



Decision No: **52/ON/046/2014**
Record number: **15124477**

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012.

AND

IN THE MATTER

of an application by Summerside
Properties Limited pursuant to s127 of
the Act for renewal of an on-licence in
respect of premises situated at 21
Wellington Street, Picton, Marlborough
District known as "The Irish Picton"

BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Chairman: John Leggett
Members: Graeme Barsanti and Hamish Beard

HEARING at Blenheim on Tuesday 16 June 2015

APPEARANCES

Neal Alan Summers - the director of Summerside Properties Limited (the licensee)
Mrs Karen Winter - Marlborough District Licensing Inspector
Senior Sergeant Peter Payne - Marlborough Police
Mr Paul Guile - Marlborough District Council Building Inspector

Introduction

This is an application by Summerside Properties Limited received on 4 November 2014 for renewal of an on-licence in respect of premises situated at 21 Wellington Street, Picton, Marlborough District known as "The Irish Picton".

The general nature of the business conducted from the premises is a tavern/pizzeria.

No change to the existing conditions have been sought.

The application was duly advertised and three public objections were received from Harbour View Motel, Gateway Motel and Ms Weine. A further concern was received after the objection period from a neighbouring accommodation provider around noise and the effect of this on their business. None of the public objectors attended the hearing.

Case law appears to be very specific as to the role of objectors. Only people who have a greater interest in the application than the public generally can object (see s102(1) of the Act). They can only object in relation to one or more of the criteria set out in s105(1) of the Act (see s102(3) of the Act). If objectors fail to appear it is likely that their objection will have no value. In this case the Licensing Inspector raised issues that covered most of the public objectors' concerns.

No opposition was received from the Police or the Medical Officer of Health.

The Licensing Inspector considered that the sale and supply of alcohol proposed under the current conditions may not meet the criteria detailed in s131 of the Act and may not be consistent with the purpose of the Act. The specific concerns were around the complaints of noise and nuisance from the garden bar area; outstanding compliance matters in regard to building work within the premises; management have not completed the refresher course to update their qualifications necessary to renew their Manager's Certificates; unsuitability of food options; and issues around the Registration of the kitchen.

The hearing was conducted based on the criteria under s105(1) of the Act. Each s105(1) criteria was discussed by all parties (if required) and comment is therefore under each heading.

Object of the Act

We considered that the application was in accordance with the Act.

Suitability of the Applicant

We heard from Mr Guile who advised that Building Control had been dealing (following a complaint) with an uncompliant installation of a freestanding log fire in *The Irish Picton* premise. Building Control had had difficulties in getting the issue resolved including issuing a number of Notices to Fix and an Infringement Notice. However Mr Guile informed us that a final inspection had been undertaken on 3 June 2015 and a Code Compliance Certificate issued subject to production of a couple of items. Mr Guile had been informed that those items had been left with Council's Picton Service Centre the previous day, but he had not sighted them yet.

Mr Guile also advised that there was an issue with the loading on the veranda above the main entrance to *The Irish Picton*. Mr Summers advised that he had moved plant pots back from the front of the veranda to ease the loading concerns.

Local Alcohol Policy

Council does not have an operative LAP at present.

Days and Hours of the Licence

The days and hours of the application were a continuation of the existing licence; Monday to Sunday 10.00 am to 1.00 am the following day. These hours are consistent with the Picton CB zone.

The public objections received are in regard to the Garden Bar and the noise late at night. They suggested that the hours of the licence for the Garden Bar area is reduced. This issue is dealt with below.

Design and Layout of the Premises

The premises are situated at 21 Wellington Street Picton. The principal entrance is accessed from Wellington Street.

The licensed area is that detailed on the plan supplied with the original application. It consists of the main bar area located within the premises and the outside garden bar. There is a centrally located bar within the premises. The outside garden bar is accessed by *walking past the* toilet area.

The designation of this premises is supervised.

The Licensing Inspector's report stated that the main bar area has good visibility of the central part of the premises however the layout of the interior is divided into three areas. The northern and most southern part of the licensed area could not be viewed from the bar itself. The outside garden bar, again could not be viewed from the main bar area.

The Licensing Inspector also reported that *The Guidelines for Crime Prevention Through Environmental Design for Licensed Premises* produced by New Zealand Police and the Health Promotion Agency discusses the layout of premises and how to best minimise harm while providing for the needs of patrons. It mentions that CCTV is useful for observing areas that cannot be easily or naturally observed within and around licensed premises. The use of CCTV in this premises may assist in staff receiving early indication of any issues arising especially in the garden bar.

The Licensing Inspector concluded that there was no opposition to the design and layout of the premises however the premises could benefit from the installation and use of CCTV. The designation of this premises was suitable for the style of licence.

Mr Summers was adamant that whilst working at the main bar (which he invariably is all the time the premises are open as he is currently the only certified Manager) he has visual contact of all aspects of

the premises including the garden bar. Mr Summers noted that he had removed an outdated CCTV set up from the premises, but had no funds to replace it. He was sure the design and layout of the premise was in accordance with *The Guidelines for Crime Prevention Through Environmental Design for Licensed Premises*, but on questioning admitted that he had not read the Guidelines. He stated in summary that the premise had a great layout and he did not need assistance.

Senior Sergeant Payne disagreed with Mr Summers in that he considered that it was not possible to see the garden bar if serving from the main bar.

Sale of Other Goods and Services

We noted that the applicant does not intend to be engaged in the sale or supply of any goods or services other than the sale of alcohol and food .

Amenity and Good Order

The Irish Picton is located in the Town Commercial Zone. *The Irish Picton* is surrounded by other commercial premises and in close vicinity to other licensed premises. It is not in close proximity to sensitive sites such as schools or churches.

The Irish Picton is located within the Liquor Ban area as described in the Marlborough District Council Liquor Ban Bylaw 2011 and is in close proximity to the Picton foreshore and marina area. It is important that intoxication of patrons is moderated so that they do not leave the premises and create a nuisance in these areas, however no issues regarding this were raised at the hearing.

The Irish Picton is in the style of an Irish Bar and does have some external advertising of alcohol including a sandwich board on the footpath.

This applicant has been operating from this premise from 1 July 2013. The Licensing Inspector advised that there have been 20 complaints regarding noise received regarding this premises since the applicant has been operating. 15 of these complaints are from one person, 3 are from another and there are 2 individual complaints. All of these complaints have been made after 11pm at night. The details of each complaint were attached to the Licensing Inspector's report.

The public objections to the renewal of this licence are generally around the noise from patrons located in the garden bar area. In 2010, the Liquor Licensing Authority (LLA) reduced the licensed hours of the outside courtyard area of an on-licensed premise in Picton known as Mikey's Bar ([2010] NZLLA PH 849-851). This followed concerns of the noise created by patrons in this outside area. The LLA decided following the hearing that in the courtyard, alcohol could not be sold or consumed after 10:00pm on any night.

The Licensing Inspector also referred to an LLA decision in regard to Paihia Saltwater (2001) Ltd. Objections to this application were received and the basic grounds for the objections were potential noise nuisance and behavioural problems of patrons. In his decision Judge Unwin stated: *Noise is just not a resource management issue. The escape of noise (particularly music) is an example of bad management. The Authority takes the view that if no attempt is made to prevent the escape of, or reduce noise, then it is the Authority's duty to monitor the hours of opening, if not the existence of the licence.*

At the hearing the Licensing Inspector advised that another three noise complaints had been received since her report was written, the complaints were on 27 March (11.20 pm – not excessive on arrival), 28 March (11.46 pm – no noise on arrival) and 10 April (12.23 am – an excessive notice issued). We also note that noise control is not always able to attend noise complaints in Picton in a timely manner.

Mr Summers defended the noise as being chatter and not music. Mr Summers advised that he now only has live music on a Friday night and is considering whether to continue with that. Mr Summers advised us that he actively monitors the chatter, especially if foul language is being used. He further advised that he is now operating as a Pizzeria and usually closes his doors no later than 10.30 pm.

Applicant's Systems, Staff and Training

The Licensing Inspector advised that since completing her report, Mr Summers is now the only certified Manager Council is aware of working at *The Irish Picton*.

Mr Summers did not dispute this, advising that he was always on-site (7 days a week from 3.00 pm to 1.00 am) and that there is no reason for him to step off-site.

Conduct of Licensee

The Licensing Inspector advised that the premise had failed a Controlled Purchase Operation in the previous 12 months and that the licence was suspended for a period of 24 hours from 8:00 am on Saturday 18 October 2014.

A visit to the premise on 21 January 2015 found that all required signage was clearly displayed. There was provision of free water, low and non-alcoholic beverages, and alternative forms of transport available.

There was a concern around the availability of food options at this premises. The menu originally supplied for *The Irish Picton* application was quite comprehensive, offering a variety of food items. The menu now used had not been supplied to Council but was visible within the premises and promoted on the web site for *The Irish Picton*. The concern was the food options available. There was only pizza advertised, although Mr Summers verbally advised that garlic bread and a curry dish were also on offer.

Section 53 of the Sale and Supply of Alcohol Act 2012 requires the holder of an on-licence to ensure that, at all times when the premises is open for the sale and supply of alcohol, a reasonable range of food is available for sale and consumption on the premises. The commentary to the Sale of Liquor Act 1989 (SL 14.54 (7) provides the Authority's minimum food standards for on-licensed premises. It specifies: *a minimum three types of food should be available eg panini's pizzas, lasagne, pies, toasted or fresh sandwiches, wedges, filled rolls, and/or salads (this does not mean three types of pie)*. The Licensing Inspector expressed concern that *The Irish Picton's* menu consists solely of pizzas and therefore does not meet the minimum standard of food provision required.

During the same visit the Licensing Inspector also conducted an inspection under the Food Hygiene Regulations 1974 as the premises was registered to prepare and sell food. This inspection found that the kitchen was no longer in compliance with Schedule 1 of the Food Hygiene Regulations 1974 and therefore was unsuitable to be re-registered on 30 June this year.

The Licensing Inspector advised at the hearing that the premise had been reinspected and was now in compliance with the Food Hygiene Regulations 1974.

Mr Summers produced yet another menu (which he tabled) – one he claims is the current menu which offered in addition to pizzas; flatbreads, hot chips (with curry sauce) and a salad option. When questioned the Licensing Inspector advised that the menu was considered to be at the minimum range of food standards for an on-licensed premise.

There was some confusion regarding hours that food was available at *The Irish Picton* in that a blackboard advertising stated pizzas were available from 3.00 pm to 11.00 pm. However this was explained by Mr Summers at the hearing that this was for takeaway pizzas, not for food to be consumed on the premise, as this was available at all times alcohol was being consumed on the premise.

Mr Summers advised that he is the sole cook/pizza maker at present, however he was adamant that he still had clear view of all the premise from his kitchen.

Objections

Public Objections were received from the Owner of the Property and two nearby accommodation providers. Their concerns were about the noise from the garden bar at the rear of the premises. A further objection (out of time) was also received, those issues being in a similar fashion to the other objectors.

None of the objectors appeared at the hearing but all suggested in their submissions that the garden bar could be closed at 10pm or 11.00 pm to alleviate this.

The Licensing Inspector also raised the issue of the noise escaping from the garden bar and that this was an ongoing issue.

Whilst the reports of fighting were not collaborated by the Police there is sufficient anecdotal evidence to show that there is indeed an issue with noise and behaviour that the licensee is unable to completely deal with, and that some intervention by the authorities is warranted.

Committees Decision

We considered that there was a noise issue in regard to the garden bar and that whilst Mr Summers was trying to mitigate some of the issues, this was not enough for the sake of the neighbouring premises, which include a number of accommodation providers. Therefore we have decided to reduce the hours of the garden bar area. We also consider that Mr Summers should seriously investigate the installation of CCTV (especially in the garden bar area) to assist with the management of the premises.

The application is therefore granted with hours of operation as follows:

- Monday to Sunday 10.00 am to 1.00 am the following day
- Provided however, that no alcohol may be sold or consumed in the garden bar area of the premises after 11.00 pm on any night.

The licence will not issue until the expiry of 10 working days from the date of this decision. That period is the time provided by s155(1) of the Act for the lodging of a notice of appeal to the Alcohol Regulatory Licensing Authority (ARLA) in Wellington.

DATED at Blenheim this

6th

day of

July

20 15



Secretary
Marlborough District Licensing Committee

