

Kentish Arms Hotel [2013] SALC 6

LICENSING COURT OF SOUTH AUSTRALIA

KENTISH ARMS HOTEL

JURISDICTION: Application for an extension of Trading Area

FILE NO: 5140 of 2012

HEARING DATE: 6 February 2013

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 6 February 2013

REPRESENTATION:

Counsel:

Applicant: Mr L Mudie with him Mr J Withers

Respondent: N/A

Solicitors:

Applicant: N/A

Respondent: N/A

- 1 This is an application by La’Marc Pty Ltd, the proprietors of the Kentish Arms Hotel, seeking an extension of its trading area to allow outdoor dining.
- 2 The Kentish Arms is an historic hotel situated on the corner of East Pallant Street and Stanley Street in a quiet, attractive part of lower North Adelaide.
- 3 The applicant seeks authorisation from the Court, as the relevant licensing authority, to set up 5 tables and 20 chairs just outside of the hotel on the Stanley Street side. Mr Mudie, who spoke on behalf of the applicant, described the proposal as follows: “it will be simply for outside dining, so it will be for food and beverage. It is just to create that, I guess that cosmopolitan atmosphere that the council has been pushing for such a long time to create that atmosphere within the city.”
- 4 When this application was lodged the Commissioner of Police lodged a notice of intervention. That has since been withdrawn.
- 5 A local resident lodged a notice of objection. That too has since been withdrawn.
- 6 It does not follow, however, that the application must be granted. Section 53 (2) of the *Liquor Licensing Act 1997* provides: “A licensing authority should not grant an application as a matter of course without proper inquiry into its merits (whether or not there are objections to the application).” Accordingly the Court has to be satisfied that it is appropriate that the application should be granted and if it is, it can impose such conditions as it thinks necessary.
- 7 As a member of a specialist Court I am entitled to know that there are a number of licensed facilities in and about the City of Adelaide that offer what I would describe as al fresco dining. That is what is envisaged here. The local climate lends itself to that form of dining and I think it adds to the charm and vibrancy of these facilities. I expect that to grant this application would be to add to the attractiveness of the hotel and would offer its patrons an enjoyable experience.
- 8 I am mindful that the hotel is in an essentially residential area. However, I note that the applicant does not intend to have any form of entertainment in the proposed area. If the application were granted I would impose a condition to that effect.
- 9 For this application to succeed the requirements of s 69(3) of the Act must be met. That section provides as follows:

“(3) An authorisation cannot be granted under this section unless—

- (a) the licensing authority is satisfied that the object of the application could not be more appropriately achieved by redefinition of the licensed premises; and
- (b) the licensee will, when the sale of liquor is authorised, be entitled to sell or supply liquor to customers in the relevant place; and
- (c) the relevant place can be adequately defined and supervised; and
- (d) the owner of the relevant place (if not owned by the licensee) consents to the application; and
- (e) if the relevant place is under the control of a council—the council approves the application.”

- 10 The applicant leases the licensed premises. I have been provided with evidence that the owner consents to the application. Save for (e) I am satisfied that all other requirements have been met. This issue regarding (e) arises because although the Adelaide City Council, being the relevant council, approved this application, that approval has since lapsed. It was granted on 31 August 2012 and expired on 1 February 2013. I expect that it was granted for a limited period so that the premises could be monitored and trialled before granting unconditional approval. If I were to grant the application I think I would be minded to do so initially on an interim basis.
- 11 However, I have not yet to that point, because as I see it, because the council’s approval has lapsed, the requirements of s 69(3)(e) of the Act have not been met.
- 12 Accordingly, I indicate that on the basis of what has been outlined to me and having read the file from the Commissioner, that I am satisfied that all of the other prerequisites of s 69 have been met and that subject to the council approving the application I would be minded to grant the application. However, I cannot formally make the order until the applicant obtains that approval. I therefore adjourn further consideration of this application until 9.50am on Tuesday 19 February 2013 and grant the applicant liberty to apply.