

Decision No. SWDC ON1213

IN THE MATTER the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of the application by **Courtney Spices Ltd**

for the issue of an On-Licence pursuant to s127 of the Sale and Supply of Alcohol Act 2012 in respect of the premises situated at 6 Kitchener Street, Martinborough known as The Village Café and Bar.

BEFORE THE SOUTH WAIRARAPA DISTRICT LICENSING COMMITTEE

Chair: Mr A Plimmer
Members: Mrs C Rossiter-Stead
Mr C Bowyer

HEARING at Martinborough on 10 October 2024

APEARANCES

Mr V Bhatt – representing Courtney Spices Ltd – applicant
Mr P Patel – representing Courtney Spices Ltd – applicant
Ms M Wilton – Chief Licensing Inspector – South Wairarapa District Council – in opposition of application
Ms H Turner – Inspector – South Wairarapa District Council – witness in opposition of application
Ms D Dhanani – Inspector- Hutt City Council – witness in opposition of application

OTHER

The New Zealand Police – did not oppose the application and did not appear
Medical Officer of Health – did not oppose the application and did not appear

DECISION OF THE COMMITTEE

1. Introduction

- 1.1 An application for a new on-licence pursuant to section 100 of the Sale and Supply of Alcohol Act 2012 (the Act) by Courtney Spices Limited trading as The Village Café and Bar was received by the South Wairarapa District Licensing Committee on 8 March 2024.
- 1.2 The premises are located at 6 Kitchener Street, Martinborough.
- 1.3 The general nature of the business is that of a café and bar.
- 1.4 The applicant, Courtney Spices Limited, is a legal company incorporated on 14 February 2023 with two directors, Vivek Bhatt and Pratikkumar Patel, who are also the shareholders.
- 1.5 No criminal convictions have been recorded against the applicant and the Police report does not identify any matters of concern with respect to the applicant's suitability.
- 1.6 At the time of lodging the application the company was also the holder of an on-licence in two other districts – Hutt City (Rajdhani Petone) and Wellington City (Rajdhani Wellington). However, at the hearing evidence was presented that the Applicant had sold the Wellington City business, retaining both the Petone and Martinborough businesses
- 1.7 The premises was operating on a Temporary Authority (44/TEMP/002/2024) under the existing licence issued to Epicurean Limited (44/ON/001/2022). The expiry date for the Temporary Authority was 11 September 2024, being the expiry date of the existing on-licence. That temporary authority was the second temporary authority for the premises, because the applicant was unable to provide evidence of sufficient staffing resources and rosters to satisfy the inspector before the expiry of their first temporary authority.
- 1.8 No opposition was raised by the NZ Police and the Medical Officer of Health. No public objections were lodged with the District Licensing Committee.
- 1.9 Pursuant to section 100(f) of the Act, the applicant supplied a planning certificate on 4 April 2024. The certificate states that the proposed use of the premises meets the requirements of the Resource Management Act 1991.
- 1.10 The applicant has provided a statement from the building owner A M Arapoff stating they have no opposition to the on-licence being granted at the premises, dated 21 February 2024.
- 1.11 The issuing of a new on-license for Courtney Spices Ltd for their business trading as The Village Café and Bar has been opposed by the Chief Licensing Inspector of the South Wairarapa District Council

2. Chief Licensing Inspector Objection

- 2.1 The Chief Licensing Inspector's objection to the granting of an on-license is:
 - 2.1.1 The Chief Licensing Inspector is not satisfied that the applicant has a suitable level of understanding of the object of the Act, and

- 2.1.2 The Chief Licensing Inspector is not satisfied that there is a suitable level of staffing to adequately manage the premises in terms of the sale and supply of alcohol.
- 2.2 In her written brief, the Chief Licensing Inspector states the applicant has not demonstrated to the Inspector suitable measures to ensure the responsible sale and supply of alcohol so that harm is minimised.
- 2.3 The Chief Licensing Inspector highlighted, in their written brief and direct testimony, the report into the application by the South Wairarapa District Council Inspector. That report highlighted the following major concerns:
 - 2.3.1 Rostering, specifically suitably qualified, trained and available duty managers to cover the new business concurrently with the remaining business in Petone;
 - 2.3.2 The absence of any evidence of suitable staff training; and
 - 2.3.3 An absence of robust business systems to ensure the object of the Act would be met.

3. Applicant Evidence

- 3.1 Mr Bhatt introduced himself as the director of Courtney Spices Limited. He also introduced Mt Patel as the second shareholder of the company.
- 3.2 Mr Bhatt outlined their application, noting that the committee has received and read his submitted evidence. He admitted that the inspection reports of the South Wairarapa District Alcohol Inspector were correct, but that the company had since fixed all the errors identified.
- 3.3 In the written evidence the Committee noted that the applicant agrees that at the time of the South Wairarapa District Council Alcohol Inspector's visit on 15 August 2024:
 - 3.3.1 There was no low alcohol option available at the,
 - 3.3.2 The temporary License was not publicly visible having fallen off from its visible position, and
 - 3.3.3 Mr Patel, the duty manager, was not on site.
- 3.4 In their defence Mr Bhatt, in his written evidence stated that Mr Patel was bringing the low alcohol option to the café from Wellington but was running late. He further stated that Mr Patel had advised the staff not to sell alcohol at that time.
- 3.5 The Committee further noted that:
 - 3.5.1 There was no objection by the building owner to the building being used as a licensed area,
 - 3.5.2 There is no opposition to the issuing of a license by either the NZ Police or the Medical Officer of Health,
 - 3.5.3 There are no objections from the public to the issuing of a license, and
 - 3.5.4 The applicants have no criminal convictions recorded against them
- 3.6 Mr Bhatt advised the Committee that the company had sold the Wellington branch of the business retaining both the Petone and Martinborough businesses.

- 3.7 Mr Bhatt's final comment in his opening was to assure the Committee that since selling the Wellington business the company now had enough duty managers to run the remaining businesses.
- 3.8 The Committee then asked several questions concerning staff rosters, business systems, the nature of the business and the clientele, and the current status of the infringement notices. All the Committees questions were answered, and the applicant stated that they were not appealing the infringement notices.
- 3.9 As part of the questioning, it was noted that the number of Duty Managers was not sufficient to cover the applied for hours. The Applicants were asked if a reduction on the applied for hours would be a possibility until such time that the business has sufficient Duty Managers to cover any additional hours of operation. The applicant agreed that it could be an option.
- 3.10 The Committee notes in the written submission, the staff training records provided by the Applicant are in fact a template supplied as a guide by the Serve Wise, an industry advisory organisation, not as an actual record of training.

4. Chief Licensing Inspector Evidence

- 4.1 The Chief Licensing Inspector submitted their written reports into evidence. It was noted by the Committee and taken as read, and she was asked to highlight the specific points she wished the Committee to take particular attention of.
- 4.2 The Chief Licensing Inspector advised the Committee that she agreed with the assessment by the Inspector that the suitability of the Applicant to hold a license was questionable. The Chief Licensing Inspector advised that she intended to call as witnesses the South Wairarapa District Council Alcohol Inspector Ms H Turner and the Hutt City Council Alcohol Inspector Ms D Dhanani who would provide evidence as to their inspections and processing of the Applicant's license applications.
- 4.3 The specific areas the Chief Licensing Inspector highlighted from her written submission were as follows:
 - 4.3.1 The changes introduced under the Sale and Supply of Alcohol Act 2012 as observed by Clark J in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*, "there is no presumption that an application for a licence will be granted or that a licence will be renewed."¹
 - 4.3.2 That in assessing the suitability of an Applicant to hold a license, an application can be declined based on a failure to satisfy even just one of the Section 105 factors:

One or more of the criteria in s 105 may assume prominence. That is, there will be cases where the matter(s) to which the decision maker is required to have regard are so fundamental or critical that they assume an elevated mantle.

As a result, it may be that a single criterion is itself a sufficient reason to decline an application. Indeed, within the requirement to stand back and cross-check the application against the object of the Act is the obligation to decline an application where the object of the Act cannot be achieved by an application, even if one or

¹ *Medical Officer of Health (Wellington Region) v. Lion Liquor Retail Limited* [2018] NZHC 1123 at [46], citing *Christchurch Medical Officer of Health v. J & G Vaudrey Ltd* [2015] NZHC 2749 at [54]

more of the other criteria are satisfied. As Gendall J put it, “if the object of the Act cannot be achieved by the application, then it cannot succeed”²

4.3.3 That the suitability for a license application is broadly construed:

“... “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...”³

4.3.4 That suitability is not a simple yes or no answer but rather a wider view is required:

“As suitability is ultimately about how well the appellant will operate the premises in light of the twin object in s 4, it is necessary for a DLC to consider the appellant’s suitability relative to the premises including both the nature of those premises and the operation of the business, and the characteristics of their location. Suitability cannot be assessed in a vacuum.”⁴

4.4 The Chief Licensing Inspector called Ms H Turner, a licensing inspector for South Wairarapa District Council. Ms Turner provided evidence as to:

4.4.1 The processing of the Applicants on-license application,

4.4.2 The time-line of the process,

4.4.3 A lack of adequate duty managers to cover the requested hours of operation,

4.4.4 Information concerning the failed inspections with particular emphasis on the following:

4.4.4.1 The lack of a low/zero alcohol option being available at all times,

4.4.4.2 No evidence of the staff having been informed to cease selling alcohol when no duty manager was on site or no low alcohol options being available, and

4.4.4.3 Staff training records being copies of industry training advisory sheets.

4.5 Ms Turner, when questioned by the Committee agreed that a reduction in the operating hours would satisfy her concerning the duty manager coverage aspects of the application.

4.6 Ms Turner also submitted several copies of digital photographs as evidence supporting the inspection failures. These are identified as Exhibits A-G.

4.7 It is noted by the Committee that despite advertising the sale of alcohol while there was no Duty Manager on site, nor a low/zero alcohol option, sales records provided to Ms Turner during her inspection shows that no alcohol was actually sold during the periods of absence. Despite this, Ms Turner reiterated her concerns about the apparent lack of understanding of s105 given that alcohol sales were still be advertised, even after the temporary license had lapsed.

4.8 The Chief Licensing Inspector called Ms D Dhanani, Licensing Inspector from Hutt City Council. Ms Dhanani provided evidence as to the Applicant’s application to Hutt City in March 2024. In processing the application Ms Dhanani stated that:

² *Patels Superette 2000 Ltd v Muir* [2019] NZARLA 75 at 186–187

³ *Re Nischay’s Enterprises Ltd* [2013] NZARLA 837 at [54].

⁴ *Capital Liquor Ltd v Police* [2018] NZARLA 335 at 119–120.

- 4.8.1 The Applicant failed a routine compliance inspection on 9 September 2024, 3 months after the issue of a license. Specifically, the Applicant failed in the following areas:
 - 4.8.1.1 The named duty manager, Mr Patel, was not on site.
 - 4.8.1.2 Trading hours were not displayed.
 - 4.8.1.3 No low/zero alcohol options were available for purchase.
 - 4.8.1.4 The Manager's register, staff training records and incident logbook were not available on site.
- 4.8.2 The inspection fail resulted in a recommendation to the NZ Police to issue and infringement notice
- 4.8.3 The training records, when sighted were of a general nature and not of a standard expected.
- 4.8.4 That all areas of the Applicant's license are now being complied with.

5. Applicant Right of Reply Evidence

- 5.1 In their right of reply, Mr Bhatt made an opening statement that they believe they have fulfilled all the concerns raised by the inspectors as mentioned in both their evidence supplied and the Inspectors report.
- 5.2 Mr Bhatt added that during the time of the hearing another staff member had been approved as Duty Manager bringing their staff managers to eight.
- 5.3 Under further questioning by the Committee Mr Bhatt acknowledged that:
 - 5.3.1 On 11 September 2024, the last day of the temporary license, they again failed to remove the signs relating to the sale of alcohol,
 - 5.3.2 There is only one Duty Manager living locally and that they will train two more local people.
 - 5.3.3 That they are still learning the things with regards paperwork.
 - 5.3.4 The issues of running out of low alcohol options are real but that they have a plan in place to ensure that it does not happen again.
 - 5.3.5 The staff training plans submitted were not actually staff training plans and provided no evidence of training having taken place.
- 5.4 With regards staff training, Mr Bhatt stated that within 14 days they will be able to provide real staff training records for all their staff.

6. Requested Information re Training Records

- 6.1 As previously identified, the Committee gave the Applicant 14 days to resubmit their training records. These were received after 13 days. The Chief Licensing Inspector has reviewed the records and provided the following comments:
 - 6.1.1 The staff training document provided appears to cover the criteria under the Act that we would expect from a licence holder. Accordingly, this material would cover the systems, staff and training portion of her opposition.
 - 6.1.2 There are staff training records for four staff:

- 6.1.2.1 Aldrich Moraes,
 - 6.1.2.2 Melanie Cabeltera,
 - 6.1.2.3 Daniella Shivas, and
 - 6.1.2.4 Gopinath Pramanik.
- 6.2 To the Inspector's knowledge, of the four records provided, only Aldrich Moraes holds a duty manager certificate. Manager's certificates have not been provided for Melanie, Daniella or Gopinath.
- 6.3 No staff training records have been provided for the other duty manager holding staff mentioned at the hearing by the applicant to be working at Village Café that being Pratikkumar Patel, and Kinjalben Ajitkumar Kandoi.
- 6.4 The Chief Licensing Inspector therefore remains unclear as to who is working at the site, and who holds manager's certificates for the site, and whether they have sufficient duty manager staff.

7. Criteria for the Approving of a new On-License

- 7.1 The Committee, in deciding the application for the issue of a new on-license, must, in making its decision, take into account the criteria noted below in the Sale and Supply of Alcohol Act 2012.

s105 Criteria for issue of licences

- (1) *In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:*
- (a) *the object of this Act:*
 - (b) *the suitability of the applicant:*
 - (c) *any relevant local alcohol policy:*
 - (d) *the days on which and the hours during which the applicant proposes to sell alcohol:*
 - (e) *the design and layout of any proposed premises:*
 - (f) *whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods:*
 - (g) *whether the applicant is engaged in, or proposes on the premises to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:*
 - (h) *whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
 - (i) *whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—*

- (i) *they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
- (ii) *it is nevertheless desirable not to issue any further licences:*
- (j) *whether the applicant has appropriate systems, staff, and training to comply with the law:*
- (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under [section 103](#).*

7.2 During the hearing and following a detailed reading of the submitted evidence, it became clear that the provisions of s105 that were in contention between the Applicant and the Chief Licensing Inspector were as follows:

- (a) *the object of this Act:*
- (b) *the suitability of the applicant:*
- (d) *the days on which and the hours during which the applicant proposes to sell alcohol and*
- (j) *whether the applicant has appropriate systems, staff, and training to comply with the law.*

7.3 None of the other provisions in s105 were raised as a cause for concern by the Chief Licensing Inspector, and there was no evidence submitted or introduced during the hearing that raised any questions. The Committee therefore determined that in all other respects of s105 the applicant meets the criteria for an on-license and that only the remaining areas of contention, as identified above, will be addressed in this decision.

8. The Committee's Decision and Reasons

8.1 The Committee, in reaching its decision has assessed the evidence against each provision in the Act upon which the Chief Licensing Inspector bases their objections.

Object of Act

8.2 With regards s105(1)(a), the Committee notes that the object of The Act is to ensure that:

*“the sale, supply, and consumption of alcohol should be undertaken safely and responsibly”.*⁵

8.3 In assessing the evidence, the Committee believes that “*safely and responsibly*” entails meeting not only the letter of the Act but the intent, and therefore carries with it a duty of care for those people utilising the services the on-license will allow.

8.4 It was noted by the Committee that Martinborough is internationally known for its viticulture and as such, rightly or wrongly, means that it has become a specific alcohol

⁵ Sale and Supply of Alcohol Act 2012, s4(1)(a)

and fine dining destination. This reputation is hard earned by the people of Martinborough and fiercely protected.

- 8.5 The Committee believes that the onus is on the applicant to show that they understand the requirements of the Act and have the systems and staff training in place to not only demonstrate compliance, but to ensure that the patrons are suitably and responsibly served.
- 8.6 In order to determine if the Applicant meets the object of the Act, in this case the Committee notes that “safely and responsibly” needs to be assessed with regard to the other areas of the objection. The failure of one area of s105 could therefore have a direct bearing on whether the Applicant meets the object of the Act.

Suitability

- 8.7 Assessing the suitability of the Applicant to hold an on license (s105(1)(b)), the Committee believes that the evidence presented by the Chief Inspector, and uncontested by the Applicant, of three failed inspections, (two during a period of temporary licenses in the Wairarapa and one, during the same period in the Hutt Valley), shows beyond a reasonable doubt that the applicant fails to adequately understand their responsibilities under the Act. Those failures furthermore demonstrate a lack of business systems and staff training to show responsible compliance. These failures alone give rise to the question of suitability of the applicant to hold a license.
- 8.8 Specifically, the evidence that the Committee accepts, as presented by the Chief Licensing Inspector, that supports questioning the suitability of the applicant is:
- 8.8.1 The failure of two advised inspections as part of the Inspectors routine assessment of the application (26 March 2024 and 15 August 2024).
- 8.8.2 The inspection failure of the Applicant at the Petone business during the same period while applying for the new on-license in Martinborough (9 September 2024).
- 8.8.3 Two of the failures were serious enough that the Inspectors of South Wairarapa and the Hutt Council recommended infringement notices be issued by the NZ Police.
- 8.8.4 The comment by the Applicant, when questioned by the Committee, that they were “learning” what was required under the Act despite already having two on-licenses in Petone and Wellington.
- 8.8.5 The inability by the Applicant to provide evidence of individual employee training records for any employees to be involved in the sale and supply of alcohol under the applied for on-license.
- 8.8.6 Not enough duty managers available to cover the hours of operation applied for by the Applicant.
- 8.8.7 The ongoing delays by the Applicant in providing the information requested by the Inspector in order to process the application.
- 8.8.8 Failures by the Applicant to provide sufficient low/non-alcohol options to cover normal operating hours.
- 8.9 While the Committee accepts the statement from Mr Bhatt that Mr Patel was bringing low alcohol options over from Wellington on 15 August 2024, there is no corroborating evidence as to his instructions to the staff not to sell alcohol. Rather, the fact that

there was still alcohol on display for sale when the Inspector arrived, Exhibit D, casts doubt on the accuracy of Mr Bhatt's written statement.

- 8.10 Of further concern to the Committee is that, despite clear direction from the Inspector at the first inspection on 26 March 2024, the Applicant failed to take any actions to rectify the faults/omissions. The same faults/omissions were again observed at the second inspection on 15 August 2024 and then again at the Applicants other licensed venue on 9 September 2024.
- 8.11 Neither Mr Bhatt or Mr Patel directly addressed the Inspectors' evidence in either the inspection on 26 March 2024 or 9 September 2024 and therefore the Committee fully accepts the Inspectors' evidence with regards the inspections.

Hours of Operation

- 8.12 Regarding the hours of operation (s105(1)(d)), the Committee noted that in the evidence presented by the Applicant, there was a question as to whether, at the time of submitting the application, the Applicant had the required qualified Duty Managers to cover the applied for hours of operation.
- 8.13 The Applicant acknowledged that this was an error and that they were gaining further qualified staff. During questioning by the Committee, the Applicant agreed that a reduction of hours would be agreeable if the Committee decided to grant a License.
- 8.14 The South Wairarapa Alcohol Inspector agreed that a reduction in operating hours would, if approved, meet the requirements under the Act.

Business Systems

- 8.15 Assessing whether the Applicant has appropriate business systems, staff and training in place to comply with the law (s105(1)(j)), the committee supports the Chief Alcohol Inspector's concerns that the applicant does not. In support of this conclusion the Committee was guided by the following:
- 8.15.1 No evidence of systems or processes of stock management was presented to ensure that there is adequate low/zero alcohol options available at all times.
- 8.15.2 No evidence of staff training was presented. Rather the Applicant provided copies of industry guidelines of training, repurposed and re-printed with the Applicant's logo to imply staff training was actually being conducted.
- 8.15.3 The applicant was given an opportunity to revisit their training records and resubmit them within 14 days. The applicant met the time frame; however, the Committee was concerned that the resubmitted training records did not include all the members identified in the primary evidence submitted, and that there was no documentary evidence submitted that the staff members identified had actual duty manager certificates.
- 8.15.4 The lack of detail in the resubmitted training records again confirmed for the Committee that the applicant failed to understand what training was required and how to record such training.
- 8.15.5 It was clear from the application submitted that there was inadequate duty manager coverage available to cover what was being applied for, and it was only during the hearing that the Applicant advised additional duty managers would be trained. The Committee believes this shows a real lack of

understanding of the intent of the Act and that the Applicant lacks the business systems and knowledge to fulfil the requirements under the Act.

Conclusion

- 8.16 The Committee notes that, in accordance with *Patels Superette 2000 Ltd v Muir* [2019] NZARLA 75 at 186–187, the Applicant need only fail in one area of s105 for a license to be declined.
- 8.17 As outlined, the Committee had determined that the Applicant has failed in the three areas of Suitability, Hours of Operation and Business systems. By doing so the Committee therefore determines that the Applicant also fails on the Object of the Act.
- 8.18 It is noted that while there is the ability to remedy the issue with operating hours and duty manager coverage, the Committee believes that remedying that one area of the objection does not affect the other the areas of the objection. Therefore, the application for an on-license by Courtney Spices Ltd is **declined**.

Dated at Tauherenikau this 5th day of November 2024



Alistair Plimmer
Chair
South Wairarapa District Licensing Committee