

OTOROHANGA DISTRICT LICENSING COMMITTEE

Application	018-0047
<u>IN THE MATTER</u>	of the Sale and Supply of Alcohol Act 2012
<u>AND</u>	
<u>IN THE MATTER</u>	of an application by Charoen Company Limited trading as Jasmine's Thai Restaurant for a BYO endorsed on-licence pursuant to sections 15 & 100 of the Act in respect of the premises situated at 81 Maniapoto Street, Otorohanga

OTOROHANGA DISTRICT LICENSING COMMITTEE

Chairperson: Mrs S Grayson
Members: Cr R Johnson, Dr M Cameron

HEARING at the Otorohanga District Council Chamber 3 May 2018

APPEARANCES

Mr S Chick - director, Charoen Company Limited
Mr T Shemely - representative, Charoen Company Limited
Mr C Suntronchatchavach - Food and Beverage Manager, Charoen Company Limited
Mrs M Fernandez - Licensing Inspector
Mrs N Zeier – Medical Officer of Health

DECISION OF THE OTOROHANGA DISTRICT LICENSING COMMITTEE

1. The application for a BYO endorsed on-licence pursuant to section 37 in respect of the premises situated at 81 Maniapoto Street, Otorohanga and known as Jasmine's Thai Restaurant is granted. The licence may issue upon payment of the annual fee and when the Licensing Inspector receives and approves the content of the BYO Restaurant Staff Training document supplied by Charoen Company Limited.

2. The conditions of the licence are:
 - a) Alcohol may only be consumed by patrons while trading as a restaurant.
 - b) Alcohol may only be consumed by patrons who are on the premises for the purpose of dining from 11.00am to 12.00 midnight Monday to Sunday.
 - c) No alcohol may be consumed on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day by any person who is not on the premises to dine.
 - d) A holder of a manager's certificate or a properly notified manager shall be on duty and on the premises from 5.00pm to 12.00 midnight, on Friday and Saturday nights when the restaurant is trading as a restaurant. If a duty manager is not present, then there must be no consumption of alcohol and a notice displayed advising the public of this fact.
 - e) The area where alcohol may be consumed is described in the plan date stamped as received by the Hamilton District Licensing Committee on 29 November 2017.
 - f) The entire premises is undesignated.
 - g) A Host Responsibility Policy must be maintained and displayed and the Licensee must ensure all staff receive training in their responsibilities and obligations under the Sale and Supply of Alcohol Act 2012.
 - h) There must be no consumption of alcohol by minors or intoxicated persons and there must be displayed at every point of sale appropriate signs detailing these restrictions.
 - i) Drinking water must be freely available and this must be clear to customers, while the premises is open for the sale and supply of alcohol.
 - j) Food must be available for consumption on the premises at all times when open for the consumption of alcohol in accordance with the restaurant menu submitted with the application for this licence, or variations of a similar range and standard.
 - k) A range of low-alcohol and non-alcoholic drinks must be available at all times when the premises are open for the consumption of BYO alcohol.
 - l) A phone must be freely available for customers to call for transport and staff must assist if required. Telephone numbers for alternative forms of transport from the premises must be displayed.

The Application

1. This is an application by Charoen Company Limited for a BYO endorsed on-licence for the premises known as Jasmine's Thai Restaurant. Charoen Company Limited previously held a restaurant style on-licence, however it was surrendered following the renewal application in 2017 and subsequent opposition by the Licensing Inspector. The opposition related to the fact the company did not have enough duty managers that could effectively communicate in English about the requirements of the Act. On-licence 018/ON/003/16 expired on 23 September 2017. No alcohol has been sold from the premises since the withdrawal of the previous renewal application.
2. The Licensing Inspector, Police and Medical Officer of Health do not oppose this application. There are no public objections.

3. Charoen Company Limited now wishes to operate a BYO restaurant without any Duty Managers. While it is not compulsory for a BYO restaurant to have a Duty Manager, the licensing committee must consider whether it should be a condition of the licence that one or more managers be appointed and whether they must be on duty on specified days and times (section 37(2)).
4. In addition, the licensing committee must assess whether Charoen Company Limited has appropriate staff, systems and training to comply with the law (section 105(j)). There are no details in the application about any on-going staff training.
5. In order to make a proper decision about these issues the licensing committee considered this application at a public hearing (section 201(1)). A site visit was conducted beforehand.

The criteria for granting an on-licence

6. The purpose of the Act is to put in place a new system of control over the sale and supply of alcohol (s 3). The object of the Act is to ensure that the sale and supply of alcohol is undertaken safely and responsibly, and the harm caused by excessive or inappropriate consumption of alcohol is minimised (s 4)
7. In deciding whether to issue a licence the District Licensing Committee must have regard to the criteria in s 105 of the Act. Therefore this committee must consider the following questions within the framework of the purpose and object of the Act:
 - a) Is the applicant suitable?
 - b) Are the days and hours during which the applicant proposes to allow people to consume alcohol reasonable?
 - c) Is the design and layout of the premises suitable?
 - d) Does the applicant propose to engage in the sale of goods or provision of services other than those directly relating to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments and food?
 - e) Will the amenity and good order of the locality be reduced to more than a minor extent by the effects of the issue of licence? Is the amenity and good order of the locality already so badly affected by the effects of the existing licenses that it is unlikely to be reduced further by the effects of the issue of the licence or is it desirable not to issue any further licenses?
 - f) Does the applicant have appropriate systems, staff and training to comply with the law?
 - g) Have the Police, Inspector and Medical Officer of Health raised any relevant considerations?
 - h) Does the application comply with the Otorohanga District Local Alcohol Policy?
8. There have been no issues raised about the suitability of the company to hold a licence, the trading hours, design and layout of the premises or amenity and good order. However, the licensing committee must decide whether it should be a condition of the licence that a Duty Manager be appointed and whether there are appropriate staff, systems and training in place to ensure compliance with the Act.

Should be a condition of the licence that a Duty Manager be appointed? Are there appropriate staff, systems and training in place to ensure compliance with the Act?

9. The Licensing Inspector reports that the Food and Beverage Manager, Charoenvach Suntronchatchavach, does have a Licence Controller's Qualification (LCQ) and is knowledgeable about the Act and its requirements. In addition, one of the directors, Mr Simon Chick, has attended a Host Responsibility workshop in August 2017.
10. Mr Shemely, representative for the directors, Mr and Mrs Chick, explained that the company accepts that the standard of English of the staff and the level of training has not been sufficient in the past. Charoen Company Limited also operates a restaurant in Taumarunui, also known as Jasmine's Thai Restaurant. Mr Shemely does not have previous experience in alcohol licensing matters, however he has studied the managers booklet and has held some training for the staff at both restaurants. He has made a staff

training record sheet which shows that staff will be trained in understanding the licence conditions, host responsibility, signs of intoxication and proof of age.

11. Mr Shemely advised that he will not be continuing with staff training on an on-going basis and intends to train Mr Suntronchatchavach to conduct the training in the future. Mr Suntronchatchavach has applied for a manager's certificate. Currently, four staff members work in the restaurant including Mr Suntronchatchavach, and one of them has a manager's certificate. Certificated duty managers from Jasmine's Thai Restaurant in Taumarunui can fill in if required.
12. When questioned, Mr Suntronchatchavach demonstrated a reasonable understanding of different designations, the meaning of a legal guardian and ID checking. However, Mr Suntronchatchavach was confused about whether a person had to finish a bottle of wine before leaving the restaurant. Section 15 of the Act provides that a BYO endorsed on-licence does permit a person to remove alcohol from the premises if it is sealed or resealed.
13. Mr Suntronchatchavach's confusion about this matter most probably arises from the fact that the staff training provided to date has not covered material specific to a BYO endorsed on-licence. Before the licence can be granted, the licensing committee would like the Licensing Inspector to view and approve a simple staff training document that contains all of the basic information that staff working in the restaurant need to know about the obligations of a licensee holding a BYO endorsed on-licence.
14. Charoen Company Limited has made a good start with its staff training and with further training based on more targeted materials staff will be better equipped to ensure compliance with the Act. The licensing committee accepts that the premises is reasonably low risk and therefore the BYO endorsed on-licence can be granted.
15. However, the licensing committee agrees with the Licensing Inspector and Medical Officer of Health that it would be prudent to require the company to have a certificated duty manager on duty at the restaurant from 5.00pm to 12.00 midnight (or closing) on Friday and Saturday nights only. These are the busiest nights for the restaurant and having a duty manager overseeing the consumption of alcohol on these nights would ensure compliance with the Act.
16. This will also be of benefit to the company. Mr Shemely advises that the company would eventually like to have a full on-licence again. Therefore, the requirement to have a certificated duty manager on duty on Friday and Saturday nights will give staff and duty manager's the opportunity to build their experience in preparation for needing a duty manager on duty at all times, when a full on-licence is applied for.

Conclusion

17. Therefore, the application for a BYO endorsed on-licence is granted, subject to the condition that a certificated duty manager be on the premises on a Friday and Saturday night.

Dated this 25th day of May 2018



Sara Grayson
Commissioner
Otorohanga District Licensing Committee