

Liquorland - Gawler [2014] SALC 15

LICENSING COURT OF SOUTH AUSTRALIA

LIQUORLAND – GAWLER GREEN

JURISDICTION: Application for a Retail Liquor Merchants Licence

FILE NO: 5243 of 2013

HEARING DATE: 31 March 2014

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 31 March 2014 published on 17 April 2014

Application for a retail liquor merchant's licence - Whether the licensed premises that already exist in the vicinity of the proposed facility are adequately catering for the public demand for take away liquor - Whether in the exercise of the Court's discretion the application should be refused - Held that the applicant has satisfied the prerequisites for the grant of a retail liquor licence for the proposed facility - Held that it is not necessary in the Court's discretion to refuse to grant the licence - Ss, 53, 57 and 58 Liquor Licensing Act 1997

Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern [2000] SASC 116;
(2000) 76 SASR 290

Woolworths [2013] SALC 23

Woolworths Liquor BWS Arndale [2014] SALC 14

REPRESENTATION:

Counsel:

Applicant: Mr M Roder SC with Mr R Harley

Solicitors:

Applicant: Hunt and Hunt Lawyers

- 1 On 31 March 2014 I granted an application by Liquorland (Australia) Pty Ltd for a retail liquor merchant's licence in respect of premises to be constructed within a Neighbourhood Shopping Centre presently under construction on land abutting Tulloch Street and Main North Road, Evanston, a developing suburb in the south of Gawler. The shopping centre will be known as the Evanston Neighbourhood Centre.
- 2 The application drew objections from BIP Enterprises Pty Ltd, the Criterion Tavern and Kingsford Hotel. Prior to the scheduled hearing the objectors indicated they did not wish to participate in these proceedings. provided that if the applicant was successful, it agreed to a condition being imposed upon the licence that:

“If the Licensee makes application to the Liquor and Gambling Commissioner for an order approving redefinition of the licensed premises or removal of the Licence to other premises then the Licensee must, regardless of any direction given by the Commissioner concerning public notification of such an application, provide full written particulars of the application within 7 days of lodgement of the application with the Commissioner to the licensees of the following premises:

Criterion Tavern 18 Nineteenth Street GAWLER 5118 SA

Kingsford Tavern 32 Murray Street GAWLER 5118 SA

Golden Fleece 77 Murray Street GAWLER 5118 SA”
- 3 The Court indicated that if it was satisfied that the licence should be granted it would impose that condition. Hence the application proceeded unopposed. I can therefore state my reasons briefly.
- 4 To succeed in this application Liquorland needed to meet the pre-requisites of ss 57 and 58 of the *Liquor Licensing Act 1997*. And it needed to persuade me, in the exercise of the Court's discretion, that the licence should be granted.
- 5 Section 57 concerns matters such as the suitability of the premises; the potential for them to cause undue offence, annoyance and the like to nearby workers, residents and worshippers in their vicinity; prejudice to the safety or welfare of children attending nearby kindergartens and schools; and whether the appropriate approvals, consents and the like, pertaining to the proposed premises have been granted.
- 6 Section 58(2) requires an applicant for this type of licence to satisfy the Court that “the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated do not adequately cater for the public

demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.” This was the only matter of contention in this case.

- 7 In determining whether this test has been met licensed premises within and outside the boundaries of the locality had to be considered.¹

Background

- 8 The Centre is within an area of land that previously formed part of the land owned by the Gawler Racing Club. Gawler is an historic town that has grown from being a significant rural town to become a large outer metropolitan suburb of Adelaide. Indeed, its growth has been such that it has developed its own suburbs.
- 9 Population growth was predominantly in and around the town centre which is about three kilometres north of the Centre. In more recent years there has been considerable development in the southern areas resulting in the suburbs of Gawler West, Gawler South and Evanston.
- 10 Although the town centre is well serviced by retail outlets of various descriptions, including take away liquor facilities, those outlets are not especially convenient to those living away from the town centre, and in particular by those living in the south of Gawler. Hence, no doubt, the financial commitment to and the development of the Centre. It will contain a Coles Supermarket and a number of specialty shops. The evidence of the planner, Mr Jeffrey Smith, which evidence I accept, is that upon completion the Centre will draw considerable patronage from the local area, comprising of the southern suburbs of Gawler.

Section 57

- 11 The proposed facility is a reasonably large walk-in bottle shop that will be well stocked and presented. The Liquorland brand is part of the Coles Group. Coles enjoys a good reputation as an operator of retail liquor outlets. I have no doubt that the proposed facility will be suitable.
- 12 A plan of the area and my own observations based upon a view indicated that the proposed premises posed no threat of the type contemplated by s 57.

Section 58

- 13 I now turn to the s 58 issue.

¹ *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* [2000] SASC 116; (2000) 76 SASR 290 at 299.

- 14 As I have said in previous cases the starting point is to identify the relevant locality.
- 15 Mr Smith identified the relevant locality by reference to a two kilometre radius from the Centre. He suggested that it comprised of the suburbs of Gawler West, Gawler South, Evanston, Evanston Gardens, Evanston South and Evanston Park. He suggested that the Gawler town centre to the north was outside of the locality.
- 16 I found that the locality is by and large as Mr Smith suggested.
- 17 The locality is a developing area. It has experienced significant population growth.
- 18 Within the locality there is only one take away liquor facility, a drive through and bottle shop attached to the Criterion Tavern an old hotel on Nineteenth Street, Gawler. It is about two kilometres away from the Centre.
- 19 As mentioned earlier, there are several take away liquor facilities in the town centre of Gawler and beyond. However, I regarded them as irrelevant for the purposes of this application. I did so because in my opinion they are too far away and too inconvenient for many of those living within the locality or likely to visit the Centre.
- 20 The real issue for me was the adequacy of the Criterion Tavern in meeting the public demand for those living in the locality.
- 21 In determining its adequacy I thought that the evidence of residents was telling.
- 22 Ms Gallie lives in Evanston. She would prefer to service her take away liquor needs with her grocery shopping. She does not like shopping in the Gawler town centre. For now she does most of her take away liquor shopping at the Kingsford Hotel in Gawler, but she finds it inconvenient and frustrating. She does not use the Criterion Tavern.
- 23 Mr Cavallaro lives in Evanston. For now he buys liquor from a Dan Murphy's at Munno Para, quite some distance away. He said he hates driving to Gawler. He does not use the Criterion Tavern. He said that he would much rather browse and shop for a wider range than is available there. He would like to combine his liquor purchases with his grocery shopping.
- 24 Mr Kotzur lives in a Retirement Village in Evanston Park. He has not bought liquor from the Criterion Tavern for some years. He does not like to shop there because it is out of the way. He does not like the fact that the bottle shop is attached to a drive through. For now he buys liquor

from a Dan Murphy's at Munno Para. He says that it is too far. He does not like to travel to the Gawler town centre. He would prefer to combine his liquor purchases with his grocery shopping.

- 25 Mr Holmes lives at Evanston Park. He dislikes travelling to Gawler. He uses the Criterion Tavern for his liquor needs. He does so reluctantly. He finds it a very average facility and has difficulty parking and accessing the bottle shop. He would like to combine his liquor purchases with his grocery shopping.
- 26 Ms Weinel lives at Willaston. Willaston is a couple of kilometres south west of Gawler and west of the Centre.
- 27 Ms Weinel reluctantly uses the drive through at the Willaston Hotel to service her take away liquor needs. She does not use the Criterion tavern as it has an inadequate range and for her is out of the way. She would use the Centre. She would like to combine his liquor purchases with his grocery shopping.
- 28 Mr Branford lives at Evanston. He described travelling to Gawler as a nightmare. He would prefer not to do his liquor shopping there. He uses the Criterion Tavern for his liquor needs. He does so reluctantly. He said that he would prefer to purchase liquor at a dedicated bottle shop where he could browse and expect a better range than what is on offer at the Criterion. He would use the Centre. He would like to combine his liquor purchases with his grocery shopping.
- 29 Whilst the take away retail liquor facility attached to the Criterion Tavern is a reasonable bottle shop carrying a reasonable range it was undeniably attached to a drive though.
- 30 In *Woolworths Limited* I made reference to an earlier decision of mine in *Liquorland (Aust) Pty Ltd* and of my observation in that case that some people do not like purchasing take away liquor from a hotel and would prefer to make their purchases from a dedicated retail facility. I qualified this recently in *Woolworths Liquor BWS Arndale*² but not in a way that is relevant here. It might be expected that a not insignificant portion of the people living within the locality would desire to make their take away liquor purchases from a facility that is not attached to a hotel of the type provided for by the Criterion Tavern. That was borne out by the evidence of the needs witnesses.
- 31 Accepting that the needs witnesses can be hand-picked, I nevertheless thought that there evidence rang true and was likely to be representative of what other would say.

² [2014] SALC 14

- 32 That evidence and my own observation led me to find that the Criterion Tavern does not adequately cater for the relevant public demand for liquor for consumption off licensed premises. Accordingly I formed the view that the proposed premises are necessary to satisfy that demand.

Discretion

- 33 As to the issue of discretion, there was no basis to refusal of the application. Indeed, to the contrary, the grant of this licence is in the public interest. Many of the people living in the locality can be expected to use the new Shopping Centre. The addition of a retail liquor facility will further add to its attractiveness and will meet a growing desire by many to combine their take away liquor purchases with their supermarket shopping.

Conclusion

- 34 The applicant has satisfied the tests applicable to establishing that a retail liquor merchant's licence is necessary, that the proposed premises are suitable and that the other matters identified in s 57 of the Act are of no concern. The exercise of the Court's discretion does not require the application to be refused. Subject to the imposition of the condition agreed upon by the applicant and the objectors the application is granted. Counsel is to forward draft minutes of order.