

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of a rehearing of an application by
**RODD & GUNN NEW ZEALAND
LIMITED** pursuant to s.201(4) of the
Act for an on-licence in respect of
premises situated at 2 Rees Street,
Queenstown known as "The Lodge
Bar"

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 3rd October 2016

APPEARANCES:

Ms J E Riddle - for the applicant
Sergeant T D Haggart - NZ Police – in opposition
Dr D W Bell – Medical Officer of Health – to assist
Ms S H Swinney – Licensing Inspector – to assist

**RESERVED DECISION OF THE QUEENSTOWN LAKES DISTRICT LICENSING
COMMITTEE**

Introduction.

- [1] In a written decision (QLDC 0013/16) dated 15th August 2016, the Committee granted a tavern style on-licence to Rodd & Gunn Limited (the company) in respect of premises situated at 2 Rees Street, Queenstown. The new business was to be known as "The Lodge Bar". The on-licence was uplifted by the company's agent on the afternoon of Friday 26th August 2016.
- [2] The on-licence was issued following a public hearing on 21st July 2016. The application was different from the norm because the company was seeking to licence part of its retail space for an upmarket lodge style bar operation. The company was "looking for an innovative way to adapt to changing consumer preferences". The proposal was to complement the shopping experience by providing an intimate bar with a small fireplace and a full kitchen serving platters and the like. At the time of the hearing, the space available limited the number of patrons to 26 including one member of staff.
- [3] The main cause for concern was that the proposed bar was to be an extension of the retail store in that patrons or customers would pass seamlessly from the store to the bar, and vice versa. It was proposed that patrons could enter the bar through the clothing store from Rees Street, or via the principal entrance on the lake front. The Committee met immediately after the hearing and decided that granting the application in its present form would be contrary to the object of the Act. Given the proposed design and layout, the Committee took the view

that granting the application with access through to the clothing store would not only seriously undermine the Act's objectives, but set a precedent that would thereafter enable stores within stores to be licensed.

[4] Accordingly, on 22nd July 2016, a Memorandum was issued advising the parties that the application in its present form would be declined. The Memorandum then stated:

“Given that the building work is well underway, the Committee advises that if the proposed doors between the retail shop and the proposed “Lodge Bar” were converted into a solid wall, so that there was no internal access between the retail clothing shop and the “Lodge Bar”, then the application would be granted. Additionally, the Committee would have no concern if the applicant company decided to make a separate entrance/exit for the retail shop opening towards the lake, provided a clear physical demarcation between the two businesses is maintained.”

[5] The company was given ten working days to advise whether or not it would like a full decision setting out the Committee's decision with reasons, or whether it wished to amend its application. On 29th July 2016 the company advised that it had decided to amend its application so that there would be no internal access between the retail clothing shop and “The Lodge Bar”. Accordingly, the new on-licence was granted.

The Opening Function.

[6] The company held a private function on the Friday evening 26th August to celebrate the occasion. The event was invitation only with complementary food and drink. About 65 guests or more were invited. Security at the door was arranged. During the evening, reports were received by the Agency and the Police that guest were freely walking between the two businesses, and that the maximum number of persons allowed in the bar was being exceeded.

[7] Sergeant T Haggart and Ms J J Mitchell (Licensing Inspector) were carrying out monitoring work on licensed premises that night. They had teamed up at about 10.00pm. At about 10.30pm they visited the premises having heard that the terms on which the licence had been issued were being ignored. At the time of the visit the doors between the premises were closed, although it was conceded that they had earlier been opened. There were about 40 people in the bar when they arrived but several left while Sergeant Haggart was speaking with the Duty Manager, and Ms Mitchell was speaking with Mr M J Beagley, the company's chief executive officer. The Sergeant was advised that at its busiest, there were 65 people present on the premises, furthermore the solid wall that had been referred to, did not exist. Instead there was a double set of glass doors.

[8] Sergeant Haggart took photographs of the doors for reference purposes, and this provoked a negative reaction from Mr Beagley. There was a factual dispute as to what was said by Mr Beagley to the Police Sergeant, Given the way that the rehearing was conducted, it is unnecessary for us to resolve that issue. When he gave his evidence, Mr Beagley acknowledged that he was upset that the premises were being inspected within hours of the licence being issued. He also accepted that his son had suggested that he move away from the conversation, as he was not making a helpful contribution. He unreservedly apologised to the Sergeant if she thought he was being challenging or obstructing her from doing her job.

The Application for a Re-Hearing.

[9] On 1st September, the Committee was advised of what had happened, by way of statements from Sergeant Haggart and Ms Mitchell. There was evidence that (a) the basis on which the on-licence has been granted, (that there be no internal access between the

retail clothing store and the bar), had been ignored; (b) that the building of a solid wall between the premises had not taken place; and (c), that the maximum number of patrons allowed in the bar had been exceeded. The Alcohol Licensing Inspector suggested that the Committee may wish to rehear the matter pursuant to s.201 (4) of the Act.

[10] The Committee had little hesitation in ordering a re-hearing. We needed to be satisfied that the company could be trusted to observe the terms on which the licence had been issued, as well as the conditions of the licence.

The Re-Hearing.

[11] To its credit, the company acknowledged what had happened. It seems that the company proceeded with the opening function in the mistaken belief that it could host a private function without a licence, and without the restrictions that a licence might contain (even though the licence had been issued and was on display). The company was of the understanding that because it was not trading, then access between the two premises would not be an issue. Mr Beagley apologised unreservedly to the Committee for any misapprehension that the company had ignored the conditions of the licence, or did not take the issuing of the licence seriously.

[12] The evidence was that since the bar had commenced trading, there had been no access between the clothing store and "The Lodge Bar". Furthermore, the glass wall has been locked, the handles have been removed and the keys taken to Auckland. Obstacles have been placed in front of the glass wall to ensure that there will be no future misunderstanding that the two premises are completely separated and cannot be accessed from either side. There have been other monitoring visits that have not resulted in any concern.

[13] In addition to the evidence given by Mr Beagley, we heard from the company's new General Manager of Hospitality, Mr Joshua Beagley. He confirmed that trading hours had gradually been extended since being opened to the public, and were currently between 2.00pm and 11.00pm, and expected to be from 12.00midday to 11.00pm in the near future. He thought that "The Lodge Bar" was attracting mainly mature residents and tourists. There had been very few families.

[14] It seems that the busiest nights are Fridays and Saturdays, and door-persons are employed on these days to greet patrons as well as monitoring the occupancy numbers. In this regard Mr Beagley junior produced a 'design advice note' from "Holmesfire" advising that the maximum occupancy load could be increased to 50 persons without changing or impacting on the means of escape requirements. This document is now under consideration by the relevant Council consenting body. It seems that the company is not satisfied with the look of the glass wall that currently separates the bar from the clothing store; appropriately designed shutters are to be installed.

[15] As from 2nd September 2016, Ms Stephanie Maddox is the new manager of "The Lodge Bar" replacing Mr M J Whiteman who gave evidence at the first hearing. She confirmed that the company had no intention of initiating any alcohol-related promotional activities. She regarded the patronage as mature, and advised that the company actively promotes the purchase of food with alcohol as part of its philosophy of what "The Lodge Bar" experience should be.

[16] In her final submissions, Ms Riddle emphasised that at the time of the opening function, the company was unsure whether the new on-licence would be granted, and therefore planned the opening night as a private function which did not require a special licence. She submitted that the evening of 26th August was 'anomalous', and noted that the company 'naively' believed that the licensing process could be managed without legal advice. She argued that the company's intention was always to trade with the clear understanding that there would be no access between "The Lodge Bar" and the retail store.

[17] Given the company's acceptance of the basic facts at issue, there was no need to hear further evidence from either the Police or the Inspector. In their final submissions the reporting agencies stressed that although the Committee had held that the company was suitable to hold a licence, its opinion may have to be reconsidered given the company's disregard of its agreement to install a solid wall to prevent access between the two premises, and its flexible approach to safety requirements limiting the number of patrons and staff allowed in the licensed premises.

The Decision and Reasons.

[18] The company's approach to the rehearing has been commendable. It has sought the appropriate legal advice and become aware that any licence granted under the Act is a privilege and not a right. It has acknowledged what happened and apologised without reservation. We are more than satisfied that the lessons have been well and truly learned. With its emphasis on good food, the restricted trading hours and the company's current attitude to the enjoyment of the ambience of the bar, we are confident that the object of the Act will be achieved. We believe that the company will abide the conditions of its licence and the law.

[19] The company has not provided a solid wall between the two premises as was originally anticipated. Given the company's attitude to its responsibilities as a licence holder, we do not see the need to insist on such a provision. Instead the new licence will contain a condition to read "At all times while the licence is being operated the licensee will ensure that there is no access of any kind between its licensed premises and its adjoining clothing retail store."

[20] Had the parties reached agreement on the maximum number of patrons and staff allowed on the premises, then that figure would also have been added as a condition. However, such a condition can be considered on renewal. It may well be that the company on renewal, should also look at the designation of the premises, given the nature of the clientele. It is preferable to have one designation at all times thereby ensuring the absence of any future misunderstanding.

[21] For the reasons expressed we confirm the grant of an on-licence and authorise the issue of a new licence with trading hours between 10.00am and 11.00pm daily, and the same conditions as pertain to the present licence with the additional condition set out in paragraph [19] above.

DATED at QUEENSTOWN this 26th day of October 2016



Mr E W Unwin
Chairman