

Licensing Board of Tasmania

Re Jacqueline Pitt
What about Wine?
3 Kenneth Court, Launceston, Tas.
Special licence application
Hearing 21st August 2008 at Launceston, 2.15pm
Date of decision: 9th September 2008.

REASONS FOR DECISION

Present:

The Applicant Ms JL Pitt, and Mr Rob Giblin.

Objectors: Alderman Ian Norton, Mr Robert Morrison, Mr David Beeson, Mr Charlie Popowski, Mr Stephen Grieve, Mr Frank Nott.

THE APPLICATION

Ms Pitt, was, until recently, involved in an off licence business in Launceston. It has closed doors, and she retains the customer list and wishes to gain a licence to authorise sale of 'cleanskin' wine to be sold and marketed solely by mail order, internet and telephone sales, with no cellar door, shop front or direct public retail access.

The chosen site for conducting this commercial venture is from the Applicant's garage in suburban Launceston.

Such liquor as is stored on site will occupy one half of a two car brick garage. Security systems will be installed. No signage or advertising would indicate that the site is licensed or contains liquor. Marketing would be via website, direct contact (letter, email) and word of mouth. A post office box address would be provided, along with email for contact purposes.

The Applicant's intention is to focus on Tasmanian cleanskin wines, offered at budget or economical price.

Maximum delivery to the site would be 2 times per calendar month, and maximum deliveries from the site would involve a small van exiting once per day and returning once per day.

This is a 'home office' business for town planning purposes and is permitted by the planning scheme and Council.

Numerous objectors raised a host of concerns. Review of the letters of objection would be necessary to be complete, but substantive arguments may be summarised thus:

- 1 An additional licence increases consumption and is bad for the community.
- 2 No benefit to the community only to the applicant.
- 3 Liquor stored on the premises invites criminal activity in the locality – including theft, and underage drinking.
- 4 Any other location would be better for the community in the locality, and preferable places would be of a commercial or industrial nature.
- 5 No contact by the Applicant with members of the local community left them antagonistic to the application, uncertain as to its scope, and unsupportive.
- 6 Concern at policing and compliance with any licence conditions, and apprehensive of expansion of the business.

In response the Applicant stated:

- With the previous business in which she was employed, closing down, and the customer list becoming available, this was the initial basis for the new business, and there was not likely to be any increase in alcohol consumption by virtue of this licence.
- The community generally accepted that liquor ought to be available, and there was no implicit reason why this licence should contribute to the harm associated with consumption of liquor in the community.
- Some asserted benefit to the community would be provided by enabling fund raising for community ventures (presumably by use of economically purchased wine, specially labelled, and somehow to be resold – detail was not provided).
- The area for storage of the wine is minimal, at 30m², equating to a footprint of 2 pallets, 128 cases of 12 bottles each.
- Other sales would be arranged by the Applicant, but would result in distribution direct from the vineyard or another wholesaler to the end customer, so some quantity of liquor sold would not come through the licensed premises.
- In the event of any expansion becoming desired or necessary, then the Applicant would look for other premises.
- There is nothing inherent in storage of the wine which would make the property (and consequently the area) the target for criminals.
- No contact was made with locals because of a ‘timeframe issue’ (not elaborated) followed by apprehension consequent on written objections having been lodged.

- Policing and compliance would be ensured by inspections and risk of loss of licence for non compliance.

A number of objectors indicated they would not have objection if the stock was for example, books, not liquor, and that they were not against a home business per se. That did tend to put their objections about amenity appear irrelevant or artificial.

Some objectors maintained that a residential area should remain so, and not be used for commercial enterprises, arguing that there was no community benefit from such use.

Mr Nott summarised the arguments against:

- Concern at drinking of alcohol;
- Absence of neighbourly contact about the application;
- Quiet cul de sac – adverse impact on amenity;
- Concern at lack of openness in the application, apprehension and uncertainty about the resultant impact;
- Absence or dubious benefit from the licence;
- Due consideration should be given to the sensitivity of the neighbours.

DECISION

The application relates to a residence in a short cul de sac. Apart from the property adjacent to the east (which is a community home) every neighbour in the cul de sac opposes the application. Numerous other people in the vicinity wrote letters of objection.

No one apart from the Applicant supports the application.

It is permitted by town planning.

The Board in considering an application for a licence is to make a decision in the best interests of the Community (s 24A(2) Liquor Licensing Act 1990).

The relevant community is not just the local community, but the more general community of Tasmania (Crawford J as he then was, in *R v P A Kimber, W Morris and H Voss; Ex Parte Ananias Tsinoglou* [1997] TASSC 48 (5 May 1997)).

What is the benefit? It will allow one person to run a home office business, provide convenient employment, potentially a profit, contribute to getting Tasmanian produce (liquor) to the market. It will also make use of an existing customer list. The latter could of course still be used. Likewise, the enterprise could also be conducted using the home as an office, and with storage in a commercial or industrial building (no

doubt at some degree less efficiency). That may reduce an element of convenience, increase the cost to the enterprise, and risk it not being established, or failing.

What is the detriment in granting the licence? Looking critically at the objections:

- Absence of community consultation, consequently apprehension as to scale and impact.

We consider that the Applicant has done her application a disservice by not introducing her intentions and scope to her immediate neighbours. Assertion of time constraints ring hollow, as the failure has only extended the hearing process, and time for consideration and determination.

- No benefit to community.

We consider that is answered above, by the benefits which will determine are capable of arising.

- Liquor invites criminal activity.

Any valuables on property could be said to invite criminal activity. We conclude that in the context and with the Applicant's plans, and the restraints by way of condition which can be placed on the licence if granted to limit visibility, the reality is that there is little likelihood of criminal activity arising due to the presence or existence of the licence.

- Residential amenity.

Largely answered by planning approval: such minor enterprises are accepted as authorised under planning schemes. The reason for this is that on balance it is considered in the community interest for people to be able to conduct low impact businesses from their homes. We agree with that principle.

In addition, conditions on the licence would limit scope, size, advertising, visibility, ingress and egress, to minimise impact on amenity for neighbours.

- Policing and compliance.

We do not have any doubt that if the premises are used outside the licence conditions which would authorise sale of liquor, that compliance action would contain it.

In conclusion, we are left without any particular objection which would require us to reject this application, however, we are left with the fact that no one, apparently, supports the Application except the Applicant herself. Mr Giblin did not give evidence.

It is also obvious that there is little supporting material provided by the Applicant except her own self-serving statement.

We can say we have not experienced an application for a licence such as the present one where objection from neighbours has been substantially universal.

We do have the impression however, that if canvassed, and invited to the tribunal, suppliers and prospective purchasers would indicate support.

Liquor licence application hearings are not beauty contests, democratic, or based on personality. The issue is an objective determination of what is in the best interests of the Tasmanian community.

It is not uncommon to have a large degree of either support or opposition evident in a licensing application hearing, however the degree or fact may not necessarily coincide with the balance of the community interest which is the focus of the application.

In this instance, all the evidence, apart from the Applicant herself, was in opposition, but on analysis, much of the opposition seems to have arisen from concern arising from lack of consultation.

Our conclusion is that the concerns expressed by the objections are illusory and that no detriment of any significance is likely to arise caused by the sale or consumption of liquor or from the increased commercial activity from the Applicant's home, in consequence of the grant of the licence.

DIRECTION

We direct the Commissioner to grant the special licence with conditions:

- Space and area for use as per these reasons;
- Ingress and egress for deliveries in and for deliveries from the premises limited as per these reasons;
- No signage, advertising or marketing on site;
- No deliveries to customers on site;
- Internet front page to quote licence number, licence holder's name and only post office box and email and fax as address for communication;
- Internet and fax marketing to indicate that the contract for sale will arise on acceptance by the Licensee by return communication, and that the place of sale will be taken to be from the licensed premises;
- Only wine permitted to be sold under the authority of the licence.

PA Kimber, Chairman.

K Sarten, Member.