

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of an application by NICHOLAS WARNER O'CALLAGHAN pursuant to s.18 of the Act for renewal of an on-licence in respect of premises situated at 442 Richmond Road, Grey Lynn, Auckland, known as "Warners Corner"

AND

IN THE MATTER

of an application pursuant to s.132 of the Act for cancellation of on-licence number 007/ON/80/97 issued to NICHOLAS WARNER O'CALLAGHAN in respect of premises situated at 442 Richmond Road, Grey Lynn, Auckland, known as "Warners Corner"

BETWEEN

RICHARD WARNE McDOWELL  
(Police Officer of Auckland)

Applicant

AND

NICHOLAS WARNER O'CALLAGHAN

Respondent

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge J P Gatley  
Members: Mr R J S Munro  
Mr J W Thompson

HEARING at AUCKLAND on 23 February 1999



## APPEARANCES

- |                      |   |  |
|----------------------|---|--|
| Sergeant M J Lopdell | - | NZ Police - on behalf of applicant for cancellation and in opposition to renewal                                       |
| Mr W J Perring       | - | Auckland District Licensing Agency Inspector - in support of application for cancellation and in opposition to renewal |
| Mr J H Wiles         | - | for licensee/respondent  |
| Mrs J Stuart         | } | in person in opposition  |
| Mr J Sturm           | } | to renewal   |

## DECISION

We have before us two applications:-

1. An application by Nicholas Warner O'Callaghan dated 4 May 1998 for renewal of an on-licence in respect of premises situated at 442 Richmond Road, Grey Lynn, Auckland, known as "Warners Corner", and
2. An application by the Police dated 3 September 1999 pursuant to s.132 of the Act for cancellation of the above on-licence being on-licence number 007/ON/80/97.

We set out in full the grounds of the Police application for cancellation incorporating amendments made at the hearing:

*"Grounds of Application.*

*(a) That the licensed premises have been conducted :*

*(i) In breach of the following provisions of the Act :*

*Section 4(1) [Object of the Act ]*

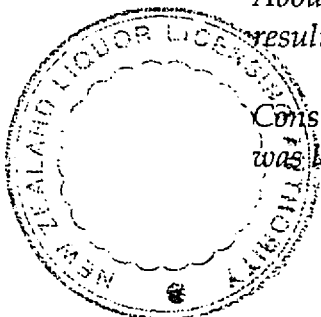
*Section 171 [Allowing person on licensed premises outside licensing hours x2]*

*And in particular it is alleged as follows :*

*Nicholas Warner O'Callaghan holds a restaurant style licence in his own name. The premises are known as 'Warners Corner.' Licensed hours being Monday to Sunday 11.00am to 11.00pm.*

*About 1.50am on Monday 19 January 1998 Police visited Warners Corner as a result of a complaint that the premises was operating outside their licensed hours.*

*Constable RAWLINSON and another officer went to the main entrance, the door was locked.*



The licensee Nicholas O'Callaghan came to the entrance and allowed the Police to enter.

Police observed approximately 10 patrons in the restaurant. They were consuming beer and wine, and appeared to be intoxicated. Partly filled bottles of wine were on the tables.

O'Callaghan stated these people were his friends, and he had not sold alcohol to them.

There was no sign of food present.

About 9.45am on Sunday 15 February 1998 Police were called to Warners Corner as a result of a complaint that the premises were open outside their licensed hours.

Upon arrival Constable Karl and another officer found the front door locked. They entered the premises from the rear.

Police observed approximately 10 patrons on the deck area consuming alcohol. Inside the premises Police found approximately 10 patrons also consuming alcohol. Wine bottles were on the tables, and the patrons were in various stages of intoxication.

The two separate groups did not appear to be associated, and appeared to have been on the premises for a considerable length of time.

The licensee Nicholas Warner O'Callaghan stated all the persons present were his friends, they had been on the premises for 30 minutes, and he had supplied them with the alcohol.

O'Callaghan was informed this was a breach against the Sale of Liquor Act.

**(b) That the conduct of the Licensee is such as to show that he is not a suitable person to hold the licence; and in particular it is alleged as follows:**

About 1.20am Sunday 19 July 1998 Constables Foote, McCarthy and Boyd were on plain clothes beat patrol in Downtown, Auckland.

At this time they were making an unrelated enquiry at 6 Gore Street. Upon entering the building Police noticed a staircase illuminated by candles. They walked up approximately 3 flights of stairs and entered an open door, which gave access to an apartment.

The strong smell of cannabis was emanating from the apartment.

Approximately 200 people were partying in a large room. It appeared to be a gangster party. Approximately 80% of the people inside were smoking cannabis.



*A bar was set up in a corner. There were prices of alcohol on the wall, and alcohol was being sold.*

*Police entered what appeared to be a bedroom. This room contained approximately 8 people. Three of them were snorting white powder from a mirror with a \$10.00 note. This powder was methamphetamine, otherwise known as speed. The remaining people in the room were smoking cannabis and inhaling cannabis oil.*

*Due to lack of Police resources the Constable decided to deal with the persons in the bedroom committing drug offences. Police were unable to deal with the unlicensed bar.*

*Constable Foote approached and spoke to Nicholas Craig Warner O'Callaghan. O'Callaghan stated he was renting the apartment with 2 other people, and the bedroom was his.*

*Located on O'Callaghan was a small plastic bag containing methamphetamine, speed. Located on the bedroom floor were two knives used for spotting cannabis oil, and two plastic bags containing small amounts of methamphetamine.*

*Also located on the floor were liquor receipts made out to Warners Corner.*

*O'Callaghan was arrested and charged with:*

*Possession of Class B ( Methamphetamine )  
Possession of Cannabis Instruments.  
Permits premises to be used ( class b)  
Permits premises to be used ( class c)*

*On 5 November 1998 O'Callaghan appeared at the Auckland District Court*

<i>Possession of Class B</i>	<i>Convicted &amp; fined \$200.00</i>
<i>Possession of cannabis instruments</i>	<i>Convicted and Discharged</i>
<i>Permits premises to be used x 2</i>	<i>Withdrawn in lieu of a guilty plea in regard to the other offences.</i>

*...*

*The Strategic Liquor Licensing Unit only became aware of the drug convictions in mid January 1999. This is the reason for the delay in the application to cancel the liquor licence of O'Callaghan."*



### Renewal of On-licence

The present licence authorises the sale of liquor Monday to Sunday 11.00 am to 11.00 pm. In the renewal application Mr O'Callaghan seeks to extend trading hours to Monday to Sunday 9.00 am to 12.30 am the following day.

### Criteria for Renewal

Section 22 of the Sale of Liquor Act 1989 provides:-

*"22. Criteria for renewal-In considering any application for the renewal of an on-licence, the Licensing Authority shall have regard to the following matters:*

- (a) The suitability of the licensee:*
- (b) The conditions attaching to the licence:*
- (c) The manner in which the licensee has conducted the sale and supply of liquor pursuant to the licence:*
- (d) Any matters dealt with in any report made under section 20 of this Act."*

### Grant of original On-licence

Mr O'Callaghan's original application for an on-licence was the subject of an opposed hearing before the Authority in Auckland on 11 March 1997. We quote from our Decision 664/97 granting the application:-

*"By Auckland City letter dated 30 July 1996 the applicant for a licence was granted a non-notified restricted discretionary activity land use application to establish and operate a restaurant on the above site.*

*The objectors who recorded an appearance .... were concerned to ensure that if the licence sought is granted the premises only operate as a restaurant and that the amenities of the neighbourhood are not disturbed by music from the proposed restaurant. Basically the objectors were anxious to ensure that the premises only operate in compliance with the resource consent.*

*Mr O'Callaghan accepted that if the licence sought is granted loud speakers would not amplify music outside the restaurant building and liquor would not be served or consumed in the outside area.*

...

*The applicant originally sought trading hours of Monday to Sunday 11.00 am to 1.30 am the following day. Having regard to the site of the restaurant in relation to neighbouring residential properties we accept the recommendation of Mrs Carr that hours of Monday to Sunday 11.00 am to 11.00 pm are appropriate.*

*We have decided to grant the application for a probationary period of 12 months. We emphasise that the licence only authorises the sale and consumption of liquor*



*on the ground floor of the building and inside the building. The licence will not authorise the operation of a function venue."*

The licence issued on 6 June 1997 for a period of 1 year.

### **Reports**

In a report on the application for renewal Mr W J Perring, Auckland District Licensing Agency Inspector, noted that the application had attracted objections from neighbouring residents to the effect that the premises had been operating in breach of the resource consent. Mr Perring's report included:-

*"During a personal visit to the premises on 3 July 1998, I spoke to Nicholas Warner. The licence required to be on display at the principal entrance was not on display. Warner told me that it had been taken by his solicitor. Since the incident in January when he was living upstairs on the premises, he had now moved to accommodation more appropriate to his life style in a Downtown Warehouse building. Duty Manager present during my visit was Jane Hulme the holder of a General Manager's Certificate 2290/97.*

*This application for renewal of On Licence 007/80/97 has attracted objections. There is opposition to the suitability of the applicant to hold a licence. The renewal will be required to be determined by the Authority at a public hearing."*

A Police report dated 7 August 1998 signed by Constable R W McDowell included:-

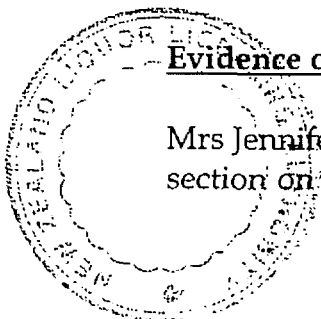
*"12.15am, 3 September 1997. Constable R McDOWELL visited the premises. Located 4 persons drinking alcohol inside restaurant. Spoke to licensee Nicholas O'Callaghan, he informed Police they were friends and he had supplied them with alcohol. No licence or hours of operation displayed. O'Callaghan was warned and advised of requirements under the Sale of Liquor Act.*

...

*6.25pm, 2 July 1998, Constables R McDowell and S Taylor made a plain clothes licensing visit, after receiving information that the premises was trading as a tavern. The restaurant had approximately 15 patrons inside, all of whom were dining. The Constables stayed for one hour. They purchased and consumed at the bar area, 4 light ice beers. At no stage did the Duty Manager, or any of the staff ask the Constables to purchase a meal. Further more they had a conversation with the Duty manager, he stated "A lot of people just treat this as their local, they come for a meal or a drink. I can't sell alcohol outside in the court yard, problems with neighbours. I will serve if their (sic) couples, quiet, not loud groups."*

### **Evidence of Objectors**

Mrs Jennifer Stuart resides at 1 Hakanoa Street, Grey Lynn. Her property adjoins the section on which the subject premises are situated. Mrs Stuart was a forthright and



credible witness. She mentioned our Decision 664/97 having granted Mr O'Callaghan a licence to operate a restaurant, Mr O'Callaghan's acceptance that *"loud speakers would not amplify music outside the restaurant building and that liquor would not be served or consumed in the outside area"*. Mrs Stuart further mentioned our decision stipulating that *"the licence will not authorise the operation of a function venue"*.

Mrs Stuart produced *"flyer"* advertisements advertising Warners as a *"groove kitchen"* and

*"available for private functions"*. A magazine restaurant review article produced by Mrs Stuart described *"the funky music"* and an accompanying advertisement said *"large groups fully catered for"*.

Mrs Stuart said she spoke with Mr Warner several times concerning *"loud thumping music"* and liquor being served and consumed on a daily basis in the outside area, most recently on Sunday 21 February 1999. The witness said she had *"cause to call noise control several times over the last 22 months, on the odd occasion the music not excessively loud, but the thumping of the bass so excessive to the point of not being able to sit in my lounge without the thump, thump, thump over the top of the T.V. or CD that I was playing."*

The witness said:

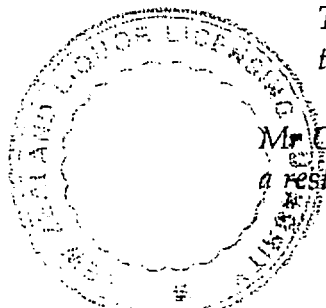
*"Consumption of liquor is happening at a table set up outside on the footpath that fronts the building on Richmond Road, on the now altered deck at the back of the premises (Hakanoa Street entrance) and in the now remodelled garden between the deck and the unit of 1/1a Hakanoa Street."*

An objector who had appeared at the original hearing but who was unable to attend the hearing on 23 February last had the following objection tabled: (Dr Simon Cotton from Richmond Road Medical Centre, 452 Richmond Road, Grey Lynn):-

*"I ask that this application (for renewal) be declined. I represent the medical practice on his boundary and 452 Properties Ltd, the owners of the medical premises."*

1. *Mr O'Callaghan has continued to enlarge his operation, building an extension behind the neighbouring shops which he called a "Cigar Bar" but which I suspect is used for eating.*
2. *I observe drinking in the garden regularly. It is quite open. This is contrary to the terms of his licence.*
3. *He continues to hold functions into the early hours with loud bass music. The latest function he called his Christmas Party. People were crowded into the garden and openly drinking.*

*Mr O'Callaghan approached us initially to sign a document allowing him to run a restaurant in the designated indoor space. He failed to keep faith with us up to*



*the last hearing and continues to break the rules. I find his behaviour extraordinary, he must know that sooner or later he will face the consequences.*

*I apologise for not being able to attend the hearing due to a previous engagement out of Auckland."*

The Authority is conscious that Dr Cotton was not present to have his evidence tested by cross-examination. Section 109(1) allows us to have regard to such evidence which is corroborative of Mrs Stuart's evidence.

The remaining objector to record an appearance was Mr P D Sturm who resides at Unit 1/1a Hakanoa Street, separated from Warners Corner by the width of Hakanoa Street. Mr Sturm said:-

*"My objection to this application for renewal of an on-licence is not based on closing them down, but to ensure that the operators strictly observe the agreed terms of their licence with due respect to the surrounding residential properties of which I am the most affected.*

*It is very fair to say that over the past 6 months since the proprietor has moved away from living on the premises that the noise from the venue late at night has reduced significantly. In the 1<sup>st</sup> twelve months the operators didn't give a "rats bottom" to the restrictions their temporary licence granted them.*

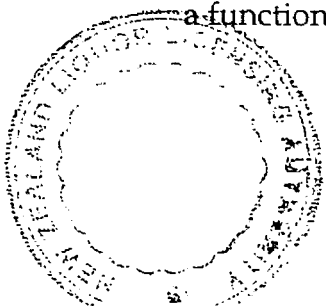
*The restaurant is promoted and advertised as a function venue with a regular Sunday twin turn-table drinking function held on the outside balcony & surrounding garden areas.*

*It is easy for me. I can shift. I feel sorry for the landlord who has purchased the property as an investment for rental purposes.*

*Not once did the proprietor of Warners Corner make an effort to communicate with me, knowing full well that his operation was giving us a good deal of discomfort. Common courtesy could have seen both of us live & work in harmony.*

*In my opinion, the venue is a great little site with lots of potential under considerate management, it would & should be a welcomed addition to this residential area."*

Mr Sturm also produced a flyer advertising Warners Corner for "local Christmas functions – ideal licensed venue, day/night, large or small buffet specialists" – contrary to our original decision stipulating that the licence would not authorise the operation of a function venue.





### Evidence of Mr N W O'Callaghan

In relation to the party on 18/19 July 1998 at Mr O'Callaghan's then place of residence at 6 Gore Street the witness said a party to celebrate his birthday had been arranged by one of the other two tenants. Mr O'Callaghan did not dispute that up to 150 people may have been drinking alcohol, the witness did not arrange for delivery of the liquor and was not aware of it being sold. Wall signs with prices for liquor depicted in photographs produced at the hearing had not been seen by Mr O'Callaghan. If people were smoking cannabis at the party he was not.

The witness said:-

*"I was subsequently charged with possession of amphetamine powder and pleaded guilty to that offence in the Auckland District Court. I was convicted and fined \$200. There was no proof that the substance was amphetamine and I pleaded guilty to the charge only because my lawyer was advised the conviction would not affect the viability of my licence."*

In regard to allegations of 20 patrons consuming liquor at 9.45 am on Sunday 15 February 1998 Mr O'Callaghan said he had "treated" them to a few drinks. Mr O'Callaghan said that the verandah was "part of the designated area which I believe entitles me to supply alcohol to persons thereon."

The witness said that the courtyard is "generally used by children using the swing and sometimes people wander out with a drink".

Mr O'Callaghan said:-

*"I have spoken to several neighbouring residents who tell me that noise is no longer a problem. Thus, Mr CH Worrall told me he would not be giving evidence at the hearing. Chris Knox is in the same position. He was formally an objector. Dr Simon Cotton of the Medical Centre is in the same category."*

*In response to Mr Phillip Sturm's objection, we no longer put out bottles after 10pm.*

*I don't allow people to remain out on the deck after 10pm. This has been our policy since talking to Andrea Wallace of Noise Control earlier this month. She didn't approach me - I approached her.*

*Recently I have installed a door shutting spring device on the door out to the deck to ensure internal noise doesn't escape. I have also changed the speakers in the back room to smaller speakers emitting less bass noise.*

*We are willing to co-operate in every way possible with noise control officers and the monitoring of sound."*



Mr Wiles called Mr James Reason, a former Police Sergeant now employed as law clerk to Mr Gary Gotlieb, the barrister who had appeared for Mr O'Callaghan when Mr O'Callaghan pleaded guilty to offences against the Misuse of Drugs Act. The purpose of Mr Reason giving evidence was to establish that Mr O'Callaghan had pleaded guilty at a "*status hearing*" in the District Court:-

1. On an understanding obtained from Sergeant Lopdell that the convictions would have "*little effect if any*" on Mr O'Callaghan's liquor licence.
2. To expedite an end to defended proceedings that would be costly.

A number of references were produced by Mr O'Callaghan attesting to the quality of food served and the popularity of Warners Corner. Typical comments were, Warners "*is providing for a niche as a local, neighbourhood cafe/restaurant*". Mr D B King a journalist:-

*"Sometimes I just drop in for a coffee, occasionally I'll have a glass of red wine. From time to time I'll have a meal."*

A near neighbour called to give evidence in support of the licensee, Mr R S Walder said that he had never seen more than a dozen persons drinking on the deck and had not seen anyone drinking in the garden area. Mr Walder described Warners as a "*growing neighbourhood meeting place – a little bar where people go and meet*".

### Authority's Conclusions and Reasons

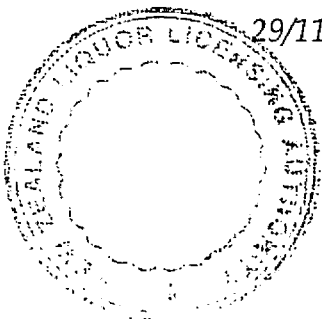
#### Mr O'Callaghan's Convictions

Sergeant Lopdell told the Authority that he could not recall having had the conversation described by Mr Reason where the Sergeant had allegedly indicated that convictions on the lesser misuse of drugs charges would have "*little effect if any*" on Mr O'Callaghan's liquor licence. We accept that assurance from Sergeant Lopdell and do not accept that the seriousness of Mr O'Callaghan's offending is in any way lessened by him pleading guilty at a "*status hearing*" in the belief that his liquor licence would not be affected.

We set out Mr O'Callaghan's previous criminal and traffic history:-

#### *Previous Criminal History*

11/11/93	Credit by fraud	convicted, ordered to pay costs.
29/11/93	2 charges theft	convicted, 45hrs community service.



### ***Traffic History***

03/12/90	Careless Driving	convicted, \$200 fine, disqualified 2 months.
18/07/92	Excess Breath Alcohol (0603)	Convicted, disqualified 6 months \$450.00 fine
15/10/94	Excess breath Alcohol	Convicted, disqualified 6 months \$700 fine

When Mr O'Callaghan applied for an on-licence in 1996 a Police report dated 1 November 1996 offered no objection and did not disclose to the Authority the previous convictions, including excess breath alcohol convictions in 1992 and 1994. Had those two convictions plus convictions for credit by fraud and two charges of theft in 1993 been placed before the Authority at the hearing of the original licence application on 11 March 1997 then we would have had no hesitation in determining that at that time Mr O'Callaghan was not a suitable person to hold a liquor licence.

However having accepted Mr O'Callaghan as suitable in 1997 it would be inappropriate to now allow convictions prior to 1997 to weigh against Mr O'Callaghan's present suitability in terms of s.22(a) of the Act.

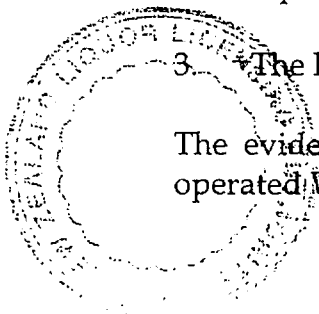
It then transpired that during a period when Mr O'Callaghan was trading pursuant to a licence tagged with the warning of "*probationary*" he pleaded guilty under s.7(1)(a) and (2)(b) of the Misuse of Drugs Act 1975 to possession of a Class B drug "*methamphetamine*" and under s.13(1)(a) and (3) of the same Act to possession of cannabis instruments.

On the basis of that offending alone the conclusion of the Authority is that at this time Mr O'Callaghan is not a suitable person to have his on-licence renewed.

On the application for renewal we are directed by s.22(c) to have regard to the manner in which the licensee have conducted the sale and supply of liquor pursuant to the licence. In our Decision 664/97 Mr O'Callaghan was granted an on-licence for a "*probationary period of 12 months*" conditional on certain matters specified in our decision:-

1. That the premises only operated as a restaurant ie the sale of liquor was only authorised to persons present on the premises for the purpose of dining.
2. Loud speakers would not amplify music outside the restaurant building and liquor would not be served or consumed in the outside area.
3. The licence would not authorise the operation of a function venue.

The evidence of Mrs Stuart and Dr Cotton satisfies us that Mr O'Callaghan has operated Warners Corner in breach of all three of the above conditions.



There was undisputed evidence of Mr O'Callaghan having advertised Warners Corner as a function centre. Where there was a conflict of evidence as between Mr Warner and Mrs Stuart and Dr Cotton as to liquor being consumed outside the building we prefer the evidence of Mrs Stuart and Dr Cotton. We accept the evidence of Mrs Stuart that *"the speakers were placed outside the building facing the garden area, funky thumping music played at volume"*.

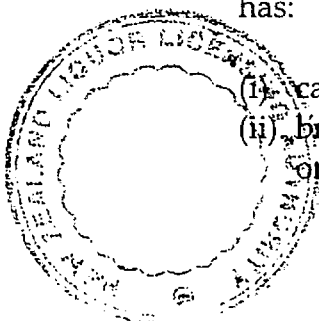
We also accept evidence that Mr O'Callaghan has not confined his operation to that of a restaurant – references produced by him mention Warners Corner becoming the neighbourhood *"local"* and one patron calling in for a coffee, a glass of wine and *"from time to time I'll have a meal"*. More serious are Mr O'Callaghan's breaches of his undertaking not to have loud speakers outside the restaurant building and the further proven breaches of his assurance that *"liquor would not be served or consumed in the outside area"*.

At the hearing on 23 February last Mr O'Callaghan said that the verandah *"was part of the designated area which I believe entitles me to supply alcohol to persons thereon."* We understand Mr O'Callaghan to be relying, with hindsight, on the fact that the plan lodged with the original application and referred to in the description of licensed premises on the licence did not identify the verandah. We accept that technically the verandah was within the licensed premises, described in the licence as *"more particularly identified in a plan date stamped as received by Tribunals Division on 13 December 1996"*. However it weighs against Mr O'Callaghan's credibility as a responsible licensee that he now chooses to rely on the plan in preference to the clear wording of our decision that the sale and consumption of liquor was only authorised inside the building and his assurance that liquor would not be served or consumed in the outside area. The limiting words in our decision and the assurances sought from Mr O'Callaghan had regard to the interests of residential neighbours; the present objections show that Mr O'Callaghan has deliberately chosen to ignore the interests of his neighbours. We have no confidence in the assurance given by Mr O'Callaghan that he is willing to co-operate *"in every possible way with Noise Control Officers and the monitoring of sound"*.

In terms of the criteria set out at s.22 of the Act we have concluded that renewal of the on-licence should be refused because:

- (a) We have found Mr O'Callaghan to be unsuitable after having regard to criminal convictions incurred during the period of an on-licence specified as *"probationary"*;
- (b) The manner in which the licensee has conducted the sale and supply of liquor has:

- (i) caused annoyance to his neighbours, and
- (ii) breached conditions specified in the decision of the Authority granting the on-licence.



- (c) We find the grounds of opposition to renewal by both the Police and an Inspector to have been fully justified.

Having concluded that the application for renewal will be refused no practical consequence would follow from the Authority making a finding as to whether or not the specific grounds of the Police application for cancellation have been established. However, having regard to closing submissions made by Sergeant Lopdell at the hearing, and written submissions since received from Mr Wiles, there may be merit in us commenting briefly as to our findings on the grounds of the application for cancellation.

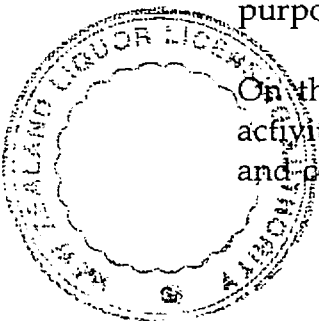
1. The object of the Act is set out at s.4(1):-

*"4. Object of Act-(1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means."*

We doubt whether that provision can strictly be said to be breached by a licensee. Obviously evidence of sales to intoxicated patrons would suggest contributing to liquor abuse, contrary to the spirit of the legislation, but the technical breach would be an offence against s.166 or s.167 of the Act – sale or supply of liquor to intoxicated person or allowing a person to become intoxicated. Here there was Police evidence of patrons at Warners Corners *"appearing intoxicated"* at around 1.50 am on Monday 19 January 1998 and of patrons being *"mildly intoxicated"* around 9.45 am on Sunday 15 February 1998. These allegations were somewhat retracted in response to cross-examination by Mr Wiles. The Authority does not make any finding of liquor abuse occurring at Warners Corner.

2. Breach of s.171 – allowing person on licensed premises outside licensing hours in contravention of s.170. This part of the Police application relates to the two incidents referred to in (1) above around 1.50 am on Monday 19 January 1998 and around 9.45 am on Sunday 15 February 1998. Both occasions were clearly outside licensing hours – ie at a time when the premises were required to be closed for the sale of liquor with the hours authorised in the licence being 11.00 am to 11.00 pm. However for s.170 to apply the Police would have to prove that on both occasions the premises were being used *"principally or exclusively for the sale, supply or consumption of liquor"*. It was Mr O'Callaghan's evidence that on both occasions he was *"treating friends"* – he did not deny that they were consuming alcohol but he maintained that he had not sold alcohol to them. On both occasions there was no suggestion that the *"friends"* were there for the purpose of dining.

On the evidence of Constables Rawlinson and Karl we accept that the only activity taking place at Warners Corner on the two occasions was the supply and consumption of liquor. It follows that even though there were no proven



sales of liquor on the two occasions our finding on the balance of probabilities is that offences against s.171 did occur.

3. That the conduct of the licensee is such as to show that he is not a suitable person to hold the licence.

For the reasons given above leading to our conclusion to refuse the application for renewal it follows that we find this ground of the Police application for cancellation to have been established. In addition to the convictions under the Misuse of Drugs Act 1975 arising from events at 6 Gore Street on the morning of Sunday 19 July 1998 Sergeant Lopdell submits that Mr O'Callaghan's suitability to hold a licence is further questioned in that unlawful sales of liquor were made at unlicensed premises on the night of 18/19 July 1998. We accept that the evidence established that Mr O'Callaghan was the occupier of a flat at 6 Gore Street, the premises were not the subject of a liquor licence, a bar was set up on the premises and liquor was being sold to approximately 150 persons.

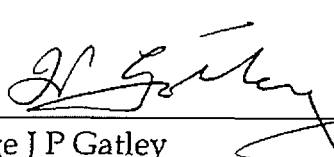
Although there was no evidence of Mr O'Callaghan being actively involved in the sale of liquor on that night our finding on the balance of probabilities is that Mr O'Callaghan committed an offence against s.152 of the Act in that as an occupier of unlicensed premises he allowed another person to sell liquor on the premises. We agree that this further detracts from Mr O'Callaghan's suitability to hold a licence even though it was not a matter relied on in our decision to refuse renewal of the licence.

We did not accept as credible Mr O'Callaghan's assertion that he was not aware that liquor was being sold at 6 Gore Street that night.

Many of the matters leading to our decision to refuse renewal of the on-licence can be attributed to immaturity on the part of Mr O'Callaghan. In his favour are the references as to the quality of food served and the popularity of Warners Corner. A finding of unsuitability is not permanent. If Mr O'Callaghan were to have two or three years free of any criminal or serious traffic convictions, or convictions for offences against the Sale of Liquor legislation then he may well be found suitable to hold a liquor licence in the future.

We repeat that the application by Nicholas Warner O'Callaghan for renewal of on-licence 007/ON/80/97 in respect of premises situated at 442 Richmond Road, Grey Lynn, Auckland, known as "Warners Corner" is refused.

DATED at WELLINGTON this 14th day of March 1999

  
Judge J P Gatley  
Chairman

