

Decision No: On – R/59/273/2024

Off – R/59/187/2024

UNDER THE: Sale and Supply of Alcohol Act 2012

IN THE MATTER OF: an application by **FAMOUS GROUSE 2009 LIMITED** for renewal of an On-Licence and an Off-Licence in respect of premises situated at 2 Gerald Street, Lincoln, and known as 'The Famous Grouse Hotel'

BEFORE THE SELWYN DISTRICT LICENSING COMMITTEE

Chairperson: Mrs Merelyn Redstone

Members: Ms Tracy McIlraith

Mr Martin Ferguson

HEARING at Lincoln on **31 October and 1 November 2023**

APPEARANCES

Ms Amy Keir – Counsel for the Applicant

Mr Kurt Young and Mr Lynn Townsend – Famous Grouse 2009 Limited - Applicant

Mr Malcolm Johnston – Licensing Inspector **opposed**

Ms Paula Williams – on behalf of the Medical Officer of Health **opposed**

Sgt Dave Robertson – NZ Police **opposed**

RESERVED DECISION OF THE COMMITTEE

INTRODUCTION:

- [1] This is an application by **FAMOUS GROUSE 2009 LIMITED** ('the Applicant') for Renewal of On and Off-Licences. The premises is situated at 2 Gerald Street, Lincoln, known as 'The Famous Grouse'. The application was received on 18 January 2023. The current licence expires on 20 February 2023.

[2] The Applicant company has three directors appointed by the Shareholders: Brian Robert HUMM, Stephen John MURRAY and Lynn Randell TOWNSEND. There is one Shareholder in the Applicant Company being The Lincoln Club Incorporated. Mr Townsend is the President of the Lincoln Club. It is noted that since the application was filed, Mr Stephen Murray has resigned as a director and has been replaced by Mr Dene CASSIN.

[3] The Applicant sought the following trading hours (current licensed hours):

On-Licence:

Monday to Sunday, between the hours of 7:00am and 2:00am the following day.

Off Licence:

Monday to Sunday, between the hours of 8:00am and 9:00pm

These hours are less than the default maximum trading hours for an On-Licence.

The Inspector, at paragraph 6.2 of his report recommends the hours of the On-Licence be amended as follows:

On Licence:

Sunday to Thursday, between the hours of 7:00am and 12:00 midnight.

Friday and Saturday, between the hours of 7:00am and 2:00am the following day.

On-Licence Outside (Beer Garden):

Sunday to Thursday, between the hours of 7:00am and 9:00pm

Friday and Saturday, between the hours of 7:00am and 10:00pm

[4] The application received no public objections.

[5] The Application was opposed by the reporting agencies under s.105(b) suitability, (h) good order and amenity and (j) staff, systems and training.

[6] The District Licensing Committee ('the Committee') members each undertook a visit to the locality to assess the surroundings prior to the hearing.

OPENING SUBMISSIONS:

Applicant:

[7] Ms Keir opened on behalf of the Applicant. She referred to the unique locality of the premises in a changing town with considerable residential development in recent years.

The said the Lincoln Club had 600 members and was strong in the Lincoln community, with the hotel premises being the Club's physical home.

- [8] She said Lincoln University students had traditionally been patrons of the hotel premises going back over 100 years. She said there was a sense that Police thought drinking by students was a problem. She said the students are part of the community and that whilst it is accepted that some may be irresponsible, the hotel does a good responsible job in managing students and issues were not such that the Applicant was unsuitable. She submitted that the renewal should be granted.

Police:

- [9] Sgt Robertson, on behalf of the New Zealand Police, submitted that amenity and good order had decreased. He referred to the growth in the Lincoln area. He submitted that younger people, including students, in the 18-25 age group were more likely to binge drink. He submitted that it was untrue to say the Police saw students as a problem but that they needed to be managed appropriately.
- [10] Sgt Robertson said the Tri-Agencies had chosen to use the Graduated Response Model rather than apply to the Alcohol Regulatory & Licensing Authority pursuant to section 280 to have the licence suspended. To this end the Agencies had met with the Applicant representatives on a number of occasions to encourage them to reduce risks. In his view, rather than taking a cooperative approach the Applicant had taken the stance that 'Police don't like the hotel and don't like students'.

HEARING PROCEDURE:

- [11] It was agreed between the parties to hear the evidence of Senior Constable Craddock first, followed by the Applicant, followed by the remaining Police witnesses, the Inspector and the Medical Officer of Health.

POLICE:

Snr Constable Craddock (Police witness 1) (sworn).

- [12] The Senior Constable's evidence was taken as read and a summary chronology is set out as follows:
- (a) 6 April 2022 meeting held with Mr Young, Mr Townsend, the Licensing Inspector, Constable Barraclough and Snr Constable Craddock following noise complaints

and observations of Const. Barraclough. Highlighted concerns, discussed risk of hosting student-focused events, and offered to assist with advice going forward.

- (b) May 2022 complaint of noise and broken glass on road. Meeting Mr Young, Mr Townsend, Licensing Inspector and SC Craddock.
- (c) 17 August 2022 "Mr Grouse" event. SC Craddock produced a number of videos, the contents of which was the subject of a non-publication order. Police attended after reports of some patrons being injured by glass sprayed over them by one of the performers. The male (name suppressed) was assessed as intoxicated. Ambulance staff attended described the scene on their arrival, to the Police, as 'chaos'.
- (d) 22 September 2022 meeting held with Mr Young, Mr Townsend, Licensing Inspector and SC Craddock to discuss the event and concerns about student-focused events. A warning letter was sent to the premises following this meeting.
- (e) October 2022 Police Inspection during which some intoxicated patrons were observed, and one patron assessed by Police. Email sent to General Manager, Mr Young.
- (f) 7 February 2023 Police attended fighting outside the premises. Another occasion in February Female patron exiting the premises was assessed as intoxicated. Discussion about medication she may have taken and the effect that may have had on alcohol.
- (g) 10 May 2023 Good Order and Amenity survey carried out by the Licensing Inspector and SC Craddock in the area surrounding the premises. The survey was carried out over a period of just over 3 hours. SC Craddock produced videos, recordings and photos outlining patron behaviour, level of noise, and patrons urinating in various locations near the premises, including the area behind the chemist shop, climbing over a ute, with little action taken either by Security or Mr Young.
- (h) 27 September 2023 SC Craddock drove past the premises and noted approximately 20 young people lined up waiting to enter the premises. She noted that Security on the main entrance checking identification.
- (i) Continued advertising of student-focused events on FaceBook.

[13] SC Craddock said in evidence that the Agencies had tried to engage with the Applicant. There had been multiple meetings which highlighted the issues and said they were there to assist with issues and training following a graduated response. She had outlined to

the Applicant the problems that had arisen both at Springston and Yaldhurst Hotels when the students used to congregate there. The Police were in the process of Enforcement Action in relation to the Yaldhurst Hotel when it was sold. The students then moved to congregating at the Famous Grouse. She said 'Wednesday Student Nights' over the last couple of years raised issues relating to amenity and good order.

- [14] SC Craddock said Mr Young's responses to issues raised were dismissive and she felt he would not accept any responsibility. In response to the question, "Is it personal with Mr Young" she responded that no, she felt the Agencies had been very fair. Only one Warning had been issued and meetings held offering assistance and training whereas with the Yaldhurst there had been one Warning following by Enforcement Action.
- [15] In response to question put by the Licensing Inspector and Medical Officer of Health (MOH) SC Craddock confirmed that Mr Young's attitude was different to others, for example Rugby Clubs, in that others took ownership whereas Mr Young was quick to deflect issues to others or was "simply not listening to the message and attacking the messenger".
- [16] In response to questions put by Ms Keir about noise complaints, SC Craddock agreed there was only one registered on the Selwyn Table of Noise complaints but said she understood other generic complaints had been received by the Licensing inspector and she had received one from Constable Barraclough. When asked what advice was given at the meetings she responded their role was to give advice going forward, 'come to us for help', willingness to assist with training and how to host students in a responsible way. She disagreed that student focused events discouraged drinking by diversion and said from her observations they encouraged drinking.
- [17] SC Craddock agreed that some initiatives taken by Mr Young were positive but other actions, especially around noise, assessments by Police of intoxication and behaviour around premises as young people left the premises and waited for courtesy van still raised significant concerns.
- [18] In response to a question about the location of most student accommodation and any issues that arise from student parties and that might further arise if students were not welcome at local licensed establishments, SC Craddock said there would be less control and likely more alcohol-related issues and student parties would impact negatively on the amenity and good order in the area.
- [19] In re-examination SC Craddock spoke about intoxication and the SCAB assessment and also about the duty of care required, even if there were no arrests. She confirmed that

by the third meeting between the Agencies and the Applicant those in attendance spoke of the elevation of issues.

APPLICANT:

Mr Lynn Townsend (Applicant witness 1) (sworn).

- [20] Mr Townsend's brief of evidence was taken as read. He gave a history of the Lincoln Club and explained the ownership of the Famous Grouse. He has lived in Lincoln area for about 62 years and explained the history of the university and the changing town in recent times. He said the company had tried to put in initiatives to assist with controlling the drinking environment such as vans for transport which meant there was less destruction of property. They wished to continue to embrace students as part of the community but with strict controls and surveillance by Duty Managers.
- [21] He said in his view the opposition to the application suggested that they work to attract students as part of the business model and that this was untrue. They want a comfortable gathering point for members of the club and other activities should not detract from that aim. Their aim was to be 'a Club in a Pub' and not the other way around.
- [22] He shared the concerns of the tri-agencies, particularly around pre-loading and trying to smuggle alcohol into the premises. He said they were constantly working to address those concerns. It was his belief that the Police and Licensing Inspector have 'clashed with Kurt' and that this had become a personal thing rather than a fair evaluation of the overall impact of the Famous Grouse in the Lincoln Community.
- [23] In response to questions, he said the point of the business was to run a profitable business that would benefit the Club. He said the business had not changed to target students and many Club members and local people enjoyed using the premises for meals. He agreed they did not stay late at night.
- [24] Mr Townsend agreed that Mr Young was quite defensive at one meeting and had spoken to him after another meeting he attended about the fact the premises was "possibly running foul of Police and had to straighten up". However, he felt overall Mr Young was very effective, meeting with staff fortnightly.
- [25] Mr Townsend said he had been "shocked" when the renewal application was opposed, even though he had attended meetings and had received Tri-agency reports. He admitted and showed he had a lack of knowledge of alcohol licensing and the changes to the Act from 10 years ago which moved the emphasis to mitigating alcohol harm which

required a different way to operate with the Tri-Agencies holding Licensees to a higher standard.

- [26] Mr Townsend agreed that the 'Mr Grouse' event was unacceptable, describing it as a 'disaster that would not happen again'. However, his view was that behaviour outside of the premises was not their responsibility, that they tried to have vans available to take people home, but these were driven by staff who had to be freed up for that work which made some of the behaviour which affected amenity and good order 'hard to stop', 'we do the best we can'.

Kurt Young (Applicant Witness 2) Sworn

- [27] Mr Young's evidence was taken as read. His brief outlined his experience of 19 years in the hospitality industry and his work as a Youth Garden Volunteer Tutor in Christchurch Men's Prison.
- [28] Mr Young outlined the weekly programme of events which attract Club members and local people. He said Wednesday is often a student night. He pointed to a number of events which are more pro-social and designed to minimise drinking like the Non-Alcoholic Beer Pong tournament and Silent Discos which also reduced sound externally. He said in response to noise complaints a sound reader had been purchased and this was monitored regularly.
- [29] Mr Young acknowledged that pre-loading and behaviour outside the venue was a big issue and that it can be hard to control what happens outside. He suggested those problems would occur in a university town in any event regardless of the existence of licensed premises.
- [30] Mr Young lists at paragraph 41 the connections he has built since commencing at the Famous Grouse, noting at least nine initiatives he has undertaken/introduced.
- [31] In summary Mr Young said 'It does sometimes feel that the Agencies have turned against me' and feel there should be no Famous Grouse in Lincoln. He said he tries hard to address issues and lists changes he has made to the operation over the last year at paragraph 44.
- [32] In response to questions about the Mr Grouse event he agreed he was present and agreed to the incidents that arose from that event. He said he would not run a similar event again. He agreed that despite meetings there were still issues of noise, amenity and good order and intoxication happening in May of this year. He noted they had

changed security companies to Harvey Security, now had two courtesy vans with transport from the front and back of the premises to assist with the issues that arise as crowds of young people are leaving the premises at the same time. He said the vans are now also picking up patrons which he felt assisted with issues arising with noise as students approach the premises and the pre-loading and disposal of cans onto the streets and private property. He talked about the increase in Duty Managers working at busy times which now leaves him floating and overseeing general.

[33] Mr Young responded to questions about security cameras saying five cameras were now in operation, two to the back garden/carpark, one at the main door entrance, one at the side entrance and one facing up the road. However, he said these were only viewable from the office.

[34] When asked about issues with intoxication Mr Young said it was 'a unique business to operate and comes with challenges. He admitted there had been a need for change and he outlined the increase in training for staff. In his view there had been improvement since the meetings in May. In response to questions, he said he had banned/trespassed several people. He said students do purchase food while they are drinking but admitted they buy a lot of alcohol. it was the primary source of income. He did not know the person (name suppressed) who had twice been identified as being intoxicated by Police. In response to a question about the student spending he said they wouldn't entertain students if they didn't purchase alcohol and students were a large part of the business.

[35] Mr Young felt the message from the Agencies came across as 'Don't host students' rather than 'students are a risk'. As to amenity and good order he admitted it can be noisy. He accepted all criticisms of the Mr Grouse event, accepting that the injuries were alcohol-related harm and that the responsibility for that rested with him. However, in response to the question, "You have allowed an offence to occur and didn't intervene?" he responded, "I accept I made the wrong decision possibly, yeah". This answer is indicative of the way Mr Young responded to a number of questions, giving the impression that throughout meetings and in the course of the hearing he was on a number of occasions defensive and/or dismissive.

ADDITIONAL POLICE EVIDENCE:

Constable Matthew Barraclough (Police witness 2) (sworn).

[36] PC Barraclough's evidence was taken as read. He spoke of visiting the premises on 11 March 2022 at a time when Covid restrictions were in place meaning licensed premises could not have more than 100 people present. Security staff told him there

were about 60 patrons present. He felt there were significantly more than that, and more likely the total exceeded 100. At the time patrons were required to be seated and wear masks. He said patrons appeared to be moving around freely and there was no real separation between groups.

- [37] In response to questions PC Barraclough said people were unlikely to be able to get alcohol anywhere else at the time. He said at the time there was alcohol compliance but no respect for Covid rules. He said he had attended incidents at the hotel in the last nine months. He agreed with Counsel for the Applicant that students drinking outside of licences premises, for example in flats and in the street, was an issue. He agreed premises were in a position to control behaviour and it was ultimately the Licensee and Duty Manager who were responsible for that.

Sgt Melissa Arnold (Police witness 3) (sworn).

- [38] Sgt Arnold has been a Police Officer for 18 years and is based at Rolleston. In response to the comment of Mr Townsend that the town of Lincoln is now poorly served by Police, she explained the current coverage which had given significantly increased patrols from the days of three officers being stationed at Lincoln covering 24/7.
- [39] Sgt Arnold has gained significant experience in monitoring licenced premises. She spoke of occasions on 7 October 2022 and 12 October 2022 when she found intoxicated persons on the premises. In response to questions from Mr Watson for the Applicant she said the actions of the manager on 7 October were not appropriate and that Duty Managers should intervene prior to issues arising. The manager at the time was Sourab Kumar (Sandy) who no longer works at the premises. She produced the Police reports.
- [40] She agreed with Mr Watson that pre-loading could be an issue for premises to be aware of. Similarly with drugs and drinking which Mr Watson put to her can take some time to process, she agreed but said it was a matter for Duty Manager observation and control. She agreed that student parties can cause issues as they are uncontrolled but said that most student parties are now registered. She agreed that it was good that the premises was offering free food.
- [41] In response to questions from the Committee Sgt Arnold felt the style of management was at the lower end with a soft approach to training of staff with regards to students. She felt staff did not have control of the premises. Asked about the drug MDMA she said it was a cheap drug making it popular with young people including students. Asked about behaviour when this drug is used in combination with alcohol she said it was generally known as a happy drug where people 'wanted to hug rather than fight' and therefore did

not cause as many problems as intoxication alone. She said she took a soft approach with assessments to start but agreed it was an offence to have intoxicated persons on the premises.

- [42] In re-examination she agreed there was a clearing out of intoxicated patrons when police arrive but said it was a game of cat and mouse for premises to get intoxicated patrons out as quickly as possible, and not just at the Famous Grouse. She noted that on a visit in the last week she had found an unlicensed security guard working at the premises.

Constable Lucy Brears (Police witness 4) (sworn).

- [43] PC Brears gave evidence of attending the premises on the night of the Mr Grouse event and what she saw there. She further gave evidence of attending on 10 February 2023 and observing a female leaving the hotel who appeared to be intoxicated. She spoke with this person (name suppressed) who said she was on medication but only Panadol and Ibuprofen but refused to answer any other questions. She completed a Premises & Patron report which she produced. The Duty Manager at the time was Aimee Cottle.
- [44] Counsel asked several questions about the night of the Mr Grouse event. She asked how many patrols there had been between the August 2022 and February 2023 to which PC Brears responded there had been multiple patrols, not only at the Famous Grouse. She said the visit on 10 February was a planned visit to all licensed premises with a number going on at the same time. She agreed there was security on the door, no noise and about 60 people present.

THE INSPECTOR:

Mr Malcolm Johnson (sworn).

- [45] Mr Johnson (the Inspector) appeared as the Alcohol Licensing Inspector in opposition to the application on the grounds of suitability, systems, staff and training and the good order and amenity. He outlined his experience working for District Councils in the area of Licensing.
- [46] The Inspector reiterated the Police evidence given earlier in respect of attendances and observations at the hotel, issues with intoxicated persons and the meetings held with Mr Townsend and Mr Young in order to raise issues and offer support in terms of training.
- [47] He said there had been 12 noise complaints received since 2020 with four being in 2023. This was more than at any other hotel in the Selwyn area.

- [48] In response to questions from Counsel the Inspector agreed there had been no public objections to the application. He agreed with Counsel as to the siting of most of the student flats and the University Halls of Residence, together with other Licensed Clubs and On and Off Licences in the area, including a licensed café at the university.
- [49] The Inspector agreed that his concerns raised about noise from the garden bar had arisen from one complaint and his observations. Many of the incidents referred to in his report were not personally witnessed by him, but reported to him. He agreed that the bus incident referred to at paragraph 19 of his report came from a newspaper report only.
- [50] The Inspector agreed that urination was not evidence of intoxication but commented that invariably it was a result of drinking too much. He agreed that he had spoken with neighbouring residents who had agreed that things were better in the last half of this year and there had been improvements in terms of noise. He agreed that surveillance carried out on 23 September 2023 has shown no issues.
- [51] In response to a question as to whether he had provided specific advice about systems, staff and training he said he had undertaken training with new Duty Managers on what he and Police expect around conducting assessments. He agreed that he had attended training at the Famous Grouse in November 2022 when the Hotel hosted a training session for their own staff and staff from other licensed premises. He had addressed the challenges for staff when there were crowds of people. He had suggested reducing the number of people allowed in the bar at one time. He agreed the fact that there was no longer an entrance from the carpark to the Garden Bar.
- [52] He agreed that there was a recent history of fewer being in the bar, with security monitoring that, giving better control and more opportunity for assessments. He agreed that limiting occupancy and increasing staff is helpful but said that 250 in the bar and 100 in the outside Beer Garden was too many.
- [53] As to the Applicant Company he said he had once had interaction with the new Directors and knew Dene from the Lincoln Rugby Football Club. When asked about input from Dene he said that had only happened recently, since his report was written, but agreed that input would definitely assist as Dene is 'a good operator as a manager'.
- [54] In response to questions from Sgt Robertson the Inspector accepted that students were problematic but that they were better in a hotel than in gardens and parks. He felt they were better at a premises within walking distance of their accommodation.

[55] In response to questions from the Committee he was not surprised there were no public objections as people do not want to appear at hearings, they are afraid of ramifications, or they feel nothing will be done.

[56] The Inspector advised the Lincoln area was a 7-8 on the Deprivation Scale.

THE MEDICAL OFFICER OF HEALTH

[57] Ms Paula Williams appeared as the representative for the Medical Officer of Health in opposition to the application. She said the Medical Officer of Health opposition was in support of the position of the Police and Licensing Inspector on the grounds of suitability, systems, staff and training and the good order and amenity. She was not sworn and did not give further evidence.

FINAL SUBMISSIONS:

[58] Final submissions were received from the Applicant and the Agencies. Prior to receiving final submissions Counsel for the Applicant filed a Memorandum setting out some proposed conditions should the application be granted. In addition, a meeting was held on 10 November 2023 between the Applicant at the Agencies to discuss these suggested undertakings and conditions prior to final submissions being filed.

[59] The Agencies maintained their stance that the renewal should not be granted as 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. The Police went further, suggesting that the events noted reflected on the suitability of the applicant.

[60] The final submissions of the Agencies repeated the various events referred to in evidence in support of their submissions. The Licensing Inspector and the Medical Officer of Health offered conditions that might be imposed if the renewal of the licence was granted.

[61] The Applicant expanded on the Memorandum filed following the hearing and discussed the meeting held between the Tri Agencies and the applicant following the hearing.

EVALUATION AND DECISION:

[62] Having considered the Application together with Agency Reports and Objections placed before it, and with the oral evidence and submissions received at the hearing, the Committee must now stand back and determine whether the application for renewal of the Licence should be granted.

Evaluation and findings under section 105 and section 106 of the Act

[63] The role of section [105](#) and how it is to be approached in relation to applications has received plenty of judicial attention.¹ The approach, when considering the licence application, is succinctly summarised as follows:²

“Is the decision-maker satisfied, having regard to all the relevant factors set out in s 105(1)(b)–(k) that the grant of the licence is consistent with the object of the Act?”

[64] The duty to “*have regard to*” requires that we turn our mind to the listed criteria. We are required to give them “*genuine attention and thought*”. The weight to be attached to each is a matter for us to decide.³ In *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123, Clark J summarised the applicable principles in respect of the renewal of a licence.

[65] Further, the evaluative function is an assessment of risk.⁴ Clark J said at [43]

“The factors to be considered in the course of assessing an application for a licence or for renewal, as the appellants submitted, stand to be assessed in terms of their potential impact upon the prospective risk of alcohol-related harm”.

▪ ***The object of the Act***

[66] The object of the Act is that -

- (a) The sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- (b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimized.

[67] The Act further states that the harm caused by the excessive or inappropriate consumption of alcohol includes -

- (a) Any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

¹ *Re Venus NZ Ltd* [2015] NZHC 1377, [2015] NZAR 1315 per Heath J; *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689 per Moore J; and *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 per Gendall J.

² *Re Venus NZ Limited* at [20] and *Auckland Medical Officer of Health* at [60] see Westlaw NZ, SA 105.02

³ *Foodstuffs (South Island) Ltd v Christchurch City Council* (1999) 5 ELRNZ 308, [1999] NZRMA 481 (HC).

⁴ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Limited* [2018] NZHC 1123.

- (b) Any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in a) above.

[68] We keep those objects to the forefront of our minds in considering the application.

[69] There are two arms to the Object of the Act and both must be met. In terms of the first arm we need to be satisfied that the sale and supply of alcohol by the Applicant will be undertaken safely and responsibly. The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. '*Minimised*' means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.⁵ In *Lion Liquor Retail Limited*, Clark J held that "*the legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between availability of alcohol and alcohol-related harm.*"

[70] Our role is an evaluative one, and we need to have regard to the extent to which granting a renewal of the licence with conditions should minimise alcohol-related harm.⁶ There is a presumption built into the Object of the Act that excessive and inappropriate consumption of alcohol causes harm i.e. harm caused by *excessive or inappropriate* consumption of alcohol.

[71] '*Harm caused by excessive and inappropriate consumption*' is defined broadly in section 4(2) of the Act to include harm in the form of crime, damage, disorderly behaviour, illness or injury to individuals and to society generally and includes direct and indirect cause or contribution to harm.

[72] We now make assessments, based on the evidence before us and the various reports received, on each of the criteria contained in section 105 of the Act.

▪ ***The suitability of the applicant***

[73] The Applicant is a Company which is in the unique position of having an Incorporated Club, the Lincoln Club, as its sole shareholder. The Club appoints members from time to time as directors of the Applicant Company. It is noted that since the filing of this application, a new director has been appointed by the Club who has considerable experience in running licences premises whilst the other two directors have recently

⁵ See Shorter Oxford Dictionary; *Re Peony Spirits Limited* [2014] NZARLA 696 at [19]; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [115].

⁶ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

completed LCQ training. It is not for this Committee to tell the Club how and who to appoint as Directors of the Applicant Company. Suffice to say the Committee, whilst acknowledging the recent 'upskilling' was concerned at Mr Townsend's lack of knowledge of the requirements of the Act, he being the only Director to be heard. The position as a Director of a company that holds a Licence under the Act is not an honour, or a position to be automatically undertaken by Executive members of the Club, but is an onerous responsibility, carrying with it the requisite knowledge and skills to meet the requirements of the Act. This factor, in the Committee's opinion, should be taken into account by the Club when making Director appointments.

[74] It was noted that at the time of a number of incidents raised by the Police and the Inspector, the Duty Manager at the time was a person who has now left the applicant's employ. Secondly, in response to criticisms raised in relation to the applicant's response to student behaviour, the applicant has committed to a reduction in student focussed events over the last six months and is taking seriously its responsibilities under the Act.

[75] The Committee acknowledges the steps taken by the applicant. The Committee finds that the applicant is a suitable entity to undertake the responsibilities of both an On-Licence and an Off-Licence.

[76] The Committee listened to the issues in relation to the current manager's lack of response to recommendations made by the Police and the Inspector and shared their concerns. It is noted that both the directors of the Applicant company and the manager have already taken steps to upskill themselves and the manager will receive ongoing mentoring support by an appropriate person "identified in consultation with the Agencies ... to be completed no later than 30 March 2024".

[77] Ultimately the Applicant has the responsibility of appointing its staff with an expectation that those staff will meet the requirements of the Act. Premises in the situation of the Famous Grouse, in a growing University town, require a strong management team who will ensure that the requirements of the Act are met and the premises enhances the community in which it is situated cognisant that any decrease in the amenity and good order of the locality arising from the conduct of those premises will reflect on its suitability on any future application for renewal.

▪ ***Any relevant local alcohol policy***

[78] The Selwyn District Council has a Local Alcohol Policy. In relation to Tavern and Hotel Licences there are restrictions as to hours of operation and suggested discretionary conditions. There are no alcohol ban areas within the Lincoln Township.

- ***The days on which and the hours during which the applicant proposes to sell alcohol***

[79] The Applicant has applied for hours which are within the default maximum trading hours. The hours applied for are set out in paragraph 3 above together with the response of the Licensing Inspector as to those hours.

[80] In Counsel's memorandum dated 8 November, she advises that the applicant now seeks the following hours of operation:

On Licence: Sunday to Thursday 07:00 to 12 midnight.
Friday and Saturday 07:00 to 01:00 the following day.

On Licence Outside (Beer Garden)

15 February to 1 November (University Term Time)

Sunday to Thursday 0700 to 2100

Friday and Saturday 0700 to 2200

2 November to 14 February (Non-Term Time, Summer Months)

Sunday to Monday 0700 to 2200

Off Licence: Monday to Sunday 0800 to 2100

In addition, the Applicant undertakes that during University Term Time on Monday to Wednesday the bar area will close no later than 22:00, with last drinks served at 21:30 and the Garden Bar entrance/exit will be restricted to exit only after 19:00.

[81] These suggested hours are less than those recommended by the Licensing Inspector and the Committee is of the view that they will go a considerable way to ensuring that alcohol is served responsibly, alcohol related harm is reduced and that the amenity and good order of the area will be increased by more than a minor extent.

- ***The design and layout of any proposed premises***

[82] There are no concerns with the design and layout of the premises.

- ***Amenity and Good Order***

[83] Amenity and good order is defined in section 5 of the Act as:

"in relation to an application for or for the renewal of a licence, means the extent to which, and ways in which, the locality in which the premises

concerned are situated is (or, in the case of a conveyance, the localities where the conveyance is likely to travel are) pleasant and agreeable.”

[84] Section 106 requires that when the Committee is considering whether the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of this licence, it 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.

[85] Much of the evidence received at the hearing related to amenity and good order. A lot was heard, and photos shown, of the Mr Grouse event run at the premises. It is noted that the Director of the applicant company expressed disappointment at both the event and the actions taken by the manager that night. It was stated categorically that no such like event would take place in the future.

[86] The Committee further acknowledges the instances of intoxication and noise received at the hearing and recorded earlier. On the other hand it acknowledges steps taken by the applicant to reduce nuisance in terms of noise by the provision of silent discos, for example, and the reduction of damage to the community by providing transport to and from the premises.

[87] The Police in their final submission take the stance that the horse has bolted and the applicant is not suitable to hold a licence and the amenity and good order of the surrounding area would be increased if the renewal of licence was declined.

[88] In that regard the Committee notes that the Mr Grouse event took place on 22 August 2022. A Warning letter was sent to the Applicant on 6 October 2022. The Police have not taken further action to issue an Infringement Notice or close the premises pursuant to Section 266.

[89] The Police do not acknowledge that the actions of the Applicant since that event have made any improvement to the amenity and good order of the locality.

[90] It is noted by the Committee that there were no public objections. If the Committee were to accept the Police view that the good order and amenity is so bad that the licence renewal should be declined, the Committee would have expected that to be supported by neighbouring residents voicing concerns. At paragraph 32 of the Inspector's Brief of Evidence he states that neighbours advised there had been an improvement in the last three months.

- [91] It was acknowledged by the Police that students are particularly difficult to work with and control. There had been incidents in other licensed premises in the surrounding area when students had congregated. They had been moved on and have consequently gathered at the Famous Grouse. It was acknowledged, as recorded earlier, that banning students from the hotel would inevitably result in an increase in student parties that may place further strain on Police resources. It is a matter of balance and the Committee has turned its mind to this balance. Based on the evidence received, the Committee finds that there is a preference to having students in a controlled environment, but that the Licensee must provide sufficient staff and security to meet any challenges that may arise.
- [92] There was no criticism of the Licensee in respect of the restaurant, and the management of the premises when students were not in attendance. The Committee agrees with the Agencies that there should be less focus on events that attract students and more focus on welcoming students as part of a responsible Lincoln community. The traditional behaviour of students in a University town is acknowledged and this requires a closer liaison between the Applicant, its Manager and staff, and the Tri-Agencies than is required for licensed premises where there is no such student congregation. Interaction and the setting of expectations are also required between those parties and the University together with its Student Association.
- [93] The Committee has turned its mind to Section 106 considerations as to whether 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 having regard to current and possible future noise levels and current and possible future levels of nuisance and vandalism.
- [94] The Committee received evidence of vandalism and nuisance in the area having decreased since the Applicant began providing transportation to and from the premises. Noise has reduced with the provision of events such as the silent discos and noise is likely to reduce further by the earlier closing proposed and the undertakings in respect of the garden bar area.
- [95] It is inevitable in a University town that the students will congregate somewhere and given the location of student housing in the area, the Committee is not convinced 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 having regard to current and possible future noise levels and current and possible future levels of nuisance and vandalism.

[96] The Committee draws the applicant's attention to the view of Agencies that accepting student patrons, especially at Wednesday night events, is risky because students can be hard to manage and can put a licence at risk. On the evidence this has been reiterated to the applicant on a number of occasions and the applicant and its manager are strongly advised to take notice of this advice.

▪ ***Whether the applicant has appropriate systems, staff, and training to comply with the law:***

[97] In the opinion of the Committee there are appropriate systems and training to comply with the law. In particular the Medical Officer of Health reports in final submissions that "the current systems and training are largely computer/electronic based and appear to be thorough".

Decision

[98] Accordingly, having regard to the matters in sections 105 and 106 of the Act together with the evidence and submissions of the Applicant, the Agencies and the Objectors, the Committee has decided to renew the Licence subject to conditions and undertakings. However, it takes a precautionary approach and the Licence will be renewed for two years.

[99] In *Hooper v Clark Liquor Licensing Authority*, Decision 1169/99:

"A liquor licence is a privilege. It may colloquially be regarded as a "package deal". Both the burdens and the benefits run with the licence. Mr Clark as licensee must either accept those burdens and control the sale and supply of liquor in a satisfactory manner, or he will not continue to enjoy the privilege."

[100] The Committee finds a similar position arises in relation to the current matter. The renewal of the Licence for a period of two years will mean it expires on 20 February 2025. This allows time for the Applicant to accept both the burdens and benefits that run with the licence. It allows time for the Agencies to monitor the undertakings of the Applicant aimed at addressing issues raised in the course of the hearing. The Applicant will be on notice that any failure to accept the burdens and control the sale and supply of alcohol in a satisfactory manner will reflect on its suitability to hold a licence at the time of any future renewal application.

The Licensed Premises

(a) The premises are identified on the plan provided with the application for a licence.

Restricted and Supervised Areas - section 147(2)

- (b) The whole of the licensed area is designated as a supervised area.

Discretionary conditions – section 110 (1)

- (c) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (d) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold and supplied within the area marked on the plan submitted with the application.

Discretionary Conditions - section 110(2)

- (e) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day . to any person who is not:
 - i) residing or lodging on the premises; or
 - ii) present on the premises to dine;
- (f) Alcohol may only be sold or supplied on the following days and during the following hours when the premises are being operated as a Hotel:

On Licence: Sunday to Thursday 07:00 to 12 midnight.

Friday and Saturday 07:00 to 01:00 the following day.

On Licence Outside (Beer Garden)

15 February to 1 November (University Term Time)

Sunday to Thursday 0700 to 2100

Friday and Saturday 0700 to 2200

2 November to 14 February (Non-Term Time, Summer Months)

Sunday to Monday 0700 to 2200

Off Licence: Monday to Sunday 0800 to 2100

From any mini bar at any time on any day.

- (g) In addition, the Applicant will abide by the undertakings given and recorded above at paragraph 79.
- (h) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

Section 117 – Other Discretionary conditions

- (i) The following steps must be taken to promote the responsible consumption of alcohol:
 - (i) The Licensee must implement and maintain the steps proposed in The Famous Grouse Host Responsibility Policy aimed at promoting the reasonable consumption of alcohol. This plan is to be reviewed with input from the Agencies.
- (j) Occupancy will be limited in both the bar area and the garden bar to a number to be decided in consultation with the Agencies.
- (k) The applicant will provide adequate security. In addition, when occupancy rates are high, the applicant will provide a duty manager, who is not otherwise involved with the sale of alcohol, to monitor patron behaviour both inside and outside the premises, particularly at the time of departure of courtesy vans.
- (l) The following information must be displayed on the internet site in a prominent place, in any catalogue used by the licence holder and on every receipt issued for any alcohol sold via the internet site.
 - (i) The licence holders name, the licence number, and the date on which the licence expires.
 - (ii) A copy of the licence or a clearly identified link to such image must be displayed in a prominent place on the internet site.

▪ **Conditions applying to all remote sales and supply of alcohol**

- (m) The following steps must be taken to verify that people are over the purchase age:
 - (i) In the case of an order made using an internet site, telephone order, or physical order –The prospective buyer must declare that he/she is 18 years of age or over

(and where the prospective receiver is involved that the prospective receiver is also 18 years of age or over) –

- (a) Once, when the prospective buyer first commences the order process; and
- (b) Again, immediately before the sale of alcohol is completed

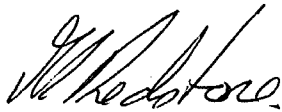
Other restrictions and requirements

- (n) Section 56 – Display of signs
- (o) Section 57 – Display of licences
- (p) Section 59 – Requirements relating to remote sales by holders of off-licences.
- (q) Section 214 – Manager to be on duty at all times and responsible for compliance

[101] The licence shall be issued for **TWO (2)** years.

[102] The Applicant's attention is drawn to section 259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act. Specifically, sections 46 to 63 and 231(1). The Applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 26th day of January 2024



Merelyn Redstone
Chairperson for and on behalf of
the Selwyn District Licensing Committee

