

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **Mr Robert J Pearce**
pursuant to section 219 of the Act for the
issue of a Manager's Certificate in respect
of the premises situated at 10 Wellington
Road, Paekakariki known as 'Paekakariki
Bowling Club'.

BEFORE THE KAPITI COAST DISTRICT LICENSING COMMITTEE

Chair: Fiona Vining
Members: Fraser McInnes
Trevor Knowles

HEARING at Kāpiti Coast District Council offices, Paraparaumu, on 24 February 2020.

APPEARANCES

Robert J Pearce – the applicant
Stephen Joiner, – in support of the applicant
Clarissa (Chris) Garvey – in support of the applicant
Antoinette Bliss – Licensing Inspector
Jacqui Muir, Environmental Standards Manager
Sgt Shane Bengel - NZ Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction

1. This is an application by Mr Robert J Pearce for the issue of a Manager's Certificate to manage the sale and supply of alcohol on licensed premises at Paekakariki Bowling Club, 10 Wellington Road, Paekakariki.

The Application

2. A copy of the application was forwarded to the reporting agencies and the Licensing Inspector, as is required by section 220. The police opposed the application on the grounds that the Applicant was not suitable to hold a Manager's Certificate. This was on the basis that the Applicant "failed to make any attempt to disclose any previous convictions while completing the application" and had an extensive number of traffic infringement notices.
3. Prior to the hearing the police provided the Committee with the Applicant's Driver Demerit and Suspension History. At the hearing the police also provided a Criminal and Traffic History report in respect of the Applicant. Due to the historical nature of the majority of the information in those statements, the Committee makes an order

under section 203(5) prohibiting publication of those documents unless lawfully obtained in a manner unrelated to this application.

4. All those appearing were sworn in.

Applicant's Evidence

Robert Pearce

5. In Mr Pearce's application he answered the question of whether he had any criminal convictions in the affirmative. He did not put the details of the convictions but wrote "unsure – long time ago – police check should clarify".
6. Mr Pearce's evidence was that he answered "no" in relation to the question about convictions as his convictions were all historical and not recent. The police records provided show that his most recent conviction for careless driving dates from 2005 and the most recent conviction prior to that was from 1995.
7. Mr Pearce's role at the Paekakariki Bowling Club is a voluntary one. He assists when Mr Joiner is absent.
8. In response to questions from the police, Mr Pearce acknowledged his historical convictions.
9. When it was put to him that there is concern that disregard in one part of the law may see similar disregard in other areas Mr Pearce's evidence was that he has changed in his life over the last twenty and that while he was self-interested when younger he understands now that public safety is not a frivolous matter. He confirms that he understands that liquor licensing laws must be fully upheld.
10. In response to further questions from police, Mr Pearce acknowledged receiving a warning in 2018 in relation to marijuana use. He stated that he does not use any drugs at present.

Steve Joiner

11. Mr Joiner is the Bar Manager of the Paekakariki Bowling Club. At present, he is the only club member with a Manager's Certificate.
12. Mr Joiner provided a letter of support in which he noted that Mr Pearce had been doing his training with him for the last year. He stated that Mr Pearce "has shown he has ability, honesty and integrity to be in charge when required".

Chris Garvey

13. Mrs Garvey is the manager of the Mary Potter Hospice shop in Paraparaumu. She also provided a letter of support. She stated that Mr Pearce had volunteered at the shop for over four years and had recently been offered paid employment within the organisation.
14. She stated that while "everyone has a past" she did not see that there would be any issues going forward. She stated that Mr Pearce helps the community and puts his best foot forward.

The Inspector

15. The Licensing Inspector's report refers to Mr Pearce's application and responses to the questionnaire accompanying the application, making a number of comments. Ms Bliss has noted Mr Pearce's work history in licensed premises (including the Paekakariki Bowling Club), his current business role and also the work undertaken at the Mary Potter Hospice shop, initially as a volunteer and now as an employee.
16. Her report notes that she asked Mr Pearce why his convictions were not listed on the application and that he responded that he thought that, given the age of the convictions, he was eligible under the clean slate scheme.

The Police

17. As noted above, the police initially opposed the application on the grounds that the Applicant was not suitable to hold a Manager's Certificate. This was on the basis that the Applicant "failed to make any attempt to disclose any previous convictions while completing the application" and had an extensive number of traffic infringement notices.
18. Police also raised an incident in which a member of the public made an accusation about Mr Pearce. Mr Pearce denied that allegation. The police did not take the matter further. On this basis, we cannot put any weight on that allegation.
19. During the hearing, the police acknowledged that Mr Pearce's convictions were historical. Police did raise concerns about Mr Pearce's driving and some drug use (as noted above) but withdrew the initial opposition.

Committee's Decision

20. The matters which a Committee must consider in regard to granting a Manager's Certificate are contained in section 222 of the Act:
 - (a) the applicant's suitability to be a manager:
 - (b) any convictions recorded against the applicant:
 - (c) any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force:
 - (d) any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218:
 - (e) any matters dealt with in any report made under section 220.

Suitability

21. Under the previous legislation, the High Court has stated:

The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that are to go with the holding of a license.¹

22. The Liquor Licensing Authority has noted:

Each application is dealt with on a case by case basis. In determining suitability we assess the likelihood of a potential licensee or manager upholding the law in light of the evidence provided.²

23. The first issue raised was that Mr Pearce had not disclosed his previous convictions. Police quite rightly withdrew their objection on that ground during the hearing. While Mr Pearce did not provide details of his convictions, he clearly stated that he did have convictions from a "long time ago". Given the time passed, it is understandable that he would not remember the details of those convictions. The Committee is satisfied that he did not make any attempt to hide the convictions.
24. Mr Joiner gave evidence of Mr Pearce as a duty manager who takes his responsibilities under the Act quite seriously and who has not had any issues at work. Mrs Garvey also gave evidence that Mr Pearce helps the community and puts his best foot forward and that she did not think future issues would arise.
25. Mr Pearce was forthright and honest in his responses and fully acknowledged his past. He is focused on helping the Bowling Club and is aware of how important it is that the law is upheld. The Committee is satisfied as to Mr Pearce's suitability.

Convictions

26. In *Re Osborne*³ the Liquor Licensing Authority said in respect of a manager's certificate, there should be an appropriate stand-down period in respect of serious convictions. Given the significant time that has passed since Mr Pearce's previous convictions and the nature of those convictions, we are satisfied that they should no longer be taken into account (unless there are new matters in future) in determining Mr Pearce's suitability and that no stand-down period is required.

Experience controlling licensed premises

27. Mr Pearce has experience serving alcohol over the last four years at the Paekakariki bowling club and also has previous experience in licensed premises. No issues have been raised as to how he has conducted himself in this regard. The Committee is satisfied with Mr Pearce's experience.

Training and Qualifications

28. Most of Mr Pearce's training has been "on the job". He has the required qualifications. The Committee is satisfied with Mr Pearce's training and qualifications.

Other matters

¹*Re Sheard* [1996] 1 NZLR 751 at 758

²*Deejay Enterprises Limited* (LLA Decisions 531/97-532/97)

³LLA 2388/95 (13/10/1995)

29. The matters raised by the Police and Licensing Inspector have been discussed above.

Renewal criteria as a whole

30. The Committee is required to consider all the criteria set out in section 222. This is a balancing act. The Committee acknowledges that Mr Pearce has a number of previous convictions, but other these are all very historical. Mr Pearce has fully acknowledged those convictions but has made a clear change in his life. His honest responses support our view that he understands the need for the law in relation of the sale of alcohol to be upheld and that he will do this.

Conclusion

31. Accordingly, the District Licensing Committee, having read the application and the submissions and reports filed by the parties and having listened to the capable submissions which were made by all parties, and having taken particular notice of the objects of the Act set out in Section 4, and having addressed the criteria for the grant of a Manager's Certificate set out in Section 222, approves the application by Robert Pearce for a Manager's Certificate to manage the sale and supply of alcohol on licensed premises situated at 10 Wellington Road, Paekakariki, known as 'The Paekakariki Bowling Club'. The Certificate is to issue for a period of one year.

DATED at Paraparaumu on this 9th day of June 2020




Commissioner Fiona Vining
Chair
Kāpiti Coast District Licensing Committee