

Decision No: 45/ON559/2023

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

AND

IN THE MATTER of an application pursuant to section 127 (2) of the Sale and Supply of Alcohol Act 2012 by KD Hospitality Limited for a renewal of an On-licence for premises situated at 91-93 Mazengarb Road, and to be known as the Jolly Pub & Kitchen

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Cr Nigel Wilson

Members: Mr Philip Parkinson

Ms Susie Mills

HEARING at Kapiti Coast District Council offices, Paraparaumu, on 18 April 2023.

APPEARANCES

Mr Kamaldeep – the applicant (Appeared via Zoom)

Mr Simon Middlemiss, solicitor of Norris Ward McKinnon – for the applicant (Appeared via Zoom)

Antionette Bliss - Licensing Inspector

Kirk Fraser – Police Sergeant

Julie Blythe – Appearing for the Medical Officer of Health

Introduction

1. This is an application by KD Hospitality Limited under section 100 and Section 127 (2) of the Sale and Supply of Alcohol Act 2012 for the RENEWAL of an ON-LICENCE in respect of premises situated at 91-93

MAZENGARB ROAD, PARAPARAUMU. And to be known as THE JOLLY PUB & KITCHEN.

The Application

2. KD Hospitality Limited has made application for the renewal of an On Licence under section 127 (2) of the Sale and Supply of Alcohol Act 2012 (the Act), to sell and supply alcohol for consumption on the premises, situated at 91-93 Mazengarb Road, Paraparaumu, and known as THE JOLLY PUB & KITCHEN.

PREMISES/BACKGROUND

3. A tavern style On Licence has been held on the premises since 1993 (Shearer's Arms) following the granting of building consent BC930862 for a tavern and restaurant. Resource consent was not required for the establishment of the business but resource consents have been granted subsequently to extend the licensed hours for Christmas Eve and New Year's Eve.
4. The applicant took over the premises under temporary authority on 18 June 2018 and was granted a new On Licence on 17 July 2018.
5. The general nature of the business is that of a tavern; the principle business being the sale of alcohol and meals to the public for consumption on the premises.
6. A restaurant, TAB facility, and gaming machines are operated on the premises. Regular community fundraising quiz nights and entertainment events are held, including DJs, karaoke, live music, and televised sport.
7. The applicant leases the premises from Rica Limited who have given permission in a letter dated 9 June 2018 for the applicant to hold an On Licence for the premises.
8. The licence expired on 17 July 2022 but has remained valid as an application for its renewal was filed prior to this date. The applicant has not sought to vary any conditions of the licence.
9. The Inspector (Antionette Bliss) in her report of 5 December 2022, stated the application currently falls within the medium cost/risk rating under sections 5 to 7 of the Sales and Supply of Alcohol (Fees) Regulations 2013, in that it is an On Licence in a tavern, having licensed trading hours finishing before 2am and having no recorded

enforcement holdings within the last 18 months (prior to December 2022)

10. The premises are situated on land zoned Local Centre under the operative District Plan 2021 (the District Plan).
11. The premises are accessed from a car park with entry points from Mazengarb Road and a continuation of Guildford Drive (no exit). Mazengarb Road is a main thoroughfare through the residential areas of Paraparaumu and Paraparaumu Beach.
12. The premises are located in a prominent area at the intersection of two busy residential roads.
13. The Jolly Pub & Kitchen occupies the only Local Centre zoned land in the area. Surrounding land is zoned General Residential with areas of Open Space zoned land along the nearby stream and behind the premises.
14. Neighbour activities and uses within the immediate vicinity include residential buildings and Paraparaumu College.
15. The premises are situated within an alcohol free zone that is in effect Monday to Sunday from 9pm to 6am the following day.
16. The operation of the business has not changed since the last renewal and therefore a planning certificate is not required.

NOTIFICATION

17. Pursuant to section 127(3) of the Act and section 38 of the Sale and Supply of Alcohol Regulations 2013 the application was publicly notified twice.
18. The Secretary of the District Licensing Committee did not receive any objections to the application in accordance with section 128 of the Act.

OBJECTIONS

19. The Secretary of the District Licensing Committee did not receive any objections to the application in accordance with Section 128 of the Act.

20. All those appearing were sworn in.

Applicant's Evidence

21. Mr Middlemiss for the applicant, submitted his client Mr Kamaldeep and the agencies [Police, and DLC Inspector] had discussed initial objections and concerns raised by the agencies had been resolved.

22. Mr Middlemiss submitted that his client had implemented procedures and policies to assure the amenity good order concerns.

23. Mr Middlemiss stated Mr Kamaldeep had instructed his firm Norris Ward McKinnon to assist with policy. He further stated that the agencies 'appeared to be onside with key issues the DLC had to consider.'

24. Mr Kamaldeep told the hearing several steps had been taken to increase security. These included: The stopping of DJ Nights, and increased lighting in the carpark.

25. Mr Kamaldeep told the hearing he had engaged Mr Middlemiss and his firm to prepare a template to upskill staff.

26. Mr Kamaldeep said Staff members would be patrolling the carpark; there would be supervised training of staff and he would receive daily updates from staff.

EVIDENCE FROM THE INSPECTOR – Antionette Bliss

27. Ms Bliss stated, following her initial assessment that the licence should not be renewed primarily due to the issues concerning suitability of the applicant.

28. In her Report dated 5 December 2022 (Page 10) the Inspector stated *'In my opinion, the applicant's operational procedures, have been inadequate to fulfil the object of the Act in terms of minimising potential harm and ensuring a safe environment for patrons.'*

29. In the same report (Page 16) the Inspector states *'Following review of the application, supporting information and discussions with the applicant, in my opinion the applicant has not demonstrated that there were appropriate systems, staff and training to meet the requirements of the Act in the previous licensing period.'*

30. The recommendation from the Inspector read; *Having regard to the particulars of the application and the relevant statutory criteria under the Act, I oppose the application for renewal of the On Licence in relation to sections 131(1)(a) to (d) as discussed in this report.'*

31. The Inspector stated her opposition to the application was withdrawn following an agreement with the agencies and the applicant that would address the concerns raised in her report. She stated there had been discussions with Mr Kamaldeep and Police and a set of conditions had been discussed and agreed on. Consequently the Inspector felt the licence could be granted.

EVIDENCE FROM POLICE – Kirk Fraser

32. Sergeant Fraser noted the initial Police opposition to the renewal of the licence in July 2022. Sergeant Fraser stated this was due to the suitability of the Applicant from the period 2019 to May 2022. He stated Police had concerns with staff training process. Subsequent to agreed conditions around security and staff training, Sergeant Fraser stated the Police were no longer opposing the granting of the licence.

EVIDENCE FROM Julie Blythe – appearing for the Medical Officer of Health

33. Ms Blythe stated initial opposition related to concerns regarding the suitability of the Applicant. Subsequent discussions and agreement of conditions meant the Medical Officer of Health had now withdrawn opposition the application.

Responses to Committee questions

34. In response to a question regarding the qualifications of the duty managers listed on page 55 of the application Mr Kamaldeep confirmed that three of those listed had actually left and he would forward the names of replacement staff who were suitably qualified.

35. Further, in relation to security concerns raised, Mr Kamaldeep stated a Duty Manager would check the car park every half hour from 10.30pm.
36. Another significant security concern related to the DJ Nights. In response Mr Kamaldeep stated the major issue was mainly people pre-loading and creating trouble and fighting in large groups. He said the DJ Nights would be stopped.
37. Mr Middlemiss, acting for the Applicant, said Mr Kamaldeep had met the conditions agreed between the Police, Licensing Inspector, and medical Officer of Health.
38. Mr Middlemiss said the Applicant meets the objects of sections 131 and 105 of the Act and did not consider a truncated licence period would be warranted.
39. In relation to the Applicant's suitability, Mr Middlemiss stated Mr Kamaldeep had shown a willingness to work with Police and he had been proactive and had not attempted to hide anything from any of the agencies. He further stated Mr Kamaldeep and the agencies had been working well together for positive outcomes.
40. For the Police Sergeant Kirk said the Police are unopposed as the applicant had shown a willingness to reduce harm and considered the conditions agreed to by the agencies and Mr Kamaldeep would address the issues that has caused major concern.
41. Police Sergeant Kirk said there had definitely been a shift to maintain the amenity and good order conditions.

Committee's Decision

42. In the matter of an application by KD Hospitality under sections 100 and 127(2) of the Sale and Supply of Alcohol Act 2012 for the renewal of an on-license in respect of the premises situated at 91-93 Mazengarb Road, and to be known as the Jolly Pub and Kitchen the Committee considered the application in reference to sections 100 and 172(2), 131, and 105 of the Act.
43. The Committee agreed with the grounds for the original view of the agencies to oppose the licence being granted.
44. The Committee duly considered the terms and conditions of the Agreement (Copy Attached) between the Police, Licensing Inspector, Medical Officer of Health, and the Applicant KD Hospitality Ltd.
45. The three reporting agencies met with the applicant represented by Mr Kamaldeep and his lawyer, Simon Middlemiss on 21 February 2023.
46. An additional discretionary condition as well as undertakings were agreed by the parties, which included a truncated period for the licence. (attached)

47. Pursuant to section 127(2) of the Act, The Kapiti District Licensing Committee having considered the papers in relation to the application by KD Hospitality have determined the Applicant may continue under the current on-licence until its expiry truncated to the date of 17 March 2024, this being 20 months on from the expiry of the current licence (17 July 2022).

Dated at Paraparaumu this 15th day of December 2023.

A handwritten signature in black ink, appearing to read 'Nigel Wilson', with a long horizontal flourish extending to the right.

Nigel Wilson

Chairperson

Kapiti Coast District Licensing Committee