

REQUEST FOR REASONS IN TERMS OF SECTION 68(2A) OF THE WESTERN CAPE LIQUOR ACT 4 OF 2008 (AS AMENDED), FOR THE DECISION OF THE LIQUOR LICENSING TRIBUNAL TO GRANT A LIQUOR LICENCE

This is an application in terms of Section 36 of the Western Cape Liquor Act 4 of 2008 (as amended), for an on-consumption liquor licence lodged by David Anthony Harris, in respect of a premises trading as Springbok Pub Observatory.

2019/566

A. BACKGROUND

1. This is an application in terms of Section 36 of the Western Cape Liquor Act 4 of 2008 as amended (hereafter referred to as "the Act") from David Anthony Harris (hereafter referred to as "applicant") for an on-consumption liquor licence. The application was lodged on 24 May 2019 for a premises trading as Springbok Pub Observatory (hereafter referred to as "premises"), situated at 42 Lower Main Road, Observatory.
2. A report by the Designated Liquor Officer (hereafter referred to as "DLO") and comments from the municipality were submitted in terms of Section 40 of the Act.
3. Objections against the granting of the application were submitted by members of the public. A research report titled, "Alcohol outlet density and crime in Observatory, Cape Town", compiled by Ms. A Kriegler for the Observatory Improvement District, was also submitted as part of the objections.
4. A hearing was held on 30 October 2019 for the LLT to hear oral evidence from some of the objectors, UCT researcher and DLO.
5. The Liquor Licensing Tribunal (hereafter referred to as "LLT") considered the application, DLO report, municipal comments and representations for and against the granting of the application, against the requirements of the Act.
6. After considering all available relevant information in relation to the application, the LLT on 20 November 2019 conditionally granted the application after it was satisfied

on a balance of probabilities that the requirements of the Act for the granting of licences had been complied with.

B. LEGISLATIVE FRAMEWORK

1. Powers and functions of the LLT

1.1. The powers and functions of the LLT are prescribed by Section 20 of the Western Cape Liquor Act 4 of 2008 as amended (hereafter referred to as "the Act").

1.2. In terms of Section 20(1) of the Act the LLT is empowered to consider any of the following matters at its meetings:

- "(a) any application for a licence referred to in section 33(1);*
- (b) any application for the transfer of a licence in terms of section 65(1);*
- (c) representations for or against the granting of applications;*
- (d) any report lodged with it by a designated liquor officer, an inspector or a municipal official;*
- (e) any complaint lodged with it regarding the conduct of a licensed business;*
- (f) representations by a licensee or other interested person regarding the rescission of the suspension of a licence or the removal or amendment of any condition imposed upon a licence;*
- (fA) any matter remitted to it by the Appeal Tribunal in terms of section 68(5);*
or
- (g) any other matter referred to it by the Chief Executive Officer or the Presiding Officer, or which it may or must consider in terms of this Act."*

1.3. The LLT may in terms of Section 20(3), after the consideration by it of any matter contemplated in –

- "(a) subsection (1)(a), (b), or (c), refuse or grant the application subject to such conditions as it may deem appropriate;*
- (b) subsection (1)(d) or (e)—*
 - (i) dismiss the report or complaint, as the case may be;*
 - (ii) revoke the licence concerned;*
 - (iii) suspend the licence in the prescribed manner as a punitive or corrective measure;*
 - (iv) impose such conditions upon the licence as it deems appropriate;*

- (v) *order the licensee to pay such fine as it may deem appropriate, subject to the prescribed limit; or*
- (vi) *take such other action as it may deem appropriate;*
- (c) *subsection (1)(f), dismiss the representations or rescind the suspension of the licence, or remove or amend the condition or conditions concerned; or*
- (d) *subsection (1)(fA) or (g), consider the matter and take such action as it may deem appropriate.”*

1.4. The LLT is mandated by Section 20(4A) to exercise its functions according to the provisions of the Act, impartially and without fear, favour or prejudice.

2. Criteria for granting licences

2.1. The criteria for the granting of applications are prescribed by Section 34(1) of the Act. In terms of Section 34(1) the LLT may not grant a licence, unless it is satisfied on a balance of probabilities that –

- “(a) the granting thereof is in the public interest;*
- (b) the applicant is of good character, and not disqualified from holding a licence in terms of section 35;*
- (c) the premises on which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence;*
- (d) the applicant has the right to occupy the proposed licensed premises; and*
- (e) the granting of the application does not prejudice—*
 - (i) the residents of a residential area;*
 - (ii) the residents of an institution for the aged or frail;*
 - (iii) the learners of an educational institution who are under the age of eighteen (18) years;*
 - (iv) the patients of an institution for drug or alcohol related dependencies; or*
 - (v) the congregants of a religious institution located in the vicinity of the proposed licensed premises.”*

C. SUMMARY OF DLO/MUNICIPALITY COMMENTS/REPRESENTATIONS AGAINST THE GRANTING OF THE APPLICATION

1. In summary objections against the granting of the application related to the following issues:
 - (a) overabundance of drinking establishments in Observatory ("outlet density");
 - (b) gentrification and changing of demographics of residents;
 - (c) drug dealing and associated crime;
 - (d) burden on Woodstock SAPS and Law Enforcement resources;
 - (e) parking issues;
 - (f) noise and proximity to residential properties;
 - (g) proximity to places of worship, schools and age care facilities;
 - (h) contribution of premises to alcohol related harms; and
 - (i) granting of application not in the public interest.

2. The DLO recommended that the application not be granted for the following reasons:
 - (a) contribution to crime in area;
 - (b) outlet density;
 - (c) location of the premises;
 - (d) objections against the premises; and
 - (e) granting of application not in the public interest;

3. Municipal comments submitted by Sub-council 16 made the following recommendation:
 - (a) objections received from community members, community and resident organisations;
 - (b) application supported by town planning as the zoning permits the proposed licensed business;
 - (c) application supported by health as premises not located near aged or frail care centre, drug/alcohol rehabilitation centre or schools;
 - (d) no objection from city emergency services;
 - (e) application supported by law enforcement liquor unit; and
 - (f) application is conditionally supported, subject to only inside area being used.

D. REPRESENTATIONS IN SUPPORT OF APPLICATION

1. In summary the LLT considered the following representations in support of the application:
 - (a) applicant is a suitable person and not disqualified from holding a liquor licence;
 - (b) premises is suitable for the proposed licensed and applicant has the right to occupy the premises;
 - (c) premises will not prejudice Section 34(1)(e)(i) – (v) persons/institutions;
 - (d) premises is correctly zoned for the proposed licensed business;
 - (e) nature of the business (as a restaurant and sports pub) and its different impact on crime;
 - (f) objections regarding outlet density based on outdated census information and there have been several developments after research was conducted;
 - (g) not legally permissible and reasonable to refuse the application based on outlet density;
 - (h) applicant agreed to reasonable restrictions to be imposed by the LLT;
 - (i) measures taken to mitigate concerns of objectors, including soundproofing (inside and outside area), double doors to outside area, no music/tv screens will be allowed in the outside area, erecting of canvas stretch tent in outside area and dedicated personnel to ensure that outside area do not cause a disturbance to neighbours;
 - (j) nature of the proposed licensed business is different to the pub in Newlands;
 - (k) interests of those that might benefit from the granting of the application; and
 - (l) granting of application is in public interest.

2. All relevant written and oral representations in support of the application were duly considered.

E. REASONS FOR DECISION

1. All decisions by the LLT are subject to the law and must comply with the applicable legal requirements prescribed by the Constitution, Promotion of Administrative Justice Act 3 2000 (PAJA), Western Cape Liquor Act 4 of 2008 (as amended) and other applicable legal prescripts.

2. LLT decisions are administrative decisions which must, inter alia, comply with the following legal requirements:
 - (a) authorised by the applicable empowering legislative provisions;
 - (b) comply with legislative procedures/requirements;
 - (c) procedurally and substantively fair; and
 - (d) rational and reasonable.
3. Representations for and against the granting of an application must be considered and tested against the applicable legal requirements. Both the potential negative consequences and potential benefits of the granting of the application were weighed up and properly considered.
4. In coming to a decision regarding the application, the LLT also considered whether and to what extent the concerns of the objectors can be mitigated by imposing certain conditions. In addition, consideration was also given to the compliance and enforcement mechanisms by the WCLA, municipality and SAPS that are in place to protect the public against non-compliance with the Act and licence conditions.
5. After due considering of all available relevant information in relation to the application, the LLT on 20 November 2019 conditionally granted the application after it was satisfied on a balance of probabilities that the requirements of the Act for the granting of licences had been complied with. Trading hours for the outside area are restricted to 20h00 (Sunday to Thursday) and 22h00 (Friday and Saturday). Granting of the application is subject to submission of final a DLO report and colour photos that the premises have been completed according to the plan approved by the LLT.
6. The LLT is of the view that compliance and enforcement mechanisms by the WCLA, municipal by-law enforcement, SAPS and other stakeholders can mitigate concerns raised by the objectors.



ADV. SD WILLEMSE
DEPUTY PRESIDING OFFICER
LIQUOR LICENSING TRIBUNAL
14 JANUARY 2020