

Application	19/080/2020
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	
<u>IN THE MATTER</u>	of an application by James Robert Batger for a manager's certificate pursuant to section 219 of the Act

HEARING at the Waitomo District Council Chamber on 6 May 2021

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Dr M Cameron, Ms T McIntyre

APPEARANCES

Applicant – Mr J Batger
Licensing Inspector – Mr L Norris (to assist)
Police – Senior Sergeant Hall (to assist)

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The application for a manager's certificate is declined.

REASONS

1. Mr Batger filed his application for a manager's certificate on 14 December 2020. Mr Batger works at The General Store Waitomo & Twelve Tables Bar & Eatery as a Chef.
2. The Licensing Inspector does not oppose the application. However, Mr Norris reports that Mr Batger was a Temporary Manager or an Acting Manager on duty on 19 December 2020, when alcohol was sold to a minor during a controlled purchase operation (CPO).
3. Police did not oppose the application. However, the report was filed on 16 December 2020, before the failed CPO.
4. The failed CPO raises concerns about Mr Batger's training, experience and suitability to hold a manager's certificate. The District Licensing Committee (DLC) set the matter down to be determined at a public hearing in order to understand more about the incident and give Mr Batger an opportunity to present submissions and evidence to support how he meets the criteria in section 222 of the Sale and Supply of Alcohol Act 2012 (SSAA).

5. In considering an application for a manager's certificate, the licensing committee must consider the following criteria (s 222 SSAA):

- a) Is the applicant suitable to be a manager?
- b) Have any convictions been recorded against the applicant?
- c) Does the applicant have any recent experience in controlling any premises for which a licence was in force?
- d) Has the applicant undertaken appropriate training and completed relevant qualifications under section 218?
- d) Have the Inspector and Police raised any relevant matters in their reports?

6. The Licensing Authority in *Markovski v Dalziell-Kernohan*¹ stressed the importance of having regard to all of the criteria in section 222 SSAA and to undertake a balancing exercise and stated:

When considering an applicant's suitability to be a manager, it is important to note that the section relates to "suitability to being a manager". The criterion is not about an applicant's character in a general sense. This was emphasised in *Re Sheard* [1996] 1 NZLR 751 where Holland J stated at [758]: "The real test is whether the character of the applicant has been shown to be such that he is not likely to carry out properly the responsibilities that go with the holding of a licence:".

7. Mr Batger does not have any convictions and no concerns have been raised about Mr Batger's character. However, the DLC must consider whether Mr Batger has sufficient experience and adequate knowledge to properly carry out the responsibilities of a Duty Manager and whether he is a suitable person to hold a manager's certificate.

Does Mr Batger have sufficient experience controlling licensed premises, a thorough understanding of the Act and skills necessary to carry out the responsibilities of a Duty Manager?

8. Mr Norris explained in his report that Mr Batger gained his Licence Controller Qualification on 9 November 2020. Mr Batger has been working at The General Store Waitomo & Twelve Tables Bar & Eatery since December 2019 as a chef and the Inspector understood that this included some time spent serving alcohol to customers. Mr Norris interviewed Mr Batger and reported that he had an excellent understanding of the requirements and responsibilities of a manager.

9. Mr Batger explained that, on the night of the CPO, he was working as a chef in the kitchen and was also required by his employer to work as Temporary Manager. The kitchen has an open door leading to the bar servery. However, the bar is not directly visible from within the kitchen. The sale to a minor was made by a relatively inexperienced front of house staff member.

10. Senior Sergeant Hall gave evidence that on 19 December 2020 he was supervising a CPO at The General Store Waitomo & Twelve Tables Bar & Eatery. A volunteer minor aged 17 years entered the store and was sold a single bottle of Heineken beer valued at \$8.00. The volunteer was not asked for identification. Mr Batger was the Temporary Manager on duty at the time.

11. Mr Batger explained that he has been working at the premises as a Chef since December 2019; however, he had about three months off during lockdown. His employer, Mrs Davis, explained that Mr Batger terminated his employment before March 2020 and recommenced employment at the premises on 19 September 2020 and did his LCQ shortly after that. There has been a decrease in business during the COVID-19 pandemic and at times the business has been short staffed. Mr Batger has been asked to work as a temporary manager for approximately two days per week since his appointment on 16 November 2020. He has always been working as a chef when he has been a

¹ [2016] NZARLA 118, paragraphs [10], [12] & [18]

Temporary Manager. Sometimes, he was the only person on site and other times there was one other staff member.

12. After questioning Mr Batger and his employer Mrs Davis, it has become obvious to the DLC that due to the shortage of staff at the premises and slow trade, Mr Batger has not had experience learning about the sale and supply of alcohol under the supervision of a Duty Manager. This is because he has predominantly been working as a chef in the kitchen. Mr Batger says that he has been re-reading his LCQ booklet at home.
13. When questioned about the responsibilities and obligations of a Duty Manager, Mr Batger was able to give a good description about the object of the Act, of alcohol related harm, appropriate forms of identification and how to use the SCAB Intoxication Assessment Tool. However, he was not able to confidently explain all of the conditions of the licence, including the licensed hours and the designation of the premises. He was uncertain about where minors are permitted to be in the premises. The Committee accepts that this may have been due to Mr Batger feeling nervous.
14. Mr Batger is well regarded by his employer, who believes that he has all of the necessary skills to carry out the work of a Duty Manager.
15. A Duty Manager is responsible for ensuring compliance with the Sale and Supply of Alcohol Act 2012 and with the specific conditions of the licence for the premises. A Duty Manager must take steps to run the premises in a manner that minimises harm caused by the excessive or inappropriate consumption of alcohol (section 214 SSAA). The Licensing Authority has provided guidance that a prospective Duty Manager should have six months experience controlling a premises for which a licence is held.² This means practical experience serving alcohol under the supervision of a Duty Manager, putting theoretical knowledge, such as identifying intoxication and ID checking, into practise.
16. The Licensing Committee has formed a view that Mr Batger does not have sufficient experience controlling a licensed premises under the supervision of a Duty Manager. While Mr Batger has a good practical knowledge of the SCAB intoxication tool and the object of the Act, he does not have a thorough understanding of the conditions of the licence and his responsibilities when he is on duty. We believe that understanding how the law works only comes from direct experience and putting the “theory” into practice.
17. Mr Batger should not have been asked to act as a Temporary Manager when he was also working as a chef, because he was unable to properly supervise the front of house staff and observe the customers. Therefore, it is likely that alcohol was sold to a minor during the CPO because unreasonable expectations were placed on Mr Batger, who did not have sufficient experience at the time. This is a concern to the DLC, because the supply of alcohol to minor is considered a serious breach of the Act and of the obligations of a licensee and a Duty Manager.
18. A Duty Manager, Acting Duty Manager or Temporary Duty Manager should not be also working as a chef. This is because it is not possible to actively supervise customers and the sale and supply of alcohol from the kitchen.
19. We have carefully considered all of the criteria in section 222 and undertaken a balancing exercise. On the one hand, we acknowledge that Mr Batger does not have any convictions, holds an LCQ and is a responsible person who is well regarded by his employer. However, these positive attributes and factors are outweighed by a lack of experience and lack of knowledge. As stated above, a Duty Manager is responsible for ensuring compliance with the Sale and Supply of Alcohol Act 2012 and

² *Brockelsby, re* [2006] NZLLA 50 PH 50/200

with the specific conditions of the licence for the premises. At the moment, Mr Batger is not clear about all aspects of the role of a Duty Manager and therefore we are not confident that he would properly carry out the responsibilities of a Duty Manager.

20. In conclusion, the application for a manager's certificate is declined. We encourage Mr Batger to gain at least another six months experience in the sale of alcohol under the supervision of an experienced Duty Manager, and to undertake further training (in-house and/or external training such as the online HPA Servewise course) on the responsibilities and obligations of a Duty Manager before making a further application for a manager's certificate.

Dated this 1st day of June 2021

A handwritten signature in black ink, appearing to be 'S Grayson', written in a cursive style.

Sara Grayson
Commissioner
District Licensing Committee