

Decision Number: 048/2022/HCDLC/156

IN THE MATTER of sections 99 and 100 of the
Sale and Supply of Alcohol
Act 2012

AND

IN THE MATTER of an application by Gear
Street Hospo Limited trading
as Gear Street for an On-
Licence at 18 Gear Street,
Petone

BEFORE THE LOWER HUTT DISTRICT LICENSING COMMITTEE

Chair: Cr Simon Edwards
Members: Cr Shazly Rasheed, Mr Roger Parton

HEARING via audio-visual link (ZOOM), with the Committee members in person at the Council Chambers, 2nd Floor, 30 Laings Road, Lower Hutt on 11 April 2022.

APPEARANCES

Ms C Griffin, Applicant, Gear Street Hospo Limited
Mr A (Will) Williams, Director/Manager, Gear Street Hospo Limited
Mr J Williams, Chief Operating Officer/Director, Gear Street Hospo Limited
Mr D Scott-Jones, Secretary, Hutt City District Licensing Committee
Mr H Parekh, Licensing Inspector, HCC
Mr D Bentley, Environmental Health Manager, Regulatory Services, HCC
Ms T Gibson, Alcohol Team Lead, HCC
Ms J Blythe, Alcohol Regulatory Officer, Regional Public Health
Mr D McDonald, Alcohol Regulatory Officer, Regional Public Health
Senior Sergeant S Benge, NZ Police
Mr D Hill, Managing Director, Ventech Systems, Objector

DECISION OF THE DISTRICT LICENSING COMMITTEE

Decision

[1] The Lower Hutt District Licensing Committee acting pursuant to the Sale and Supply of Alcohol Act 2012 **GRANTS an On-Licence** to Gear Street Hospo Limited, trading as Gear Street at 18 Gear Street, Petone, for a period of twelve (12) months. The licence is subject to the following conditions:

- (a) Alcohol may be sold or supplied for consumption on the premises, only on the following days and hours:
- Indoors: Sunday to Thursday 8.00am to 11.00pm**
Friday and Saturday 8.00am to 1.00am the following day
- Outdoors: Monday to Sunday 10.00am to 11.00pm**
- (b) No alcohol is to be sold or supplied from the premises on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day.
- i. unless on the premises for the purposes of dining.
- (c) Drinking water is to be freely available to customers from a water supply prominently situated on the premises.
- (d) The whole premises is designated as a supervised area at all times the venue is open, excluding the kitchen area.
- (e) The licensee must have available for consumption on the premises, at all times when the premises are open for the sale and supply of alcohol, a reasonable range of non-alcoholic and low-alcoholic beverages.
- (f) Food must be available for consumption on the premises at all times the premises are open for the sale and supply of alcohol, in accordance with the sample menu supplied with the application for this licence or menu variations of a similar range and standard. Menus must be visible and food should be actively promoted.
- (g) The licensee must provide information, advice and assistance about alternative forms of transport available to patrons from the licensed premises.
- (h) A properly appointed certified or Acting or Temporary Manager must be on duty at all times when the premises are open for the sale and supply of alcohol, and their full name must be on a sign prominently displayed in the premises.
- (i) The following steps must be undertaken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed: The Licensee or manager must ensure that:
- i. Alcohol is not sold to intoxicated persons;
- ii. Statutory restrictions on the supply of alcohol to minors are observed at all times and evidence of age documents are requested where necessary;
- iii. Signs clearly stating the above requirements be placed at all points of sale.

- (j) The Licensee must display:
 - i. A copy of the licence attached to the inside of the premises so as to be easily read by people entering each principal entrance.
- (k) The premises are to be as set out on the plans submitted with the application (17 September 2021) (Himanshu's report says it was received on 17 September but the application itself says amended received 23 September) and updated on 24 March 2022 with an amended floor plan showing the proposed takeaway area. In addition, the outdoor area is to have lockable gates to prevent unauthorised and/or unsupervised access. A note to this effect is to be made on the licence.

Failure to comply with these requirements will result in the On-Licence being revoked.

Introduction

- [1] In an application dated 17 September 2021, Ms C Griffin, acting for Gear Street Hospo Limited, trading as Gear Street (the Applicant), applied for an On-Licence with respect to the premises situated at 18 Gear Street, Petone, Lower Hutt. The premise was currently undergoing renovation, to allow for a purpose designed and built operation to be established.
- [2] We were advised by the Licensing Inspector that Gear Street Hospo Limited was incorporated under the Companies Act 1993 on 31 October 2018. Mr Andrew Williams and Mr Jamie Williams are listed as the directors, and Williams Pub Company Limited is the 100% shareholder of Gear Street Hospo Limited. The directors of Williams Pub Company Limited are Mr M Harrison, Liberato Petangna, Mr A Williams and Mr J Williams.
- [3] The premises are located within a light commercial/industrial area of Petone, zoned Commercial Activity Area under the City of Lower Hutt District Plan. It is surrounded by activities primarily of a commercial/light industrial nature with common activities including mechanical and automotive services and trade supplies. First floor residential accommodation is located at 23 Gear Street. In the wider environment, large format retail activities (K-Mart, Pak'n'Save, Countdown) are within walking distance, and the Jackson Street Historic Retail Precinct is easily accessible to the southeast.
- [4] The surrounding area appears to be clean and tidy with no evidence of rubbish, graffiti or vandalism. We confirmed this with our site visit.
- [5] The premises cover 100% of a triangular shaped corner allotment with dual frontage to Petone Avenue and Gear Street. The main entrance to the premise will be from Gear Street, with a secondary takeaway access off Petone Avenue. This secondary access will have no public access to the main restaurant, bar or outdoor area. The licensed premise will comprise of the ground floor (excluding the kitchen area), mezzanine function area, mezzanine office and an outdoor courtyard area. The internal ground floor layout will comprise the main restaurant and bar areas with a kitchen located behind the bar and a small takeaway outlet. An internal staircase will access the mezzanine floor which will be available for functions and has a small bar area.

The staff office will also be located on this floor. The outdoor courtyard will be accessed via the restaurant and will be fully fenced with lockable gates.

- [6] The building is owned by Dundon and Gill Properties Ltd. The owner (Mr Garry Hill) provided a signed statement on 31 July 2021 giving consent for the tenant (the Applicant) to sell and supply alcohol from the premises. An Agreement to Lease and Deed of Nomination were provided with the application and are held on file.
- [7] The Applicant company operates 42 hospitality businesses throughout the North Island, makes and delivers 7,000 school lunches a day, operates a catering business from Wellington Airport and another at the Heretaunga Campus and also operates a Brewery. We were advised by Mr A Williams that the company was a leader in hospitality systems and processes, employing 950 people and maintaining a high level of control with a multi-tiered system of management.

Procedural Matters

- [8] The Chair advised that parking and traffic related matters (which were raised in the submissions) were not a matter that the Committee could rule on, as they were outside the scope of the Sale and Supply of Alcohol Act 2012 (the Act). He referred to a decision of the New Zealand Alcohol Regulatory and Licensing Authority (ARLA), where at paragraph 81 it states:

“the lack of car parking and any potential for increased traffic congestion are not matters which go to the amenity and good order of a locality. The presence or absence of carparking for licensed premises is more appropriately a matter for the Resource Management Act 1991 for which this Authority has no jurisdiction.”¹

- [9] The Committee would like to record its appreciation at the manner in which the hearing was conducted by all the parties taking part. Due to the COVID Alert level, officers and objectors were asked to attend the hearing via audio-visual link. All those in attendance via this link enabled a focused hearing process that greatly assisted the Committee in assessing and determining the issues, and in delivering our recommendation as to a decision. The Committee thanks all attendees for their patience using the technology.
- [10] A copy of the application was sent to the New Zealand Police and the Medical Officer of Health on 1 October 2021.
- [11] Due to the COVID pandemic the Government has made a temporary law change to modify the requirements relating to licensing applications and renewals under section 103(4) and 129 of the Sale and Supply of Alcohol Act 2012.

¹ PNKG Limited – Levin Liquor Store v Fluker [2019] NZARLA38 (18 March 2019)

- [12] This modification suspends the obligations on Police and Medical Officers of Health to inquire into any new licence or licence renewal application that they receive from District Licensing Committees(DLC) within 15 working days, while the Epidemic Notice is in force. It also extends the time for Police and Medical Officers of Health to report on applications from the date on which the Epidemic Notice is lifted. Police and Medical Officers of Health will have 30 (rather than the usual 15) working days to file a report with the DLC if they oppose an application. Accordingly, the Police and the Medical Officer of Health reported on 14 December 2021 and 20 December 2021 respectively.
- [13] During the hearing, it was noted the New Zealand Police Reporting Officer had technical issues, and had no audio link to the hearing. He communicated via hand signals that he had no questions and nothing to add to the proceedings. It was noted that the New Zealand Police had not objected to the application.

Reports and objections

- [14] The application was not opposed by any of the three reporting agencies. Ten (10) submissions in opposition were received from several businesses in close proximity to the application site. These submissions are detailed in Table 1 below.
- [15] The Committee considers the objectors to have an interest in the application more than the public generally, due to their places of business/accommodation being within 40 metres of the applicant's property.
- [16] Table 1: Submission Details

NAME	STREET ADDRESS	DETAILS OF SUBMISSION
Ms C Carmichael, Designer Lashes	23 Gear Street	Will be living on her premise and is concerned at all adverse effects that could arise from having a licensed premise opposite. Potential for financial implications for her business. Potential for alcohol harm. Excessive hours of operation. Parking. Noise and potential disruption to business caused by outdoor area. Uncertainty regarding restaurant vs bar ratio. Potential for other services to be provided. Amenity and good order will be adversely affected.

Ms Tania Raelene, Brows by Tania	23 Gear Street	Excessive hours of operation. Parking. Noise and potential disruption to business caused by outdoor area. Amenity and good order will be adversely affected. Potential for intoxicated people to loiter.
Ms Sophia, providing relaxing services	23 Gear Street	Excessive hours of operation. Parking. Potential for outdoor drinking area to cause noise and disruption to quiet treatments. Amenity and good order will be adversely affected.
Ms J Bell, Cosmetique Ltd	23 Gear Street	Premise should be located on Jackson Street. Excessive hours of operation. Parking and congestion. Noise especially from outdoor area. Ratio of sale of non-alcoholic items to alcoholic items in order to avoid intoxicated people. Potential for gambling devices. Amenity and good order will be adversely affected. Potential for intoxicated people to loiter and pose a safety concern.

Ms J Parson, Cosmetique Limited	23 Gear Street	<p>Potential harm caused by unsafe drinking. Excessive hours of operation. Potential for noise especially from outdoor drinking area. Uncertainty regarding restaurant versus bar ratio. Potential for gambling devices. Amenity and good order will be adversely affected. Potential for intoxicated people to loiter.</p>
Ms L Schuster	23 Gear Street	<p>Excessive hours of operation. Outdoor drinking area having potential to cause disruption to nearby businesses. Amenity and good order will be adversely affected. Potential for intoxicated people to loiter. Lack of adequate lighting in the area leading to safety issues.</p>
Ms M Philipsen, Revive Nails Studio	23 Gear Street	<p>Amenity and good order will be adversely affected. Lack of adequate lighting in the area leading to safety issues. Potential for intoxicated people to loiter. Excessive hours of operation. Parking. Noise and potential disruption to business caused by outdoor area. Possibility of gambling devices.</p>

Mr Dennis Hill	17 Gear Street	Noise. Parking and traffic congestion. Retention of motorcycle business signage and memorabilia. Outdoor drinking area. Already enough hotels, bars and restaurants with liquor licences in close proximity. Excessive hours of business. Transfer of SinBin business to application site. Gaming Machines. Potential for intoxicated people to loiter.
Mr Paul Law, 4 Star Flooring	16 Gear Street	Parking. Potential for rubbish (including urine, vomit and cigarette butts) in front of his premises. Noise. Potential impact on his business with intoxicated people. Retention of motorcycle business signage and memorabilia. Already enough hotels, bars and restaurants with liquor licences in close proximity. Opposed to a sports bar. Hours of operation.
Mr Wayne Sprotson & Mr Marrice Fraei, Auto Super Shoppe Petone	11 Gear Street	Parking. Potential for damage, vandalism and rubbish. Congestion in the area.

- [17] Mr A Williams advised he had met with the Cosmetique group of submitters on 7 December 2022, and with the remainder of the submitters on 11 November 2021. He provided them all with his Statement of Evidence. The owner operator of 4 Star Flooring, Mr Paul Law, subsequently formally withdrew his objection (23 December 2021).
- [18] An interim objection was received from the Advisor Risk Reduction Specialist Fire Investigator, Hutt City Fire Station on 1 October 2021 as they had no record of an evacuation scheme for the building. However, they formally withdrew their objection on 9 February 2022.

[19] Given the opposition from businesses in the surrounding area, the matter proceeded to a Hearing.

Applicant

[20] Mr A (Will) Williams attended the hearing. He confirmed the original application, including all supplementary information provided, and his subsequent written submission, including details of his conversations with all the submitters. The Property and Licensing Manager, Ms C Griffin and the Chief Operating Officer/second Director of the company, Mr J Williams were in attendance via the audio-visual link.

[21] Mr A Williams advised the company had successfully held On-Licences for all of its 42 hospitality businesses, and that it had also successfully had renewal licences granted.

[22] In response to the concerns raised by the submitters, Mr A Williams acknowledged the issues that had been raised and believed most were misunderstandings. He submitted the measures proposed to alleviate the concerns.

[23] Mr A Williams believed it was unfortunate that the Act required the use of the word "Tavern" on the application for the On-Licence, as the proposed operation was to be family and food focussed, with a restaurant and bar, coffee roastery and takeaway burger outlet. He added that an upstairs room would be available for events and corporate functions, and also for community use (the latter of which would most likely be free of charge). He advised the food revenue for the overall operation would comprise approximately 50%-60% of the total revenue, based on the operations of similar establishments the company ran.

[24] Mr A Williams assured the Committee that the proposed operation was not a gaming, gambling or betting outlet, with no machines, pool tables, darts boards or TAB facilities. He further advised 70% of revenue from the company's similar establishments was received between 5pm-9pm each evening, with only 5% received after 10pm. He said he anticipated the Gorilla Burger takeaway area would assist in raising the revenue from food. He noted the Gorilla Bar in Miramar had an 85%/15% split between food and alcohol sales.

[25] Mr A Williams noted concerns had been raised with the proposed hours of operation being applied for, and explained that it was common practice to apply for the maximum hours available as specified under the Act. He said this ensured that special licences didn't need to be applied for in the case of one-off events, and that it was highly unlikely the Gear Street business would operate those hours regularly. He explained that he expected the business to operate between 11.30am to 10pm or thereabouts Monday to Thursday, with possibly slightly earlier opening for Saturday and Sunday to cater for the brunch demand. He predicted Friday and Saturday nights may extend to 11pm, whilst Sunday night may close closer to 9pm. He also predicted the coffee and scone takeaway functions may open earlier on weekdays.

- [26] Mr A Williams explained the proposed restaurant would have a mixture of tables, booths and bar leaners, targeting families and the dining market, with the establishment of two full chef teams. He further explained the company understood their noise level obligations under the Resource Management Act 1991 and had designed the proposed business accordingly. He stated speaker type and placement was important, and that the speaker system would have a limiter placed upon it, so the volume could not exceed a pre-set level, and that this governing equipment would be located in the locked upstairs office. He noted the business was not targeting high noise risk, late night customers. He advised the beer garden would operate under the same host responsibility and noise management plans as the rest of the establishment and that the beer garden would be surrounded by 1.8 metre high glass walls with planter boxes, and that these walls met acoustic requirements. Plants of sufficient height would be planted to assist with muffling noise at the boundary.
- [27] Mr A Williams advised it was company policy that the music playlists consist of music known to most patrons (being families), and would be at a level of background noise, to enable table conversations to still take place. He added that careful placement of outdoor speakers would ensure noise limits were not exceeded. He directed the Committee to the audio system installed at Brew Boulcott, where the speakers were installed under the seats. He added that at the Gear Street site, outdoor speakers would be faced to the building located at ground level and installed by an experienced sound system company. He advised it was not intended for bands to be present at the venue, however that "one-man" bands may sometimes be employed, and that they would be subject to the noise limitations.
- [28] Mr A Williams advised the proposed business was not targeting motorcyclists, and that it was company policy to reflect the previous history of an area, in their establishments. He noted the company supported the removal of the motorcycle parks in front of the site and their replacement with car parks, and that the company would remove the motorcycle signage and memorabilia on the building.
- [29] Mr A Williams could not envision any unsavoury issues arising afterhours (for example - people urinating the street, intoxicated people wandering the street) due to the clientele expected at the business. He added that should anything unsavoury occur, the company would take full responsibility. He advised the phone numbers of the area manager, venue manager and himself could be provided to adjacent building owners/tenants, so that any complaints could be dealt with swiftly. He further advised a full CCTV system, with additional external building lighting, would be installed and that the company had no plans to relocate the Sin Bin establishment in Station Village, Lower Hutt, to the proposed new venue.
- [30] Mr A Williams advised there would be a smoker's area inside the venue, which should help to eliminate the risk of additional cigarette butts in the streets. In any event, Mr Williams undertook to clean the area in the vicinity of the site, should cigarette butts become an issue. He advised he had recently submitted to Wellington City Council that all garden bars should be smoke free.

[31] Mr A Williams advised the company had a proven track record of good relationships with neighbours, noting that 14 of their establishments were located with close residential neighbours. He further noted that most relicensing applications for their businesses were renewed unopposed, and that the company utilised the first 12 month licensing period to develop good neighbour relationships. He explained the proposed business was intending to employ 30-40 personnel, with hopefully most of those being locals. He further added that the company had an excellent host responsibility record and had every intention of living up to this.

Reporting Agencies

Licensing Inspector

[32] Mr H Parekh confirmed his statement of evidence.

[33] Mr Parekh advised the Noise Management Plan submitted with the application had been peer reviewed by Council's Resource Consents Team, and that no issues had been raised.

[34] Mr Parekh confirmed that all other requirements for a new on-licence application had been complied with, including landlord approval, fire evacuation details, compliance with the District Plan Activity Area permitted activity requirements and supplying evidence that the business had appropriate systems, staff and training to comply with the Act and the Hutt City Local Alcohol Policy. He advised this included a detailed written Alcohol Management Plan that has been adopted by all the businesses that the company runs. He further confirmed a Certificate Of Use was issued on 27 September 2021, confirming that the premises met the requirements of the Resource Management Act 1991 and Section 17 of the Building Act 2004 at that time.

[35] Mr Parekh explained he was not aware of any complaints relating to vandalism or intoxicated people arising from any establishment in the nearby vicinity, noting there were two or three other businesses selling alcoholic beverages within a 200 metre radius of the proposed business.

[36] Mr Parekh's evidence noted the documents accompanying the application specified that food would be available at all times and would be actively promoted throughout the venue.

[37] Mr Parekh's report supported the application for an On-Licence.

Medical Officer of Health

[38] The Alcohol Regulatory Officer, Regional Public Health, Ms Blythe, confirmed the original reply to the application that stated that the Medical Officer of Health did not oppose the application, however, supported a thorough investigation of the application particularly on the impact of amenity and good order of the location. She added that should the license be granted, the Medical Officer of Health would prefer it is not issued until he is satisfied the premises layout is as per the plan received and that it would operate accordingly with its Host Responsibility Policy and that a final physical inspection is undertaken by the Alcohol Regulatory Officer.

NZ Police

[39] Senior Sergeant Bengé confirmed the New Zealand Police did not object to the application.

Submitters

[40] One submitter appeared in person at the hearing, Mr Dennis Hill. The Committee records that all the submissions received were read in full and members were cognisant of the concerns raised when deliberating.

[41] Mr Hill thanked Mr A Williams for clarifying many issues and that he understood the type of clientele the business was trying to attract. He stated he did not want the Sin Bin to relocate to this premise, and that he did not want problems at night to develop as a result of the business. He added he did not want the good nature of the existing businesses in the area to be compromised by the establishment of the facility. He stated parking was an issue in the area, but that he understood nothing could be done about that under this hearing. Mr Hill stated he still had issues with the proposed hours of operation and the outside courtyard area, however he was more satisfied after hearing from Mr A Williams especially concerning the hours of operation, provided that was what actually occurred.

[42] In response to Mr Hill's concerns regarding the possibility of gaming and gambling devices being installed in the premise post the granting of a licence (should that occur), the Chair informed the hearing of the recently approved Class 4 Gaming Venue and Board Venue Policy 2021 (the Policy), introducing a 'sinking lid' on the existing number of 'pokie' machines and venues within the city. He also noted the Policy prevented the transfer of gaming machines from one licensed premise to another within the city.

Licensing Committee Decision and Reasons

Legislation

[43] The general purpose of the Act is for the benefit of the community as a whole² and is to put in place a new system of control over the sale and supply of alcohol³.

[44] The object of the Act is to ensure that alcohol is sold and supplied safely and responsibly, and that any harm caused by the excessive or inappropriate consumption of alcohol is minimised.⁴

[45] Section 28 details who can hold a liquor licence.

² *Christchurch Medical Officer of Health v J & G Vaudrey Ltd (& Ors)* [2015] NZHC 2749 at [31(a)]

³ Section 3 of the Sale and Supply of Alcohol Act 2012 (the Act)

⁴ Section 4(1) of the Act

[46] Section 105 details the criteria for the issue of licences as follows: ⁵

- (a) *The object of this Act;*
- (b) *The suitability of the applicant;*
- (c) *Any relevant local alcohol policy;*
- (d) *The days on which and the hours during which the applicant proposes to sell alcohol;*
- (e) *The design and layout of any proposed premises;*
- (f) *Whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so which goods;*
- (g) *Whether the applicant is engaged in, or proposes on the premise to engage in, the provision of services other than those directly relate to the sale of alcohol, low alcohol refreshments, non-alcoholic refreshments, and food, and if so which services;*
- (h) *Whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:*
- (i) *Whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that –*
 - (i) *They would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but*
 - (ii) *It is nevertheless desirable not to issue any further licences:*
- (j) *whether the applicant has appropriate systems, staff and training to comply with the law;*
- (k) *any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.*

[47] In forming an opinion for section 105(1)(h) above, the requirements of section 106 are as follows:

- (1) *In forming for the purposes of section 105(1)(h) an opinion on whether the amenity and good order of a locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of a licence, the licensing authority or a licensing committee must have regard to –*
 - (a) *the following matters (as they relate to the locality):*
 - (i) *current, and possible future, noise levels;*
 - (ii) *current, and possible future, levels of nuisance and vandalism;*
 - (iii) *the number of premises for which licences of the kind concerned are already held; and*
 - (b) *the extent to which the following purposes are compatible:*
 - (i) *the purposes for which land near the premises concerned is used:*
 - (ii) *the purposes for which those premises will be used if the licence is issued.⁶*

⁵ Section 105 of the Act

⁶ Sec 106(1) of the Act

Discussion and Findings

The Premises

[48] The Committee first considered whether the applicant was eligible to hold an On-Licence. We are satisfied that Gear Street Hospo Limited, trading as Gear Street is eligible to hold an On-Licence, as it falls within section 28(1)(ba):

Any company within the meaning of the Companies Act 1993 that is not prevented by a restriction in its constitution (if any) from selling alcohol or from holding a licence (or a licence of the kind or kinds concerned);⁷

[49] The Committee notes that an On-Licence provides for a premise to sell and supply alcohol for consumption there and can let people consume alcohol⁸, and that this is the intention of the applicant.

[50] The Committee accepts the point raised by the Medical Officer of Health, that as the premises is currently undergoing renovations, final inspection by the appropriate Council officer to ascertain the internal alterations have been completed as per the application plans, prior to trading commencing, is a suitable condition of this decision.

Section 105 criteria

[51] As articulated by Heath J in *Re Venus NZ Ltd*⁹, while the object of the Act is stated as one of the criteria to be considered under s 105, the remaining factors must be weighed against the “object” of the Act. Consequently, after having regard to the criteria in s 105, a licensing committee is then required to step back and consider whether the grant of an On-Licence is consistent with the object of the Act.

[52] In this case, aside from the object of the Act, the most significant criteria are those raised by the submitters and include:

- (a) the proposed hours of sale – s105(1)(d)
- (b) the design and layout of the premises – s 105(e)
- (c) the proposed sale of goods and services other than alcohol – secs105(f) and (g)
- (d) whether the amenity and good order of the locality will be affected by more than a minor amount – secs105(1)(h) and (i)

[53] The Committee will briefly review the other criteria in ss 105(1)(b), (c) and then focus our evaluative assessment on the above four criteria which will be weighed against the object of the Act.

The suitability of the applicant

[54] The evidence produced by the Reporting Officer and that submitted by the applicant persuaded us that the applicant is suitable to hold an On-Licence. The Committee were informed of the detailed multi-leveled managerial system the company has developed across its 42 hospitality sites. The Reporting Officer stated (in their paragraph 4 of their statement of evidence) that:

⁷ Sec 28(1)(ba), of the Act

⁸ Sec 14 of the Act

⁹ [2015] NZHC 1377, [2015] NZAR 1315 at [20]

- i) *The Licensee has been involved in the hospitality industry for over 12 years, owning and operating bars and restaurants throughout the Wellington region.*
- ii) *As far as I am aware Gear Street Hospo Limited is suitable to hold an On-Licence.*¹⁰

- [55] The Committee read all the accompanying documentation supplied with the application, which explained the managerial measures which were to be put in place to ensure compliance with the Act. These included a detailed training manual, Noise Management Plan, Managerial Plan, Fire Evacuation Scheme and menu.
- [56] Mr A Williams explained the anticipated revenue figures for the establishment, based on similar operations the company conducts. These showed that the majority of revenue was gained between 5pm and 9pm, and that up to 60% of revenue was expected from food.
- [57] Mr A Williams advised of the appointment of an experienced Site Manager and that once the renovations of the building were closer to being completed, and the licence was issued, up to 40 other staff would be recruited.
- [58] Mr A Williams gave undertakings, under oath, of additional measures he would put in place for the proposed establishment, including supplying his and the Site Manager's personal phone numbers for neighbours to contact should any issues arise; and the cleaning of the immediate neighbourhood to ensure no graffiti, vandalism or rubbish would eventuate. He also explained it was company policy to learn all about the surrounding neighbourhoods of their establishments especially in the first year of operation, so as to address any issues as soon as they arose.
- [59] The Committee finds that the applicant, Gear Street Hospo Limited, trading as Gear Street, is a suitable applicant to hold an On-Licence, being a registered company under the Companies Act 1993.

Local Alcohol Policy

- [60] There is a Local Alcohol Policy (LAP) in place for Lower Hutt City in which this licence falls. The Committee was informed by the Reporting Officer that the proposal is in accordance with this Policy. The Committee accepts this advice.

Hours of Operation

- [61] The Committee heard and read of the submitters' concerns regarding the proposed long hours of operation that were being applied for. The Committee was advised by Council's Solicitor that it was common practice for all applications for licences to apply for the maximum number of hours permitted under the Act and any relevant Policies, as this negated the need for an application for a Special Licence, should a one-off event occur (e.g. early morning or late night international sports fixtures or the like).
- [62] Mr A Williams confirmed this to be the case, and advised that it would be uneconomic to open this establishment for all the hours applied for, all the time.

¹⁰ Paragraph 4, Statement of Evidence from the Reporting Officer

He further advised it was anticipated the establishment would be open between 11.30am to 10pm or thereabouts Monday to Thursday, with possibly slightly earlier opening for Saturday and Sunday to cater for the brunch demand. He predicted Friday and Saturday nights may extend to 11pm, whilst Sunday night may close closer to 9pm. He also predicted the coffee and scone takeaway functions may open earlier on weekdays.

Design and layout

[63] The Committee refer to the detailed plans submitted with the application and the descriptions provided by Mr Williams at the hearing. The Committee notes the Reporting Officer raised no concerns with the design and layout of the proposed premises.

[64] Submitters raised noise and nuisance concerns with the proposed usage of the outdoor courtyard area. Mr A Williams described the measures put in place to reduce noise, including adherence to the noise Management Plan and the District Plan permitted noise levels, the strategic placement of external speakers, noise limiters on the audio system and acoustically designed external glass walls and planter boxes.

[65] The Committee acknowledge the speed at which Mr A Williams responded to an issue raised concerning the vulnerability of the outdoor courtyard area to be accessed by members of the public outside of operating hours. At the hearing, he advised lockable gates were being installed to prevent such occurrences. The Committee have placed a condition on the license that these gates are installed prior to trading beginning.

[66] With regard to the internal layout, the proposed plans show a focus on dining and kitchen areas, reinforcing the assurances Mr A Williams provided at the hearing that the premises would target families and the dining market, rather than purely drinking clientele. Approximately 101m² of floor space was dedicated to tables and seating, whilst 16m² was allocated to the bar standing area.

[67] The plans show the proposed takeaway Gorilla Burger outlet having a separate entrance off Petone Avenue, with no ability for members of the public to access the rest of the establishment via this entrance.

[68] The Committee is satisfied that the design and layout of the premise is suitable.

Provision of other goods and services

[69] The Committee heard and read of the submitters' concerns that the premise would contain gaming and gambling equipment. Mr A Williams, in his submissions, explained the target market for the establishment was families and dining, and that to this end, there would be no gaming, gambling, pool tables or TAB provisions within the building. The Chair also informed members of the recently approved Class 4 Gaming Venue and Board Venue Policy 2021 introducing a 'sinking lid' on the number of 'pokie' machines and gambling establishments in the city, meaning no more licences could be granted in that regard. He also advised the transfer of said licences between establishments was not permitted.

- [70] Mr A Williams advised the upstairs function room would be available for hire (and possibly for free to charities) and that the room would be subject to the same noise and managerial controls as the rest of the establishment. The application provided details of the non-alcoholic beverages which would be available throughout the building.
- [71] The application included details of the food menu proposed, which offered a wide variety of snack and meal options. As well, the applicant proposes to establish a Gorilla Burger takeaway outlet, which Mr A Williams advised was anticipated to have an 85%/15% food/alcohol revenue ratio (based on their existing Gorilla Burger outlet in Miramar).
- [72] From evidence presented, the Committee is satisfied that no other services (other than food and alcohol) are going to be provided from the premises.

Amenity and good order

- [73] The Committee closely analysed the data and statements of evidence presented regarding the amenity and good order of the locality. We accepted the Applicant's and Licensing Inspector's evidence regarding the condition of the immediate locality of the premise and the state of the inside of the premises. Photographic evidence and our site visit also assisted us. We refer to the assurances provided by Mr A Williams at the hearing, that he would ensure the immediate surrounding area would be cleaned by his staff, should the need arise.
- [74] The Committee was presented with no evidence there had been noise, nuisance or vandalism complaints in the vicinity of the premise, or that the number of licences already held in the area (three, with the Jackson Street Historic Retail Precinct within walking distance also) was of concern. There were also no concerns of pre-loading or anti-social behaviour in the locality raised.
- [75] The immediate neighbourhood consists of commercial and light industrial businesses, mostly operating a normal working week. (Monday to Friday with some having Saturday hours of operation).
- [76] The Licensing Inspector also considered that *"there is no reason to believe that the amenity and good order of the locality would be likely to be increased by more than a minor extent, by the effects of a refusal to renew the licence."*¹¹ The Committee concurs with this conclusion. The Committee is satisfied that the amenity and good order will not be affected or would be likely to be reduced, to more than a minor extent, by the effect of issuing the licence.

¹¹ Paragraph 7, Statement of Evidence from the Reporting Officer

Appropriate systems, staff and training

[77] The application documentation detailed the extensive training and managerial systems the company is proposing to instigate for the premise. These are based on their successful business model in their other establishments. The systems and plans were reviewed by the Licensing Inspector. These include the Alcohol Management Plan, Security Plan, Staff Training and Development Plan, Monitoring Systems for Minor and Intoxication, Host Responsibility Policy, Noise Management Plan and a Food Control Plan.

[78] The Committee notes the application form details three proposed managers for the site, only one of whom has a valid Manager's Certificate (two having expired in December 2021). The Committee has placed a condition on the granting of the On-Licence such that all personnel must hold the required valid certificates.

[79] The Licensing Inspector concluded that:

Providing the applicant adheres to the noise management plan, alcohol management plan, security plan and host responsibility policy I do not believe there are sufficient concerns to prevent the issue of a licence to Gear Street Hospo Limited trading as Gear Street.¹²

Matters arising from Reporting Agencies

[80] There were no matters arising from the reporting agencies, other than the request from the Medical Officer of Health that a thorough inspection of the premises be conducted prior to commencement of trading to ensure the floor plan is in accordance with the submitted plans, and all host responsibility requirements (including signage) have been complied with. The Committee concurs with this request, and have placed a condition upon the approval of the granting of the On-Licence.

Object of the Act

[81] The object of the Act refers to the safe and responsible sale, supply and consumption of alcohol and requires the harm caused by "the excessive or inappropriate consumption of alcohol"¹³ be minimised.

[82] The Committee acknowledges the concerns raised by the submitters, and the proposed mitigation measures put forward by the applicant.

[83] The Committee notes that a new On-Licence is valid for one year, whereupon an application for a renewal is required to be made. The Committee accepts Mr A Williams's statement that the company will take advantage of the first year of operation to create good relationships with their neighbours, in an effort to address any issues as and when they arise. The Committee notes to this end, he offered to provide his and the Site Manager's phone numbers to the submitters. The Committee further notes that should any unruly behaviour arise within the year, this will be reflected in the application for an On-Licence Renewal application.

¹² Final paragraph on page 11 of the Reporting Officer's Statement of Evidence

¹³ Section 4(1) of the Act

[84] The Committee finds that for the above discussed reasons, the proposed Gear Street establishment will fulfill the Object of the Act.

Conditions

[85] The Committee has placed conditions as set out in paragraph 1 of this Decision.

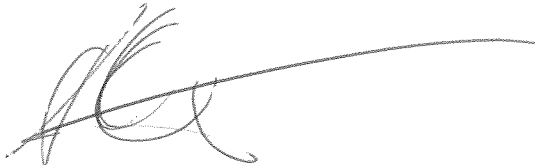
Conclusion

[86] Having considered the relevant criteria the Committee is satisfied that the considerations fall in favour of the application being granted for an On-Licence to be granted to Gear Street Hospo Limited, trading as Gear Street, for a period of twelve (12) months, subject to the conditions as listed in paragraph 1 of this Decision, and also:

- (a) That the phone numbers of Mr A (Will) Williams (Director) and the Site Manager be provided to all submitters prior to trade commencing.
- (b) That prior to trading commencing, the HCC Licensing Inspector conducts a final check of the premise to ensure the design and layout is in accordance with the application, and that all host responsibility requirements are complied with. As well, a Certificate of Public Use (CPU) or a Code of Compliance (CCC) must have been obtained.

Dated at Lower Hutt this 5th day of May 2022.

Signed



Cr Simon Edwards
Chair, Lower Hutt District Licensing Committee

