

Decision No: 045/053/2014

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by Jalaram Trading
Company Limited to s142 of the Act
for the grant of an Off-Licence in
respect of premises situated at 42
Main Street, Ōtaki, known as 'Otaki
Four Square'.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chairperson: Cr Diane Ammundsen
Members: Mr Trevor Knowles
Ms Samantha Sharif

HEARING at Paraparaumu on 15 August 2014

PROCEDURAL MATTERS

The Chairperson chose to convene a public hearing of the full District Licensing Committee to consider and determine this application. Notice of the hearing was given to the following parties:

- The Applicant
- The Licensing Inspector
- The Police
- The Medical Officer of Health

APPEARANCES

Mr Kalpesh Modi - Applicant
Mr Neil Bovey (Group Manager, Four Square Group) – for Applicant
Mr Rhys Sanson – Licensing Inspector – to assist
Ms Andrea Boston – Regional Public Health

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This is an application by Jalaram Trading Company Limited for the grant of an Off-Licence to enable the applicant to sell and supply alcohol for consumption off the premises, situated at 42 Main Street, Ōtaki, known as 'Otaki Four Square'.

2. The application was forwarded to the Police, Medical Officer of Health and the Licensing Inspector for comment. No opposition to the application was received from the Police or Medical Officer of Health. However, the Licensing Inspector queried whether the applicant met the criteria under the legislation for the kinds of premises that can hold an Off -licence.

Committee's Decision and Reasons

3. Having considered all the evidence submitted in this matter, both written submissions and oral evidence presented at the hearing, the Committee is not satisfied the Jalaram Trading Company Limited meets the criteria for the renewal of an Off-licence in that it does not meet the specific requirements of the Sale and Supply of Alcohol Act 2012.
4. In reaching this decision, the Committee wishes to iterate that it has no issues with the applicant's suitability to hold an Off-licence, or past history as a licensee. However, his business does not meet the definition of a grocery store for the purposes of the Act and therefore is ineligible to hold an alcohol licence.

Public Notification

5. Pursuant to section 127(3) of the Act, the applicant's application was publicly notified in the Kapiti News on 28 May and 4 June 2014. An error was identified in the advertisements in that they incorrectly stated the trading hours as 7.30 am to 10.00pm, whereas they should have stated 7.00am to 10.00pm.
6. The applicant subsequently advised it would intend to reduce its trading hours to reflect those advertised. The Committee noted the Licensing Inspector's advice that the error was not material. The Committee determines that readvertising is not required.
7. The Committee grants a waiver of the public notification requirements in accordance with section 208 of the Act.

Application to hold an Off-Licence

8. The Committee noted that no complaints or objections have been received in relation to Jalaram's operations and the applicant appears to understand and appreciate the increased obligations which the new legislation imposes on sellers and suppliers of alcohol. The Committee does not have any concerns with respect to the applicant's suitability and notes that the applicant has support from the community.
9. Pursuant to section 32 (1)(f) of the Act, an Off-Licence can only be issued where, in the opinion of the District Licensing Committee, the premises are a grocery store.
10. Section 33(1) of the Act provides the definition to be used in determining whether a premises are a grocery store. The store must have the characteristics of a grocery store where, inter alia, the principal business carried on, is or will be the sale of food products.
11. Section 33 (2) sets out the matters to which the Committee must have regard, to form an opinion as to whether any premises are a grocery store. These matters are addressed below.

12. The size, layout and appearance of the premises. On the evidence presented, the Committee is satisfied that the premises meets these requirements and noted that the size of the retail area is above the acceptable size threshold.
13. A statement of the annual sales revenue (or projected sales revenue) of the premises was produced in accordance with the relevant regulations. Regulation 6 is relevant in this regard, which require actual sales revenue statements for existing premises. The purpose for the revenue figures is to demonstrate that the principal business is the sale of food and grocery products.
14. The sales revenue statements submitted by Jalaram clearly demonstrate that tobacco sales generate between 60-70% of total revenues. On this basis, it is not possible to conclude that the principal business is the sale of food and grocery products.
15. The number, range and kinds of items on sale (or expected to be on sale) on the premises. The Inspector's visual inspection noted that that there was a significant proportion of hardware and general products compared to food and grocery products.
16. The Committee may have regard to any other matters it thinks relevant. In this context, the Committee considered Foodstuffs' submission that more than 60% of the tobacco revenues is actually excise duty and should not be taken into account in determining store revenues.
17. Under existing case law, the ARLA decision in Hagley Night & Day, NZARLA 211, it is clear that the Committee must consider gross revenues for the purposes of determining actual store revenues.
18. The Committee also considered the statement from Mr Bovey, that Foodstuffs was developing a strategy to increase sales of grocery items from its Four Square stores. It was also noted that this strategy is in its early stages and has not been widely implemented as yet. There is currently no evidence that this strategy will result in the sale of food products being the principal business of Jalaram Trading Company Limited as required under the legislation.
19. Pursuant to section 408 of the Act, the Committee grants the applicant a limited renewal period to 18 December 2014, the maximum length of renewal possible, to allow him to dispose of existing alcohol stock.

DATED at Paraparaumu on 22nd day of August 2014



Diane Ammundsen
Chairperson
Kāpiti Coast District Licensing Committee

