

## Decision for On-licence Application

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

**AND**

**IN THE MATTER** of an application by **One Black Rabbit Limited** for an on-licence pursuant to section 100 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at 430A Bannockburn Road, Bannockburn trading as the Black Rabbit Kitchen and Bar.

### **BEFORE THE CENTRAL OTAGO DISTRICT LICENSING COMMITTEE**

Robert B McNeil (Chairman)  
Dr Michael MacAvoy  
Brett Pay

**HEARING** held at Cromwell on 7 May 2018

### **APPEARANCES**

#### Applicant

Michael Walker, representing One Black Rabbit Limited  
Katie Funnell, One Black Rabbit Limited

#### Objectors

Bronwyn Stewart, representing John and Bronwyn Stewart, 424 Bannockburn Road

#### Supporters

Martin Anderson, representing Sue and Martin Anderson, 432 Bannockburn Road  
Jan Hawkins, representing the premises (landlord)

#### Reporting Agencies

Linda Ferrier, Licensing Inspector, Central Otago District Council to assist the Committee.  
Stephanie Bekhuis-Pay, Southern District Health Board (to assist the Committee no submission or opposition)

### **DECISION**

#### **Background**

This is an application by One Black Rabbit Limited for an on-licence in respect of premises situated at 430A Bannockburn Road, Bannockburn trading as the Black Rabbit Kitchen and Bar.

The general nature of the business to be undertaken is that of a class 3 type restaurant. The type of on-licence sought is for restaurants which do not have a separate bar area and only serve alcohol to the table. The application has come about due to a change of ownership of an existing operation. The premises changed hands on 17 July 2017 and are currently operating under its fourth temporary authority which is due to expire on 18 July 2018.

The application was duly advertised and two objections were received.

- Andrew John Stewart and Bronwyn Anne Stewart of 439A Bannockburn Road objected on the grounds that the applicant has not complied with the conditions of the resource consent or temporary authority.
- Mark and Jan Hayes of 428 Bannockburn Road objected on the grounds that the applicant has not complied with the conditions of the resource consent or temporary authority.

A letter of support was received from Sue and Martin Anderson of 432 Bannockburn Road. They commented that they did not want the on-licence granted for hours longer than those approved under the resource consent.

### **Applicant's Submission**

Mr Walker noted that the same objectors raised an objection to the original application which resulted in a hearing before the Alcohol Regulatory and Licensing Authority (ARLA) on 21 March 2014 and was granted. He submitted that the hours and nature of the operation have already been litigated, and a decision made. Therefore only the suitability of the applicant may be opposed.

He submitted that the applicant is a suitable person to hold an on-licence, as supported by the opinion of the Licensing Inspector, and the objections raised fall outside section 102 of the Act as they are not specific to the suitability of the applicant.

### **Objections**

Mrs Bronwyn Stewart raised concerns about the applicant not complying with the requirements of the resource consent granted in 2006 for the operation of a café at the premises. She also noted that in 2013 they opposed the granting of an on-licence which was eventually granted by ARLA. The concerns they raised at that hearing have eventuated, in that due to the close proximity of the premises to their house they are disturbed by activity at the Black Rabbit Restaurant and Bar.

Mrs Stewart raised concerns regarding the proximity of this commercial activity in a residential area. In particular, the noise from customers and staff in the outside area of the café and cars departing the carpark at times after her husband has gone to bed. As he often starts work in the summer at 4.00am any activity which disrupts his sleep defeats their purpose of buying a property in Bannockburn.

Mrs Stewart raised an issue of non-compliance with the conditions of the resource consent, in particular not giving 72hours notice of an event which was to go after 9.30pm and the greater use of the outside area than permitted under the consent.

She was also concerned that the outside seating area had been extended beyond what was approved by the resource consent.

In a statement made at the hearing, Mrs Stewart said "*we don't have a problem of the premises having a liquor licence so that people can have a glass of wine with their meal, but the lessees.....have to be respectful and responsible.*"

Although Mark and Jan Hayes did not appear before the Committee they noted in their objection that:

*The premises started out as a café/shop but is now marketed as a restaurant/bar. They appear to be creating a place for people to meet and drink not just eat. We oppose that*

*because they are supposed to be a restaurant not a bar. We have more noise late at night.*

They requested that the application be refused.

### **Submissions**

Mr Martin Anderson in support of the application presented a petition from the Black Rabbit Kitchen and Bar customers. In supporting the granting of the licence the Andersons made the following comments:

- 1. We would not want to see any variation of the hours beyond what is specified in the consent. The café is in the middle of a fairly densely populated area with a number of its residents acutely sensitive to noise. By this we would not want to see the granting of the licence as the first step in seeking a change to their underlying resource consent in the future such that they could run a greater number of late night events, probably with bands.*
- 2. We would like to see the café advise a wider group of residents if they plan to stay open to 11.00pm on the 10 occasions a year they are permitted to do so.*
- 3. We are not sure that background or live music is always played within the building as is required under the consent.*
- 4. During the summer there have been a number of noisy departures from the café at the close of business.*

### **Reporting Agencies**

The Medical Officer of Health and Police reported that they had no opposition to the application and made no submissions at the hearing.

Ms Ferrier the Licensing Inspector gave a history of the premises in her report:

- It was purpose built in 2008 and granted hours of 8.00am to 6.00pm to operate a café/store.
- In 2010 the hours were varied to 7.00am to 7.00pm and alcohol was permitted to be served in association with private functions if they obtained a special licence.
- In 2013 operating hours were varied to permit trading from 8.00am to 9.30pm and alcohol to be sold as part of the restaurant activity. A further variation at that time permitted the business to trade until 11.00pm on up to 10 occasions per year.

In her report she stated that;

*“Overall, it is my view that granting an on-licence would be consistent with the object of the Act.*

*In coming to this conclusion, I have had regard to the nature of the premises, (a small, class 3 restaurant with the sale of food being the principal business), the applicants host responsibility policy, staff training procedures and the receipt of unopposed reports from Police and Medical Officer of Health.”*

In respect to the suitability of the applicant, Ms Ferrier noted in her report that;

*“A failure by the applicant to always operate the premises in compliance with the resource consent conditions has caused a noise nuisance to the neighbours and potentially resulted in the applicant trading in breach of their temporary authority order. It brings into question the applicant company’s suitability to hold an on-licence and this was also a concern raised by the two objectors.*

*On the other hand, the applicant company has demonstrated that the day to day operation is in the hands of suitably qualified and experienced staff and has shown the capability to manage and operate a successful café/ restaurant business that is of a high standard and is popular with both locals and visitors to the region.*

*After taking into account all the criteria required to be considered under s.105 of SSAA 2012, I consider on balance the applicant company to be suitable to hold an on-licence. The licence will in the first instance issue for one year before coming up for renewal and is effectively a probationary period. The Authority have in past decisions pointed out that a licence is a privilege and not a right and it is up to the applicant to demonstrate during this time that they can operate the premises in accordance with the conditions of the licence and resource consent."*

### **Reason for Decision**

There appears to be a misunderstanding by the applicant of the conditions of the resource consent conditions with respect to the number of people who may occupy the various parts of the premises and the operating hours. The Committee is concerned that the applicant failed to obtain a Land Information Memorandum at the time of purchasing the business. Should the applicant have sought this information they would have realised the extent to which the conditions of the resource consent limited the scope of the operation. Consequently the licensee has on several occasions unwittingly operated beyond the hours permitted under the resource consent and outside the licensed area approved by the temporary authority.

Although a hearing before the District Licensing Committee is not the forum to seek clarification of, or enforce resource consents, the applicant is reminded of the following conditions of resource consent number RC130004 granted for these premises in 2013:

- 7a) *The café/store shall be permitted to be open during the hours of 8.00am – 9.30pm daily; and the café/store is permitted to be open during the hours of 8.00am – 11.00pm on up to 10 occasions per year.*
- b) *The consent holder shall advise the occupiers of 424 Bannockburn Road no less than 72 hours period to any evening when the café/store is to operate after 9.30pm.*
- c) *Any exterior lighting shall not be directed towards 424 Bannockburn Road.*
- d) *Trellising shall be attached to the fence required in terms of Condition 18 along the northern boundary of the site adjacent to the outdoor dining area; such trellising to increase the height of the fence to a minimum of 1.8 metres as measured above the deck of the outdoor dining area.*
- e) *The menu for evening diners shall contain a note that states as follows or to like effect:*  
  
*"Customers are requested to keep noise at a reasonable level when dining outdoors or when leaving these premises as this shows respect for our neighbours."*
- f) *The consent holder shall maintain a written record of when the café/store operates after 9.30pm as permitted in terms of Condition 7a); and such record shall be provided to the Chief Executive for inspection on request.*
- 9a) *The café is permitted to retail coffee, tea and other refreshments and prepared foods. Alcoholic beverages to be served or sold at the site shall be limited to that served in association with private functions and in terms of applications for special licences under the provisions of the Sale of Liquor Act 1989 and subsequent legislation; and alcoholic beverages are also permitted to be served in terms of an on-licence under the Sale of Liquor Act 1989 and subsequent legislation that is subject to a condition to the effect*

*that liquor may only be sold when the premises are being operated as a restaurant.*

- b) *The consent holder shall ensure that background music for diners is played inside the building. For the avoidance of doubt there shall be no speakers located outside the building.*

The Committee acknowledges the concerns raised by the objectors and consider they are primarily matters which need to be addressed through the enforcement of the resource consent. The applicant is encouraged to seek clarification of the conditions of the resource consent and the limitations they place on any alcohol licence granted for the premises.

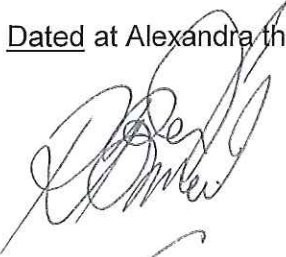
The applicant is reminded that for a restaurant style on-licence there is no provision for a half hour drink-up time and consequently patrons are required to cease alcohol consumption on the premises by the closing time of 9.30pm or 11.00pm as the case maybe. Furthermore under the conditions of the current resource consent, the business may not operate beyond 9.30pm unless they have given 72 hours' notice to neighbours of an occasion where they are intending to trade to 11.00pm.

### **Decision**

The Committee has considered the criteria set out in section 105 of the Act, and do not consider the matters raised by the objectors are sufficient to warrant the refusal of this application.

The Committee grants the applicant an on-licence authorising the sale and supply of alcohol in accordance with the application. A copy of the plan (dated 18 December 2017) defining the licensed area, and the licence is attached to this decision.

Dated at Alexandra this 10<sup>th</sup> day of May 2018



Robert B McNeil  
Chairman  
Central Otago District Licensing Committee



## On-licence

### Sections 14 to 16 and 64, Sale and Supply of Alcohol Act 2012

67/ON/14/2018

Pursuant to the Sale and Supply of Alcohol Act 2012, **One Black Rabbit Limited**, is authorised to sell and supply alcohol, on the premises situated at 430A Bannockburn Road, Bannockburn and known as Black Rabbit Kitchen and Bar, to any person for consumption on the premises and to let people consume alcohol there.

The authority conferred by this licence must be exercised through a manager or managers appointed by the licensee in accordance with Subpart 7 of Part 2 of the Act.

#### Conditions

This licence is subject to the following conditions:

- a) No alcohol is to be sold on Good Friday, Easter Sunday, Christmas Day or before 1.00pm on Anzac Day to any person who is not on the premises for the purpose of dining.
- b) Alcohol may be sold only when the premises are being operated as a Restaurant but not other than on the following days and hours:  
**Monday to Sunday 8.00am to 9.30pm**  
**8.00am to 11.00pm for up to 10 occasions per year**
- c) The licensee must have available for consumption on the premises, at all times when the premises are open for the sale of alcohol, a reasonable range of non-alcoholic refreshments, low-alcohol beverages and free drinking water.
- d) When open for the sale of alcohol, food must be available for consumption on the premises at all times in accordance with the menu submitted with the application for the licence, or variations of the menu of a similar range.
- e) The licensee must implement and maintain the steps proposed in the application for the licence aimed at promoting the responsible consumption of alcohol.
- f) The licensee must ensure that the provisions of the Act relating to the sale supply and consumption of alcohol to prohibited persons are observed and must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- g) A copy of this licence must be displayed at the principal entrance to the premises.
- h) The licensee must ensure that signs are prominently displayed within the licensed premises detailing information regarding alternative forms of transport from the premises.

#### Duration

Subject to the requirements of the Act relating to the payment of fees, and to the provisions of the Act relating to the suspension and cancellation of licences, this licence continues in force—

- (a) Until the close of the period of 1 year commencing with the date of its issue.
- (b) If an application for the renewal of the licence is duly made, until the application is determined;  
or
- (c) If the licence is renewed, until the close of the period for which it is renewed.

Expiry date being **10 May 2019** unless renewed for a further period.

Dated at Alexandra this 10<sup>th</sup> day of May 2018

L A van der Voort  
For the Secretary  
Central Otago District Licensing Committee

BACK FENCE



RECEIVED  
 18 DEC 2017  
 CENTRAL OTAGO DISTRICT  
 ALEXANDRA

Licensed Area  
 Undersignatures