

IN THE MATTER of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER of an application under
s.127 of the Sale and
Supply of Alcohol Act by
**KD Kumar Investment
Ltd** in respect of premises
Situated at **160 Tancred St
Ashburton**, known as **Liquor
Centre Ashburton**

DECISION OF THE ASHBURTON DISTRICT LICENSING COMMITTEE

Chairperson: Mrs R. Kilworth

Members: Mr S. McDonnell
Ms T. Mcilraith

HEARING: at the Council Chambers, Ashburton District Council
On Friday 2nd December 2022

PRESENT: Krisneel Kumar – Applicant
Andrew Riches – Solicitor
Rebecca Hennessey – Witness
Sergeant D Robertson – Police
Sergeant J Bowden – Police
Ms J Clements – Alcohol Licensing Inspector

INTRODUCTION

The Applicant had filed an application for an Off Licence on 17 July 2022 while previously trading on a Temporary Authority after purchasing the business at 160 Tancred Street, Ashburton Liquor Centre on 7 March 2022. The TA expired on 22 July 2022. The Ashburton Alcohol Licensing Inspector and the Police have objected to the granting of the license. The Licensing Officer from the Medical Officer of Health did not oppose and was not able to attend the hearing. Her report was taken as read along with the other agencies reports.

EVIDENCE OF APPLICANT

The brief of evidence which had previously been supplied by Mr Kumar was taken as read. Mr Riches, Counsel for Mr Kumar outlined the main points of the brief as below:

The Application is for a new off licence for an existing business

Majority of the objection is due to lack of experience of Mr Kumar

Previous owner also own another bottlestore in Ashburton. Mr Kumar has worked at this (Bottle O) store on a volunteer basis to gain experience

Rebecca Hennessey has been employed to work in the Liquor Centre and she has previous experience in the industry

Ms Hennessey and Mr Kumar have worked together to establish policies and guidelines for the operation of the store

Mr Kumar has shown himself to cooperate with the agencies to ensure the store is operated within the Sale of Liquor Act

The location of the store is in an area where there are not issues in the surrounding areas

The store has been operating under a Temporary Licence with no reported issues

The suggestion of the Licensing Inspector that the neighbourhood is vulnerable is not agreed with.

Having been sworn in Mr Kumar answered a series of questions which were put to him by Mr Riches.

Mr Kumar described the training he had undertaken with Bottle O and answered questions with regard to understanding the Purpose of the Act, identifying intoxication, his understanding of single sales, his lack of experience in the industry, his proposed management of staffing levels, his proposed sale of another business (Crest Cleaning) along with a reduction of hours worked elsewhere and conditions around single sales which he would agree to if the licence was to be granted.

CROSS EXAMINATION

The panel asked several questions around single sales and the reason for Council's objection to the sale of them. Mr Kumar was questioned with regard to the viability of the business, his training, his understanding of the purpose of the act, his understanding of amenity and good order, his intention with regard to refusing service.

Sergeant Robertson asked questions with regard to the viability of the business and actual sales, also with regard to the second door to the premises and lack of experience in the industry.

The Alcohol Licensing Inspector asked several questions with regard to time sheets and rosters, also with regard to the visa renewal for Raman Kumar one of the duty managers.

WITNESS EVIDENCE

Ms Hennessey had submitted a statement which was taken as read and questions were asked of her by Mr Riches. The questions covered her employment experience, her understanding of single sales, time sheets and rosters, Purpose of the Act.

CROSS EXAMINATION

Ms Hennessey was questioned by the panel. The questions included her knowledge of the responsibility of the Duty Manager vis a vis the Licence holder, her experience in difficult situations as a duty manager, her knowledge of the base licence issue in this case, how the training is organised.

Sergeant Robertson had no questions.

The Licensing Inspector asked questions around Ms Hennessey's confidence to undertake the role of Store Manager, which was stated in her brief of evidence, with limited experience and with regard to her work history.

LICENCING INSPECTOR EVIDENCE

The Inspector is opposed to the application as outlined in the report submitted on 4 November 2022 for the following reasons:

Lack of knowledge and understanding from the applicant – reliance on other staff

Location of store is on the deprivation index provided

Photograph of empty bottles, cans around a nearby area

Preloading and sideloading happening in carpark located one block away from the location

CROSS EXAMINATION

Questions were asked by the panel with regard to how much guidance was given to the applicant, also about the expectation of Licensing Inspector regarding knowledge of the applicant in matters of administration of the Act, the relevance of the photos and the association of the photos to the premises, the lack of opposition from the public, the deprivation map and length of suitable experience for Mr Kumar to become a Duty Manager.

Mr Riches questioned the Inspector about her own experience in the role and his understanding of how she had managed the situation also questions around conditions which would satisfy the Inspector in the event that the application was granted.

POLICE EVIDENCE

Sergeant Janine Bowden as a witness for Sergeant Robertson in opposition gave evidence by answering the questions which Sergeant Robertson put to her around the photographs which the Inspector had submitted and the police experience of preloading and alcohol related harm on a day to day basis.

CROSS EXAMINATION

The panel asked questions about Sergeant Bowden's concerns under s.105 and the lessening of concern since hearing the evidence of Mr Kumar and his answer to question as well as the Inspectors evidence and questioning. Sergeant Bowden was also questioned by the panel with

regard to the statistics which were presented in Sergeant Robertson's opposition argument and the lack of any evidence that either the previous licensee or Mr Kumar had contributed to any events attended by the Police.

Counsel for Mr Kumar questioned the Police also about the statistics.

CLOSING SUBMISSION FOR THE APPLICANT

Mr Kumar recognises the burden to satisfy the committee that he is a fit and proper person to hold a liquor licence measured against the objectives of the Act.

He disagrees that the granting of this licence would lower amenity and good order.

He does not see this as a particularly vulnerable area. No social agencies have put forward objections.

The focus has been on Mr Kumar's level of experience and time in store. He has undertaken significant work to rectify issues since the purchase of the business. If the efforts had been made before the purchase he would be in a very different position.

He is well aware of the consequences of not adhering to licence conditions.

He has been proactive in seeking guidance and advice on how to fix the situation.

He is prepared to undertake conditions.

Miss Hennessey has demonstrated that she has the experience in both liquor and security industry.

There was no initial Police objection.

Objections and criticisms of the Inspector are based on administration matters and meeting the requirements of the Act.

Possible conditions to the licence should it be granted were offered.

The Chairman requested that should the Committee choose to grant the licence it would need some evidence of a reduction in current work hours and discussion taking place around the possible sale of the Crest Cleaning business – emails txts etc.

POLICE SUMMARY STATEMENT

The Inspector drew the Police attention to the shortcomings of the applicant around knowledge of the purpose of the Act.

Police held the view that going through an objection can give rise to an application raising the level required to obtain a licence.

Police concerns have been reduced due to Miss Hennessey's evidence.

INSPECTOR

No closing submission

The hearing was closed and the decision reserved.

DECISION AND REASONS

The legislative framework for the issue of licences is set out in s.105 these are matters that the Panel must take into account in determining an application for the issue of a licence.

Much of the evidence presented in opposition centres around the applicants suitability because of inexperience, as well as lack of knowledge and understanding of the purpose of the Act and proof of systems, staff and training arrangements in order to comply with the provisions of the Act.

The panel considered the opportunities which Mr Kumar had taken to upskill himself and gain experience in an industry which he previously had little knowledge of. The panel took on board the training which could not be substantiated by employment contract but was rather in the nature of shadowing the previous owner in his other premise for a considerable length of time as well as assistance he had gained from his employee Miss Hennessey in establishing timesheets, rosters and all policies required for the operation of the business.

The Panel has considered the satisfactory operation of the store during the Temporary Authority period and the possibility of a second Temporary Authority being granted had it been applied for.

The Panel has received evidence from Mr Kumar of his reduction in hours with Post Haste and Crest Cleaning, the latter will now be run by his wife. The Panel is satisfied that Mr Kumar has made considerable efforts to comply with the provisions of the Act and that further training should provide sufficient knowledge and experience to apply for a Managers Certificate in the future.

Therefore the Licence is granted for one year with the following conditions:

A minimum of two Duty Managers must be employed.

Mr Kumar must work for training purposes under the store manager/duty manager for 20 hours a week on the shop floor while he has other reduced business commitments.

Mr Kumar should apply for a Manager's Certificate once the six months supervised training has been completed to the satisfaction of the DLC.

There is to be no sale of "single sales" under \$6.00 in price

No sales of "Nitro"

Single door entrance only with the principal entrance the carpark door entrance.

Note: Approval has already been given for the sale of existing stock of single serves.

Dated at Ashburton on this 9th Day of December 2022



R J Kilworth

Chairperson

Ashburton District Licensing Committee