

Decision No: **52/ON/043/2015**  
Record number: **16116479**

**IN THE MATTER**

of the Sale and Supply of Alcohol Act  
2012.

**AND**

**IN THE MATTER**

of an application by The Yard Bar &  
Bistro Limited pursuant to s.127 of the  
Act for renewal of an on licence in  
respect of premises situated at 30  
Maxwell Road, Blenheim, Marlborough  
District known as "The Yard Bar & Bistro"

**BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE**

Chairman: John Leggett  
Member(s): Graeme Barsanti, Hamish Beard

**HEARING** at Blenheim on Tuesday 28 June 2016.

**Appearances**

David Dew (Counsel for the applicant)

Joe Johnstone (company director and operator of the business), Craig McGregor (co-operator of the business)

Karen Winter, Alice Boyce (Licensing Inspectors) – to assist

Michael Porter (Police Licensing Sergeant) – to assist

Tony Lawrence (objector)

**RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE (DLC)**

This is an application by The Yard Bar & Bistro Limited for renewal of an on licence in respect of premises situated at 30 Maxwell Road, Blenheim, Marlborough District known as "The Yard Bar & Bistro".

The general nature of the business conducted from the premises is a tavern and no change to the existing conditions have been sought.

The licence hours are Monday to Sunday 10.00 am to 2.00 am the following day.

The application was advertised and 3 public objections were received. These objections were in regard to noise omitting from the premises.

There was no opposition from Police, Public Health or the Licensing Inspector.

**Location of the Premise-**

The premises is located in the central business area of Blenheim. The nearest residential dwellings are 253m away.

There have been numerous complaints regarding noise nuisance from this premises since December 2014. These complaints came from 18 different complainants.

In November 2015, a free standing canopy was built over the stage area to attempt to limit the propagation of band noise from this location. It appears as though the stage canopy may now be

directing the sound to the south as some of the more recent noise complaints have come from Frances Street and Nosworthy Street.

## **Objectors**

Three public objections were received from the following persons:

- Andrea Barnard- 51 George Street, Blenheim
- Peter and Sandra Stubbs- 49A George Street, Blenheim
- A P (Tony) Lawrence- owner of Hotel d'Urville- 48 Queen Street, Blenheim

Ms Barnard and the Stubbs did not attend the hearing. Ms Barnard advised, by email on 25 June 2016, that she was no longer affected by the noise. The Stubbs advised, by email on 4 March 2016, that they were happy with the measures that the Yard Bar and Bistro had taken over the past few months to mitigate the noise however would like the licence hours to be reduced to 12 midnight closing Sunday through to Thursday.

## **Hearing**

It was agreed by all parties that in reviewing the criteria under s131 of the Sale and Supply of Alcohol Act 2012 (the Act), the area in issue was s131(1)(b) Amenity and Good Order. In particular it was the noise nuisance from the premises which drew the objections from the public.

Evidence was presented by way of written material from:

- David Dew – on behalf of the applicant
- Joe Johnstone
- AP (Tony) Lawrence

Mr Dew spoke to both his submissions on behalf of the Applicant and the Affidavit of Mr Johnstone.

Questions of clarification were posed to the applicant by the Committee. The Police and Licensing Inspectors were also given the opportunity to ask questions.

We noted that the applicant has spent considerable time and money (the applicant quoted in excess of \$60,000) on mitigating the noise emitting from the premises. This is by way of a sound canopy over the stage. This was operational in February 2016.

The applicant also advised that he had purchased his own sound equipment (run by his own qualified audio engineer) and installed decibel meters (which he considered to be the most appropriate way of measuring noise on the premise) and these give him the ability to routinely measure and regulate noise levels immediately if the level rose above his predetermined level.

The Licensing Inspector clarified the rules of the relevant Resource Management Plan and also the way the Council's noise contractors assess noise levels/nuisance. The Licensing Inspector also advised by way of a supplementary report that since the beginning of 2016, 18 noise complaints have been received regarding the premises however only two Excessive Noise Directions have been issued. One was on 9 January 2016, the other on 6 February 2016, both prior to the completion of the sound canopy works. We noted that none of the complaints received this year have been people who opposed the application in question.

Mr Lawrence read his submission. Mr Lawrence also stated that unfavourable reviews (regarding noise) had also been posted to the Booking.com website.

We noted that Mr Lawrence had not been in residence in Marlborough since November 2015. Mr Lawrence introduced a screen shot of the Yard Bar's facebook page regarding a recent event at the Yard Bar. We noted that this was only a share of another person's photo and comment – not one they posted themselves.

## **District Licensing Committee's Decision**

The statute and case law are specific as to the role of objectors. If objectors fail to appear it is likely that their objection will have less weight. We accept this, but note that all objections do tend to paint a picture of a situation at a particular point of time, however in this case the situation has changed due

to the actions of the applicant in reducing the noise level emitted from the premises to an acceptable and reasonable level in the neighbouring area.

The criteria per s131 of the Act follows:

**131 Criteria for renewal**

- (1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
  - (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):
  - (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:
  - (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:
  - (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.
- (2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

We considered that there was a noise issue in regard to the operation of the Yard Bar but that mitigation efforts undertaken by the applicant had resolved much of the issue outlined by the objectors to the renewal of the on licence. We acknowledge the objection from Mr Lawrence and that the noise issue is likely to have been distressing for him and patrons of D'Urville's. However we note that there have been no noise complaints from D'Urville's since the introduction of the sound canopy and other noise mitigation measures introduced by the applicant since February 2016.

Therefore the on-licence renewal for The Yard Bar and Bistro Limited be granted on the same terms and conditions as applied for.

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



15<sup>th</sup>

day of

July

2016

**Secretary**  
**Marlborough District Licensing Committee**

