

Laneway Bar [2013] SALC 1

LICENSING COURT OF SOUTH AUSTRALIA

LANEWAY BAR

JURISDICTION: Application for a Special Circumstances Licence

FILE NO: 4608 of 2012

HEARING DATE: 23 January 2013

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 23 January 2013 (Reasons published 30 January 2013)

REPRESENTATION:

Counsel:

Applicant: Mr J Firth

Objector: Sergeant A Heffernan

Intervenor Mr Bill Allison

Solicitors:

Applicant: Duncan Basheer Hannon

Objector: Commissioner for Police

Intervenor Corporation of the City of Adelaide

- 1 On 23 January 2013 I granted Laneway Bar Pty Ltd a special circumstances licence on an interim basis for a period of six months. These are my reasons for doing so.
- 2 The applicant occupies a small property on the southern side of Hindley Street Adelaide immediately west of licensed premises known as The Palace and Red Square and immediately east of a laneway and licensed premises known as the Dog and Duck Hotel.
- 3 The premises comprise of two shipping containers to the rear that have been converted into an attractive small bar and toilets and a storage area and an open area in the front containing tables and chairs that abuts the laneway to the west and the footpath of Hindley Street to the north. The premises are surrounded by a fence and the area where liquor is to be consumed is open to the elements.
- 4 The applicant sought the licence to enable it to sell and supply, for consumption on the premises, boutique beer and cider and a small range of other liquors within a facility similar to the laneway bars operating in Melbourne that are the subject of consideration by Parliament as a new category of licence.
- 5 Subject to certain conditions being imposed the application was supported by the Adelaide City Council. It was initially opposed by the Commissioner of Police but that objection was subsequently withdrawn.
- 6 For the application to succeed the Court needed to be satisfied that the prerequisites for the grant of a special circumstances licence had been met and that the Court, as the licensing authority, in the exercise of its discretion thought it appropriate to grant the application.
- 7 The nature of and circumstances permitting the grant of a special circumstance licence are prescribed by s 40 of the *Liquor Licensing Act 1997* in the terms following:
 - “(1) A special circumstances licence authorises the licensee to sell liquor for consumption on or off the licensed premises in accordance with the terms and conditions of the licence.
 - (2) A special circumstance licence cannot be granted unless the applicant satisfies the licensing authority that:
 - (a) a licence of no other category (either with or without an extended trading authorisation) could adequately cover the kind of business proposed by the applicant; and
 - (b) the proposed business would be substantially prejudiced if the applicants trading rights were limited

to those possible under a licence of some other category.”

- 8 It was apparent to me upon an inspection of the premises and on the basis of what I was told about the nature of the proposed business that the pre-requisites to the grant of a special circumstances licence had been met. There was no other suitable licence and to require the applicant to operate under an existing category of licence would substantially prejudice the proposed business.
- 9 As for the issue of discretion, the premises were clean and attractive and the facility is one that I thought members of the public would enjoy. I also thought that the current debate about licensed laneway premises was a relevant factor in exercising the Court’s discretion in favour of the application. I was mindful that we might learn things from the operation of these premises and that this might inform the debate as to whether this sort of facility should be the subject of its own category of licence
- 10 I also thought that by granting the licence on an interim basis under the supervision of the Court issues relating to public safety and the like in respect of this and like premises could be monitored and if necessary the conditions of the licence could be varied. I thought that this might provide valuable information about these types of premises and that the potential ascertainment of this information was in the public interest.
- 11 The licensee quite reasonably contended that the supervision should not be indefinite. I therefore resolved to put it in place for six months on the basis that any interested party could apply to the Court during that period but if no such application were made that the licence would be issued permanently.
- 12 The conditions agreed with the council essentially reflected the development plan conditions approved by the council. It seemed to me that these were reasonable and that they should be incorporated into the licence.
- 13 The applicant sought authorisation for extended trading from midnight to 3.00am the following day. The council consented to this. It seemed to me to be a reasonable request and I therefore granted the authorisation.
- 14 The applicant also sought entertainment consent. The council consented to this, subject to various conditions. I thought that both the request and the conditions were reasonable and I therefore granted the consent.