

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

AND

IN THE MATTER of an application by ART DECO MASONIC LIMITED pursuant to Sections 120 and 127 of the Act, for the variation and renewal of an on-licence, for premises situated at 21 Hastings Street, Napier, known as Brazenhead Ale and Coffee House

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE

Chairman: Mr DE Fellows
Members: Councillor F White
Mr RH Pinkham QPM

HEARING at Napier on Friday 20 May 2016

APPEARANCES

Mr SJR Bird	Applicant
Sergeant R Wylie	NZ Police - to assist
Mr J Sheehan	District Licensing Inspector- to assist
MsT Te Whaiti	for Medical Officer of Health- to assist
Mr B Wilkie	Objector
Mr GA Liddy	Objector

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

1. This is an application by Art Deco Masonic Limited for the renewal and variation of an on-licence of its premises at 21 Hastings Street, Napier and known as Brazenhead Ale and Coffee House. The present on-licence provides that alcohol may be sold and supplied in the garden bar from Monday to Sunday 8.00 am to 10.30 pm. The variation sought, is to extend these hours to coincide with the internal premise hours of 8.00 am to 2.00am the following day.
2. All the reporting agencies offered no opposition or objections to the application. There were two objections following the public notice, a joint objection from Messrs Wilkie and Liddy and another from Maureen G Lennard purported to represent the residents of the block of 60 apartments north east of the premises. Whilst Ms Lennard was unable to attend the hearing, she requested that Brian Wilkie speak on her behalf.

3. The Committee finds that the objectors have status pursuant to s120 (4) and s128 (1) of the Act, and that they have a greater interest in the application than the public generally. All live in quite close proximity to the applicants premises.
4. At the commencement of the hearing it was confirmed from the objectors that the variation of hours was the only matter under objection, and the specific objection to those hours related to noise issues.

THE HEARING

5. Mr Bird gave evidence on behalf of the applicant and stated that since obtaining their licence, the business, during the past year, had moved from the original tavern style licence to that more of a restaurant, with full kitchen staffing till 11.00pm providing food sales at present, representing 40% of their market.
6. He said that the company owned an Irish style tavern a little further along Hastings Street and had no intention to duplicate the premises. The aim was to reflect their other business of The Emporium, a spacious and extensive restaurant/bar facility fronting Marine Parade, and to this end he presented a comprehensive developed design portfolio by Lovelace and Co (a concept and design studio) representing a total rebranding of the premises and a refocus on being more food orientated. He said it was not the intention to make the premises a late night or noisy nightclub, but an area where people might want to sit outside to enjoy some food and wine.
7. The application for the extended hours to the garden bar was sought to enable al fresco dining and social drinking to be fully served. He said that experience had shown that requesting patrons to leave the area at 10.30pm, was a trade killer, and he further confirmed that this occurred 2 to 3 times a week in the summer period. Whilst it was not the company's intention to utilize the hours all the time, they were seeking the ability to choose.
8. Mr. Bird confirmed that bands were not part of their entertainment focus, but more on single artist promotions as background entertainment. In conclusion he stated acoustic music was generally provided to the garden bar via speakers at a low level which were silenced at 9.00 pm.
9. The principal objection of the objectors was the unacceptable noise emanating from the premises and others in the city. Mr Wilkie, whose elevated property at 6, Brewster Street, faces directly toward Hastings Street and the Brazenhead Ale and Coffee House garden bar, stated he had experienced noise problems emanating from many city establishments over many years. He agreed that the noise issues from the premises had improved, and only on two occasions had specific noise complaints been initiated, and those in the afternoon.
10. Mr Eric Le Roux is an Environmental Health Officer employed by the Napier City Council. He has sole responsibility for monitoring noise complaints from daily worksheets provided by Armourguard, Council's noise control contractors. He stated that on 2 occasions over the past 15 months an excessive noise notice was issued, both in the afternoon. He stated that a notice was issued following two complaints

about the alleged noise source and following an assessment based on volume, time, tone and duration, by the Officer.

11. Questioned by Mr Bird relating to the two notices, Mr Le Roux advised that the two notices were issued for live music, one being a Karaoke. Mr Bird refuted that the Karaoke was from his premises as he despised them, and would not have them on his establishments.
12. Mr Bird, in summary, reiterated that the company needed to provide outside accommodation for extended hours, not as an entertainment venue, but for late night food and refreshments.

DECISION OF THE COMMITTEE AND REASONS

13. We are required in respect of an application for the renewal of an on-licence to consider criteria set out in s131 of the Act. However, as a variation was also sought, the requirement for consideration stated in s120 refers us back to the criteria of s105. It was made abundantly clear at the commencement of the hearing that the only point of issue from the objectors was the hours requested of 8.00 am to 2.00 am the following day in the garden bar. This refers to s105(d)

(d) the days on which and the hours during which the applicant proposes to sell alcohol:

14. This matter relating to hours of operation of the garden bar was previously heard by ARLA in 2013. On that occasion by decision [2013] NZARLA PH915 the Brazenhead 2010 Limited were granted a half hour extension of hours to the outdoor garden area to 11.00 pm. At paragraph [14] of that decision they stated:

[14] With the applicant having shown that it is possible to keep noise levels emanating from the outdoor area to reasonably low level, it is appropriate that the application be granted to permit the applicant to operate hours that are in accordance with the Napier City Council Alcohol Policy. However, for the Authority to depart from the Napier City Council Alcohol Policy, more substantial reasons than those given by the applicant at the hearing are necessary.

15. The policy has now been revoked pending the implementation of a Local Alcohol Policy which has yet to be ratified. Consequently the reasons for the findings of ARLA at the previous hearing have been overtaken by the provisions of the present Act. However, notwithstanding the situation with the present Local Alcohol Policy, we are guided by ARLA's confirmation that departure from a policy may be acceptable if substantial reasons are provided by the applicant. This would also require the District Licensing Committee to be satisfied that any extension of hours would not be likely to reduce the amenity or good order of the locality to more than a minor extent.
16. We are persuaded by Mr Bird that whilst the premises operate under a tavern style licence, they are heading more to a restaurant style premises. The developed design portfolio complemented this intention, which will have a marked effect of noise reduction from that of a Tavern bar.

17. The other premises owned and operated by Art Deco Masonic Ltd had a reputation of being very well run, reflecting the professionalism of the company in the hospitality industry. We are confident that the operation of Brazenhead Ale and Coffee House will be carried out, as Mr Bird stated, in a responsible manner.
18. This responsibility is reflected in the applicant's ability to have operated the business over the past 15 months without formal action, or any confirmed noise issues during the night hours, and, it would appear, without a formal specific complaint.
19. The objections appear to be of a dissatisfaction of noise emanating from the city generally, without a specific focus on the Brazenhead Ale and Coffee House. Indeed, Mr Wilkie was complimentary towards the way the premises had been operated and Ms Lennard, in her letter of objection, stated –

"Firstly, I would like to commend the present owners for the quiet and responsible way in which they have run the premises as a restaurant over the past year"

20. In this case, in our view, the applicant has demonstrated that they can operate the premises in a predominantly restaurant style without causing a noise problem. Notwithstanding the many problems associated with the Hasting Street area in past years, and the present much improved environment, we remain satisfied that the variation of hours sought will have little or no effect on the general city noise.
21. We therefore grant the renewal of the licence on the same terms and conditions as the present licence, with the exception that the reference to the garden bar in condition b) be deleted. Condition b) shall state:

***b) Alcohol may be sold only on the following days and during the following hours;
Monday to Sunday 8.00am till 2.00am the following day***

22. The licence may issue after the expiration of time stated in s155 providing no appeal has been notified.

DATED at Napier this 30th day of May 2016



**DE Fellows
Chairman
Napier District Licensing Committee**