

Decision No. 1224/2014

IN THE MATTER
AND
IN THE MATTER

of the Sale and Supply of Alcohol Act 2012 (the Act)

of an application by **AP FOODS LIMITED** pursuant to s.127 of the Act for the renewal of an Off-licence in respect of premises situated at 30, Gloucester Street, Greenmeadows, Napier, known as "Greenmeadows Four Square"

BEFORE THE NAPIER DISTRICT LICENSING COMMITTEE

Chairperson: Dave Fellows

INTRODUCTION

On 24th March 2017 I received an application by **AP Foods Limited** for the renewal of an Off-licence in respect of premises situated at 30, Gloucester Street, Greenmeadows, Napier known as "Greenmeadows Four Square". The application was dated 24th February 2014 and date stamped as received by the Napier District Licensing Committee on 26th February 2014. The application referred to Off-licence 030/OFF/1224/2013 which was due to expire on 25th March 2014.

The general nature of the business undertaken, as submitted by the applicant, is that of a grocery store, which remains to be determined.

Accompanying the application was;

- i) a Police report dated 10th March 2014, offering no opposition to the issue of the renewal.
- ii) an Inspectors report dated 31st July 2014, covering many issues at that time in relation to single alcohol areas and the determination of grocery stores, concluding with an ambiguous paragraph offering no opposition to the issue of the renewal.
- iii) a report from the MOH dated 25th August 2014, recommending certain matters needing to be clarified before a renewed licence was issued but stating no opposition to the application.
- iv) an urgent memorandum, dated 23rd March 2017 on behalf of the applicant, from Messrs I.S.Thain and I.F.Scorgie solicitors of DLA Piper, counsel for AP Foods Limited.

THE RENEWAL

The application was received in good time allowing the continued use of the Off Licence under the existing conditions, with the additional requirement of the provision of drinking water during wine tastings and the introduction of a single alcohol area.

I do not intend to detail the contentious issue around the single alcohol area provisions of the Act, suffice to say that all matters in this regard were put on hold pending appeals, and whilst the final Court of Appeal judgement was issued on 16th November 2016, the licensing committee staff are still awaiting guidance from the Alcohol Regulatory and Licensing Authority.

As a consequent Supermarket and Grocery Off Licence renewals were put on hold pending that guidance. We have now arrived at a stage whereby renewal of existing Off Licences are reaching the end of their 3 year life.

The base Off Licence for AP Foods Ltd expires on 25th March 2017. Waivers have been sought by the applicant to enable to continued sale and delivery of alcohol.

I concur with Counsel for the applicant where they state at paragraph 9 of the memorandum -

"9. The applicant notes that the delay has not been caused by the applicant, the grant of the requested waivers and renewal of the Off Licence are in the interests of justice and there will be no prejudicial effects to third parties from the grant of the renewal or waivers."

Notwithstanding the recommendation in the report from the MOH, nor the Inspectors concerns in his report regarding the alcohol area and the confirmation of store sales activities, neither of which oppose the application, I shall deal with the matter on the papers.”

The application for renewal in 2014 was compliant with the law.

The reluctance of the licensing committee reporting agencies and staff, to process the application during the time of legal challenges to the new provisions of the Act, is understandable.

Whilst I am appreciative of Counsels’ suggestions as to placate the situation their applicant finds themselves, I shall take another approach.

With no base licence, the licensee, through no fault of their own, will be unable to file an application for renewal in the prescribed time pursuant to s.127(2)(b) of the Act, where special mention is made to the filing “**not being later than the date of expiry of the licence**”.

Upon a favourable decision to the renewal of a licence, the Committee may, pursuant to s.135(1)

“..... **renew the licence for a further period of not more than 3 years ...**”

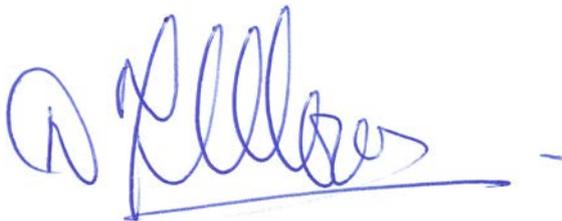
However, there is a leniency in the 3 year expiry time, albeit upon the refusal to renew a licence, in the provision of s.135(2), of a maximum of 3 months after the date of the committee decision, which I feel would be appropriate in this decision.

DECISION

Under these extraordinary circumstances, not of the applicants making, I therefore extend the period of renewal by 37 days, allowing the continued use of the premises for off sales and deliveries whilst providing a further 23 working days before the expiry of the licence. I grant the renewal of the licence until 1st May 2017 that being 4 years and 1 month after the date it was issued, and authorise the issue of a notice of renewal and replacement licence 30/OFF/1224/2014 subject to the terms and conditions of the Off-licence, attached to, and forming part of, this decision.

The licence and notice of renewal may issue immediately.

DATED at Napier this 24th day of March 2017



Dave Fellows

Chairperson

NAPIER DISTRICT LICENSING COMMITTEE