

Decision No. QLDLC Hearing 0907/2024 (OF431) & 0910/2024 (ON930)

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **GANTLEY'S
(1865) LIMITED trading as
"GANTLEY'S TAVERN"**
pursuant to s.100 of the Act for a
new on-licence and new off-
licence.

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr LA Cocks
Members: Mr PM Jones
Mr CJ Cooney

HEARING at QUEENSTOWN on 2nd September 2024

APPEARANCES

Ms KW Murray – Representing Gantley's (1865) Ltd – applicant
Ms C Cook – Gantley's Tavern Operations Manager - applicant
Ms T J Surrey – Counsel for the applicant
Ms JE MacDonald – Counsel for the applicant
Ms S Swinney – Queenstown Lakes District Council (QLDC) Licensing Inspector – to assist
Ms A Elvin-Blair – QLDC Monitoring and Enforcement Officer - Witness
Ms AE Smyth – Medical Officer of Health – to assist
Sergeant SJ Matheson – NZ Police – to assist

DECISION OF THE COMMITTEE

Introduction.

1. Before the Committee is an application by Gantley's (1865) Limited trading as 'Gantley's Tavern' (the applicant) for a new on-licence and new off-licence in respect of premises situated at 172 Arthurs Point Road, Arthurs Point, Queenstown. The application was received by the Queenstown Lakes District Licensing Agency (the Agency) on the 22nd January 2023. The applicant intends to operate the premises pursuant to a 'Tavern' style licence with a 'High' 907risk rating. The hours sought for the on-licence are (inside and outside) Monday to Sunday from 8:30am to 1:30am the following day. For the

off-licence the hours sought are Monday to Sunday from 8.30am to 11.00pm for off-sales across the bar (There is no stand-alone bottle store).

2. The applicant company has three directors and shareholders as follows:
 - a. Courtney Elaine Cook = 5% share allocation;
 - b. Katherine Ward Murray = 5% share allocation; and
 - c. Euan James Paterson = 90% share allocation.
3. Mr Paterson was convicted of driving with excess breath alcohol on 17th October 2023 in relation to an offence on 8th July 2023.
4. The premises has a very long history dating back to c.1865 and has had several renovations and extensions over the years. It has been operating as a licensed premises for many years.
5. The premises has a variety of areas with capacity for 134 guests inside and around 90 people outside. Detailed floor plans were provided with the application.
6. The premises are located in the Rural Visitor Zone (Operative District Plan) and High-Density Residential Zone (Proposed District Plan). It is a well established mixed use area and six residential apartments have been built on the eastern neighbouring property to Gantley's Tavern, along with the Swiss-Bel Hotel across the road.
7. The Building Code Compliance was approved on 14th May 2024. The premises operate pursuant to existing use rights as applied when the activity was lawfully established but confirmation was received from the QLDC Planning team on 4th July 2024 that the applications also met the requirements under the subsequent resource consent RM010076.
8. The application did not generate any public objections. There was no opposition from the Police or the Medical Officer of Health, although they did question the suitability of the applicant and commented on noise complaints and the need to be mindful of impacts on neighbours. The report from the Inspector was not unfavourable.
9. Eleven noise complaints have been lodged since the applicant has been operating the premises and this is the catalyst for this hearing and a notice of hearing was subsequently issued for the 2nd September 2024.

The Applicant

10. Ms Surrey provided a comprehensive description of the mixed-use area with maps showing the layout of businesses and residential activities. She submitted that the object of the Act will not be compromised by the operation of these on and off licences in this area, and the applicant is a suitable entity.
11. With regard to Mr Paterson's conviction bringing into question the suitability of the applicant, Ms Surrey submitted he is not involved in the sale and supply of alcohol and does not hold a Manager's Certificate. Ms Cook supported this in her evidence stating Mr Paterson's role is finance, ordering, and maintenance.
12. Ms Surrey highlighted there is no statutory definition of 'suitability' and provided case law to support her contention that this conviction should not influence the suitability assessment of the applicant. She also noted there was no opposition by the Police or Medical Officer of Health.
13. Ms MacDonald acknowledged there had been noise complaints but disputed what was reported by the Inspector regarding actions taken by Noise Control and subsequent communication. She emphasised the applicant does not shirk

from responsibilities re noise, and this is reflected in its Noise Management Plan and in the email trail with Council showing willingness to co-operate and comply.

14. Ms Murray and Ms Cook provided detailed evidence as to how the complaints had been dealt with and action taken through a Noise Mitigation Plan that was put in place in December 2023. They emphasised all the noise complaints had come from one household and based on communication with other neighbours, no one else had issues, and there have been no further complaints since the last complaint on 21st June 2024.

The Police

15. Sergeant Matheson submitted that Police did not oppose the application and there was no history of issues with the operation of the Gantley's Tavern. He did however question the suitability of the applicant due to Mr Paterson's conviction and suggested this should be further investigated.

The Medical Officer of Health

16. Ms Smyth submitted the Medical Officer of Health did not oppose the application, but did express some concern as to the accuracy of information provided regarding noise complaints.

The Inspector

17. Ms Swinney considered the noise related issues have been dealt with by the Monitoring and Enforcement teams' intervention. She confirmed a Noise Management Plan has been provided with the application, and adherence with this plan would be evaluated in the licence renewal process after one year.
18. Evidence was provided by Ms Elvin-Blair, QLDC Monitoring and Enforcement officer. She provided detail of the monitoring and enforcement process and gave a timeline and brief of all the complaints made against Gantley's Tavern between 30th November 2023 and 21st June 2024. Ms Elvin-Blair acknowledged some inconsistent action by the Noise Control Officers but she had addressed all issues and mitigation measures with Ms Cook and considered the noise concerns had been addressed at this point. Any justifiable noise concerns in the future would be assessed by at least two Monitoring and Enforcement Officers.

The Committee's Decision and Reasons

19. The Committee considered all the evidence and submissions presented at the hearing and is satisfied the noise concerns have now been adequately dealt with and the applicant has put in place appropriate mitigation measures through its Noise Management Plan to minimise the impact of noise from Gantley's Tavern. In view of this and taking account of the mixed-use activities in this area, we do not believe the amenity and good order of the locality will be reduced, to more than a minor extent. We note the success of these measures and any affect on

the good order and amenity of the area will be evaluated in the renewal process one year from now.

20. With regard to the question of suitability of the applicant due to one of the Directors/Shareholders (Mr Paterson) being convicted of a drink driving offence within two years, we accept the evidence that Mr Paterson is not involved in the sale and supply of alcohol and does not hold a Manager's Certificate. His role is recruiting, ordering, and maintenance.
21. As stated by Holland J in *Re Sheard*:

"To refuse an application for an on-licence on grounds of suitability the Authority has to be satisfied on balance of probabilities that the character of the applicant has been shown to be such that he is not likely to carry out the responsibilities that go with the holding of a licence."

We acknowledge the conviction is a blot on Mr Paterson's character, but do not consider it to be such that he is unlikely to carry out the responsibilities that go with holding a licence.

22. The Committee has considered the criteria in accordance with s.105 of the Act and grants the application by Gantley's (1865) Limited trading as "Gantley's Tavern", for a new on-licence and new off-licence.
23. The applicant's attention is drawn to s.56, s.57 and 214(3) of the Act obligating the holder of an on and off licence to display:
- a. a sign attached to the exterior of the premises, so as to be easily read by persons outside each principal entrance, stating the ordinary hours of business during which the premises will be open for the sale of alcohol;
 - b. a copy of the licence and of the conditions of the licence attached to the interior of the premises so as to be easily read by persons entering through each principal entrance; and
 - c. the full name of the manager on duty must be prominently displayed inside the premises so as to be easily read by people using the premises.

DATED at Queenstown this 9th day of September 2024.



L.A. Cocks
Commissioner
Queenstown Lakes District Licensing Committee

