

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **COOL
STREET LIMITED** pursuant to ss.
32, 33 and 99 of the Act for an off-
licence in respect of premises
situated at 1 Onslow Road, Lake
Hayes Estate, known as “The
Hayes”

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr L A Cocks
Mr J M Mann

HEARING at QUEENSTOWN on 19 September 2018

APPEARANCES

Mr M A and Mrs E J Latham, and Mrs J M Rule – for the applicant company
Ms S H Swinney – Queenstown Lakes Licensing Inspector – to assist
Sergeant T D Haggart – N Z Police – in opposition
Ms L M Grace – representing Medical Officer of Health – in opposition

DECISION OF THE COMMITTEE

Introduction

- [1] Before the Committee is an application by Cool Street Limited (hereafter called the company) for an off-licence in respect of premises situated at 1 Onslow Road in the Lake Hayes Estate, in Queenstown. The business trades as “The Hayes”, although in the application, the proposed trading name was shown as “Hayes Deli”.
- [2] The business has been operating at its present site with a grocery style off-licence since 2014. The application for a new off-licence, results from the sale of the existing business, to the company. The company is owned and directed by Mr M A and Mrs E J Latham and Mr B J and Mrs J M Rule. The company took over the business on or about the 10 October 2017, and it has been trading with temporary authorities since that time.
- [3] The business is in two separate parts, but enclosed in the one building. It is situated in a residential area known as the Lake Hayes Estate. The company operates a licensed restaurant/cafe on the Eastern side of the building. On

the Western side of the building is a very small shop or 'deli' with a separate entrance. It is this small retail area that is currently licensed to sell alcohol for consumption somewhere else. The hours sought for the off-licence are from 8.00am to 11.00pm seven days a week.

- [4] There was no public opposition to the application. The Police reported with matters in opposition. They were concerned that the premises did not qualify legally for an off-licence, in that the business conducted in the shop was not a grocery. In her report, the Inspector noted that the application did not appear to meet the criteria for an off-licence set out in s.32 of the Act.
- [5] In her report on the application, the Medical Officer of Health's delegated officer (Ms L M Grace) also raised matters in opposition. She noted that the annual sales revenues did not support the definition of a grocery, and submitted that the business was actually a shop of the kind commonly thought of as a convenience store.
- [6] There were other issues. There were references to the duty manager being in the restaurant/cafe area, and the wine being stored in a fridge along with other non-alcoholic types of refreshments. In addition the company failed to comply with the provisions of s. 33(2)(a) of the Act and Regulation 13 of the Sale and Supply of Alcohol Regulations 2013. The application was lacking in disclosing (a) the details of the annual sales revenue, (b) certification by a chartered accountant, or (c) the number, range and kinds of items on sale.
- [7] Because of these concerns as well as the matter raised by the reporting agencies, the application was set down for a public hearing.
- [8] In a prepared response the company accepted that the business was neither a grocery store nor a true deli. It argued that the business was an anomaly and sought a 'dispensation' as the business did not fall into any of the legal categories for which an off-licence can be granted. The company submitted that it provided a service that was important for the community, and there was no evidence that the business in any way contributed to alcohol related harm.

Preliminary Discussion.

- [9] Informal discussions were held prior to any evidence being given. The company became aware that the application in its present form was unlikely to succeed. The relevant issue was whether the company would accept a different cost/risk rating. Pursuant to Regulation 5 of the Sale and Supply of Alcohol (Fees) Regulations 2013 the highest cost/risk rating is reserved for class 1 restaurants, night clubs, taverns, and adult premises. A class 1 restaurant is defined as a restaurant that has a significant bar area, and operates that bar area in the manner of a tavern at least one night a week.
- [10] The business is currently rated as a class 1 restaurant so that any change to a tavern would make no difference to the annual fees. The advantage of changing would mean that the company could then operate the off-licence from the bar of the cafe/restaurant, (rather than the shop), and thereby continue to provide a service to its community.

- [11] The company directors were made aware that a number of restaurants have such a rating. In this case, the change to a tavern rating would enable the off-licence to continue in force. It would mean that the company could continue to operate the restaurant/cafe in the same way that it is doing currently, with the added licence to sell alcohol for consumption elsewhere. In addition the small shop could continue with its present layout and appearance, but without any alcohol being stored or displayed.
- [12] We indicated that if such changes were made we would have no difficulty in granting an off-licence under s. 32(1) (a) of the Act, and we were prepared to waive any requirements to re-advertise or re-apply. (See s.208 of the Act). It seemed to us that the moving of the off-licensed premises from the small unsuitable shop to a qualifying tavern was a sensible solution which kept the off-licence in the area, and any resultant issues could be resolved when the off-licence came up for renewal in twelve months.
- [13] As a result of the discussions, the parties agreed to the proposed course of action, and the Police and Medical Officer of Health withdrew their opposition to the issue of an off-licence based in the licensed area of the current on-licence.

The Committee's Decision and Reasons.

- [14] When the new Act was passed in 2012, the kinds of licences were reduced to four being on-licences, off-licences, club licences and special licences. One of the unintended consequences is that the distinction between restaurants and taverns has become blurred. On the other hand, the reality in this case is that an off-licence which had effectively been legislated out of existence can be retained, albeit in another format.
- [15] The application for an off-licence is granted with the normal statutory conditions, and with the licensed area being the same as the area licensed for the on-licence. The address of the premises will be the same as the address for the on-licence. The trading hours for the off-licence will be from 8.00am to 11.00pm daily.

DATED at Queenstown this 5th day of October 2018


Mr E W Unwin
Commissioner

