

Loxton Golf Club [2018] SALC 66

LICENSING COURT OF SOUTH AUSTRALIA

LOXTON GOLF CLUB

JURISDICTION: Application to review a Commissioners decision –
Application to vary a condition

FILE NO: 2607/2018

HEARING DATE: 12 July 2018

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 12 July 2018

CATCHWORDS:

Application for review of a decision of the Commissioner’s delegate who refused an application pursuant to s 36(1)(f) of the Liquor Licensing Act 1997 for a condition on a club licence held by the applicant, Loxton Golf Club Inc to permit the sale of liquor for off premises consumption – Principles governing a review under s 22 discussed – The delegate conducted the hearing on the papers and the application drew an objection from a local hotel – At the hearing before the Court the application was revised to only include limited members, the hotel effectively withdrew its objection and it was supported by oral evidence – In the circumstances the Court resolved to hear the matter de novo – Meaning of “great inconvenience” as it appears in s 36(1)(f) discussed – Held that for two groups of members, being those who live in the opposite direction to Loxton and those who live near to the club a 16 kilometre round trip to Loxton to purchase take away liquor was in their circumstances a great inconvenience – Further held that in light of the revised application it was not necessary in the exercise of the Court’s discretion to refuse the application – Ss 22, 36 and 53 Liquor Licensing Act 1997.

Jackpots on Hindley [2009] SALC 35

Bell Pty Ltd & Ors v Motor Fuel Licensing Appeal Tribunal and Kalantzis & Kalantzis (1988) 50 SASR 39

Glossop Club Unreported, judgment delivered 29/11/91

Mount Osmond Golf Club [1995] SALC 37

Port Parham Social Club [1998] SALC 16

REPRESENTATION:

Counsel:

Applicant: Mr A Ling

Respondent: Ms Meaney

Solicitors:

Applicant: N/A

Respondent: Mellor Olsson

- 1 At the conclusion of an application for the review of a decision of the Commissioner's delegate I granted an application pursuant to s 36(1)(f) of the *Liquor Licensing Act 1997* for a condition on the club licence held by the applicant, Loxton Golf Club Inc to permit the sale of liquor for off premises consumption. These are my reasons for doing so.
- 2 The Loxton Golf Club is located in Loxton North, which is about eight kilometres north east of the town of Loxton. It has a club licence that permits it to sell liquor on the licensed premises for consumption on the premises within prescribed times.
- 3 Section 36(1)(f) of the Act empowers a licensing authority to include in a club licence a condition authorising the sale of liquor for off premises consumption, provided that the authority is satisfied that members of the club cannot, without great inconvenience, obtain supplies of packaged liquor from a source other than the club.
- 4 The club made an application to the Commissioner to seek such a condition. The application was refused by the Commissioner's delegate.

The delegate's decision

- 5 The delegate conducted the hearing on the papers. At the time of that hearing the application had drawn an objection from the Loxton Hotel.
- 6 In refusing the application, the delegate noted evidence of general trends that there had been a decrease in the number of the club's members consuming liquor at the club's premises and that more people choose to drink at home. The delegate noted evidence that some club members had expressed a preference to be able to purchase liquor from the club for take away consumption and that some members live in directions away from Loxton and would prefer not to have to make a special trip to Loxton to purchase take away liquor.
- 7 The delegate noted that the nearest take away liquor facilities were in Loxton. In the delegate's view, a ten minute drive from the club to those facilities was not "a great inconvenience" and was not "considerable troublesome".
- 8 The delegate was not satisfied that members of the club could not, without great inconvenience, obtain supplies of packaged liquor from a source other than the club.
- 9 The delegate then went on to note that in its written submissions the applicant said:

Now that residential housing close to the golf club has increased significantly and is continuing to do so, a much closer take away

liquor outlet will enable us to meet an increased demand. We also hope to entice new members to our club, and help underpin our club viability longer term.

- 10 The delegate expressed concern about this submission, noting that a club licence was never intended to be a take away liquor outlet nor was it intended to meet an increased demand for take away liquor.

The review hearing

- 11 The hearing before this Court was conducted as of right by application of s 22 of the Act which provides:

- (1) A party to proceedings before the Commissioner who is dissatisfied with a decision made by the Commissioner in the proceedings may apply to the Court for a review of the Commissioner's decision.
- (2) However, if the Commissioner's decision relates to a subject on which the Commissioner has an absolute discretion, the decision, insofar as it was made in the exercise of that discretion, is not reviewable by the Court.
- (3) An application for review of a decision of the Commissioner must be made within 1 month after the party receives notice of the decision or a longer period allowed by the Court.
- (4) A review is in the nature of a rehearing.
- (5) On a review, the Court may exercise any one or more of the following powers:
 - (a) affirm, vary or quash the decision subject to the review;
 - (b) make any decision that should, in the opinion of the Court, have been made in the first instance;
 - (c) refer a matter back to the Commissioner for rehearing or reconsideration;
 - (d) make any incidental or ancillary order.

- 12 In *Jackpots on Hindley*,¹ Judge Soulio applied the following passage from the judgment of King CJ in *Bell Pty Ltd & Ors v Motor Fuel Licensing Appeal Tribunal and Kalantzis & Kalantzis* as the guiding principles as to how this Court should conduct a review under s 22 of the Act:

¹ [2009] SALC 35

I think that the appeal created by s 22 is an appeal by way of rehearing but that the Appeal Tribunal has been endowed by implication with authority which is wide enough to enable it to fashion its procedures to meet the circumstances of the case. Where there is a full hearing before the Board as here, it is proper for the Appeal Tribunal to conduct the appeal on the documents and the record of the evidence and arguments before the Board, admitting only such additional evidence as it considers to be necessary to decide upon the substantial merits of the case. Where, however, there is no hearing, an appeal by way of hearing de novo would generally be necessary.²

- 13 These are the principles that I applied in this case.
- 14 In the hearing before this Court the club clarified its application. It made it clear that that it was not seeking a condition allowing sale for off licence consumption to all its members, which could include social or temporary members. Its application was limited to permit sale to full members, country members and life members. In its application before me, it said that the club only opens on Wednesdays, Friday evenings, Saturdays and some Sundays with very occasional openings during the week on corporate cup days. It stressed that its bar was generally only open three days a week and that at rare occasions it might be open on five days in a week. The more limited application allayed concerns expressed by the hotel that the club was seeking to become a de facto take away liquor facility. Accordingly, the hotel effectively withdrew its objection.
- 15 Unlike the delegate, I had the benefit of hearing oral evidence for Mr Geoffrey Ling, a life member and immediate past president of the club and its current bar manager.
- 16 In light of what I regarded as a revised application and the fact that I heard oral evidence and the delegate did not, in conformity with King CJ's judgment in *Bell Pty Ltd & Ors*, and with great respect to the Commissioner's delegate, I resolved to deal with this matter de novo and to decide the case for myself.
- 17 Mr Ling said that the club has about 120 members. He said that it is not uncommon for members to want to have a drink after a round of golf, but increasing numbers wish to do so at home. In light of contemporary community views about drink driving that is understandable.
- 18 Mr Ling said that 40% of the members of the club do not live in Loxton and live in agricultural areas, 25 to 30 kilometres away from the club and in the opposite direction of Loxton. He said that these members do not

² (1988) 50 SASR 39 at 45

pass a take away liquor facility en route to where they live and that they do not have a take away liquor facility close to where they live. He said that for these members having to drive eight kilometres in the opposite direction to which they live after a visit to the club to purchase liquor in Loxton is a great inconvenience. He said that driving on country roads can be hazardous and that collisions with wildlife such as kangaroos were not uncommon.

- 19 He said that an increasing number of members live in recently developed properties across the road from the club. He said that these now number 14 and some would need to make a special trip into Loxton to purchase liquor. He said that many of these members were pensioners and retirees. He said that for them a round trip to Loxton to buy say a six pack of beer, when the time to make the purchase is taken into account, in all might take up to 30 minutes. He said that for them the time and expense associated with that trip constituted a great inconvenience.

Consideration

- 20 The meaning of “great inconvenience” as it appears in s 36(1)(f) of the Act was discussed by Judge Kelly in *Glossop Club* as follows:

Now whether all of this evidence amounts to great inconvenience (including matters of road safety, distances, time, financial ability and so on) must be a matter of degree and here I must say something as to the proper interpretation of the subsection. There must be clearly something more than mere inconvenience. The word “great” as defined in the Shorter Oxford English Dictionary bears, among other meanings - “In a great degree, to a great extent, greatly, exceedingly, highly, much, very.” When coupled with the word “inconvenience” I think the proper way to approach the interpretation of the words used in the Act is to regard them as meaning, in practical terms, an inconvenience which is very significant and real and something much more than of passing annoyance. Liquor supply must constitute a significant problem to the members of the Club before it could be said that they are greatly inconvenienced by being required to get their “take-off” supplies from places other than the premises of the Club.³

- 21 His Honour referred to this passage in two subsequent cases: *Mount Osmond Golf Club*⁴ and *Port Parham Social Club*.⁵
- 22 *Mount Osmond Golf Club* concerned an application to amend the conditions of a general facility licence. The golf club had previously traded under a club licence. Part of the application concerned an

³ Unreported, judgment delivered 29/11/91

⁴ [1995] SALC 37

⁵ [1998] SALC 16

amendment to allow for take away liquor sales. Judge Kelly resolved to deal with that application by reference to the golf club's previous club licence and he applied the principles he espoused in *Glossop*.

- 23 The evidence was that the golf club was situated many kilometres from the nearest liquor outlet and that its membership of nearly 1500 members lived in various areas of metropolitan and country South Australia, many of whom had often asked for there to be a take away liquor facility at the club. Judge Kelly found that those who lived in "the hills" have little inconvenience in purchasing take away liquor because they would pass or go close to a liquor outlet on their way home. He said that same could be said of those who lived in many of the suburbs identified in an exhibit that supported the application.
- 24 Judge Kelly said that it was only those members who lived in suburbs such as Beaumont, Mount Osmond, Linden Park and Glen Osmond, who might have to go to facilities such as the Feathers Hotel to collect their liquor supplies and then drive back home, would be inconvenienced in having to do so. But he thought requiring someone to drive maybe six or seven minutes was no more than a minor inconvenience. He said that a small number living in the immediate vicinity of the club would be greatly inconvenienced but found that their numbers were not sufficient to accede to an application to amend the licence to permit take away sales.
- 25 *Port Parham Social Club* concerned an identical application to the one at hand. The evidence was that members of the club living in Port Parham needed to travel to the Dublin Hotel, some nine kilometres away, to attend to their take away liquor needs. The club wished to offer its members the capacity to service that need so as to avoid that trip, which was on a potentially dangerous dirt road. Judge Kelly noted that many of the permanent residents were either retired or non-working. In all the circumstances, he was satisfied that a sufficient proportion of members were greatly inconvenienced and he granted the application.
- 26 For reasons of comity I would have followed the approach of Judge Kelly in *Glossop Club*. In any event, I agree with him that determining the issue of great inconvenience involves an evaluative judgment in respect of which matters such as road safety, distances, time, financial ability and the like are relevant considerations. I agree that something much more than passing annoyance is required. I also agree with his observation in *Mount Osmond Golf Club* that the mere fact that a small proportion of the members of a club may be greatly inconvenienced would not justify the granting of the application.
- 27 With these matters in mind I now turn to the evidence.

- 28 I thought that Mr Ling was an impressive witness and I accepted his evidence.
- 29 In this case 40% of the members of the club have to make a 16 kilometre round trip in the opposite direction to where they live to purchase take away liquor in conjunction with their visit to the club.
- 30 Another significant proportion of members who live near the club, many of whom are retirees or not working, have to make a 16 kilometre round trip to Loxton to purchase take away liquor at times when they might otherwise have no need to go there.
- 31 I formed the view that for these two groups of members this trip to purchase take away liquor involves much more than passing inconvenience.
- 32 I formed the view that a sufficient proportion of the members of the club cannot, without great inconvenience, obtain supplies of packaged liquor from a source other than the club, so as to justify the grant of the condition sought.
- 33 Had the club's application included social or temporary members, I would have had similar concerns to those expressed by the delegate. The extended condition that s 36(1)(f) permits is not intended to provide for a de facto form of retail liquor merchant's licence. Had this been the club's proposal, it might have been necessary for the Court to have exercised its discretion under s 53 of the Act⁶ to refuse the application. The club's clarified proposal allayed my concerns in that regard, such that I did not find it necessary to invoke s 53.

⁶ Section 53 of the *Liquor Licensing Act* provides: (1) Subject to this Act, the licensing authority has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).

(1a) An application must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest.