

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

AND

IN THE MATTER of an application by KANE CARDING CO LIMITED pursuant to Sections 99 of the Act, for an on-licence, for premises situated at 32, Main Street, Hospital Hill, Napier, known as "The Old Mill Napier".

**BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE**

Chairman: Mr. D.E. Fellows  
Members: Cllr. F. White  
Mr. J. Cocking

HEARING at Napier Conference Centre, 48, Marine Parade, Napier.  
On Tuesday 12th December 2017

**APPEARANCES**

Ms. M.A. Vink.	Applicant.
Mr. D.C. Ginns.	for Applicant.
Mr. D. Waugh.	Liquor Licensing Inspector- in Opposition
Acting Sergeant D. Power.	NZ Police – to assist
Ms.T. Te Whaiti.	for Medical Officer of Health- to assist

**RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE**

**Introduction**

1. This is an application by Kane Carding Co Limited for an on-licence for its premises at 32, Main Street, Hospital Hill, Napier and known as The Old Mill Napier.
2. The application drew no public objections and neither the Police nor the Medical Officer of Health (MOH), raised any objections, however the Liquor Licensing Inspector, Mr. Darryn Waugh, in his report dated 21st November 2017 opposed the application citing s.105(1)(b) the suitability of the applicant and s.105(1)(j) whether the applicant has appropriate systems, staff and training to comply with the law, resulting in the matters being set down for a public hearing.

## The Hearing

3. Ms. Madeleine Anne Vink gave evidence as sole director and shareholder of Kane Carding Co Limited, (the company). She gave a brief history of the Old Mill and its Heritage building status, and that she had a passion for the building which, with her now deceased husband, they purchased in 1973. In these years they ran a hand spinner and weaver business until 1991 when they re-established the building to its former glory and opened it up to the public for functions, operating with special licences and eventually an on licence some 20 years ago.
4. Ms Vink stated that during those 20 years of operating with a licence, the company had operated without cause for any concern in relation to intoxication, had never sold alcohol to a minor and had not contributed, to the best of their knowledge, to alcohol related harm in the area. She further stated that their neighbours were very supportive of their business and had never had a complaint lodged against them. Mr. Waugh, from his limited knowledge of the business, could not refute this.
5. She stated that during 2016 her mother, living in Canada, broke both hips on separate occasions and that in the ensuing 14 months, had travelled back and forth on four occasions. During this period she left the running of the business with Mr. Darryl Ginns, the events manager for the company.
6. She also discussed with Mr. Ginns that she would let lapse her own manager's certificate, due to expire in December 2016, and encouraged him to obtain his own manager's certificate.
7. She stated that, whilst overseas, and not aware of the licence expiry date, the licence lapsed on 19th October 2016. She stated that she knew this renewal was her responsibility but in mitigating circumstances, said that for the past 20 years she had received reminders from the City Council for the renewal. Under these stressful times she failed to make a renewal application.
8. Ms Vink further stated that during a return to New Zealand in December 2016 she belatedly paid her annual fee, which again overrode any question as to the status of the company's licence.
9. Ms Vink said she was only made aware of the situation in November this year, and during cross examination by Mr. Waugh, admitted that functions had been held during the previous 12 months, and that she knew that a recent wedding function had been held without a licence, as she could not bring herself to cancel the booking.

10. Further cross examination revealed that whilst she had left the running of the business to Mr. Ginns she was aware that as her certificate had lapsed there was no permanent duty manager employed. She further stated that whilst she acknowledged the application filed by Mr. Ginns was flawed as to management, they had since arranged employment, when necessary, from Megan Bloomfield and Paul Cadigan, both experienced and longstanding certificate holders. Furthermore, in her evidence she confirmed that Design Cuisine, holders of a caterers off licence will join the company for weddings when required.
11. Ms Vink acknowledged that the failure to renew the licence was her responsibility and she had made a dreadful oversight and was truly regretful. She confirmed that 20-30 functions were held each year, mainly in the summer months and that the income helped pay for the upkeep of the listed building.
12. Mr. Darryl Ginns stated that he was made aware that the Old Mill had no current on licence in June 2017. He related various discussions with Mr. Waugh, but in his words;  
*“I was extremely naïve about the time frame for applying for a new licence and the process involved”*  
as a consequence the application for an on licence was not submitted until 11th October 2017.
13. Mr. Ginns stated that once realizing the seriousness of the situation he cancelled two Retro Music Night bookings on 27th October and 4th November. He did host a wedding on 25th November and a further private party on 2nd December, stating that as he lived on the premises and did not sell alcohol, although alcohol was consumed, he assumed it was acceptable.
14. He further stated that this all occurred whilst Ms Vink was in Canada and he was reluctant to add to her stress and wanted to avoid further pressure on her. Since then he had received his licence controller qualification and would be making application for a manager’s certificate, and further confirmed the appointments of certificated managers, as stated by Ms Vink.
15. In his evidence Mr. Waugh produced a letter dated 13th September 2016 to the company at 32 Main Street, advising of the pending expiry of their licence. He also produced a letter dated 30th June to Mr. Ginns advising that the company had been trading without a licence since 19th October and further stating –  
*“It is an offence to sell or supply alcohol without a licence and you must stop doing so immediately”.*

16. Upon perusing the application for the on licence Mr. Waugh stated he was concerned that no certificated managers were listed in the management section, merely Darryl Ginns and Clare White, certificate number to be advised. Upon questioning Mr. Ginns asked why they could not still use Ms Vink notwithstanding her certificate had lapsed.

17. Mr. Waugh produced a job sheet of a meeting with Ms Vink on 27th November. In these notes he questioned what had been going on at the Old Mill on Saturday evening, he concluded there was a wedding function operating, he saw several people with glasses of beer and wine in their hands and some with bottles of beer. Upon questioning these activities Ms Vink confirmed that it was a wedding function and according to Mr. Waugh's notes in relation to the booking stated;

*"I don't know about the booking, it would be at least a year ago".*

He said this had occurred despite his advice of not going ahead, and following his advice that he would be opposing the application.

## **Decision of the Committee and Reasons**

18. We are required in respect of an application for an on-licence to consider the criteria set out in s.105 of the Act.

### **s105 Criteria for issue of licences**

(1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*

*(a) the object of this act:*

*(b) the suitability of the applicant:*

*(c) any relevant local alcohol policy:*

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

*(e) the design and layout of any proposed premises:*

*(f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*

*(g) whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*

- (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
  - (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that –*
    - (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
    - (ii) *it is nevertheless desirable not to issue any further licences:*
  - (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
  - (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*
- (2) *The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.*
19. We made it clear from the outset that our deliberations would be centered on the opposition by the Inspector in relation to suitability and systems staff and training. However, we must address those other matters to which we are required to have regard.
  20. s105 (1)(a) the object of the Act is considered by all reporting parties to have been met. Whilst we have some reservations regarding this matter, for the present we accept these assertions.
  21. s105 (1)(b) Suitability will be addressed further in this decision.
  22. s105 (1)(c) Local alcohol policy, there is none.
  23. s105(1)(d) Days and hours, 10 am to 1 am the following day are unchallenged and appear reasonable for this style of operation.
  24. s105 (1)(e) Design and layout has operated successfully in the past and the applicants desire to extend the licensed area into a rear courtyard would satisfactorily deal with patrons exiting the building and enhance the ambience of the venue, without affecting neighbouring properties.
  25. s105 (1)(f & g) Engagement in other sales or services is consistent with this style of licence and does not adversely affect the operation of the on

licence.

26. s105 (1) (h & i) Amenity and good order has not been the concern of the reporting agencies, and the past record of 20 years without notified complaints convinces us that amenity and good order would not be reduced.
27. s105 (1)(j) Systems, staff and training is dealt with later in this decision.
28. s105 (1)(k) Reporting agencies is the subject of this hearing.
29. We accept that the reference to managers in this application was unsatisfactory, and the opposition of the Inspector was quite justified. Mr. Ginns naivety in this matter, whilst unacceptable at that time, has been mitigated by his recent training and education in the Sale and Supply of Alcohol Act. Also the immediate response from Ms Vink in sourcing and arranging employment, when necessary, of experienced certificated managers, satisfies us that, together with the pending application for a manager's certificate by Mr. Ginns, that the systems staffing and training will be acceptable.
30. Turning to the suitability of the applicant represented by Madeleine Anne Vink as sole shareholder and director of the company. We acknowledge and respect Ms Vink's admissions and remorse over the company's operation without a licence over the past 12 months. We accept that the stress and emotions she encountered during her mother's ailments in Canada, played an important role in distracting her from her licensing obligations. Nevertheless, we consider the appointment of Mr. Ginns to assume full control of the business was an error of judgment, which ultimately accentuated the failure of the business to undertake its statutory duties in relation to the Sale and Supply of Alcohol Act.
31. By her admission, there is no question or doubt that the business has been operating without an on licence for most of the previous 12 months. Sections 233 and 234 of the Act refer to a person who does not hold a licence, or a person who is the occupier of unlicensed premises, who sells alcohol or allows other persons to sell alcohol from the premises, commits an offence. The penalty for each offence is;

a term of imprisonment of not more than 3 months, or  
a fine of not more than \$40,000

These penalties are the highest of any offence against the Act, and

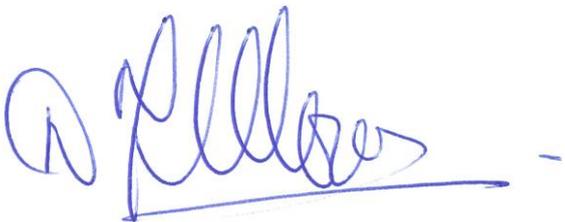
emphasize the seriousness of operating without a licence.

32. Whilst we understand that unknowingly operating without a licence came as a shock, we cannot condone allowing the recent wedding function to have continued without a licence, when other avenues were available. (notwithstanding our complete understanding of comprising someone's wedding day).
33. Apart from that event, we are satisfied that there was no intent on behalf of the company to deliberately flout the law. The unblemished record of holding numerous successful functions over the previous 20 years satisfies that the company has the ability to operate an alcohol licence successfully. Special licence applications may therefore be a consideration for the company.
34. In conclusion, the seriousness of the operation of the function venue without a licence, irrespective of the circumstances, leaves us with little or no option.  
We quote an extract from the well referenced DeeJay Enterprises Limited NZLLA 531/532/97

*"... The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and holders of General Manager's Certificates who control and manage licensed premises".*

35. The application by Kane Carding Co Limited for an on licence, is declined.

**Dated** at Napier this 18th day of December 2017



Dave Fellows  
Chairman  
Napier District Licensing Committee.

Footnote: *This decision does not negate the company from making an application in the future. Functions with special licences, or the use of licensed caterers, which are successfully undertaken, may be seen as sufficient evidence to explore the chances of re-applying for a full on licence in some 12-18 months time.*