



# *Hastings District Council*

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## **DECISION – MANAGER’S CERTIFICATE**

**ADRIAN RICHARD BORRIE**

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## **HASTINGS DISTRICT LICENSING COMMITTEE**

**Adrian Richard Borrie - Manager’s Certificate Application**

Meeting Date: **Tuesday, 4 December 2018**

**DECISION NO: HDC/MC/463/2018**

**IN THE MATTER** of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER** of an application by **Adrian Borrie** for a manager's certificate pursuant to s.219 of the Act.

**BEFORE THE HASTINGS DISTRICT LICENSING COMMITTEE AT A MEETING HELD IN THE LANDMARKS ROOM, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS ON TUESDAY, 4 DECEMBER 2018 AT 1.00PM**

**LICENSING COMMITTEE** Chair: Councillor Kerr  
Members: Councillor Lyons and Mr Bradshaw

**Licensing Inspector** Ms Janine Green

**Police** Sergeant in Charge of Alcohol Harm Prevention,  
Raymond Keith Wylie

David Power

**Committee Secretary** Mrs Carolyn Hunt

**APPEARANCES:**

**Applicant:** Adrian Richard Borrie

## **DECISION OF THE HASTINGS DISTRICT LICENSING COMMITTEE**

### **1.0 INTRODUCTION**

- 1.1 This was an application by **Adrian Borrie** for a manager's certificate.
- 1.2 Mr Borrie had declared one conviction on his application, however did not declare 10 others, nor a cancellation of manager's certificate in 2012. It was not until a second interview and after some prompting that Mr Borrie had produced a partial list of his convictions. This all impacted negatively on his suitability to hold a manager's certificate.
- 1.3 The full list of convictions was finally produced as Police evidence.

## **2.0 AT THE HEARING**

- 2.1 Mr Borrie has a long history and experience at the Stortford Lodge Club and has completed relevant training.
- 2.2 Mr Borrie had stated he had completed many courses, including an anger management course, sought counselling for his drinking issues and had also completed several host responsibility, harm minimisation, alcohol and gambling courses related to his work.
- 2.3 No evidence was provided to support the Anger Management course or the volunteer work he claimed to do “helping others” within Alcoholics Anonymous.
- 2.4 When asked for a copy of his convictions Mr Borrie produced a page that listed five convictions. When asked about the balance of the convictions Mr Borrie, in the view of the Committee was very dismissive of the need to produce them then claiming “there wasn’t room” on the application form.
- 2.5 Senior Sergeant Ray Wylie produced a copy of the Applicant’s Criminal and Traffic history for the period 1989 to 2012. He also produced a copy of the Summary of Facts which related to the 2012 Assaults to Injure (Manually) conviction.
- 2.6 Mr Borrie minimised his assault conviction saying “that the lady tripped over” and “it wasn’t serious”. He denied being intoxicated and repeatedly challenged the Police on this fact.
- 2.7 Mr Borrie later in the hearing claimed to have drunk only 4 low alcohol beers.
- 2.8 When questioned about his loss of Managers Certificate in 2012, he again denied being intoxicated.
- 2.9 The Committee found Mr Borrie’s answers to questions at times very long winded and often he did not answer the question. The Chair had to remind him several times to answer the questions. He struggled to answer questions with a YES or NO answer when asked. He became very agitated when pushed to clarify or answer questions he did not want to answer.

## **3.0 DELIBERATIONS BY THE COMMITTEE**

- 3.1 The Committee must have regard to the matters set out in s.222 of the act when considering any application for a Manager’s Certificate. These are as follows:
  - (a) *the applicant’s suitability to be a manager.*
  - (b) *any convictions recorded against the applicant.*
  - (c) *any experience, in particular recent experience that the applicant has had in controlling any premises for which a licence was in force.*

- (d) *any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218:*
- (e) *any matters dealt with in any report made under section 220*

3.2 The issue was the applicant's suitability in respect of 11 convictions recorded against him from 1989 to 2012 and his behaviour during the hearings. The inspector also had difficulty in obtaining information from Mr Borrie.

3.3 The Committee in reviewing the application for a new manager's certificate considered ARLA's decision in the case of G L Osborne LLA 2388/95 the Liquor Licensing Authority said:

*"Without fettering ourselves in this or other applications, it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol or arising in the course of an applicant's duty on licensed premises.*

*Less serious convictions are also weighed. By way of an example is an isolated excess breath or blood alcohol conviction. In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration."*

Subsequently the former Authority amended its view in regards to when the time of the stand-down period should start to run, and in *Re Pompey LLA PH623/04*, 6 September 2004, determined that *"the correct assessment of time is from the date of offending"*.

3.4 The Committee also considered the more recent *Police v Manson [2015] NZARLA 590*:

*"[25] While we agree with the DLC that the Osborne decision is a guideline, rather than a rule, it is one that in our view should not be departed from lightly and only where justified by the circumstances. However, the Authority has in the past reduced the stand down period required to take into account exceptional circumstances. It would be an extremely rare case where convictions such as these have been incurred and no stand down period at all was required."*

3.5 The Committee gave more weight to the case of *Valesha Anna Marx LLA 946-947/97* the Liquor Licensing Authority said:

*"In considering the effect of individual convictions ..... in the case of an applicant for a General Manager's Certificate, we are generally inclined to give little weight to convictions:*

*More than 10 years old provided there has been no further offending of any kind since that time;*

*Relating to minor traffic or parking offences not involving liquor; or  
Resulting from minor youthful indiscretions*

*On the other hand we usually give added weight to any conviction:*

*For any offence occurring on or involving or arising from conduct  
on licensed premises;*

*Relating to or involving the use or abuse of drugs or liquor;  
Disclosing two or more serious offences of a similar type; and  
For assault or violence offences against any person*

*In addition we closely examine any pattern of offending  
disclosed by the type of convictions listed.”*

*In Antony Raymond Johns LLA 947/98, the Authority said that “it takes a very  
serious view of any failure to report correctly a complete list of convictions.”*

*In the Ferguson v McCullough LLA PH915/07, the authority also stated that:*

*“We regard a licence as a privilege not a right. However the  
privilege comes with obligations, one of which is to be honest with  
the reporting agencies and with the Authority.”*

- 3.6 The Committee noted that the Anthony Raymond Johns and Ferguson v McCullough cases were particularly important to this application as Mr Borrie had twice failed to declare all of his convictions. He had failed to declare all of his convictions upon initially applying for a manager’s certificate in 2008 and again in this 2018 application. Mr Borrie also did not declare the cancellation of his certificate in 2012.
- 3.7 The Committee was concerned at the repeated non-disclosure of convictions during face-to-face interviews, phone interviews and at the Hearing when only 5 of the convictions were disclosed by Mr Borrie.
- 3.8 Mr Borrie has in the past not disclosed his convictions. His previous Manager’s Certificate application was adjourned in 2008 due to non-disclosure of his convictions.
- 3.9 Mr Borrie also failed to disclose during interviews the cancellation of his Manager’s Certificate in 2012.
- 3.10 The cancellation of this Certificate was a result of his conviction on 2 July 2012 for Assaults to Injure (Manually). This cancellation from LLA also noted his extensive alcohol related conviction list.
- 3.11 It was a concern to the Committee that Mr Borrie minimised his assault conviction saying “that the lady tripped” over and “it wasn’t serious”. He denied being intoxicated and challenged the Police on this fact.

- 3.12 The conviction for Assaults to Injure (Manually) is serious.
- 3.13 The Police Application for Cancellation for Manager's Certificate 12 July 2012 to the Liquor Licensing Authority in 2012 states "*BORRIE was extremely intoxicated*".
- 3.14 The Summary of Facts for the 2012 conviction shows a charge of "Assault to Injure (Manually). Mr Borrie minimised his intoxication saying he only had "four low alcohol beers".
- 3.15 Within the Hearing, the Committee noticed inconsistencies and Mr Borrie's reluctance to give direct answers. He was evasive and at times argumentative.
- 3.16 Mr Borrie has a past history of alcohol associated issues resulting in three drink driving convictions, as well as the assault conviction.
- 3.17 No evidence was available to support Mr Borrie's statement that he had attended anger management courses, nor counselling for his drinking issues. There was no evidence to support the training he said he had completed in relation to alcohol harm minimisation, or alcohol and gambling courses.
- 3.18 In considering Mr Borrie's suitability the Committee noted that both the New Zealand Police and the Licensing Inspector opposed the application.
- 3.19 The above continuing pattern of behaviour highlights the concerns the Committee has with Mr Borrie's suitability to hold a Manager's Certificate.
- 3.21. In the Hearing the Police when questioned about a stand down period responded they recommended an indefinite stand down period.

#### **4.0 DECISION OF THE DISTRICT LICENSING COMMITTEE**

- 4.1 The Committee has considered the matters to which it is to have regard under section 222 of the Act and accordingly the applicant is hereby declined a manager's certificate.
- 4.2 The Committee do not believe Mr Borrie is a suitable person to hold a Manager's Certificate.

DATED at Hastings this 13<sup>th</sup> day of December 2018.



**CHAIRMAN  
HASTINGS DISTRICT LICENSING COMMITTEE**