

Decision No. QLDLC 0011/14

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER

of an application by **GREY DOOR**
LIMITED pursuant to s.137 of the Act for
a Special Licence

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin

Members: Ms M W Rose

Mr L Cocks

HEARING at QUEENSTOWN on 7 April 2014

APPEARANCES

Ms T J Surrey – for the applicant

Ms K L Rusher – Queenstown Lakes District Council – to assist

Sergeant L K Stevens – N Z Police – in opposition

Dr D W Bell – Medical Officer of Health - in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] This is an application for a special licence brought pursuant to Section 137 of the Act. The applicant is Grey Door Limited which trades as 'The Bunker Restaurant and Bar'. The applicant seeks approval for the right to sell alcohol over the long Easter weekend. The licence is sought in respect of a music festival to be known as "The Bunker Easter Music Festival".

[2] The business trades with a tavern style licence with trading hours from 8.00am to 4.00am the following day seven days a week. DJ's play regularly in the upstairs bar from Thursday through to Saturday. The applicant was granted a special licence for a similar event in 2013. The event will be held in the upstairs bar area above the upmarket dining destination and bar. This upstairs bar area

holds about 100 people. The applicant stated that two security staff would be working each night to ensure only invitation holders and suitable patrons would be permitted entry.

[3] The proposed trading hours are:

Thursday 17 April	9.00pm to 3.00am the following day
Good Friday 18 April	9.00pm to 3.00am the following day
Saturday 19 April	9.00pm to 3.00am the following day
Easter Sunday 20 April	9.00pm to 3.00am the following day

It will be seen that the applicant wishes to trade on Good Friday for a total of six hours (from midnight to 3.00am and from 9.00pm to midnight) with similar times for Easter Sunday.

The Application.

[3] Mr C Mitchell-Derman is the company's sole director and shareholder. He has been involved with the ownership and management of the business for eleven years. He stated that "Given the nature of the Easter break and the fact that people are available, it is an ideal time to hold a festival of this nature." In the application he advised that the principal purpose of the event was 'entertainment'. He said that the Easter break in Queenstown was a busy time with very few options for evening entertainment. He advised that when the original event was held in 2013 it was trouble free.

[4] Mr Mitchell-Derman stated that the intention was to employ eight DJ's from out of town although they were yet to be confirmed. He had originally applied to start the entertainment at 5.00pm and finish at 4.00am but changed the start and finish time a few days before the hearing. He said that there would be two different specialist DJ's each night, and that he would be advertising via Facebook. He indicated that people would pre-book through Facebook although there would also be sales at the door and that there would be normal snack food as well as complementary food throughout the night.

[5] The issue of tickets was confusing. Tickets were to be \$10.00 each, limited to 100, and the ticket would allow entry to the events on all four nights. The original application referred to invitation holders and suitable patrons. This was partly confirmed in Mr Mitchell-Derman's letter dated 20 February 2014 when he stated that entry would be by invitation, guest list and door charges only. In a letter written on 3 April last, Ms T J Surrey advised that the music festival was a ticket only event. When asked whether he would be prepared to allow entry to ticket holders only, Mr Mitchell-Derman appeared unwilling to make such a commitment.

[6] Mr Mitchell-Derman provided a host responsibility policy for the Music Festival. This document included the words "We appreciate that Easter is an occasion when people like to celebrate and this involves the consumption of alcohol more so than any normal evening, so it is our goal to encourage people to have fun without over doing it." When confronted with this comment, Mr Mitchell-Derman said that he must have cut and pasted the wording from another policy for New Year's Eve, and typed in the word Easter without reading the document properly.

[7] Ms Surrey appeared for the applicant company and we acknowledge her thoughtful submissions. She submitted that there was no evidence that the granting of the application would compromise the Act's object. She argued that since Queenstown was one of the country's leading tourist attractions, and hospitality added to the vibrancy of the town, a broad and liberal approach should be taken when interpreting the Act. On the other hand she accepted that the target audience over the weekend was more likely to be locals including hospitality workers.

[8] Ms Surrey referred to the decision of K P Newall [2009] NZLLA 1060, an appeal against a decision of the Queenstown Lakes District Licensing Agency granted a special licence for a music festival over Easter from 9.00pm to 2.00am on Good Friday, Saturday and Easter Sunday. The applicant had assembled six live acts involving over 20 artists. Although the appeal was refused the Authority did indicate that had it been in a position to make the original decision, it would have refused to allow trading on the Good Friday.

The Inspector

[9] As she is required to do, the Inspector filed a comprehensive report. She noted the applicant's Facebook page showed a number of events (approximately 18) in 2012 and 2013 when a variety of DJ's provided entertainment. On those occasions it appeared there was no need to book or purchase a ticket. She noted the reports from the Police and Medical Officer of Health and raised the question whether the applicant had met the criteria in the Act.

The Reports from NZ Police and the Medical Officer of Health.

[10] Sergeant L K Stevens provided helpful submissions. She pointed out that ten days out from the event, the proposed run sheet was still very vague, and no details had been supplied about any of the artists. (Mr Mitchell-Derman stated that he would be prepared to provide some of the names to the Committee in confidence). She noted the various comments made by the applicant about admission and referred us to the letter written by Ms Surrey that the music festival would be a 'ticket only' event. Finally she noted that there were often bands or artists or live music playing at the venue. Further, that the Facebook pages showed the DJ's played there regularly. Consequently she submitted that the proposed event was 'business as usual' and the event was 'contrived' to enable the applicant to trade on two of the sacrosanct days.

[11] Dr D W Bell has been a registered medical practitioner since 1998. He has been the Medical Officer of Health for Otago and Southland since 1998 under designation. He argued that the legislation was clear about restrictions of trade on certain days. Accordingly he contended that it was important that the criteria for a special licence were clearly met. He suggested that the applicant was proposing an event that did not significantly differ from its normal trading practices. He noted that the applicant was entitled to sell liquor to patrons who were on the premises to dine, and that such patrons were entitled to consume alcohol one hour before, and one hour after dining.

The Committee's Decision and Reasons.

[12] At the conclusion of the hearing the committee gave an interim decision reserving the right to give this fuller and more detailed reserved decision. The application for a special licence was declined. We now set out our reasons in full.

[13] Section 47 of the Act provides that the holders of an on-licence are unable to sell alcohol on Good Friday, Easter Sunday, Christmas Day or before 1:00pm on Anzac day. There are 3 basic exceptions. The first exception is where a special licence for the premises is granted. The second exception is where persons are on the premise for the purpose of dining. And the third exception is where people are residing or lodging on the premises. Parliament has therefore decreed that the owners of on-licences have the right to apply to sell alcohol by way of a special licence on the 3 ½ sacrosanct days. However there are obstacles to be overcome.

[14] Special Licences are referred to in S.22 of the Act. A special licence enables the licensee to sell or supply alcohol to people **who are attending an event** described in the special licence. (Emphasis ours). It is not to be granted to enable people to attend the premises primarily to drink. An event is defined in s.5 of the Act as including an occasion or a gathering. There is no evident difference between an event under the new Sale and Supply of Alcohol Act 2012 and the previous act.

Therefore we must rely on previous case law to assist with the Act's interpretation. Over the years a number of principles and guidelines have been established as follows.

[15] Firstly there must be a genuine event and not something that has been contrived. **Alan Robert Christie v Invercargill Licensing Trust LLA PH 1225/2000**. This was a case involving events over Easter. The Authority stated:

“The principal issue for determination is whether or not persons attending the series of occasions or events at the 'Sugar Shack' were attending a particular occasion or event in terms of s.79(1)(a) of the Act, or they were attending a contrived series of events or occasions, contrived solely for the purpose of enabling a tavern to trade at a time when the legislation otherwise required the premises to be closed.”

[16] Secondly the application must not be a means for a tavern to obtain extended trading hours. In **Bond Street Inn Limited 1997 NZAR 9** the Authority stated:

“We have a firm view as to what the special licence is not intended to cover. It is not intended to be a means for hotels and taverns to obtain extended trading hours at times when the premises would otherwise be required to be closed.”

[17] Thirdly one of the major changes in the new Act is the dramatic shift in decision making from a national to a territorial level. As a consequence it is likely that a degree of national consistency will be lost. There have been cases where local decisions have been made for local circumstances. In **David Alan Thomson LLA 1287/97** the Authority declined to interfere with a local body decision to allow a tavern to trade through to 1.00am on Christmas Day.

[18] It is therefore possible for local decisions to be made to address local needs. But for every case where the Authority has not interfered with a local decision, there are just as many cases where the local decision has been reversed. The most significant of those was **Pirovano [2006] NZLLA 727** where the Queenstown Lakes District Licensing Agency had granted 22 special licences to trade over Easter because of “Warbirds over Wanaka” and because Queenstown was a significant tourist destination. All 22 decisions were reversed by the Authority.

[19] Fourthly it is likely that any wholesale relaxation of standards will bring the Act into disrepute and could in the long term reflect adversely on the Object of the Act. In **Universal Liquor Limited and anor [2003] NZLLA 806** the Authority stated:

“If all taverns (and off-licences) had the right to trade through Easter then in our view the law restraining trading during that time would inevitably be brought into disrepute. Having a law that has no effect may not physically lead to liquor abuse, but could certainly encourage the public to treat the Act with contempt and disrespect. This in turn would in our view undermine any serious attempts to reduce the abuse of liquor.”

[20] To these principles we would add our own. Whether an event is contrived can often be determined by a number of factors. The following list is not necessarily exhaustive;

(a) The price of entry. The lower the price the more members of the general public the applicant appears to be encouraging to attend.

(b) Whether there is some generic factor with the customers (such as guests at a wedding or people with a special interest in the event).

(c) Whether it is anticipated that members of the public will attend. It will be noted that under s.147(1) (h) of the Act a licensing committee may impose a condition excluding members of the public from the premises.

(d) Whether the intrusion into Good Friday and/or Easter Sunday is significant or restrained. In other words whether the applicant seeks to trade for as many hours as possible.

(e) Whether a reasonable person attending the event would immediately notice a difference between the ambience of the occasion and any other trading day.

(e) And finally, the extent of the planning that has taken place, and the thought that has been given to the way the event is to be run. The less organised the applicant, the more likely that the event has been thought about after the decision has been made to apply for a special licence. Applicants were generally critical of the lack of time brought about by the public hearings, but the committee's staff has been at great pains to encourage the filing of early applications to enable them to be dealt with in an orderly way.

[21] The criteria to which we must have regard in deciding whether to issue a special licence are set out in S142 of the Act. The relevant conditions in this case are (a) the Object of the Act, (b) the nature of the particular event for which the licence is sought and (f) the days on which and the hours during which the applicant proposes to sell alcohol. There is no issue about the applicant's suitability to hold the licence.

[22] The stated purpose of this new Act is to put in place a new system, and one of the characteristics of the new system is that it is reasonable. (S.3 of the Act). Parliament has effectively made the law surrounding the 3 ½ sacrosanct days more restrictive by including all on-licences. Previously for example those who operated entertainment or cinema style licences were exempt. It is pertinent to ask why Parliament allowed club licences the continued right to trade on Good Friday and Easter Sunday as well as on Christmas Day and Anzac Day. Two logical reasons come to mind. (a) That members of the public are not legally able to be present at a club unless as a guest of a member, and (b) that members of clubs have an obvious commonality of interest.

[23] The onus is on the applicant to prove on the balance of probabilities that the event is genuine and not contrived. Applying the factors set out in paragraph [20] above, the applicant failed to prove any entitlement on most of them. The price of the ticket, particularly if it applied to four nights was very low. It could be argued that all persons attending had an interest in the DJ's, but on the other hand, if the bar was the only one open over Easter there was nothing to prevent members of the public attending who only wanted to drink. Six hours drinking on Good Friday and Easter Sunday could not be said to be a gentle intrusion into the prohibited hours. It is quite clear that a reasonable person would not notice any difference between what was happening on each night compared to any other night when DJ's were playing, although we accept that some customers may have noticed that the calibre of the DJ's was higher than usual.

[24] And finally we were not that impressed by the amount of planning that had taken place, as illustrated when the proposed trading hours were changed just prior to the hearing. There were other factors as well. The changes that took place about the tickets. The issue about whether DJ's were actually available or not. The explanation for the unprofessional reference to the amount of alcohol consumed over Easter and so on. While we accept that Mr Mitchell-Derman is a competent licensee, his presentation for a special licence for a music festival lacked credibility.

[25] On the one hand we have accepted that a four day event of eight different professional and competent DJ's could constitute a music festival and that such an event could be granted a special licence. But in this case Mr Mitchell-Derman himself acknowledged that Easter was a busy time with a lot of people about and there was little entertainment for them in the evenings. He was keen to fill the gap. In other words the idea of the festival was inspired by the Easter break and not the other way round.

[26] In our interim decision we acknowledged that this application had greater merit than the other applications that were due to be heard. That is why we approached the issues with some concern. However in summary we were not satisfied that the proposed music festival was an event that warranted the grant of a special licence on Good Friday and Easter Sunday and the application is therefore declined.

DATED at QUEENSTOWN 24th Day of April 2014



E W Unwin

Chairman