

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by **BADGER
DEBT COLLECTION LIMITED**
pursuant to s.18 of the Act for
renewal of an on-licence in
respect of premises situated at
Eurelia Arcade, 11 The Mall,
Queenstown, known as
“Bardeaux”

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin
Member: Dr J Horn

HEARING at QUEENSTOWN on 18 November 2009

APPEARANCES

Mr J R Castiglione – for applicant
Ms T J Surrey – for Queenstown-Lakes District Licensing Agency – in opposition
Sergeant K P Newell – NZ Police – in opposition
Mrs A M Fowler – on behalf of Medical Officer of Health – in opposition

ORAL DECISION OF THE AUTHORITY

[1] This is an application by Badger Debt Collection Limited (hereafter called the company) for the renewal of its on-licence in respect of premises situated in The Mall, Queenstown. The business trades under the name of “Bardeaux”.

[2] The application is effectively the last in a series of similar applications for the renewal of a number of ‘24-hour’ on-licences. These applications have been dealt with by us at numerous public hearings. All applications relate to the liquor policy adopted by the Queenstown-Lakes District Council. The policy sought to vary the trading hours by bringing back the closing time to 4.00 am.

[3] It has always been within the knowledge of the parties that one of the last of such on-licences to be dealt with by way of renewal would be this particular licence. The licence fell due for renewal on or about 3 June of this year. The application was not unnaturally opposed because of the policy. Attempts were made to have the matter dealt with earlier but this was not possible. The parties were advised at least a month ago of this hearing.

[4] For commercial reasons the company changed counsel on 10 November last. Mr Castiglione, having received instructions, realised that he was not particularly well prepared for the forthcoming hearing, and sought an adjournment. He said that he would need to brief witnesses on the matter. He also said that he would be

unavailable because of another matter in the High Court. Mr Castiglione expanded on those matters after he had received a letter of opposition from Ms Surrey acting on behalf of the Queenstown Lakes District Council.

[5] In addition to the above reasons, he said the company had for some weeks been trying to locate an appropriate expert witness in New Zealand to give evidence about whether there is a connection between 24-hour trading, and patron disorder. No such expert had been found and the company resorted to searching overseas. He advised that recent contact had been made with a University Senior Lecturer in Cardiff, Wales.

[6] The company wished to have the opportunity of arranging for this expert to give evidence before us. Apparently the notion had arisen because Mr R W K Gray (the Chief Executive Officer of Good Group Limited), had attended the recent Court of Appeal hearing. A question had been asked whether the company had obtained the services of an expert to discuss this very issue.

[7] The application for adjournment was placed before the Chairperson prior to the hearing but the application was refused. No reasons were given, but counsel was advised that the adjournment application could be repeated at the hearing, and if necessary, the renewal application could be part heard because of the non-availability of the expert witness.

[8] In the event the application was repeated at the hearing. Mr Gray gave evidence in support of the request for an adjournment. The company offered to trade until 5.00 am rather than on the basis of a 24-hour licence, if the adjournment was granted. The company agreed that during any adjourned period, there would be a one-way door policy from 4.00 am, that food would be available free of charge to those people who were drinking at the bar, that the speakers would be turned off outside the premises, and there would be no activity outside. It was also agreed that the level of music inside the bar would be reduced.

[9] The other parties opposed the application on the basis that the company had had ample warning, that the issues were well known and understood, and that any adjournment would give the company an unfair trading advantage over other premises who had been required to close at 4.00 am. After taking time to consider the application, we declined the adjournment and said we would give reasons at a later date. Mr Castiglione then advised that his company was so concerned to obtain the services of the expert, that it would agree during the adjourned period to close at 4.00 am, to bring the business into line with all other on-licences in the district. We believe that that is a reasonable offer in the circumstances, and indeed the other parties also agree to those terms.

[10] We have in effect taken this as an undertaking from Mr Gray that commencing on Wednesday 25 November 2009, the company will henceforth trade until 4.00 am. That is a solemn undertaking which has been given by the Chief Executive Officer. If there is a breach of the undertaking, then the company is well aware that some form of enforcement proceedings will follow based on lack of suitability.

[11] We have however, no reason to doubt the undertaking. Although our intention was to complete the matter by Friday, we agree with Mr Castiglione, that a part heard matter may have been of little assistance. In those circumstances the adjournment

will now be granted. It is unlikely that a fresh hearing will take place until the New Year. We thank the company for its concession.

DATED at WELLINGTON this 2ND day of December 2009

B M Holmes
Deputy Secretary

Bardeaux.doc(jeh)