

Tasmanian Liquor and Gaming Commission

Appeal against a determination of the Commissioner for Licensing made 18 October 2021

Minwei Fang

Appellant

V

Commissioner for Licensing

Respondent

Background

1. The Appellant applied to the Commissioner for Licensing to become a licensee of the Star and Garter Bottleshop at 87 High Street, New Norfolk on transfer of the licence from the current licensee, Mr Patrick Cooper.
2. On 18 October 2021, the Commissioner determined under section 22 (1) (c) of the *Liquor Licensing Act 1990* (Tas) (“the Act”) that he was not satisfied that the applicant would be able to maintain effective control over the sale and consumption of liquor and as a consequence the applicant was not qualified to be granted a liquor licence. A written decision containing a statement of reasons was sent to the applicant (the appellant) on 19 October 2021.
3. The Commissioner’s reasons essentially relate to the working constraints imposed by Mr Fang’s student visa.
4. On 24 October 2021, the appellant appealed in writing to the Commission pursuant to section 211 of the *Liquor Licensing Act 1990*.

The appeal

5. The Commission determined that the appeal would be heard on 7 February 2022 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.
6. The appellant was advised on 20 December 2021 that any further documentation was to be provided to the Commission by 28 January 2022. Nothing further was submitted.
7. The Commission considered the appeal on 7 February 2022. The Commission exercised its discretion to allow Mr Fang and the current licensee to appear to present further information both orally and in written form. This further information is included in attachment A.
8. After hearing an appeal, the Commission may under section 214 (1) (c) of the Act confirm the Commissioner’s decision, or alternatively revoke the determination, or alternatively direct the Commissioner to take such action as the Commission considers appropriate.

Grounds of appeal

9. The appellant essentially argues that, in making his decision, the Commissioner did not have full relevant knowledge of how he intends to operate the bottleshop and exercise effective control as he is required to do under the Act. He raises the following matters:
 - 9.1 That he will be assisted in all operational and other matters by Mr Patrick Cooper (the current licensee) who is identified as an associate;
 - 9.2 That he has hired 2 persons (as casuals), as well as Mr Cooper, to assist him to operate the business who will all be RSA trained and experienced;
 - 9.3 That his hours of study are flexible and he will be absent from the bottleshop only for 2 days a week during term time at college; and
 - 9.4 That there have been significant changes to visa work restrictions as a result of the COVID 19 pandemic and there are currently no limitations set by the Commonwealth Government on how many hours he can work.

Legislation

10. Section 29(1) of the Act provides that:

“(b) The Commissioner must not approve the transfer of a liquor licence unless the Commissioner is satisfied that the person to whom the licence is proposed to be transferred is qualified to be granted a liquor licence under section 22.”

11. Section 22 (1) provides that:

“A person is qualified to be granted a liquor licence if -

(c) the Commissioner is satisfied that the person will be able to exercise effective control over the service, and any consumption, of liquor on the premises for which the licence is sought.”

Consideration of Grounds of Appeal

12. Mr Cooper, the current licensee, attested to the fact that he would assist Mr Fang in the operation of the bottle shop when he is absent due to study commitments. Additionally, Mr Fang’s hiring of the 2 extra staff would appear to provide back-up for him when he is not able to be present. This would appear to be no different from many business owners who trained hire staff to oversee operations in their short-term absences. Mr Fang himself worked in the Star and Garter bottleshop for 12 months in such a capacity.
13. The Commission accepts that the staff hired are familiar with the restrictions and requirements concerning the service of alcohol in an off-licence premises.
14. The Commission accepts that Commonwealth Government student visa requirements have changed and Mr Fang is now able to work legally more than 20 hours per week. This was the main concern of the Commissioner for Licensing in not approving the transfer of the licence to Mr Fang.

15. While this may be the situation legally, Mr Fang does, however, have study obligations and the Commission needs to be satisfied that he can exercise effective control of the bottle shop while attending to these.
16. Mr Fang provided evidence that, as the new owner of the business, he will spend many hours at the premises training and managing staff and undertaking unpaid work. Because much of his study commitments will be undertaken using online technology, he can be, and intends to be, physically present in the licensed premises, even if not technically working.
17. Mr Fang submits that he has completed his current course of study in the Advanced Diploma of Hospitality Management and has accepted an enrolment offer in Commercial Cookery from the relevant registered training organisation. This course requires 2 days a week attendance at college and this is the period of time that Mr Fang would rely on the 3 trained staff referred to above to work in the bottle shop.

Conclusion

18. Based on the new information provided by Mr Fang, the Commission is satisfied that he is able to exercise effective control over the sale of liquor as required and that he is qualified to hold a liquor licence.
19. The only issue that may arise for Mr Fang is that his current student visa expires on 15 April 2022 and he will need to seek an extension. He is fully aware of what is required in this and that is a matter for him to deal with, as is the fact that the Commonwealth Government has advised that it will review the student visa work restrictions in April 2022. It is up to Mr Fang to ensure that he meets both the conditions imposed by his visa and those obligations placed on him as a liquor licensee.

Decision

20. The Commission directs the Commissioner for Licensing to approve the transfer of the liquor licence for the Star and Garter Bottle Shop from Mr. Patrick Cooper to Mr Minwei Fang.

Decision made by the Commission on 18 February 2022.

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

ATTACHMENT A

MATERIALS to be relied on:

- The original submission from Minwei Fang in respect of the transfer application for an Off liquor licence, received on 10 June 2021.
- Criminal history police check conducted by Tasmania Police on 22 June 2021.
- RSA certificate for Minwei Fang received on 1 July 2021.
- Licence application report from transfer application interview, conducted on 13 July 2021.
- Request, and response to effective control measures received from Minwei Fang on 20 July 2021.
- Student visa details for Minwei Fang received on 19 August 2021, and 7 September 2021.
- Decision made by the Commissioner for Licensing dated 18 October 2021 against the applicant to transfer, Patrick Cooper.
- Notification, and reasons for decision provided to Minwei Fang made by the Commissioner for Licensing, dated 18 October 2021.
- Letter received 24 October 2021 from Minwei Fang giving notice of appeal of the Commissioner's decision, with supporting information.
- Letter from the Commission to the appellant advising of the date and time of the appeal hearing, dated 20 December 2021.
- Letter from the Commission to the Commissioner for Licensing advising of the date and time of the appeal hearing, dated 20 December 2021.

Supplementary material submitted by appellant at hearing on 7 February 2022

- Letter of Offer – Certificate IV in Commercial Cookery - Frontier Education dated 2 February 2022