

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **JJ'S RESOURCE LIMITED** pursuant to s.99 of the Act for an on-licence in respect of premises situated at 54 Buckingham Street, Arrowtown, known as "Off Piste"

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Ms M W Rose  
Mr J M Mann

**HEARING** at Queenstown on 10 February 2014

**APPEARANCES**

Mr J J C Sheehy – representing the applicant company  
Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist  
Sergeant L K Stevens – N Z Police – in opposition

**THE COMMITTEE'S RESERVED DECISION**

***Introduction***

- [1] Before the Committee is an application by JJ'S Resource Limited (hereafter called the company) for an on-licence in respect of premises situated at 54 Buckingham Street, in Arrowtown. The application was filed with the Queenstown Lakes District Licensing Agency (as it then was) on 26 November 2013. The application was completed and filed by Mr Jordan Sheehy who described himself as the 'contact' person and 'operator' of the business. The company has two directors Mr W D Sheehy and his wife Penelope. They are the parents of Jordan and each of them own 40% of the shares. The remaining 20% of the company is held by Jordan.
- [2] The premises has not previously been licensed. It is part of a newly developed commercial block located off Buckingham Street. The business is a café selling woodfired pizzas. The premises is small being 45 square metres. In addition there is an outside area which can hold three small tables or two large ones. Thus the on licence sought will be a restaurant style licence.

- [3] The business opened on or about 4 December last. The hours sought are from 11.00 am to 11.00 pm, seven days a week. For the outside area the hours proposed are from 11.00 am to 10 pm.
- [4] The general area where the business is situated, is a mixture of commercial and residential. There is a Tapas style tavern next door which trades to 2.30 am, and two licensed restaurants within 50 metres of the site. There is a church nearby as well as houses. However it is not expected that the amenity and good order of the locality would change should a licence be granted.
- [5] The application stated that Joshua Hawke and Andrew Crutchley would be employed to manage the licence. However at the time of the application it seems that neither were the holders of Managers' Certificates. Mr Hawke's application had yet to be reported on, and Mr Crutchley was facing the Alcohol and Regulatory Licensing Authority (ARLA) on disciplinary issues. The absence of a certificated manager drew an adverse report from the Police who also questioned the suitability of the company to hold a licence. This was because of recent drug convictions incurred by Jordan Sheehy. Reference was made to his claim that he would be involved in the day-to-day running of the business.
- [6] Other requirements under the Act are satisfactory. The building meets the requirements of the Building Code; the application meets the requirements of the Resource Management Act; the owner of the building has consented to the grant of a licence; and a written host responsibility policy has been filed. Because of the opposition, the application was set down for a public hearing.

### ***The Application.***

- [7] To say that Mr Jordan Sheehy has been though a purple patch in his young life would be something of an understatement.
- [8] At 18 years of age he incurred his first drink driving conviction with a blood alcohol level of 58. When he was 21 he incurred his second conviction for similar offending with a level of 121. Six months later he was apprehended for supplying or dealing in BZP type substances. He was sentenced to six months home detention which he served at his parents' home. During that time he held down a steady job and attended drug and alcohol counselling. Less than a year ago at age 23 he was arrested for disorderly behaviour and discovered to have cannabis in his possession. He was sentenced to six months supervision.
- [9] Mr Sheehy said that he had received the benefit of a 'wake-up call' and now accepted the need to act responsibly. Although he still drinks socially he gave up recreational drugs at the start of the New Year. Mr Sheehy freely acknowledged that there was little point in his applying for a Manager's Certificate because he was unlikely to be successful.
- [10] Mr Sheehy had been anxious to get into business on his own account and he was able to purchase a business that had not quite started. He had been a shareholder in the company JJ Resources Limited when that company had purchased and restored a property in Dunedin. On the sale of the property he

had sufficient funds to help establish his own enterprise which he called 'Off Piste'.

- [11] Mr Sheehy was clearly proud of the business which he described as an affordable convenient alternative where people can drop by without having to book or dress up. The business has a record player and there may be unplugged acoustic music as well. He stated that the business would be unlikely to succeed without a licence, not just because of the profit from the sale of alcohol but also because the opportunity to drink would be an incentive to stay and eat.
- [12] Mr Sheehy said that he was unaware that his proposed Duty Manager Andrew Crutchley had a conviction for possession of cannabis for supply incurred in January 2011. During the course of the hearing he changed his mind about the proposal and stated that he would not employ Mr Crutchley even if he managed to persuade ARLA to allow him to become a manager.
- [13] On the other hand Mr Sheehy said that the day before the hearing, he had spoken to a Mr David Ireland who holds a manager's certificate and works at an off-licence in Arrowtown. The suggestion was made that Mr Ireland was interested in helping out by doing extra work in the hospitality industry. The plan was that Mr Ireland would work for two days a week to give the second proposed Duty Manager, Mr Joshua Hawke, some relief. It was clear that Mr Hawke would soon receive his manager's certificate. He gave evidence and seemed both competent and capable.
- [14] We heard from Mr Sheehy's parents. They described themselves as silent partners. They said that they would not have supported their son if they were not confident that he would uphold the law and act in a professional way. They both emphasised the positive aspects of encouraging their son into this venture. Effectively they asked for the right for their son to have the opportunity to succeed and thereby show his worth, as well as make a contribution to society. Mr Sheehy senior is a builder and he acknowledged that this was really Jordan's business, and they tried not to be in his face.
- [15] With the benefit of hindsight it is unfortunate that neither the parents nor Jordan seemed to understand how seriously the licensing laws are viewed. They were given plenty of opportunity to make changes to the business model in order to give the company more chance of being granted a licence, but did not do so. All three wanted to retain the status quo if possible. No realistic alternative was offered

### ***The Police Opposition.***

- [16] Sergeant L K Stevens holds the licensing portfolio for the Queenstown Lakes District. She confirmed that the Police concerns related to the suitability of the company's CEO. She argued that the business was effectively being run by Jordan Sheehy, and yet he had an extensive drug and alcohol history at the age of 24. She contended that we could have little confidence in Mr Sheehy's ability to uphold the law.

### **The Committee's Decision and Reasons.**

[17] In considering an application for an on-licence we are directed by s105 of the Act to have regard to certain criteria. We do not propose to list all the criteria because in our view, the company fulfils the majority of the items. The only relevant matters are as follows:

- (a) The object of the Act;
- (b) The suitability of the applicant company;
- (c) Whether the applicant has appropriate systems, staff, and training to comply with the law; and
- (d) The report from the Police.

[18] In *Re Sheard* [1996] 1NZLR 751 Holland J made these comments on the issue of suitability:

*"To refuse an application for an on-licence on grounds of suitability the Authority has to be satisfied on the balance of probabilities that the character of the applicant has been shown to be such that he is not likely to carry out the responsibilities that go with the holding of a licence."*

*"Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in the concise Oxford Dictionary as "well fitted for the purpose, appropriate".*

[19] The company carries the onus of establishing its suitability. We recognise that when we assess the suitability to hold a licence, we need to take into account what the nature of the business is, what the company intends to provide by way of activities, whether there is to be an emphasis on food, and the proposed trading hours.

[20] Sergeant Stevens was good enough to supply two decisions of the former Authority that discussed the link between alcohol and drugs. The first of these was *K P Newell v Thorne* LLA PH 1290/08 in which the Authority said:

*"There has often been a link between the two drugs, liquor and cannabis. Whenever that has happened in this jurisdiction a stern response has been almost automatic. If the object of the Act is to be achieved it is vital that no person who has responsibility in the hospitality industry has any involvement with the drug sub-culture."*

[21] The second decision was *Graeme James Scott* LLA PH 906/2009 where the Authority said:

*"We would normally have preferred a three-year standdown or conviction free period where a pattern of offending has emerged. This is despite the fact that the offending could be regarded by some as being at the lower end of the scale. There are no liquor issues but as Mr Scott has acknowledged a combination of drugs and liquor is not a healthy combination in the industry."*

[22] There have been cases where the Authority has stated that if a person is suitable to hold a Manager's Certificate then prima facie he is suitable to hold a licence. The corollary should also be true.

[23] The object of the Act has been changed by Parliament. In our view the bar has been raised by the new Act. The object of the Act now reads:

*The object of this Act is that –*

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*

[24] For the first time the object has become a factor to which the committee must have regard. Taking into account that this is not a large establishment and that the consumption of food is the first priority, we were still left in serious doubt that alcohol would be supplied safely and responsibly. Put in another way we could not be confident that the licensing or the general law would be upheld, even though this is a small business with the emphasis on food. While it could be argued that it is the duty manager who must ensure that the law is obeyed, s.214(4) states that it is up to the licensee to take all reasonable steps to enable the manager to comply with his obligations.

[25] In summary we were not impressed by the evidence given on behalf of the company. There was a distinct lack of appreciation about the need to minimise harm. There was a lack of concern about Jordan's very recent decision to distance himself from the drug sub-culture. And there was a lack of understanding about the concerns expressed by the Police and the Inspector. So long as Mr Jordan Sheehy is effectively the alter ego of the applicant company, then in our view that company is unsuitable to hold a licence.

[26] In the well known and frequently followed decision of *G L Osborne LLA 2388/95* the Authority made the following comments:

*"Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five years period free of any serious conviction or any conviction relating to or involving the abuse of alcohol or arising in the course of an applicant's duty on licensed premises.*

*Less serious convictions are also weighed. By way of example is an isolated excess breath or blood alcohol conviction or a single driving offence disclosing no pattern of offending. Nevertheless all convictions must be weighed as required by s.121(1)(b). In these and similar circumstances we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration provided suitable reports from both the Police and Licensing Inspector are received."*

[27] The applicant company has an unrealistic expectation that it should receive a licence. A licence is more like a privilege rather than a right. The comparison between a month old decision to abandon a reasonably long standing lifestyle with a five year conviction free period shows how unrealistic the expectation is.

[28] For the reasons expressed, the application is refused.

DATED at QUEENSTOWN this 13<sup>th</sup> day of February 2014



E W Unwin  
Chairman

