

In the matter of the Liquor and Accommodation Act 1990

And in the matter of an application by **Mr JI Roddick** for a special licence to permit the off-premises sale of premium and imported wine from premises at 49 Balfour St, Launceston, known as “**Balfour Street Deli**”.

Decision: Balfour Street Deli

Heard before the Licensing Board at Launceston on Tuesday the 15th July 2003.

Date of decision: 16th July 2003.

This application comes to be decided taking account of s216 of the Act, s17(7) of the Act, and the Liquor Guidelines: the ‘interests and concerns of the community’, guideline 3 ‘off-licence’, guideline 5 ‘special licences, and guideline 5.7 ‘Special Licence, Tasmanian and Local Wines’, and taking account of the Supreme Court decision affecting the reading of the guidelines: *R v Kimber; ex parte Tsinoglou 42/1997, Crawford J.*

The essence of the application is that the applicant and his business partner (who also gave evidence, Mr S Dawkins) have a particular interest in premium and imported wines, and believe there is a market well able to be developed in food matching special wines they can procure, thereby providing a service to the public, not readily satisfied by existing licensed outlets in the neighbourhood.

Evidence was provided by the representative from the AHA to the effect that a large number of such premium and imported wines are available from off- or general-licensed premises in the locality, and that if any particular requirement was voiced by the purchasing public, the licensees would be keen to procure that to sell.

So far as is relevant, then, the board accepts that (in terms of guideline definition of ‘interests and concerns of the community’), businesses carried on under licences in the area are satisfying a significant part of the need intended to be satisfied by the applicant – at least in one degree. That is, there is a wide range of such liquor available. There was evidence that some of the intended wines to be offered are not available in nearby hotels.

But coverage of stock lines is not all that the guideline or the law is directed towards. It is also other aspects of the service of provision of liquor. For example; the specific intention to provide liquor in conjunction with food and to assist the purchasing public with acquisition decisions by guiding them with what is now commonly referred to as food matching.

We perceive that the applicant will be well placed to provide an additional service in this regard, over and above that which the existing local licensees provide.

But the application suffers from other potential pitfalls on its way to licence grant.

During the hearing the board attempted to get the applicant to better define the range and nature of the liquor he intended to offer for sale. He was unable to define that for the board to such a degree that we felt confident that what would be authorised would

be other than a very broad off-licence – authorising sale of wine from any country apart from mainland Australia (indeed, the applicant sought authority to offer for sale Tasmanian wines in addition).

The board has determined that what was sought does not fit within a specific existing special licence category, that the categories should not be widened to include such a broadly defined type of liquor, and that the licence category which should really be considered is that of the off-licence.

As the off-licence category would not permit sale from premises containing another retail business, we feel that to extend the special licence category as requested would be to subvert the licence category system. We are not satisfied, on the evidence, that this should be done, taking account of the criteria in s216 of the Act, and s17(7) of the Act.

The closest analogy is the Tasmanian wines category, and for similar reasons as set out in the board's decision today in *Davies Grand Central Station 3*, we conclude that we should refuse the application.

If it were intended by Parliament that such a large category of liquor should be available from delicatessens in Tasmania, then the off-licence category would not have the specific restriction mentioned above.

We do not feel there are any aspects of the application, if granted, which would contribute to harm or adverse effects from the sale or consumption of liquor, contrary to that which was advanced by the AHA representative. Clearly, that was an effort to grace with public interest what was really a trade protective objection by the AHA on behalf of hoteliers in the vicinity. This was selective objection based on member perception of likely competitive effect, rather than objection based truly on public interest grounds. See for example the failure to object on another application heard on the same day (which application was granted) for the grant of an on-licence for the Riverside Golf Club.

A further issue is that the Tas Wines special licence, with which this application is most closely analogous, is available where the applicant demonstrates a significant tourist and hospitality basis to their business (see the guideline). There was conflicting information at the hearing. The impression we are left with is that this business is at present being renewed, revived and changed, but that it is, at present, substantially an ordinary suburban delicatessen. It may be the intended stock and food/wine promotion would overcome this issue, but more evidence would be necessary to satisfy us that the premises and business meet the intent of that guideline. By analogy, we are not presently satisfied that it meets the level of tourist and hospitality service or goods provision which might be appropriate if we were to go outside the strict guideline.

In conclusion, the board feels that the application is genuinely based on a perception of a market which could be satisfied, to the benefit of the public, however, it is outside the scope and intent of the licence categories. To extend the special licence category to enable grant of such a licence would subvert the system, and is not endorsed by Parliament's intent in the legislation. There was also inadequate

evidence to put the business in the category of a tourist and hospitality business for which a special licence – Tas wines would apply; so by analogy in considering extension or going outside the guideline, it would be important to demonstrate that higher level of service.

The application is refused.

Dated: 16th July 2003.

PA Kimber, Presiding Member. WF Morris, Member. L Finney, Member

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