



Application 19/037/2021

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

AND

IN THE MATTER of an application by
Waitomo Club
Incorporated for the renewal of a
club licence pursuant to section 127 of the
Act

HEARING at the Waitomo District Council Chamber on 4 May 2022

WAITOMO DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Ms T McIntyre, Mr R Murphy

APPEARANCES

Mr A Hepi – President, Waitomo Club Incorporated
Mr P Taituha, Vice President, Waitomo Club Incorporated
Mr A Mangiono-Ashby – Secretary/Manager, Waitomo Club Incorporated
Mr C Nash – Club Member, Waitomo Club Incorporated
Ms S Tuheke – Duty Manager, Waitomo Club Incorporated
Ms Manaia Tuheke-Kingi - Duty Manager, Waitomo Club Incorporated
Ms L Atutahi – Committee Member, Waitomo Club Incorporated
Mr T Sheldon - Objector
Mr L Norris - Licensing Inspector

DECISION OF THE WAITOMO DISTRICT LICENSING COMMITTEE

1. The club licence 19/CLUB/004/2015 in respect of the premises situated at King Street East, Te Kuiti and known as Waitomo Club is renewed for a further period of 3 years. The licence may issue upon payment of the annual fee.
 - (a) The present conditions of the licence continue to apply.

Reasons

Introduction

1. This is an application by Waitomo Club Incorporated for renewal of a club licence in respect of the premises situated at King Street East, Te Kuiti. The club licence has been in force since July 1990. The club is an incorporated society and is therefore entitled to hold a club licence. The current licence expired 12 July 2021.

Reports

2. The Licensing Inspector, Medical Officer of Health and Police do not oppose the application.

Public Objection

3. An objection to this renewal application was received from Tony Sheldon on 25 June 2021, within 15 working days after the first publication of the public notice of the making of the application (as required by section 128(2) of the Act). Mr Sheldon states that he was assaulted at the club by a guest of the club at 9.25pm on 18 December 2020. This incident took place while the club was operating under a special licence for a funeral wake and Mr Sheldon was working in the kitchen as the club's in-house caterer. Mr Sheldon's concerns relate to the fact that the club took no responsibility for the incident on the night it happened or at any point after.
4. Section 102 / 128 of the Act states that:
 - (1) *A person may object to the grant of a licence only if he or she has a greater interest in the application for the licence than the public generally.*
 - (2) *An objection must be in writing and filed with the licensing committee within 15 working days after the first publication of the public notice of the making of the application.*
 - (3) *No objection may be made in relation to a matter other than a matter specified in section 105/131.*
5. Section 105 & 131 lists the criteria that the Licensing Committee must have regard to when deciding whether to renew a licence. These include the object of the Act, the suitability of the applicant, the proposed days and hours of trade, the design and layout of the premises, whether the applicant is engaged in the sale of goods and services in addition to the sale of food, alcohol and non-alcoholic refreshments, staff, systems and training and any matters raised by the reporting agencies. Section 131 also refers to whether the amenity and good order of the locality would be likely to be increased by more than a minor extent, by the effects of a refusal to renew the licence, and the manner in which the applicant has sold, displayed, advertised, or promoted alcohol.
6. Section 202(3)(b) states that where an objection is filed within the prescribed time, the Licensing Committee concerned must convene a public hearing to consider the application, unless, having considered the application, the authority or committee believes that the objection is vexatious or based on grounds outside the scope of this Act.
7. The licensing committee agrees with the Licensing Inspector that the club's former in-house caterer Mr Sheldon does have a greater interest in the application than the public generally. In addition, his objection raises questions about the object of the Act, the suitability of the Club to hold a licence and whether the applicant has appropriate systems, staff and training to comply with the law. The scope of the objection is based on the criteria set out in section 105/131 of the Act.

8. Therefore, the application was set down to be heard at a public hearing pursuant to section 202(1).
9. The Licensing Committee conducted a site visit prior to the hearing.

The Sale and Supply of Alcohol Act 2012

10. 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).
11. In deciding whether to renew a club 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 comply with the Waitomo District Local Alcohol Policy (LAP)?
12. The club does not seek changes to any conditions. There are no concerns about the trading hours, the design and layout of the premises, the amenity and good order of the premises, the types of activities the club is involved with or the way the club has sold, displayed, advertised or promoted alcohol. The application complies with the LAP. No issues have been raised by Police, the Medical Officer of Health or the Licensing Inspector.

Is the club a suitable applicant to hold a club licence? Does the club have appropriate systems, staff and training to comply with the law? Does the application comply with the object of the Act?

13. The Licensing Inspector, Mr Norris, does not report any concerns regarding the suitability of the club to hold a club licence. He reports that the new club Secretary/Manager, Mr Mangioni-Ashby was an international flight steward with Air New Zealand for 27 years. He was also employed as a Kiwi Rail National Service Manager. He previously held a manager's certificate, which expired in 2018, and was not renewed at that time as Mr Mangioni-Ashby was no longer involved in the hospitality industry.
14. The President, Mr Hepi, is a long-standing club [member](#) and has held a number of executive positions. In particular he was the Club Manager for four years and at the time of the incident. He is a senior manager employed at a local freezing works.
15. Mr Norris states in his report that there is a Host Responsibility Policy, Date of Birth Chart, Intoxication Assessment Tool and Prohibited Persons signage displayed at the bar servery. In

addition, a manager's register is maintained, and three staff members hold manager's certificates. The two entrances, at the front and back door, are kept locked and entry is gained via a swipe card for members and an intercom system for visitors. Members guests and authorised visitors are signed in at the bar by the manager on duty. The club operates a free courtesy bus service from 5.00pm until closing time on Monday, Wednesday, Friday and Saturday.

16. The club has supplied evidence of training provided for committee members and staff since 2018. This includes training conducted by Club member Cameron Nash, who has had five years' experience conducting hospitality training at the Training Bureau Ltd.
17. However, the objection submitted by Mr Sheldon raises a concern about whether the club had appropriate systems in place to deal with the assault that occurred on 18 December 2020. Mr Sheldon stated in his statement to Police that at approximately 8.15pm he had finished for the evening and was in the process of cleaning up. Around that time two patrons walked up to the counter and looked at the menu. His partner informed the patrons that the meals were finished and that there was only French fries and baskets available as the ovens were switched off. The patrons walked back to their table and then a male came back to the counter and ordered a steak in a demanding tone. He wasn't happy when he was told that the only option was fries and baskets, however he walked away. Mr Sheldon says that he carried on cleaning in the kitchen when the male asked where his fries and basket were. Mr Sheldon says that he told the patron that he had not placed an order. The male made some derogatory comments to Mr Sheldon, and when Mr Sheldon walked past him to say goodnight to the bar staff, he heard the male threaten to punch him. On the way back to the kitchen, the male followed him to the kitchen. He turned around and the male walked up to him and slammed his chest into him, and head butted his forehead into Mr Sheldon's eye brow and nose. A duty manager, Manaia, was standing beside them at the time and tried to calm the situation and told Mr Sheldon to go home.
18. At the hearing Mr Sheldon gave evidence that the male was a guest at the funeral wake that was being hosted by the club with a special licence. Mr Sheldon was responsible for catering for 200 people attending the event. His partner told him that she returned to the club at about 10.00pm and found that the male offender was still at the club drinking. The next day Mr Sheldon visited the club and spoke to Selina, the bar manager, about what had happened the night before. It was his perception that she was uninterested and told him to speak to the club manager on Monday. He made a Police complaint on Monday and also visited the doctor. The doctor's report states that Mr Sheldon had a contusion to his nose. Mr Sheldon states that he spoke to the Club Manager on 22 December 2020, however no action was taken. The club then terminated Mr Sheldon's catering contract. The police did not take any action because there was no CCTV footage of the incident.
19. Mr Sheldon's main concern is that the club took no responsibility for what happened.
20. The Club Manager at the time was Mr Hepi. Mr Hepi gave evidence that an investigation was conducted, and the club formed an opinion that Mr Sheldon was the aggressor. It was his understanding that the male thought that Mr Sheldon was rude to his daughter when she ordered a meal suitable for her special diet. When the male approached the bar, Mr Sheldon made a gesture to him and made some comments. In his view, this created antagonism and which led to the male following Mr Sheldon to the kitchen area and head butting him.
21. Mr Hepi said that when Mr Sheldon came to the club the next day, he was in an irate state and was speaking loudly to Selina and she felt intimidated. Two club members intervened and asked Mr Sheldon to leave the premises.

22. Ms Manaia Tuheke-Kingi, who was working on the bar that evening, gave evidence that Mr Sheldon came to the bar to say goodnight and told her something about the male that she didn't quite clearly hear. When she asked him to repeat what he had said he appeared to throw his arms in the air and walk off angrily. She watched him walk back past the male and saw some comments being exchanged and decided to follow them. She saw Mr Sheldon spin around and face the male, and laugh and make silly comments to him. She saw the male head butt Mr Sheldon and then she put her hand on his shoulder to stop him. Manaia said that in her opinion Mr Sheldon aggravated the situation by turning around to confront the male. He should have carried on walking into the kitchen and gone out the back door as he usually does. She told Mr Sheldon to leave the premises. Then she let the male finish his drink while he waited for his ride to arrive. She said that she thought the male arrived at the funeral wake between 3.00pm and 4.00pm but was able to confirm that he left at about 8.30pm. Ms Manaia Tuheke-Kingi wrote an incident report which stated that the incident occurred at about 8.15pm and that the male and his daughter left about 15 minutes later. She stated that there were no breaches of the special licence and that the male attending the funeral had left the premises before the expiry of the special licence at 9.00pm.
23. Mr Hepi said that the club took appropriate steps to deal with the assault because:
- a) It co-operated with the Police investigation.
 - b) It tried to communicate with Mr Sheldon but found him hard to deal with and eventually trespassed him from the property.
24. Mr Hepi also explained that the club's relationship with Mr Sheldon had been difficult because of some concerns about his behaviour and poor food service had been raised with him on a number of occasions. One complaint was about that fact that he brought his dog to the club and let it sleep in the pantry which was a breach of health regulations. The club terminated Mr Sheldon's catering contract on 1 February 2021. Mr Sheldon made a claim to the Disputes Tribunal seeking compensation for unlawful termination of the contract. This claim was dismissed in September 2021.
25. The licensing committee has carefully considered all of the evidence given, including the submissions made by the Vice President, Mr Taituha, who is related to both parties involved in the incident, and who tried to resolve the dispute. We have formed the view that the relationship between Mr Sheldon and the club was already strained before the incident. It is clear that Mr Sheldon was angry about the response by the club and various club members found his response intimidating. This may help to explain why Mr Sheldon was trespassed from the premises.
26. The fact that Mr Sheldon was assaulted on the club's premises is not disputed. Regardless of the strained relationship between the parties, the licensing committee is concerned that the club failed to show adequate care and concern to Mr Sheldon, as the victim of the assault. We do acknowledge the fact that Ms Manaia Tuheke-Kingi is a small woman who had the courage to intervene directly with two very tall males who were in a heated situation. She may have simply reacted with the best solution she could think of given her observation that Mr Sheldon had aggravated the situation.
27. If an assault of this nature occurs on any licensed premises, we expect that Police would be called and the male offender immediately removed from the premises. It is preferable that the victim of this type of assault is taken to a quiet place to check injuries, to offer first aid treatment and to arrange transport home, after the offender has been escorted from the premises. We strongly recommend that the club reviews its procedures for dealing with any type of assault or violence on the premises.

28. Nevertheless, standing back and evaluating the criteria against the object of the Act, the strengths of the club outweigh the unfortunate response to this single incident. There is no evidence to suggest that the club breached the conditions of the special licence or did anything to cause the incident. The club has demonstrated a commitment to a good training programme, and we are confident the club will review its procedures after this hearing. Mr Norris also reports that the duty managers are all well trained and responsible.
29. The licensing committee observed that the coverage of the CCTV cameras in the main dance floor area and in front of the bar is lacking. In addition, the cameras covering the snooker tables are not working. Mr Hepi gave an undertaking that the club will take steps to improve this situation. Had CCTV footage of the assault been available, this may have helped to clarify the events leading up to the assault.

Conclusion

30. In conclusion, the application for the renewal of the club licence is granted.

Dated this 12th day of May 2022



Sara Grayson
Commissioner
Waitomo District Licensing Committee