

*Liquorland (Islington North Shopping Centre)* [2013] SALC 64

## LICENSING COURT OF SOUTH AUSTRALIA

LIQUORLAND

**JURISDICTION:** Application for Retail Liquor Merchants Licence

**FILE NO:** 2662 of 2013

**HEARING DATE:** 26 September 2013

**JUDGMENT OF:** His Honour Judge BP Gilchrist

**DELIVERED ON:** 26 September 2013  
(Reasons published on 15 October 2013)

*Application for a retail liquor merchant's licence - Whether the licensed premises that already exist within and in the vicinity of the proposed facility are adequately catering for the public demand for takeaway 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 the public interest does not require the refusal of the application in the exercise of the court's discretion - Ss 53, 57 and 58 Liquor Licensing Act 1997*

*Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* (2000) 76 SASR 290

*Nepeor v Liquor Licensing Commission* (1987) 46 SASR 205

*Woolworths Limited* [2013] SALC 23

*Harding Hotels v Jatadd Pty Ltd* (2001) 81 SASR 222

### REPRESENTATION:

Counsel:

Applicant: Mr M Roder SC with Mr R Harley

Solicitors:

Applicant: Hunt and Hunt Lawyers

- 1 On 27 September 2013 I granted an application by Liquorland (Australia Pty) Ltd for a retail liquor merchant's licence in respect of premises to be constructed within the Islington North Shopping Centre, Churchill Road, Kilburn. These are my reasons for doing so.
- 2 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.
- 3 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.
- 4 None of these matters were in issue.
- 5 The proposed facility is a walk-in bottle shop that will be well stocked and presented. It will be within a new major shopping centre that is currently under construction on the western side of Churchill Road at Kilburn, just north of the junction of Churchill Road and Regency Road. The area under development is immediately to the north of a group of heritage listed buildings that formed part of the Islington Railway Complex. Stage 1 of the Shopping Centre will include a K-Mart and a Coles Supermarket as well as 50 specialist stores, including the proposed facility.
- 6 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.
- 7 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 this provision.
- 8 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.

- 9 In determining whether this test has been met licensed premises within and outside the boundaries of the locality had to be considered.<sup>1</sup>
- 10 West of the Shopping Centre is the Adelaide/Gawler railway line. In terms of locality this is plainly a natural barrier that often referred to in the cases.<sup>2</sup> So too is Grand Junction Road to the north, Main North Road to the east, and Regency Road to the south. I found these to be the boundaries of the relevant locality. Midway between the east and western boundaries is Prospect Road, which runs from south to north.
- 11 This area comprises of the suburbs of Kilburn and Blair Athol and part of Prospect. Historically it contained many industrial premises. It has now become increasingly residential. In 2011 it comprised of 11,000 residents. It is a developing area. The population has in all probability increased since then.
- 12 Within the locality there is only one bottle shop, a BWS store on Main North Road, Blair Athol. There are three other takeaway facilities, all of which are attached to hotels. The Albion, on the eastern side of Churchill Road, just north of the Shopping Centre; the Empire, which is due west of the proposed facility on Prospect Road; and the Gepps Cross, on the corner of Main North and Grand Junction Roads. Just outside of the locality is the Reephram, on the corner of Regency and Churchill Roads.
- 13 All are typical suburban hotel takeaway facilities that carry a limited range of products.
- 14 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 takeaway liquor from a hotel and would prefer to make their purchases from a dedicated retail facility. I also said that it might be expected that among the 12,000 people that lived within the locality there under consideration that a fair number of them could be expected to desire to make their takeaway liquor purchases from a facility that is not attached to a hotel.<sup>3</sup>
- 15 Those observations are apposite here.
- 16 There is a Celebrations Bottle shop on Churchill Road, about 1.5 kilometres south of the edge of the locality. There is another BWS store on south eastern edge of the locality within the Sefton Park Shopping Centre. Whilst these might be expected to be used for those

---

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

<sup>2</sup> *Nepeor v Liquor Licensing Commission* (1987) 46 SASR 205

<sup>3</sup> [2013] SALC 23 at para 92

living at the south of the locality and to be relatively convenient for them, the same would not be true for those living towards the north.

- 17 Having reflected upon the matter I regarded them as sufficiently distant and inconvenient for many of those living within the locality as to be irrelevant.
- 18 The real issue for me was the adequacy of the Albion and the BWS store on Main North Road, Blair Athol in meeting the public demand for those living in the locality.
- 19 My inspection of the takeaway facility at the Albion led me to dismiss this as not particularly relevant. While it clearly serves a purpose, the walk-in section was so small and had such a limited range it was obvious that it did not adequately cater the relevant public's demand for liquor.
- 20 That left the BWS store on Main North Road. Mr Sean Doonan, the State manager of SA/NT Coles Liquor, very fairly acknowledged that this store had a comparable range to the proposed facility; that it provided good service; and that it had an extended beer and RTD range.
- 21 Importantly, it will be observed that the BWS store is at the western edge of the locality and for many living within the locality it could involve round trips of 5 kilometres.
- 22 In determining its adequacy I thought that the evidence of residents was telling.
- 23 Ms Lovick, who lives in Prospect, towards the southern edge of the locality, did not know it existed. She said that she never had any reason to travel to that area.
- 24 Ms Holen, who lives between Prospect Road and Churchill Road, spoke of the inconvenience of travelling to this store, involving as it does for her, having to cross Prospect Road. She said:

“It is always a special trip to do that and is extremely inconvenient. The situation is not helped by having to cross Prospect Road on the way to that store and back again to my home.”<sup>4</sup>
- 25 Even though he lives much closer, Mr Smith also expressed the view that access to the BWS store was inconvenient for him.

---

<sup>4</sup> Exhibit A4 at para31

- 26 I appreciated that witnesses like these might be said to be “hand picked”. But it does not follow that such evidence should be ignored. In *Harding Hotels v Jatadd Pty Ltd*, Doyle CJ explained as follows:

“This court has previously referred to the desirability of the Licensing Court having regard to objective features of the locality, the make up of the population and the courts own expertise, when assessing the demand for liquor, and not paying undue regard to evidence of demand from witnesses. This is because of the way in which witnesses can be hand picked and because of the subjective nature of their evidence: See for example (2001) 80 SASR 50 at 74. On the other hand, the calling of witnesses from the locality is a permissible means of proving that the public demand for liquor is not adequately catered for by existing premises in the locality. Perhaps, the main point to emphasise is the need to pay careful attention to the objective features of the locality, and the make up of the local population, when considering whether the need witnesses are representative of a significant part of the public in the locality”.<sup>5</sup>

- 27 I thought that this was precisely the situation here. The evidence of these witnesses reflected the objective features of the locality. Very few of the roads running from west to east in the west of the locality between Churchill and Prospect Road permit direct access to Main North Road. Thus people living in that area who travel by car who wish to use the BWS store on Main North Road would find it a difficult or long journey. They could weave through the roads leading to Prospect Road, cross Prospect Road and then embark upon a similar exercise in getting to Main North Road. Alternatively, they could drive down to Churchill Road to Regency Road, travel east along Regency Road and then turn left into Main North Road to access the BWS store and on the return journey travel up the Grand Junction Road, turn left there and left again into Churchill Road. Going in the other direction would be difficult as it would involve either crossing Main North Road by foot to access the store or making a right hand turn across main North Road. At that point Main North Road can be particularly busy, making crossing the road, either by foot or by car, a challenge.
- 28 I thought it likely that many people live in the area to the extreme north and south of the locality and those living west of Prospect Road would have to traverse distances and encounter inconvenience in accessing the BWS store at Blair Athol that could be fairly described

---

<sup>5</sup> [2001] SASC 439; (2001) 81 SASR 222 at 227

as involving “more than the sort of mere inconvenience that is a part of daily life for people in the locality”<sup>6</sup>.

- 29 I concluded that the number of people that fall within this category was significant.
- 30 I found that collectively the takeaway facilities that I have identified do 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.
- 31 As to the issue of discretion, as I have said previously, a relevant consideration in determining this is clear evidence that has emerged from many cases of the community’s wish for one-stop shopping. It led me to say when I granted this application that the public interest does not require the 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 takeaway liquor purchases with their supermarket shopping.
- 32 Counsel is to forward draft minutes of order.

---

<sup>6</sup> *Woolies Liquor Stores Pty Ltd v Seaford Rise Tavern* [2000] SASC 116; (2000) 76 SASR 290 at 297-8