

Tasmanian Liquor and Gaming Commission

Appeal against a determination of the Commissioner for Licensing made 20 May 2020

Pui Man (Emma) Chiu

Appellant

V

Commissioner for Licensing

Respondent

Background

1. The Appellant applied to the Commissioner for Licensing for a special licence seeking authority for the sale of Chinese liquor products for consumption off the premises which currently operates as York Asian (grocery store) located at 50 York Street, Sandy Bay at its junction with Regent Street.
2. The premises are located in a residential area, a few blocks from the University of Tasmania campus and within walking distance of the Sandy Bay shopping precinct. The corner store currently sells a variety of Asian foods from various Asian countries.
3. The appellant seeks to expand the product range to include Chinese alcohol that she contends may not be bought in bottle shops nearby. She states that the store attracts both Asian and local patrons.
4. The product she wished to sell, as set out in her application, is “Chinese alcohol”.
5. The Commissioner determined on 20 May 2020 to refuse the application for a special licence with a written decision containing a statement of reasons sent to the applicant (the appellant).
6. On 21 May 2020, the appellant appealed in writing to the Commission pursuant to section 211 of the *Liquor Licensing Act* 1990 (Tas) (“the Act”).

The Appeal

7. The Commission determined it would be heard solely on the basis of written evidence pursuant to section 213 (4A) of the Act. The written evidence considered is set out in attachment A to this decision.
8. The appellant was advised on 3 June 2020 that any further documentation was to be provided to the Commission by 22 June 2020. Some additional information comprising a photograph of the Sandy Bay Korean Grocery Mart and a petition with 220 signatures was not received until 3 July 2020. The

Commission determined that it would consider this information and it is included in attachment A.

9. After hearing an appeal, the Commission may under section 214 (1) (c) of the Act confirm the Commissioner's determination, or alternatively revoke the determination, or alternatively direct the Commissioner to take such action as the Commission considers appropriate.
10. The Commission heard the appeal on 6 July 2020.

Grounds of appeal

11. The appellant raised the following grounds which essentially relate to lack of supply for the alcohol in question and evident demand for it:
 - 11.1 The Commissioner based his decision on the application that was for "Chinese alcohol". The appellant now states that she wishes to sell quite specifically "Chinese sorghum liquor" only and this is unavailable not just in Sandy Bay (the location of the subject premises) but in any retail shop in Tasmania.
 - 11.2 The Commissioner's reference in his decision to the Sandy Bay Mart store, a licensed premises within walking distance of the applicant premises, licensed for the off sale of Asian liquor products is not relevant as this store sells Korean liquor and, in any case, this store is closing down and relocating in the coming months.

Legislation

12. Section 24(A) of the Act provides that:

"(1) In considering an application for a liquor licence, the Commissioner or the Commission must make a decision which, in the opinion of the Commissioner or the Commission, is in the best interests of the community."
13. The term "best interests of the community" is defined in section 3 of the Act, and the prescribed interests are in Regulation 4 of the Liquor Licensing Regulations 2016 and are:
 - (a) the general costs and benefits to the community of the supply, or proposed supply, of liquor;
 - (b) whether the supply or proposed supply of liquor might cause undue offence, annoyance, disturbance or inconvenience to people who, in the area of the supply or proposed supply –
 - (i) reside or work; or
 - (ii) attend schools or other facilities frequented by children; or
 - (iii) attend hospitals or facilities where people receive treatment for alcohol dependence or other addictions; or
 - (iv) attend places of worship;
 - (c) possible adverse effects on the health and safety of members of the public due to the supply of, or proposed supply of, liquor."

14. The Commissioner was of the view, and the Commission agrees, that the relevant consideration in this particular case, is the balance between the general costs and benefits to the community of the proposed supply of liquor products as outlined in the application.

Consideration

15. The appeal grounds raise the issue of the availability of particular liquor products from a particular country. In the evidence now before the Commission, the appellant specifies that Chinese sorghum liquor only is proposed to be sold. This was not specified in the original application. However, the Commission is prepared to deal with the appeal on the basis that where the original application refers to Chinese liquor, it means Chinese sorghum liquor. The Commissioner was not wrong, given the lack of precise identification of the products in the original application, in his findings on the availability generally of Chinese liquor.

16. The appellant states in the application that:

- (a) “we would like to introduce them [local patrons] to the Chinese alcohol not bought in the bottle shop before”;
- (b) “we would like to introduce different types of Asian...beverage to our community. We also found that there are not many choices for Chinese alcohol in bottle shop nearby”;

and in the email appeal dated 21 May 2020:

- (c) “we have done a research before we submit our application (by phone and site visit), not just in Sandy Bay, you cannot find one retail shop in Tasmania selling the Chinese sorghum liquor”;
- (d) “all the bottle shop(s), Asian Grocer in Hobart do not have Chinese sorghum liquor and we are the only shop...that will not affect the existing market”.

17. The Commission does not accept the evidence of this “research” because it does not disclose what was done to undertake the research, what questions were asked of which suppliers, or whether those suppliers were asked if the products could be ordered in. Given the Commission’s awareness of the very large range of products that are available from national bottle-shop chains operating in Southern Tasmania, it does not accept the appellant’s simple assertion that these products are not available at all.

18. Even if these products were not available at all, the Commission must consider whether the licence applied for is in the best interests of the community. In considering this, the Commission considers that liquor products do not need to be available close to wherever people reside. While undoubtedly this might be more convenient for some, it is not in the community’s best interests that such convenience overrides the measured and controlled regulation of the supply of alcohol in Tasmania.

19. Neither is it necessarily in the community’s best interests that customers of the appellant’s corner store be introduced to different types of Asian

beverage. Previous Board and Commissioner decisions have emphasised that the community's best interests are not served by all retail outlets adding liquor to their collateral as a matter of convenience or to increase their revenue base. See Salamanca Fresh Davey Street 2013, Augustus Chocolates 2018, Mount Nelson General Store 2019, TCM Market 2019, Moonah Caltex 2019. The Commission agrees with this general principle.

20. The appellant has submitted a petition as supplementary material. The petition is not accompanied by any commentary, and the Commission presumes it is intended to indicate the extent of the demand for Chinese sorghum liquor. The petition contains 220 names, phone numbers, post codes and signatures and is titled "Support York Street selling Chinese sorghum liquor (e.g. Erguotou)". Such a petition is given very little weight by the Commission, and indeed this type of "evidence" is to be discouraged, for a number of reasons: in many cases no surnames are given, no addresses are given and the exact nature of the petitioners' apparent support is not clear. In any case, if there is a relevant question raised by such a document, it is not whether there is support for the York Street store selling Chinese sorghum liquor but whether this support would translate into actual purchase; that is, the identification of a genuine market.
21. The appellant has described the price of such liquor as expensive - between \$200-\$4000 a bottle. This would indicate to the Commission, based on its understanding of the broader market for alcoholic products, that any retail market is further narrowed and likely demand would be limited.
22. The appellant submits that she currently provides wholesale food supply to Asian restaurants that, she claims, are "all interested to have Chinese sorghum liquor in Tasmania." In the Commission's view, the grant of a special licence to a corner store grocer in a residential area enabling it to service a "wholesale market" would plainly not be in the community's best interests.
23. The Commission has considered the photograph of the Sandy Mart Store, and is aware from its own research that the premises once housing that Mart are now vacant. However, a liquor licence granted to a licensee for particular premises is able to be transferred and the Commission is aware that it is not uncommon practice for a licence to be transferred to a new operator as part of the sale/tenancy transaction. The Commission is not satisfied that the licence which subsists for these premises is of no effect.
24. The Commissioner made no findings in relation to the proposed harm minimisation measures to be adopted by the appellant so this issue is not relevant to the appeal.

Conclusion

25. The Commissioner for Licensing must make a decision that is in the best interests of the community, pursuant to section 24A (1). In doing so, he has weighed up the general costs and benefits to the community of allowing such as licence.

26. The type of liquor sought by the original application was limited to Chinese alcohol and the Commission is satisfied that this general product is readily available in store in the general Hobart area. The Commission accepts that the narrower Chinese sorghum liquor may not be as readily available, but it does not accept that it is not available at all. Further, the Commission considers strongly that applications that are essentially based around very specific types of alcohol face a high bar to satisfy the test of being in the best interests of the community.
27. In the Hobart area there are numerous licensed premises selling varieties of Asian and specifically Chinese alcohol and the Commission is satisfied that they could add this particular product to their range should a demand for it be identified. As the Commission stated in its decision in QiE Asian Grocer 2019, by the granting of one special licence the availability of such products is increased, and consequently any argument based on availability will be more difficult to be established.
28. The Commission considers that the Commissioner was correct when he stated in his determination that:
- “There must be true community benefit in that product being available, including a genuine market and a reasonable expectation that existing licensed premises have not moved, or would not move, to address that market such that only through the licence applied for could the community benefit be met.”
29. The Commission visited the store (on 4 July 2020) and is satisfied that it is a corner store in a residential area and nothing in the appellant’s submission persuades the Commission that this application differs in any significant way from the circumstances in previous decisions relating to the grant of special liquor licences in retail outlets.

Decision

30. The Commission confirms the decision of the Commissioner for Licensing to refuse the grant of a special licence to Ms Pui Man Chiu to sell Chinese sorghum liquor from her premises, York Asian, at 50 York Street, Sandy Bay.

Decision made by the Commission on 6 July 2020.

Jenny Cranston (Chair), David Hudson (Member), Andrew Walker (Member)

**TASMANIAN LIQUOR and GAMING COMMISSION
Appeal hearing - York Asian**

Monday, 6 July 2020

The Commission considered the following documentation:

1. The submission (31/10/19) provided to the Commissioner from York Asian to determine its application.
2. Reasons for Decision - Commissioner for Licensing - York Asian - dated 20 May 2020 (sent to the appellant on 20 May 2020).
3. Email dated 20 May 2020 from Licensing Operations to the appellant advising of right of appeal and providing 14 days from date of email to lodge an appeal.
4. Appeal lodged by the appellant on 21 May 2020.
5. Extract – sections 213 and 214 of the *Liquor Licensing Act 1990*.
6. Letters from the Commission dated 3 June 2020 to the appellant advising of the date and time of the appeal hearing and allowing any further submissions by 22 June 2020.

Supplementary material provided by appellant 3 July 2020:

7. A photograph of the Sandy Mart store which appears to show empty premises; and
8. A petition titled “Support York Street selling Chinese sorghum liquor (e.g. Erguotou)” signed by 220 individuals.