

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by MAUREEN JOAN YOUNG pursuant to section 136 of the Act for a Temporary Authority in respect of premises at 2 Clive Square East, Napier and known as the Viceroy Hotel

BEFORE THE DISTRICT LICENSING COMMITTEE AT NAPIER

Chairman: Mr DE Fellows
Members: Mr J Cocking
Mr RH Pinkham

HEARING at Napier City Council on Monday 10 February 2014

APPEARANCES

Mr R Petrie Manager for the applicant
MsMJ Young Applicant for questions only
Mr J Sheehan District Licensing Inspector

IN ATTENDANCE

Barry Williams For the applicant

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

Introduction

1. This is an application by Maureen Joan Young for a Temporary Authority to carry on the sale and supply of alcohol from the Viceroy Hotel situated at 2 Clive Square Napier under the ON Licence 030-ON-1273-2013R held by Viceroy Hotel Limited.
2. Prior to the receipt of the application information had come to hand that the licensee had vacated the premises on Friday 24 January 2014 and the owner of the land and buildings had taken over the business, furthermore, the Viceroy Hotel was the venue for an official opening ceremony of the wine bar and bistro known as Delmonicos on Tuesday 28 January involving the consumption of alcohol on the premises.
3. Consequently the matter was scheduled for a Hearing and due to the requested urgent nature of the application, the District Licensing Committee waived the 10 working day notice upon agreement of all parties.

The Hearing

4. Neither Ms Maureen Young the applicant, nor Mr Randal Petrie, Manager of Delmonicos had prepared any written evidence, so the Liquor Licensing Inspector, Mr Jason Sheehan presented his report.

Liquor Licensing Inspector

5. Mr Sheehan referred to the Sale and Supply of Alcohol Act 2012 S.136 Temporary Authority and introduced the current details of the ON Licence 030-ON-1273-2013R together with a comprehensive list of the conditions.

He also referred to S.172 and S.176 of the Act regarding the Licensing Authorities issuance of practice directions and statements to licensing committees.

6. He stated that of the three practice statements given to date, direction five of the first statement was relevant.

5. TEMPORARY AUTHORITY APPLICATION – INVOLVEMENT OF POLICE AND INSPECTORS

- 5.1 A temporary authority granted in terms of section 136 of the Act confers upon the holder the same duties, obligations and liabilities as the holder of a licence. The consequences of an unsuitable person operating premises pursuant to a temporary authority could obviously be as equally undesirable as such a person holding a licence.

- 5.2 It is the licensing authority's view that the secretary of the licensing committee should refer any application for a temporary authority to the Police and the Inspector for comment and/or report. Each committee should settle procedures for the referral of such applications. Those procedures should be able to take account of situations where urgency or priority is required.

- 5.3 Any subsequent report or comment to which the committee considers it may wish to have regard to in determining an application must be referred to the applicant before any decision is made.

7. The substantive licence in respect of the premises held by Viceroy Hotel Limited detailed the licence holding company's directors and shareholders as:

Directors (2): Brent William GIBSON
 271 Glenmore Road, RD 3, Albany

 Timothy Philip MATHEODA
 18 Fitzpatrick Place, Chatswood, Auckland

Shareholder: Brent William GIBSON
 271 Glenmore Road, RD 3, Albany 100% shares

8. Mr Sheehan stated he spoke to Randal Petrie, the Manager of Delmonicos which is part of the Viceroy Hotel on 28th January. He was informed by Mr Petrie that as of the previous Friday, the Managing Director Mr Brent Gibson was no longer managing the Hotel and that the building owner had taken control of the business.
9. A discussion between Mr Sheehan and Mr Petrie concluded that no alcohol could be sold or supplied or consumed on the premises until such time a Temporary Authority was granted. Mr Randal advised that a function had been booked for that evening and both agreed it should be cancelled.
10. On Wednesday 29th January Mr Sheehan was alerted that the function had taken place and was reported in the H.B. Today newspaper with accompanying photograph of attendees holding drinks which he admitted in evidence as exhibit one.
11. Later that day the application for a Temporary Authority was filed by the daughter of the applicant. The reasons for the application was stated – “Change of ownership”. Leaseholder has had his lease cancelled and the owner of the land and business has taken management of the business. This happened on Friday 24th January 2013 [sic].

Mr Sheehan advised he again re-emphasised that alcohol should not be sold supplied or consumed on the premises.

12. On 30 January Mr Sheehan received a call from Graeme Scott, a Liquor Licensing Consultant acting for Brent Gibson challenging the operation/management of the Hotel as set out in the Temporary Authority application. Later Mr Randal Petrie confirmed that Maureen Young was the new Proprietor. He also stated that Ms Young had advised him he was able to continue to operate the business under the Viceroy Hotel Limited Licence.
13. Mr Sheehan concluded that he believed that on the evening of Tuesday 28th January the premises had been operated in breach of the Act and that offences, specifically S.233 Sales by Unlicensed Persons and S.247 Unauthorised Sale or Supply, had been committed by both Ms Young and Mr Petrie.
14. Mr Sheehan upon questioned, confirmed he had since visited the premises and no breaches of the Act were observed.

The Applicant

15. Mr Randal Petrie spoke briefly on behalf of the applicant and confirmed the events as presented by the Inspector. He emphasised the previous Manager had not been on the premises since 24 January but challenged that he had agreed the function on the 28 should be cancelled. Upon cross examination he submitted there had been a misunderstanding and agreed to the Inspector’s report.
16. He advised that the function on the 28 January had been by invitation only, to celebrate the completion of the refurbishing of the Bistro and Restaurant and that it was impossible to notify all the guests, which numbered 65, of a last minute cancellation. He stated that no alcohol was sold, that it consisted of wine only donated by Iro Wines and non-alcoholic beverages namely ginger by HB Independent Breweries. The function ran from 6pm to 8pm.

17. Ms Young took the witness stand to answer questions only. She stated that the licensee owned over \$100,000 in back lease and had been in conflict with her for many months.
18. She thought as owner of the building she had a right to the Hotel and consequently took up the employ of Mr Petrie to continue the business including the managing of the opening function of the Bistro. She confirmed that since, notification on Wednesday 29 that she was acting in breach of the Licence, she had not sold or supplied alcohol.

Licensing Committee Decision and Reasons

19. This matter was brought to a Hearing to enable the applicant to give some explanation as to the events reported by the Liquor Licensing Inspector. The concern of the Committee was the suitability of the applicant and the actions of her appointed Duty Manager.
20. Whilst a written brief of evidence would have been preferred, we were none the less satisfied with the open and confrontational evidence given by the applicant's Manager, and his honest acceptance of the breach of the Act. Ms Young had little to offer in defence, she confirmed her employment of Mr Petrie as Duty Manager and the desire to continue with the opening function, under the misguided impression that all was well.
21. We accept that a pre-arranged opening function with invited guests to a refurbished Bistro and Restaurant is an exciting occasion for both Proprietor and Manager. We also acknowledge the difficulty of informing the invitees of its cancellation, notwithstanding the accompanying embarrassment.
22. Sponsors and future suppliers to Delmonicos had provided the alcohol in the form of wine and non-alcoholic beverages. These were all supplied to guests, free of charge.
23. We acknowledge that the function was more in the form of a private party, unfortunately held in a premises with a dubiously affective licence, and that the offences would be at the lower end of any breach of Sections 233 and 247.
24. The fact that this breach may have gone unnoticed had Mr Petrie not informed the Inspector of the function and the licensee dilemma, coupled with the lack of hard evidence and the Police choosing not to report on the application, and the above extenuating circumstances we shall grant the applicant a Temporary Authority.
25. In considering an application for a Temporary Authority the Committee are directed by S.136 of the Act which states –

136 Temporary authorities: on-licences and off-licences

- (1) A licensing committee may, on the application of a person who appears to the committee to have any right, title, estate, or interest in any premises, or any business conducted in any premises, for which an on-licence or off-licence is in force, make an order authorising the applicant (or some suitable person nominated by the applicant) to carry on the sale and supply of alcohol for a period, not exceeding 3 months, stated in the order.

- (2) The application must be made in the prescribed form and manner and be accompanied by the prescribed fee.
 - (3) The committee may hear and determine the application without notice, or direct that notice of the application and the time and place fixed for any hearing be served on any persons and in any manner the committee specifies.
 - (4) On making an order, the committee—
 - (a) must impose any conditions that this Act requires an on-licence or off-licence (as the case requires) to be issued subject to; and
 - (b) may impose any conditions that this Act enables an on-licence or off-licence (as the case requires) to be issued subject to; and
 - (c) may impose any other reasonable conditions it thinks fit.
 - (5) The person authorised by the order has for the purposes of this Act the same duties, obligations, and liabilities as the holder of the on-licence or off-licence concerned.
26. By implication we are further required to have regard to the criteria for the issue of a licence in Section 105 of the Act. We regard the only pertinent issue in this section is the suitability of the applicant which we have satisfactorily addressed.
27. We therefore grant Maureen Joan Young a Temporary Authority to carry on the sale and supply of alcohol under the terms and conditions of the ON Licence 030-ON-1273/2013R viz:
- (a) The licensee must have available for consumption on the premises, at all times when the premises are open for the sale of liquor, a reasonable range of non-alcoholic refreshments and low-alcohol beverages:
 - (b) No liquor is to be sold or supplied on Good Friday, Easter Sunday, Christmas Day or before 1.00 pm on Anzac Day to any person other than:
 - (i) Any person who is for the time being living on the premises whether as a lodger or an employee of the licensee or otherwise; or
 - (ii) Any person who is present on the premises for the purpose of dining.
 - (c) Liquor may be sold only on the following days and during the following hours:
 - (i) At any time on any day to any person who is for the time being living on the premises.
 - (ii) Monday to Sunday 7.00 am to 3.00 am the following day; EXCEPT THAT on the Thursday before Good Friday; and on Easter Saturday; and on Christmas Eve; and on the day before Anzac Day, liquor may only be sold between 7.00 am and 12.00 midnight.
 - (d) Food must be available for consumption on the premises as follows:
At all times when the premises are authorised to be open for the sale of liquor, food of a range and style similar to that shown on any menu submitted or a range of snack foods in the nature of pies, sandwiches, filled rolls, pizzas and the like, must be conveniently available for all patrons and the availability of those foodstuffs must be notified to them by appropriate notices throughout the premises.
 - (e) The following parts of the premises is designated as a supervised area: every bar.
 - (f) The licensee must ensure that signs are prominently displayed within the licensed premises detailing information regarding alternative forms of transport from the premises.

- (g) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of liquor.
- (h) The licensee must ensure that the provisions of the Act relating to the sale and supply of liquor to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of liquor to minors and the complete prohibition on sales to intoxicated persons.

With the addition of the following condition:-

- (i) Drinking water is to be freely available at the Service Bar and on every dining table in use

Conclusion

The Temporary Authority may issue immediately.

Dated at Napier City Council this 14th day of February 2014

A handwritten signature in blue ink, appearing to read 'DE Fellows', with a horizontal line underneath the name.

DE Fellows
Chairman