

DECISION FOR OFF-LICENCE

Licence Number : 67/OFF/15/2014

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

AND

IN THE MATTER of an application by **Upland Foods Limited** for an Off-Licence pursuant to section 105 of the Act in respect of premises situated at 91 Tarbert Street, Alexandra known as "Alexandra Four Square Supermarket"

BEFORE THE CENTRAL OTAGO DISTRICT LICENSING COMMITTEE

Robert B McNeil (Chairman)
Neil Gillespie
Michael MacAvoy

HEARING at Alexandra on 8 May 2014

APPEARANCES

Rhys Tait - Applicant
Medical Officer of Health, Doctor Derek Bell – In opposition
Senior Constable Gordon Pay – New Zealand Police – To assist committee
Ray Applegarth - Licensing Inspector, Central Otago District Council – To assist committee

DECISION

Background

This is an application by Upland Foods Ltd for an Off-Licence in respect of premises situated at 91 Tarbert Street, Alexandra , known as "Alexandra Four Square Supermarket".

The application was duly advertised and a report opposing the issue of the Licence was received from the Medical Officer of Health (MOH). Accordingly this hearing was convened to consider the application.

The Applicants Submission

The applicant submitted that during the visit by the representative of the Medical Officer of Health, Mrs Ann Fowler, a Public Health Check List for Off-Licensed Premises was completed indicating that all aspects of the operation were satisfactory. Mr Tait therefore indicated surprise that on the final page of the checklist the MOH had objected to the renewal of the licence.

When questioned about licensing hours Mr Tait confirmed that the store opens at 6.45am and the licensing hours are 7.00am until 10pm, and not 8am until 10pm as stated in the MOH checklist.

Mr Tait tabled photographs of the interior of the premises showing the areas where alcohol is displayed for sale. He explained that previously the alcohol area was near the checkout, and the changes resulted in significantly less visibility than in the

previous owner's layout. He considered that the alcohol area complied with the Sale and Supply of Alcohol Act 2012 and that the renewal should be granted on that basis.

The Licensing Inspector asked Mr Tait whether it was practical to relocate the refrigeration unit or the alcohol display area. Mr Tait advised he had already moved the alcohol area to an area less visible but that the refrigeration units could not be moved easily because they are fixtures and are plumbed in.

The Police Submission

Firstly Senior Constable Pay addressed a matter of a perceived conflict of interest. He advised that he has had a previous professional relationship with the applicant who had been a member of the police force and that he also that knew the applicant on a personal level. He stated that the relationship had not affected his reporting on the matter in any way.

Senior Constable G Pay provided a written submission stating that Police have no opposition regarding the suitability of the applicant, the operation of the premises, systems and staff training and that the results of a Controlled Purchase Operation under the previous ownership indicated that there had been no problems with the operation of the premises. Senior Constable Pay indicated that the single area matter is best addressed by the MOH who expressed that the current layout was not meeting the requirements of section 114(1) of the Act. He considered this to be a matter the Committee should decide on a case by case basis.

The Committee questioned Senior Constable Pay about his report (in his email dated 25 March) which expressly stated that the Police have no opposition to the application but in accordance with Section 295 of the Act Police support the report of the MOH (who oppose the application). The committee sought clarification as to whether the Police are in support or opposition to the application. Senior Constable Pay confirmed that the Police have no opposition to the application but that they supported the right of the MOH to object to the application.

Licensing Inspector

The licensing Inspector tabled some notes in addition to his formal report, confirming that he had visited the premises. He noted that the intent of the Act appears to be trying to contain alcohol within one area of the shop, rather than being spread around the shop; and to give customers the opportunity to purchase groceries, and go to the checkout without the need to pass through the alcohol display area. He also noted that the Act does not require segregation of the alcohol area from the rest of the premises.

The Licensing Inspector considered that the layout of the Alexandra Four Square meets those objectives and satisfies Section 112 and 113 of the Act. He recommended approval be granted to the issue of the Off-licence for the premises.

The MOH Submission

Dr Derek Bell in his written submission indicated that whilst advertised as a supermarket he considered the premises to be more of a grocery store and therefore more likely to be frequented by children. He stated that the MOH opposition relates primarily to the location of the alcohol products within the store and referred to Section 112(1) of the Act which states "*the purpose of this section and sections 113 and 114 is to limit (as far as is reasonably practicable) the exposure of shoppers in supermarkets and grocery stores to displays and promotions of alcohol, and advertisements for alcohol*".

Dr Bell referred to photographs of the interior of the store which he stated illustrate the highly visible and up close location of alcohol along the back wall of the shop, being visible and touchable from at least two main aisles, being on the pedestrian route around the shop and located between everyday grocery items such as eggs etc.

Dr Bell referred to a final photograph showing a corner he thought ideally suited to the location of alcohol.

Dr Bell tabled the first page of a Social Science and Medicine paper relating to end of aisle placement and its influence on sales. He also referred to a decision by Rotorua DLC on a 4 Square Store in Ngongotaha and an Auckland DLC decision on a New World supermarket at Kumeu. Dr Bell considered the important issue in the Auckland decision to be that all that could be done to limit shoppers exposure to alcohol was being done short of hiding the alcohol.

Dr Bell stated he was seeking complete separation of the alcohol area from the groceries in the Alexandra Four Square. He considered more could be done to reduce the exposure of alcohol and that moving the display would be reasonably practicable.

Dr Bell also stated that he wanted to see the hours aligned with the actual hours of operation.

Dr Bell questioned the applicant about the location of the alcohol area and the ability to relocate the display to the alcove area shown on the photograph. The applicant reiterated that the units were plumbed in and could not be shifted without considerable cost. He also pointed out that the area proposed by Dr Bell is close to the ice cream freezer which children often frequent.

Reasons for Decision

The focus of the hearing has been largely on the design and layout of the premises and whether the alcohol display area complies with the Act. The agencies consider that the applicant to be a suitable person to hold an Off-Licence and noted there has been no matters raised about his ability to manage the operation.

When determining whether to grant the application therefore, the committee considers the relevant sections to be sections 112 and 113 of the Act. With respect to Condition 112(1) the committee acknowledged that the applicant has already relocated the alcohol from an area of high visibility to the back wall of the store. It is also accepted that the refrigeration plant is a fixture and cannot be moved without considerable expense to the applicant.

The committee considered the floor plan of the store and noted that because of the size, layout and physical constraints there would be limited alternatives.

The committee concluded there would be limited gains in moving the alcohol displays because despite the significant costs to the applicant, the alcohol would still be visible from some part of the shop irrespective of to where it is moved. It is further noted that the MOH was seeking to have complete separation of the alcohol, and whilst that may be a desirable outcome from the perspective of the MOH it is not a requirement of the Act. The committee did not believe there to be any evidence to demonstrate that children frequent grocery stores more than supermarkets.

The committee therefore considers that the applicant has limited the exposure to the alcohol as far as is reasonably practicable, and therefore section 112 of the Act is satisfied.

The committee considers that the premises are configured such that no part of the single area contains the most direct pedestrian route between the entrance and the main body of the premises, or the most direct pedestrian route between the main body of the premises and the point of sale. Section 113(5)(a) and (b)(i) and (ii) of the Act is therefore satisfied .

The committee noted that the Police do not oppose the application.

Decision

We are satisfied as to the matters to which we must have regard as set out in Section 105 of the Act and **approve the issue of a grocery style Off-licence** for the hours requested in the application, and subject the display and promotion of alcohol being located in the area shown on the plan submitted with the application and dated as being received 7 March 2014.

Dated at Alexandra this 15th day of May 2014

Robert B McNeil
Chairman
Central Otago District Licensing Committee