

Application 19/048/2018

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

AND
IN THE MATTER of an application by
AW and BL Mudaliar and Co Limited
d for the renewal of a
an off-licence pursuant to section 127 of the
Act in respect of the premises trading as
Piopio Superette

HEARING at the Waitomo District Council Chamber on Thursday 4 April 2019

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Mr J Gower, Cr G Whitaker

APPEARANCES

Mr A Mudaliar – Director, AW and BL Mudaliar and Co Limited
Mrs B Mudaliar – Director, AW and BL Mudaliar and Co Limited
Mr L Norris - Licensing Inspector
Mrs N Zeier – Medical Officer of Health

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The off-licence 019/OFF/001/2016 in respect of the premises situated at 57 Moa Street, Piopio and known as Piopio Superette is renewed for a further period of 2 years. The licence may issue upon payment of the annual fee.
2. The present conditions of the licence are replaced as follows:
 - a) Alcohol may be sold only on Monday to Sunday from 7.00am to 10.00pm.
 - b) No alcohol is to be sold on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day.
 - c) No alcohol may be sold other than:
 - (i) Beer that complies with the appropriate New Zealand food standard for beer; or
 - (ii) Mead that complies with the appropriate New Zealand food standard for mead; or
 - (iii) Fruit or vegetable wine that complies with the appropriate New Zealand food standard

for fruit and vegetable wine; or

(iv) Grape wine that complies with the appropriate New Zealand food standard for grape wine; or

(v) A food flavouring, prepared for culinary purposes, that is unsuitable for drinking undiluted.

- d) The area where alcohol is to be sold is described in the plan date stamped as received by the District Licensing Committee on 23 May 2019. The only area permitted within that plan, as an area for the display and promotion of alcohol pursuant to section 112 is the area labelled 'single alcohol area' on the rear wall, to the right side of the counter.
- e) The entire premises is undesignated.
- f) The holder of a manager's certificate or a properly notified manager shall be on duty and on the premises at all times alcohol is sold. If a duty manager is not present then there must be no alcohol sales and a notice displayed advising the public of this fact.
- g) A manager's register (as required by s.232 of the Act) is to be maintained and available on site.
- h) A Host Responsibility Policy must be maintained and displayed at all points of sale and the Licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012
- i) There must be no sale or supply of alcohol to minors or intoxicated persons and there must be displayed at every point of sale appropriate signs detailing these restrictions
- j) Drinking water must be freely available and displayed whenever alcohol is being supplied by way of complimentary tastings.
- k) The Licensee must ensure the following are displayed;
 - i) A sign to be seen from outside the principal entrance stating the ordinary hours of business during which the premises will be open for the sale of alcohol.
 - ii) A copy of the original licence with all the conditions, just inside the principal entrance so persons entering can read it.
 - iii) A sign in a prominent place identifying the duty manager.

Reasons

The Application

1. This is an application by AW & BL Mudaliar & Co Limited for the renewal of an off-licence in respect of the premises situated at 57 Moa Street, Piopio and known as Piopio Superette. This superette has been operating under the current ownership since October 2002.
2. The application was advertised, and no objections were received from members of the public. Police and the Medical Officer of Health have provided reports and do not oppose the application. However, the Licensing Inspector opposes the application on a number of grounds, in particular lack of training, the lack of a manager's register and a recent incident of no certified

manager on duty while alcohol was for sale. As a result of these concerns being raised, the licensing committee directed that the matter be heard at a public hearing. A site visit was conducted prior to the hearing.

Is the proposed Piopio Superette a grocery store?

3. In deciding whether to renew an off-licence the licensing committee must be satisfied that the shop is one of the categories than an off-licence can be granted for. An off-licence cannot be granted for a petrol station, garage, dairy, convenience store or a shop within a shop (section 36). However, an off-licence can be granted for a grocery store.
4. In deciding whether a shop is a grocery store the licensing committee must decide whether the shop (section 33(1)):
 - a) has the characteristics normally associated with shops commonly thought of as grocery stores?
 - b) sells a range of food products and other household items?
 - c) sells food products as its principal business?
5. To be a grocery store, the sale of foods products must be the biggest category of revenue after GST and NZ lotteries revenue is deducted. If food products are not the biggest category, then the store is likely to be a dairy or convenience store that is not able to hold an off-licence.
6. The licensing committee is satisfied that Piopio Superette is a grocery store. The size and layout of the shop have the look and feel of a small grocery store. A range of food products and other household items are sold. The Statement of Annual Sales Revenue prepared by a chartered accountant shows that food products form the greatest category of gross sales. Therefore, Piopio Superette is entitled to hold an off-licence.

Does the application contain an appropriate single alcohol area?

7. When issuing an off-licence for a grocery store, the licensing committee must impose a condition on the licence describing one area within the premises “as a permitted area for the display and promotion of alcohol” (section 112(2)). The single alcohol area must (so far as is reasonably practicable) “limit the exposure of shoppers in supermarkets ... to displays and promotions of alcohol” (section 112(1)). It may not be situated in an area “through which the most direct pedestrian route between the entrance to the premises and main body of the premises” or an area “through which the most direct pedestrian route between the main body of the premises and any general point of sale passes” (section 113(5)). No display or promotion of alcohol is permitted outside the alcohol area (section 114(1)(a)). A licensee must not display, promote or advertise non-alcohol products in a single alcohol area that does not contain sub-areas (section 114(1)).
8. The Inspector reports that the single alcohol area was not marked on the plan provided with the application. However, it was agreed at the hearing that the area marked “Wine and Beer Chiller” to the right side of the counter is the single alcohol area. Subsequent to the hearing, this area has been delineated and marked on the plan as ‘single alcohol area’. It is located at the rear of the retail part of the premises when standing at the principle entrance. It is mostly screened from the point of sale and principle entrance by a hardware display board. The area measures 5.0 metres by 1.7 metres. The Inspector concludes that location of the single alcohol area, is

unlikely to attract the attention of those customers not wishing to purchase alcohol. There are no end of aisle displays of alcohol. The licensing committee is satisfied that the single alcohol area is not in a prohibited area and the location does limit the exposure of shoppers to displays of alcohol. Therefore, the application does contain an appropriate single alcohol area.

The criteria under the Act

9. The purpose of the Act is to put in place a new system of control over the sale and supply of alcohol (s 3). The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s 4).
10. In deciding whether to renew an off-licence the licensing committee must have regard to sections 131 and 105 of the Act. Therefore this committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) Is the applicant suitable?
 - b) Are the days and hours during which the applicant proposes to sell alcohol reasonable?
 - c) Is the design and layout of the premises suitable?
 - d) Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - e) Does the applicant have appropriate systems, staff and training to comply with the law?
 - f) Have the police, inspector and medical officer of health raised any relevant considerations?
 - g) Will the amenity and good order of the locality be increased by more than a minor extent by the effects of a refusal to renew the licence?
 - h) Has the applicant sold, displayed, advertised or promoted alcohol in a responsible manner?
 - i) Does the application contain an appropriate single alcohol area?
 - j) Does the application comply with the Waitomo District Local Alcohol Policy?
11. AW & BL Mudaliar & Co Limited have applied to change the licensed hours from 7.30am to 9.30pm Monday to Sunday, to 7.00am to 10.00pm Monday to Sunday. These hours amend the licence so that it now complies with the maximum hours permitted in the Waitomo District Local Alcohol Policy. There is no opposition to this change and the licensing committee approves this variation.
12. There have been no concerns raised by the reporting agencies regarding any of the above criterion except (a) the suitability of the company to hold a licence and (e) staff, systems and training. Therefore, the only issue of concern for the licensing committee is whether the company has appropriate systems, staff and training to comply with the law and is a suitable entity to hold an off-licence.

Does AW & BL Mudaliar & Co Limited have appropriate systems, staff and training to comply with the law and is the company a suitable entity to hold an off-licence?

13. In his report, the Licensing Inspector Mr Norris, states that he inspected the premises on 23 October 2018. A sign was displayed stating "Avinesh Mudliar" (actual spelling used) was the manager on duty. However, Mr Mudaliar was not on the premises. The only person on the premises was a staff member who did not hold a manager's certificate. There was no signage

saying that alcohol sales had been suspended.

14. When Mr Norris questioned Mr Mudaliar, one the company directors, on 13 November 2018, he advised that he had not had any training since sitting the Bridging Test in 2016 and he was not familiar with the SCAB Intoxication Assessment Tool. Mr Mudaliar was not able to produce a manager's register.
15. At the hearing Mr Norris reiterated his concerns regarding a lack of staff, systems and training. This was not the first time that a manager had not been on duty when the premises was open for the sale of alcohol. A public hearing was held in October 2015 to consider the renewal of the off-licence, due to concerns about a manager not being on the premises at all times alcohol was for sale and the fact that a manager's register had not been maintained. Therefore, the company does not seem to be managing its responsibilities under the Act very well.
16. Mr Norris also noted that the Host Responsibility Policy (located in the single alcohol area) contained too much detail to be read by customers purchasing alcohol. Prohibited persons signage and an ID 25 policy is displayed, however there was no SCAB Intoxication Assessment Tool or Date of Birth chart for staff to refer to at the point of sale.
17. Mrs Mudaliar, director of AW & BL Mudaliar & Co Limited, gave evidence that the company has been operating for the past 16 years and there has been "on the job training", however it has not been documented. Mr and Mrs Mudaliar have now put a file together with relevant information about the Act and it also contains an up to date manager's register. There is a SCAB Intoxication Assessment Tool and Date of Birth chart on display. In the future, if a duty manager is not on the premises, a sign advising customers that alcohol sales are suspended will be displayed. In conclusion, staff training systems are in place and training will take place every six months. Mr and Mrs Mudaliar and Priya Mudaliar have all completed the online Servewise Host Responsibility course.
18. Mr and Mrs Mudaliar both hold manager's certificates and their daughter Priya Mudaliar has just applied for her manager's certificate. Priya works at the store on weekends and in university holidays. Mr Mudaliar admitted that the company does have trouble retaining duty managers and being located a remote area, it can be difficult to employ new managers. Mr Norris confirmed that Priya Mudaliar performed well at her recent manager's certificate interview and that the application was being processed.
19. Subsequent to the hearing, Mr and Mrs Mudaliar have supplied some additional documents requested by the committee. These include; an amended site plan that shows the location of the single alcohol area, an up to date Manager's Register, a simplified Host Responsibility Policy, a Host Responsibility Implementation Plan (essentially some useful training materials) and a Staff Training Plan and training log for recording staff training completed. A photo has also been provided showing that the licence is now displayed where it can be seen easily.
20. When deciding an application for the renewal of an off-licence, the licensing committee has a duty to undertake an evaluation task. In *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2016] NZARLA 946, the Licensing Authority explained that a licensing committee is required to have regard to the section 105 criteria as modified by s 131, and "step back and consider whether there is any evidence to suggest that granting the [renewal] will be contrary to the

object of the Act contained in s 4(1), namely that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised”.

21. Standing back and viewing the whole application, the licensing committee accepts that the renewal can be granted because the sale, supply and consumption of alcohol will be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol will be minimised. Despite the deficiencies pointed out by the Licensing Inspector, there is no evidence of any alcohol related harm connected to this premises. Most importantly, the company now has sufficient staff, systems and training in place to ensure compliance with the Act. In particular, the licensing committee accepts that staff training will now take place every three months and alcohol will not be sold without a duty manager present.
22. Staff training will now be recorded, and the manager’s register will be kept up to date. We are satisfied that granting the application will achieve the object of the Act, because the applicant is a responsible supplier of alcohol.
23. However, the Licensing Inspector has asked that the renewal be granted for a truncated renewal period of two years, rather than the usual three years. This is because of the concerns raised over the past two renewal periods. The Licensing Committee agrees with this recommendation. A shorter renewal period will mean that the compliance of the company will be assessed again within a shorter time frame. It will give the Licensing Inspector the ability to check out whether the company directors have kept their promises regarding their staff training programme and most importantly ensuring that managers are always on duty when alcohol is sold.

Conclusion

24. The conditions for this licence have been replaced to ensure that they are consistent with licences issued since the commencement of the Sale and Supply of Alcohol Act 2012. The new conditions include information about the statutory obligations to display signage, the single alcohol area, the maintenance of a manager’s register and the amended licensed hours. In conclusion, the application for the renewal of the off-licence is granted for a two-year period.

Dated this 2nd day of July



Sara Grayson
Commissioner
Waitomo District Licensing Committee