

Item: 6

Orkney Islands Area Licensing Board: 23 August 2018.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

K H Orkney Ltd – Kirkwall Hotel, Harbour Street, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by K H Orkney Ltd for a variation of a premises licence held in respect of Kirkwall Hotel, Harbour Street, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application by K H Orkney Ltd for a variation of a premises licence held in respect of Kirkwall Hotel, Harbour Street, Kirkwall.

3. Policy Aspects

3.1.

In accordance with the Licensing (Scotland) Act 2005, the Board's Statement of Alcohol Licensing Policy provides that decisions on premises licence variation applications shall be made by the Board (with the exception of decisions on minor variation applications which are delegated to the Clerk to the Board).

3.2.

The Board's Statement of Alcohol Licensing Policy generally permits off-sale operating hours of 10:00 to 22:00 each day.

3.3.

The Board's Statement of Alcohol Licensing Policy generally permits:

- Commencement on-sale operating hour of 10:00 each day.
- Terminal on-sale operating hours of 12 midnight Sundays to Thursdays and 01:00 Fridays/Saturdays and Saturdays/Sundays.
- For local events such as annual agricultural shows, local festivals and private functions, a terminal on-sale operating hour of 01:00 any morning.
- For weddings, a terminal on-sale operating hour of 01:30 any morning.

- For the festive season, being 24/25 December until 2/3 January each year, a terminal on-sale operating hour of 01:00 any morning.

3.4.

Sections 2.9 to 2.17 of the Board's Statement of Alcohol Licensing Policy set out the relationship between licensing legislation and other statutory health and safety requirements, such as planning, building standards and food hygiene. Section 2.9 of the Policy provides that the Board will avoid duplication with other regulatory regimes and will not use its powers under the Act to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies.

3.5.

The full policy document is available from the Related Downloads section of the following Council webpage:

<http://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.

4. Introduction

4.1.

A premises licence has been held at Kirkwall Hotel, Harbour Street, Kirkwall, since 1 September 2009, firstly by Mrs Debra M Low, then by Kirkwall Hotel Ltd and then by K H Orkney Ltd.

4.2.

On 28 June 2018, K H Orkney Ltd submitted an application for variation of the premises licence. Details of the application are provided at sections 5 and 6 below.

5. Outdoor Area

5.1.

The application requests approval to include an outdoor area, on the pavement adjacent to the premises, within the premises licence.

5.2.

Details of the proposed outdoor area, together with a Statement of Management Arrangements, are attached at Appendix 1 to this report.

5.3.

The application requests approval to provide outdoor drinking facilities during the hours of 11:00 to 22:00 daily, which are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

5.4.

The applicant has obtained the necessary consent from the Roads Authority to occupy the pavement.

5.5.

With reference to section 3.4 above, it is noted that the relevant service has advised that there is an outstanding planning consent approval in connection with the provision of the outdoor area.

5.6.

The on-sale capacity of the premises will increase by 24 persons from 398 to 422 with the inclusion of the outdoor area.

5.7.

The current off-sale capacity of the premises of 33.6 square metres will not be affected by the proposed variation.

5.8.

The areas accessible by children and young persons will increase with the inclusion of the outdoor area.

6. Operating Hours

6.1.

The premises are currently licensed for both on and off-sales as follows:

- On-sales:
 - 11:00 to 00:00 on Mondays to Wednesdays inclusive.
 - 11:00 to 01:00 on Thursdays/Fridays to Saturdays/Sundays inclusive.
 - 12:00 to 00:00 on Sundays.
 - 01:00 any morning for private functions; when an event related to a local festival is being held within the premises; or for the festive season.
- Off-sales:
 - 11:00 to 22:00 on Mondays to Saturdays inclusive.
 - 12:00 to 22:00 on Sundays.

6.2.

The application requests the following amendments to the operating hours:

- On-sales:
 - 10:00 to 00:00 on Sundays.
- Off-sales:
 - 10:00 to 22:00 on Sundays.

6.3.

The proposed variation of the on and off-sales operating hours on Sunday mornings are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

6.4.

The following operating hours are included in the application as required by the legislation, although no changes to those hours are proposed:

- On-sales:
 - 11:00 to 00:00 on Mondays to Wednesdays inclusive.
 - 11:00 to 01:00 on Thursdays/Fridays to Saturdays/Sundays inclusive.
 - 01:00 any morning for private functions; when an event related to a local festival is being held within the premises; or for the festive season.
- Off-sales:
 - 11:00 to 22:00 on Mondays to Saturdays inclusive.

6.5.

The on and off-sale operating hours on Mondays to Saturdays detailed at section 6.4 above are within current policy or accord with the existing premises licence. As no variation to these operating hours is sought, those aspects of the premises licence are outwith the scope of matters for consideration in connection with the current application.

7. Consultation

The required notices were issued to the statutory consultees on 4 July 2018 and the application was published on Orkney Islands Council's website from 6 July 2018. The last date for objections or representations to be received was 27 July 2018. No submissions were received.

8. Financial Implications

The appropriate application fee of £100 has been paid.

9. Legal Aspects

9.1.

The Licensing (Scotland) Act 2005 (the Act) provides that the licensing board must hold a hearing for the purpose of considering and determining an application for a variation that is not a minor variation.

9.2.

The following elements of the application mean that it is not a minor variation and therefore must be determined by the Board:

- Physical extension of premises by incorporation of an outdoor area.
- Increase in on-sale capacity.
- Increase in areas accessible by children and young persons.
- Increase in operating hours.

9.3.

Any person may, by notice to the Licensing Board, object to an application on any of the grounds for refusal specified in the Act or may make representations to the Licensing Board, including representations in support of the application, as to modifications which the person considers should be made to the operating plan accompanying the application or as to conditions which the person considers should be imposed.

9.4.

The grounds for refusal under the Act are as follows:

9.4.1.

The application must be refused if, generally, it is an application within one year of a previous refusal or seeks generally banned 24 hour opening or prohibited off-sale hours.

9.4.2.

The Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, namely:

- Preventing crime and disorder.
- Securing public safety.
- Preventing public nuisance.
- Protecting and improving public health.
- Protecting children and young persons from harm.

9.4.3.

Having regard to:

- The nature of the activities proposed to be carried on in the subject premises.
- The location, character and condition of the premises.
- The persons likely to frequent the premises.

The Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation.

9.4.4.

The Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

9.5.

Anyone lodging an objection on the ground detailed at section 9.4.4 above must specify the locality on which they are basing their objection.

9.6.

Where the Board refuses the application, the Board must specify the ground for refusal. If the ground for refusal is that specified in the ground detailed at section 9.4.2 above, the Board must specify the licensing objective or objectives in question.

9.7.

The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies. If none of them applies, the Board must grant the application. If any of them applies, the Board must refuse the application.

10. Contact Officers

Gavin Mitchell, Clerk to the Board, extension 2233, email gavin.mitchell@orkney.gov.uk.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

11. Appendix

Appendix 1: Details of the proposed outdoor area, together with a Statement of Management Arrangements.