

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application the Act by Samantha Kekila Tiera Tarawa for the renewal of an on-licence pursuant to Section 127 of the Sale & Supply of Alcohol Act in respect of premises situated at 76 Market Street, Blenheim, to be known as "Club Envy"

BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Chairperson: John Leggett

Members: Nadine Taylor
Hamish Beard

HEARING at Blenheim 23rd day of September 2022

APPEARANCES

Ms Samantha Tarawa - For the Applicant

Mr Joe Asita – In support of the Applicant

Sergeant James Mackenzie - New Zealand Police – in opposition

Ms Karen Winter – Marlborough District Council Licensing Inspector – in opposition

Ms Coral Hedley – for the Medical Officer of Health – in opposition

Also in attendance:

Mr Michael Porter – Secretary District Licensing

Ms Lynette Newport – Alcohol Licensing Administrator

DECISION OF THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Introduction

1. Before the Marlborough District Licensing Committee (the Committee) is an application for renewal of an on-licence pursuant to sections 127 of the Sale and Supply of Alcohol Act 2012 (the Act), in respect of premises situation upstairs at 76 Market Street Blenheim (the premises), known

as "Club Envy".

2. The Applicant is Samantha Kekila Tiera Tarawa (the Applicant). The application was filed with Marlborough District Council on the 12th day of October 2021.
3. The premises are located upstairs at 76 Market Street Blenheim. The principal entrance is from Queens Market Mall located between Market Street and Kings Lane where there are stairs to access the premises. The design and layout of the premises is set out in the Licensing Inspector's report which notes the slightly elevated bar which provides staff with good visibility of patrons and installation of 8 CCTV cameras located within the premises.
4. The premises are located within Blenheim CBD. There are retail outlets adjacent to the stairs to the premises. The retail outlets include Aria Beauty, Fabric Creations, Vamp Hair Studio and Café Velvet.
5. The location of the premises is known to the Committee Members. An on-licence has operated from the premises for a number of years. No site visit was undertaken by the Committee.
6. The Licensing Inspector's report recorded the building owner's consent has previously been provided in support of the Application however he advised on 13th of April 2022 there is no longer a lease in place and he would like the tenant out of the building. The Applicant produced a copy of an Agreement to Lease which provides for a number of rights of renewal of term. This gives the Applicant security of tenure until at least 2027 dependent on the Applicant exercising the

rights. The Applicant also supplied a legal opinion which supported her position. While this is self-serving, the opinion provided aligns with the terms of the Agreement to Lease. The Committee proceeded on the basis the Applicant has security of tenure of the premises.

7. At the outset of the Hearing the Applicant clarified her Application in relation to days and hours sought as follows:

- 1) Thursday to Sunday (for private functions) 2pm to 10pm
- 2) Thursday to Saturday 10pm to 3pm the following day
- 3) New Years Eve 31st of December 6pm to 3am the following day.

8. The Inspector filed a report dated 12 August 2022 in opposition to the renewal of the on-licence. The Inspector lists her opposition to the grant of the renewal of the on licence on the following grounds:

- 1) S. 105(1)(a) object of the Act,
- 2) S. 105(1)(b) suitability of the Applicant
- 3) Amenity and good order
- 4) S105(1)(k) matters deal with in any report from the Police, an inspector, or a Medical Officer of Health made under Section 103.

9. Ms Hedley for the Medical Officer of Health (MOH) filed a report dated the 23rd of March 2022 in opposition to the grant of the renewal of the on-licence. The MOH in its report, lists the grounds for opposition to the grant of the renewal of the on-licence which can be categorized under the following provisions of the Act:

- 1) S.105(1)(a) object of the Act
- 2) S. 105(1)(b) suitability of the Applicant
- 3) S. 105(1)(d) days on which and the hours during which the applicant proposes to sell alcohol
- 4) S.106 amenity and good order of locality
- 5) S. 105(1)(j) whether the Applicant has appropriate systems, staff and training.

10. The New Zealand Police (the Police) filed a report dated 16th day of March 2022 in opposition to the grant of renewal of the on-licence. The Police in its report listed the grounds for opposition to the grant of renewal of the on-licence which can be categorised under the following headings:

- 1) Suitability of the Applicant
- 2) The amenity and good order of the locality is badly affected
- 3) The impact on the patrons and public
- 4) The impact on the Police responsible for policing the licensed premises

The Law

11. Section 131 of the Act requires the Committee to have regard to a number of matters when considering renewing a licence. This includes:
 - 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 locality would likely to be increased, by more than minor extent, by the effects of a refusal to renew the licence.
- c) Any matters dealt with and any report from Police, an Inspector, or 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.

Section 3 states the purpose of the Act as follows:

- 1) The purpose of Parts 1 to 3 and the schedules of this Act is, for the benefit of the community as a whole, -
 - a) To put in place a new system of control over the sale and supply of alcohol, with the characteristics stated in subsection (2) and
 - b) To reform more generally the law relating to the sale, supply, and consumption of alcohol so that its effect and administration help to achieve the object of this Act.
- 2) The characteristics of the new system are that –
 - a) It is reasonable; and
 - b) Its administration helps to achieve the object of this Act

12. Section 4 states the object of the Act as follows:

- 1) The object of this Act is that –
 - a) The sale, supply, and consumption of alcohol should be undertaken safely and responsibly;
 - b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimized.
- 2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –
 - a) Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; a
 - b) Any harm to society generally or the community, directly or indirectly caused, or directly and indirectly contributed to, by any crime, damage death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

13. Section 105 of the Act states:

- 1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
 - a) The object of this Act:
 - b) The suitability of the Applicant:
 - c) Any relevant local alcohol policy:
 - d) The days on which and the hours during which the Applicant proposed to sell

alcohol:

- e) The design and layout of any proposed premises:
- f) Whether the Applicant is engaged in, or proposed on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:
- g) Whether the Applicant is engaged in, or proposes on the premises to engage in the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:
- h) Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced to more than a minor extent, by the effects of the issue of the licence:
- i) Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issues of existing licences that -
 - (i) They would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
 - (ii) It is nevertheless desirable not to issue any further licences
- j) Whether the Applicant has appropriate systems, staff, and training to comply with the law:
- k) Any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103

The Agencies Position

14. The Agencies remain unchanged in their respective positions.

Objectors

15. The application was publicly notified pursuant to s. 101 of the Act and attracted a number of public objections. These objectors are:

Aria Beauty

Fabric Creations

Vamp Hair Studios

Café Velvet

None made an appearance at the Hearing. Their objection is set out in an email dated 16th of November 2021 which lists their concerns if the Applicant's trading hours are increased.

Details

16. Accordingly, and pursuant to s. 202(3) of the Act, the matter was set for determination by the Committee.

Submissions and Evidence

17. For the sake of expediency and clarity we have mostly paraphrased the submissions, evidence and cross examination of that, where it is relevant to our decision.

Case for the Applicant

18. The Applicant gave evidence in support of her application.

19. The Applicant's "submission" dated 10th of August 2022 , received by email 15th of August 2022 was circulated to all parties prior to the Hearing. The Applicant referred to this document as "submission response document outlining issues and concerns raised in regard to my Application".

20. The submission, traversed by the Applicant at the Hearing, covered (inter alia):
 - a. Lease tenure

 - b. Systems, Staff and Training. This concluded with a statement –

"To ease concerns, all staff will be required to undergo refresher training bi-annually this scheduled as follows:

Duty Manager/Bar staff – 26th of August 2022
Security – 2nd September 2022"

 - c. Conduct of Licencee

This included a statement that concerns on issues have been followed up with regular meetings with the Police and Council inspector.

The Applicant also acknowledged a "breach" in failing to display a Duty Manager's name, stating "the infringement has been issued and paid".

- d. Avoiding disorderly behavior. This included a statement:

"We will continue to adapt and adjust to any issues or concerns raised and implement changes where possible to comply with the Act and suggestions given by Police".

- e. Objections – neighbouring businesses

Here the Applicant states:

"We acknowledge and understand the concerns raised. We apologise that no consultation or engagement has taken place prior to the Application"

- f. Hours

- g. Continually overflowing services at rear of Club Envy not addressed in the last 2 years.

21. The Applicant's submission also addressed "Police Incidents Recorded". This covered a number of incidents recorded by Police since the Applicant was first granted an On-Licence in October 2017. The Applicant did not dispute any of these incidents occurred but followed with an explanation and in most cases steps taken to mitigate.

22. The list of incidents is substantial and includes:

- * Drunk asleep in bar – 23/03/2019
- * People of concern working at bar – 29/4/2019
- * Uncertified security – 7/7/2019
- * Assault – 7/9/2019
- * Rape – 7/8/9 2019
- * Sexual Assault – 11/7/2020
- * Security expired ID – 5/12/2020
- * Murder – 21/6/2021
- * Pandemic Breach – 9/9/2021

23. The Applicant's submission also concluded with a list of "changes made considering issues raised" and includes

- * Suitable staff have been employed
- * Duty Manager's name always displayed
- * Rent and operational expenses up to date
- * Continuous measures to mitigate potential risk to population
- * Cleaning of shared foyer

24. The Applicant's submissions further concluded by reinforcing her intent to "comply with

law", that she has taken into consideration "and accepted mentioned previous issues", that she would "enforce policies and procedures in compliance with the Act", "would be available to work alongside Police, Council and other regulatory bodies and willfully attend any meetings requested in order to promptly address any issues". Further, she "consistently made changes to further minimize excessive alcohol consumption and harm and will continue to do so".

25. During her evidence the Applicant stated that since receiving notice of opposition from adjoining business owners, she had met with two of them and asked for direct communication if there were any issues.
26. Sergeant James MacKenzie cross examined the Applicant and commenced by referring to the "Incidents recorded by Police relating to Club Envy" commencing on page 2 of his report dated 15th of August 2022.
27. Early in his cross examination, it became clear that the Applicant had not read the updated version of the Police report "Cancellation of On-Licence" dated 15th of August 2022. The Applicant was unaware that this document updated information as contained in the initial report dated 16th of March 2022. The updated version included additional "incidents recorded by Police relating to Club Envy" from March 2022. The Applicant acknowledged the updated report had been sent to her but she interpreted it as a second copy of the report dated 16th of March 2022 so did not notice the additional incidents recorded.

28. When this became clear, the Committee adjourned the Hearing for an extended 2 hour period (not less than) to enable the Applicant to read the report dated 15th of August 2022. Following the adjournment, the Applicant confirmed that she was ready to proceed and did not require any further time.

29. Sergeant MacKenzie advised that Police witnesses were available to be called if required and that the CCTV footage referred to in his report was available. The Applicant confirmed that she did not require to see the CCTV footage and did not require Officers to be called to give evidence.

30. Sergeant MacKenzie stated that Club Envy was a draw on Police resources and higher than most similar businesses. Further, there is another business open at 3pm but that Police resources were concentrated on Club Envy.

31. In response to Sergeant MacKenzie's question – is it fair to say that you are not denying the incidents occurred, you are offering explanations, the Applicant responded by saying she was not denying the incidents occurred, she was offering explanation and context.

32. The Applicant acknowledged that it would be useful to have CCTV put in place in the stairwell of the premises. She accepted that this was response was "reactionary" to Police concerns raised in opposition to her application.

33. The Applicant was questioned around the incident occurring on the 16th of April 2022 where at 2pm patrons were observed leaving the bar carrying alcohol and some were seen urinating in the street. Patrons advised Police that Club Envy staff were aware they were leaving with alcohol. Club Envy had opened at midnight after Good Friday. The Applicant advised that the premises were opened at midnight on Saturdays so technically was not Good Friday.
34. The Applicant was questioned around the incident recorded on 24th of April 2022 (intoxicated man/under age patrons). Here the Police observed a male being carried out of Club Envy by bar security and friends. The male was placed on a bench outside the bar. Police observed the male was unconscious and was placed in the recovery position before Police contacted an Ambulance and had him transported to hospital. The Applicant acknowledged that the male had become unconscious when placed on the bench. She was questioned as to whether the male should have been left on the bench. She agreed this was not an appropriate action.
35. The Applicant was questioned around the incident on 28th of May 2022 – intoxication/offensive behavior. The Applicant responded by saying staff were trained and patrons have a responsibility.
36. The Applicant was questioned around the incident on the 29th of May 2022 - “intoxicated patron/aggressive male”. Sergeant MacKenzie stated he was on patrol that night and confirmed CCTV footage of the incident was available. The Applicant confirmed she did not require this to be produced. She was also questioned around the lack of availability of food.

The Applicant disagreed and said that there was water and food on offer.

37. The Applicant was questioned in relation to a report from Sergeant Peter Payne relating to incidents 2019 – 2021. The Applicant acknowledged a telephone call inviting her to meet with Police regarding the Report. She accepted that looking back, she should have met with Police.
38. The Applicant was questioned in relation to an Infringement Notice issued in 2019 because no Duty Manager was named. The Applicant responded by saying a Duty Manager was named but was involved with playing music (DJ) at the time of the check.
39. The Applicant was questioned regarding security issues. She responded by saying she had discussed this with Police and was looking to out-source this function within 12 months.
40. In response to the number of incidents occurring since the date of lodgment of the Application for Renewal, the Applicant responded by referencing her intention to out-source security.

Medical Officer of Health

41. Ms Hedley gave evidence for the Medical Officer of Health. She had earlier provided a brief of evidence which had been circulated amongst the parties to the Hearing.

42. Her brief of evidence summarized what she had been told by “other business owners of the mall”. She did refer to her own personal experience as a regular user of another business located in the Mall area. She recalled seeing bottles and cans on window ledges in the mornings following Club envy being open. The Applicant acknowledged the business sold the bottles but not the cans shown in the photo provided by Ms Hedley.

Licensing Inspector

43. Ms Winter provided a brief of evidence dated 12th of August 2022 which had been circulated amongst the parties to the Hearing.

Closing Submissions

44. By agreement, each party provided written submissions. The Police, Medical Officer of Health and Licensing Inspector were given until 30th of September 2022 to provide and circulate their submissions; the Applicant given a week following to provide and circulate her written submission.

Decision

45. Section 131 of the Act requires the Committee to have regard to a number of matters when considering renewing a licence. This includes:

- 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 locality would likely to be increased, by more than minor extent, by the effects of a refusal to renew the

licence.

- c) Any matters dealt with and any report from Police, an Inspector, or 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.

46. The Committee has considered the evidence before us, including submissions made. The Committee can only act on the information before us and the application of that, to the criteria that we are required to consider.

Section 105(1)(b) – Suitability of Applicant

- 47. There has been challenge to the suitability of the Applicant by all of the agencies.
- 48. The Applicant has accepted multiply incidents of assault, injury, disorderly behaviour, rape and a death involving patrons of Club Envy. These incidents either occurred within the premises or in close proximity to the premises. These incidents were acknowledged by the Applicant who gave evidence to mitigate or minimize a number of them.
- 49. There are 8 recorded incidents acknowledged by the Applicant since she lodged her Application for Renewal of Licence.

50. As recently as 24th and 25th of September 2022 there was an incident where an intoxicated male was granted access to Club Envy. The male had previously been removed from another licenced premise in Blenheim CBD for intoxication. A short time later, he was able to gain access to Club Envy where he remained. Police located this male on the street vomiting on himself. Due to his level of intoxication ambulance services were called by Police.

51. The Applicant has a responsibility to have systems in place to minimize the behaviour of patrons within the licenced premises, as they begin to leave the premises and after they have left the premises.

52. The Applicant has stated in her evidence that she believes the patrons should have some responsibility for their own behaviour. This view is deflecting from the obligations and responsibilities of a licensee and is central to the suitability of the Applicant.

53. We note *Sogi Trading Limited v Licencing Inspector Auckland Council (2020) NZARLA96* at 130, the Authority provided guidance on how a licensee must take responsibility for patron behaviour even after they have left the premises :

“the Act does not simply concern itself with how a licensee operates the internal premises but is concerned with the impact that a licensed premises may have on the locality and on the community more generally...” (265) similarly, a licensee cannot seek to absolve itself of those matters because they have been outside”.

54. We have heard evidence that the Licensing Inspector and Police have met with the

Applicant at least 4 times since Club Envy's licence was last issued (5th of February 2019) to discuss varying concerns about management of the premises and patron behaviour. The Applicant's response centered on installing more CCTV cameras and having more frequent staff meetings, training and out-sourcing security.

55. The Committee accepts that these steps are only "proposed" and, as accepted by the Applicant, "reactionary".

56. We note the Applicant in her submission states that "in terms of patrons taking responsibility for themselves I do not believe a business should be held entirely responsible for the action of patrons. I believe patrons have a responsibility not only as adults to behave and function in decent respectful manner in public but as members of society. This view references such behaviours as urinating in the streets, pre-loading and vandalism. This does not minimise or diminish my responsibility as an on-licence holder and we will continue to uphold those responsible". The Committee does not have confidence that the Applicant has an understanding of her obligations as a licence holder.

57. Police have formed the view that the Applicant is either ineffective, complacent or willfully neglecting her responsibility. We agree.

Section 105(1)(c) – Relevant Local Alcohol Policy (LAP)

58. There is no LAP in existence so there is nothing to consider.

Section 105(1)(d) – Days and Hours of Operation

59. The Applicant clarified her Application around hours which are similar to existing hours prior to Application for Renewal.

Section 105(1)(re) - The Design and Layout of the Premises

60. No issues were raised.

Section 105(1)(f) – Whether the Applicant is Engaged in or Proposes on the Premises to engage in, the Sale of Goods other than Alcohol, Low Alcohol Refreshments, Non-alcoholic Refreshments and Food and if so which Goods

61. No issues to consider.

Section 105(1)(g) – Whether The Applicant Engaged in or Proposes on the Premises to Engage in, the Provision of Services other than those directly related to the sale of Alcohol, Low Alcohol Refreshments, Non-alcoholic Refreshments, and Good and if so which Services

62. No issues raised.

Section 105(1)(j) – Whether the Applicant has appropriate Systems, Staff and Training to comply with the Law

63. The Applicant accepts in her submissions that although she currently has licenced security and staff training in place “we will look to improve by out-sourcing where more experienced security will aid in further managing patron behaviour”. She also acknowledges the need for updating current systems and training, installation of additional cameras in foyer/main entrance and more frequent training with staff emphasizing patron welfare and vigilance around patron intoxication. She further states “we acknowledge all evidence submitted in the full confidence we can and will execute the proposed plan stated”.

Section 105(1)(k) – Any matter dealt with in the Report of the Police, an Inspector or a Medical Officer of Health made under Section 103

64. The Committee has provided commentary on the Reports of Police, Licencing Inspector and Medical Officer of Health.

Section 131(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 on-licence

65. This was the subject of extensive evidence by the agencies.
66. The Applicant currently holds a licence and accepts a number of incidents had occurred since the issue of her licence.
67. It is accepted that there are 8 recorded incidents since the Applicant lodged her

Application for Renewal of her licence for the premises. We are not satisfied that this trend will not continue.

Section 105(1)(a) – The object of the Act

68. The object of the Act sets the bar for all operations of licenced premises. A person who has the privilege of holding the licence, must ensure that the sale and supply of alcohol should be undertaken safely and responsibly and that the harm caused by the excessive or inappropriate consumption of alcohol should be minimized. A question for the Committee is: Can we be satisfied, having regard to all the relevant factors set out in Section 105 of the Act that the renewal of the on-licence is consistent with the objects of the Act?

69. Following hearing of evidence and submission by the Applicant and agencies, the Committee has formed the view the Applicant has not shown that she understands the objects of the Act or that she has a considered business plan and approach to good management practices.

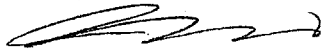
70. In considering the objects of the Act, we must look at the definition of harm as defined as:

“Any crime, damage, death, disease, disorderly behaviour, illness or injury, directly or indirectly caused by, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol.

Conclusion

71. The Applicant's application for Renewal of the On-Licence is declined.

DATED at Blenheim this 11th day of November 2022



John Leggett

Chairperson

Marlborough District Licensing

Committee on Behalf of members;

Nadine Taylor and Hamish Beard

IN THE MATTER of the Sale and Supply of Liquor Act 2012

AND

IN THE MATTER of an application the Act by Samantha Kekila Tiera Tarawa for the renewal of an on-licence pursuant to Section 127 of the Sale & Supply of Alcohol Act in respect of the premises situated at 76 Market Street, Blenheim, to be known as "Club Envy"

BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Chairperson John Leggett

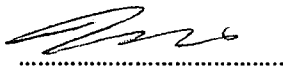
Members: Nadine Taylor
Hamish Beard

DECISION OF THE MARLBOROUGH DISTRICT LICENSING COMMITTEE as to Section 135(2) Sale and Supply of Alcohol Act 2012.

1. The Marlborough District Licensing Committee issued its decision dated 11 November, 2022 to decline the Applicant's application for renewal of On Licence.
2. Section 135(2) of the Sale & Supply of Alcohol Act 2012 ("the Act") provides :

If the Licensing Authority or the Committee refuses to renew the Licence, it must state the day on which the Licence expires, and that date must be no later then 3 months after the date of its decision.
3. For the purposes of Section 135(2) of the Act the day on which the Licence expires is 14 December 2022.

DATED at Blenheim this *16th* day of *November* 2022



John Leggett
Chairperson

Marlborough District Licensing Committee on behalf of members :
Nadine Taylor and Hamish Beard