

Decision Notification

Application Details

Application no.	217405, 217404, 217529
Licence No.	57311779
Licence Class	Restaurant & Catering
Premises Name	Good Gilbert
Premises Address	135b Goodwood Road GOODWOOD SA 5034
Licensee	Good Gilbert Pty Ltd
Application Type	Variation to Conditions (Upgrade), Application for Extension of Trading Area (S 69), Application for Redefinition

Outcome

Decision	Granted
Effective Date	07 Oct 2022

Requirements

The following requirements in support of the application have been satisfied:

- Landlord's consent has been obtained
- All approvals, consents or exemptions have been obtained
- The application for variation to conditions has been advertised

Premises

Capacity

- The capacity of the venue is set at 95.
- The capacity of the licensed premises is increased from 50 persons to 95 persons.

Alterations/Redefinition

I redefine the licensed premises to include 135c Goodwood Road, Goodwood in accordance with the plan lodged with the application.

The licensed area is outlined in red on the approved plan.

Licence Plan

The licence currently provides authorisation for the licensee to sell and supply liquor in an area adjacent to 135b Goodwood Road, Goodwood for consumption in that area.

This authorisation is extended to include the area adjacent to 135c Goodwood Road, Goodwood for consumption in that area, as outlined in red on the approved plan.

Reasons for Decision

In reaching my determination, I have had regard to the objects of the *Liquor Licensing Act 1997*.

Good Gilbert Pty Ltd (**the Applicant**) has applied for the redefinition of the licensed premises, an extension of the trading area, and a variation to the conditions of Restaurant and Catering licence situated at 135b Goodwood Road, Goodwood SA 5034.

The application for variation to conditions was sought to increase the capacity of the licensed premises.

Pursuant to section 52 of the *Liquor Licensing Act 1997* (the Act) the applicant was required to advertise the application for variation to conditions.

Pursuant to section 77 of the Act a submission may only be made in relation to an advertised application.

Pursuant to section 77 of the Act the following persons have lodged submissions opposing the grant of the application for variation to conditions to increase the capacity:

Fiona Mansfield

Emily Mansfield

Geoffrey Mansfield

Suzanne Hall

Peter Raidel

The concerns raised in the submissions have been made on quite similar grounds and therefore I will summarise them collectively and address them together.

I note that some of the submissions made opposing the grant of the application also include historical information relating to noise and disturbance from the licensed premises. One submission includes details of alleged mismanagement of the outdoor dining area.

I have undertaken searches to check whether any noise complaints have been lodged pursuant to section 106 of the Act with the Authority, and note that no such application has been made and there is no record of the Authority having conciliated any noise complaints in relation to the Applicant.

Section 106 states:

106—Complaint about noise etc emanating from licensed premises

(1) If—

(a) an activity on, or the noise emanating from, licensed premises; or

(b) the behaviour of persons making their way to or from licensed premises,

is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity of the licensed premises, a complaint may be lodged with the Commissioner under this section.

(2) A complaint under this section may be lodged by—

..

(c) a person claiming to be adversely affected by the subject matter of the complaint.

(3) A complaint cannot be made under subsection (2)(c) unless—

(a) the complainant is authorised to make the complaint by at least 10 persons who reside, work or worship in the vicinity of the licensed premises; or

(b) the Commissioner is satisfied that the nature or gravity of the complaint is such that it should be admitted despite non-compliance with paragraph (a).

In addition to this I also note that no complaints have been made to the Authority in relation to the licensed premises nor have there been any recorded breaches for the premises.

Lodging a submission against an application is not an avenue to address current or historical noise issues from the licensed premises, nor is it a platform to report alleged mis-management of outdoor dining.

There are mechanisms under section 106 the Act to remedy situations where undue noise, disturbance or offence occurs.

When determining an application, the Act requires me to consider whether granting the application would result in undue offence, annoyance, disturbance or inconvenience to people who reside in the area.

Capacity

The Objectors have raised concerns that the increase to capacity will only further increase noise, music and unsociable behaviour.

One objector has submitted that the increase in patron numbers is completely unreasonable and inappropriate for the location and the increase to capacity will undoubtedly have a greater impact on their household.

Another objector has submitted that the capacity is already excessive in a residential street in the suburbs. The same objector has submitted that a percentage of the licensed area is outdoors which has an additional noise impact on their household.

The Applicant had applied for a capacity of 127 persons. Under section 51(3) of the Act, I have allowed the Applicant to vary the application, to reduce the proposed capacity of the premises to 95. This is consistent with the planning approval provided by the City of Unley. It is to be noted that the outdoor dining portion of the licence application is not included in the number of persons accommodated in the calculation for the building rules assessment and consent.

The licence currently provides approval pursuant to section 69 of the Act. Section 69 of the Act allows the Authority to extend the authority conferred by the licence so that the licensee is authorised to sell liquor in a place adjacent to the licensed premises for consumption in that place.

Section 69(3) of the Act, provides that an authorisation cannot be granted under this section unless, if the relevant place is under the control of a council - the council approves the application. As this area is under the control of the council, the council is responsible for setting trading hours for the use of the area and a capacity for the area.

Noise and disturbance

A number of Objectors have raised concerns with music being played from the premises and that an increase to capacity may result in an increase to the music emanating from the premises.

One objector has submitted “that loud stereo music is played through to 1am especially with powerful low frequency bass. We have to sleep with earplugs and could write the playlist of the music as it is so clear in our house on some nights.”

Another objector submitted that “I would classify Good Gilbert far more like a nightclub than a bar most nights of the week when it is late – extremely loud music with very deep bass that thumps through our house and prevents us all from sleeping until early in the morning, which significantly impacts on our wellbeing and quality of life. Even with

earplugs and a pillow over your head, the bass is to a level where it is not possible to sleep.”

This has been re-iterated by another objector who has submitted that “Our major problem is the base from the sound system that can enter every room of our house. The party atmosphere and noise varies during the day, from night to night and hour to hour but often builds to its crescendo at 1am.”

A number of objectors have raised issues with noise and disturbance from patrons frequenting the premises.

One objector has submitted that noisy parties make their way past our house after a night of drinking and assert that their children sleep in one of the front bedrooms.

Another objector has raised similar concerns stating that an increase of capacity will result in an increase in noise as patrons leave the venue. We already have loud goodbye conversations outside our bedroom windows.

This has been re-iterated by another objector that has submitted that they already experience many merry groups of patrons noisily making their way past our house after midnight.

In relation to the statement contained in one of the submissions that:

“The drinkers that visit Good Gilbert introduce another problem. I no longer feel safe walking home from the bus stop on Goodwood Road to my house as a young woman, because drunk revellers spill out of Good Gilbert up the street, vomiting/pissing in the gutters, smoking on the ledge next to our house, yelling while walking up the street to their cars etc.”

There are mechanisms under section 106 of the Act to remedy situations where the behaviour of persons making their way to or from licensed premises, is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity. It is also noted that the statement includes matters that would require a response from the South Australian Police.

Parking

Two objectors have submitted that there are various parking issues in the area and have submitted that there is inadequate parking available.

In relation to the concerns raised in the submissions about potential parking issues at the premises this is a planning related matter and therefore, in accordance with section 77(3) of the Act I am not required to consider this.

Applicant’s response to submissions

In response to the submissions the Applicant has submitted that the increase to capacity is sought to incorporate the adjacent tenancy. That the adjacent tenancy will be utilised as a formal dining space to show case the creativity of their talented chefs. The applicant has detailed that the business has won and been nominated for awards in relation to its food.

The Applicant has submitted that they “have invested in new windows and frames which are rated for higher sound absorption, meaning it is less likely to transfer externally. We have also opted that all the furniture be built in soft woods, with lots of pleather and upholstery to ensure as much sound is captured and dampened internally.”

The Applicant has also submitted that the external speakers present on the adjacent tenancy to which they are expanding into have been removed from the premises.

The Applicant goes on to submit that “we take decibel readings twice a day from outside number 42, a practice which has been in place since June last year. In all circumstances it has been recorded at well below legal noise levels”.

In regard to patrons leaving the premises vomiting and urinating, the Applicant has submitted that they are not aware of, nor have they witnessed any such behaviour.

In relation to the submission made by one objector that they no longer feel safe commuting on foot near the premises. The applicant has submitted that they are shocked to hear this and submit that the premises is a safe destination.

The Applicant submits that “Our plan is, to ensure that all times, all areas of the business (inclusive outside) is fully staffed to ensure that remains presentable, respectable, and that all customers are kept in an orderly manner.”

Decision

The Act requires me to consider whether granting the application would result in undue offence, annoyance, disturbance or inconvenience to people who reside in the area, a prominent concern raised by a number of objectors. The Licensing Court has discussed 'undue noise' on many occasions, with it being held that for the noise to be undue it must be excessive or beyond what is appropriate or natural, and that residents should expect to tolerate a degree of disturbance or inconvenience in the interest of the community having access to a licensed premises.

I acknowledge the submissions made by the objectors and have considered these when determining the application.

I have also considered the direction of the Licensing Court and I do not believe there is sufficient evidence to conclude that the granting of the application would cause undue offence, annoyance, disturbance or inconvenience to nearby residents.

The licence was granted in August 2015. The application for licence did not attract any objections.

I note that one objector has submitted that over time the numbers and hours have increased and that they have not been advised or consulted with as these changes have occurred.

I note that in February 2017 and October 2017 there were variations made to the capacity and hours of the premises. These applications were advertised in accordance with section 52 of the Act. The Authority did not receive any objections to these applications.

As the Authority has not received any complaints or a s 106 application for conciliation of complaint, I do not believe I can conclude that the noise from the licensed premises, is excessive or beyond what is appropriate or natural. I also do not believe, I can conclude from this, that the licensed premises is causing undue disturbance or inconvenience.

I am also mindful that the Licensing Court has stated that residents should expect to tolerate a degree of disturbance or inconvenience in the interest of the community having access to a licensed premises.

After considering the content of the application, the concerns raised in the submissions opposing the grant of the application, and the Applicants response to the submissions, I am of the opinion that the application should be granted.

Premises address

The premises address is amended to 135b & 135c Goodwood Road, Goodwood. The licence is updated accordingly.

Under Delegation from the Liquor and Gambling Commissioner



Jane Widdowson
Hearings Delegate
07 Oct 2022

