

In the matter of the Liquor and Accommodation Act 1990

And in the matter of an application by **John Roddick and Scott Dawkins** for a special licence (restaurant) to permit the on premises sale of liquor to persons partaking of a meal, to persons attending pre-booked functions etc, and for off-premises sale of certain classes of liquor subject to conditions from premises known as **Delicacy** at 35 Canning Street, Launceston.

Decision: **Delicacy**

Heard before the **Licensing Board** at Launceston on Friday the 10th December 2004
Date of decision: 28th January 2005.

This application is for a special licence (a licence subject to conditions) which would enable the applicant to sell liquor to patrons for consumption on premises as an adjunct to a meal, and to persons attending pre booked functions such as conferences, meetings and seminars, and would permit sale of a limited range of wine for consumption off the premises. That limited class is submitted by the applicant as being Tasmanian, French, Italian and German wines.

The special licence category is a separate category which permits adhesion of conditions to a licence grant, unlike the other licence categories of general, on, club and off licences.

The category is affected by regulation 4:

Special licence

4. (1) *The Board is to direct the Commissioner to grant a special licence if satisfied that –*

(a) the principal activity to be carried on at the premises specified in the licence will not involve the retail sale of liquor or, if the principal activity to be carried on at the premises will involve the retail sale of liquor, the premises form part of or are associated with a vineyard or winery and the sale of liquor will be restricted to Tasmanian wine; and

(b) in the case of premises at which meals are to be served, liquor will be sold only for consumption on or adjacent to the premises as an accompaniment to those meals.

(2) *The Board is to direct the Commissioner to grant a special licence to sell Tasmanian wine if satisfied that –*

(a) the principal activity to be carried on at the premises specified in the licence is the provision of hospitality or tourist goods or services; and

(b) selling the wine is not likely to have a detrimental effect on that activity.

The meaning or intention of this regulation was commented upon in *Mill Providore & Gallery 2*, 24th August 2004.

The Board also considered whether such authority as there is in reg 4 is intended to cover the field. Refer to s 11 of the Act:

Special licence

11. A special licence authorizes the sale of liquor –

(a) between times; and

(b) on premises; and

(c) subject to compliance with any condition –

specified in the licence.

Also; the principal guidance as to the Board's duty in considering applications is set out in s24A:

Requirements for licence

24A. (1) In considering an application for a licence, the Commissioner or the Board must make a decision which, in the opinion of the Commissioner or the Board, is in the best interests of the community.

(2) In considering an application for an off-licence, the Board must be satisfied that the principal activity to be carried on at the premises will be the sale of liquor.

(3) In considering an application for an on-licence for a restaurant, the Board must be satisfied that the premises are, or are intended to be, used as a restaurant.

We concluded in *The Mill* (above) that regulation 4 is not intended to remove the ability of the Board to direct the grant of a special licence for premises under s11 except where the application meets the criteria in that regulation. It appears to be caste in mandatory terms in the event that the criteria set out are met. But it does not displace the broad discretion remaining under s11 of the Act.

We therefore concluded we are empowered by the Act to direct the grant of the application.

EVIDENCE

The applicant put forward evidence to the following effect:

- The previous application by the applicant included a component of entitlement to sell liquor for off premises consumption. The application was refused in July 2003 (refer *Balfour Street Deli* decision);
- That the now existing business has achieved the level of hospitality service and goods provision foreshadowed in the business plan referred to the Board;
- The type of licence sought is principally for on-premises consumption, and with limited retail sales for off premises consumption, as an adjunct to the principal focus of sale of food;
- He seeks to provide wine to complement the food he produces on site or purchases locally and from overseas;
- He perceives the particular service intended to be provided is now well catered for in Launceston at present;
- The intention is to provide a 'gastronomic centre which not only provides the ingredients but also the method to achieve a total dining experience';
- The recent relocation to 35 Canning Street allowed the applicant to expand the delicatessen/food sale area, develop a commercial kitchen for internal and external catering, expand the product range for sale on site, and also allow focus on all matters surrounding food preparation and the dining experience (including cooking classes and food preparation techniques);
- A significant and relatively unique focus is on French and Italian products, to produce authentic regional cuisine, together with fresh local produce;
- Considerable detail of the range of specialist food was given at the hearing and in the application documents;
- The in-house dining is intended to be used for private meetings catered boardroom, master classes focusing on food and wine, and cooking demonstrations;
- A considerable component of the applicant's strategy involves provision of liquor as an adjunct to food at in-house functions and demonstrations as an integral part of educating patrons on the relationships between food and liquor. Such patrons, the applicant says, expect then to be able to purchase the products showcased, in order to enhance their dining experience at home. The applicant says there is an express demand for this range and style of service; and
- The applicant suggests that in order to protect the integrity of the licence system, a condition limiting the maximum number of wine labels available for sale for off premises consumption to 12 red and 12 white would be appropriate.

Mr Roddick and Mr Dawkins each gave evidence at the hearing.

REPRESENTATIONS

The application was signposted and advertised in the local newspaper. No submissions from the public either in support or in opposition were sent to the Commissioner.

The applicant submitted that his application was more in line with *Mill Providore & Gallery 2* (24th August 2004) where the Board directed the grant of a special licence to permit sale of liquor from 3 specific European countries for off premises consumption from a specialist food and wine merchant.

We agree that the present application has the hallmarks of the *Mill Providore* application which set that apart from the type of application referred to in *Hong Kong Diner* and *Bladerunner*.

These differences include:

- The size of the outlet in regard to wine for off premises would be minimal in the context;
- The application if granted would be consistent with the Board's express desire to facilitate diversity and quality in provision of liquor services;
- There is not likely to be any adverse impact from the licence (if granted) in the sense of contributing to harm associated with consumption of liquor; and
- The applicant has a proven record of provision of high quality service to the tourist public.

A similar niche proposal was approved in the *South African Shop* application.

What must be accepted is that the principle enunciated in the *Hong Kong Diner* remains apposite; it is not appropriate for every retail operation to have the capacity to sell either Tasmanian wine, or another limited class of wines, for off-premises consumption: the standard application should be an off-licence application, and the applicant should meet the specific legislative criteria applicable.

We believe there is sufficient distinction between the premises described in *Davies Grand Central* (11th January 2001) to enable the Board to determine that the present application can be justified whilst the Grand Central was not. That distinction is in the nature of the broad scope of the Grand Central business compared with the niche style of the present application.

Something limited, specific, and unusual is relevant to permitting sale of other than just Tasmanian wine under the special licence terms and conditions. The present application meets that criteria.

DECISION

The Board determines that this application must be considered under s24A of the Act, to make a decision which in our opinion is in the best interests of the community.

There are positives in this application: better service to the public, a service not generally offered, and also a likelihood that the impact will not contribute to the harm associated with the sale of liquor.

On the other hand, there is no recognised category of licence either in the Act or regs, or under the previous Guidelines (up to September 2003) for the sale for off premises consumption of a limited range of European wines.

There is the possibility of contribution to harm by an increase in the number of outlets, greater availability and hence more consumption by the public. This can be balanced by the reality, as the Board perceives it, that there it is most unlikely the intended operation will result in any appreciable increase in consumption, and in particular, consumption in a manner productive of harm.

In conclusion the Board does not believe that there is likely to be any adverse impact by the grant of the licence applied for, and that under the conditions proposed there is sufficient protection to provide a useful and desired service. On balance then, it is in the community interest, and we direct the Commissioner to grant the licence subject to the conditions specified.

Dated: 28th January 2005.

PA Kimber, Chairman.

L Finney, Member.

K Sarten, Member