

Item: 7

Orkney Islands Area Licensing Board: 25 April 2019.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Albert Hotel Ltd – Albert Hotel, Mounthoolie Lane, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by Albert Hotel Ltd for a variation of a premises licence held in respect of Albert Hotel, Mounthoolie Lane, Kirkwall.

2. Recommendations

It is recommended:

2.1.

That the Board considers:

- The application.
- Whether to consider a late submission.
- Objections.

2.2.

That the Board determines whether it has sufficient information to proceed to determination as to whether to grant or refuse the application by Albert Hotel Ltd for a variation of a premises licence held in respect of Albert Hotel, Mounthoolie Lane, Kirkwall.

2.3.

That, in the event that the Board determines to consider the late submission, whether consideration of the application, objections and late submission should be adjourned to the meeting of the Board to be held on 27 June 2019.

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.

Section 5.4 of the Board's Statement of Alcohol Licensing Policy provides that:

"Where an objection or representation in respect of a premise licence application or a variation application is received late, after the specified date for receipt, the Board will normally treat the objection as not made unless the objector has provided an explanation for late receipt. If the Board decides there are good reasons to treat the objection as made, consideration will be given in the interests of justice to a continuation of the hearing into the application, objections and representations to a future meeting of the Board."

3.3.

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

3.4.

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 24:00 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.

3.5.

Sections 2.8 to 2.15 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 2.8 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.

3.6.

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 Albert Hotel by Albert Hotel Ltd since 1 September 2009.

4.2.

On 22 February 2019, Albert Hotel Ltd submitted an application for variation of the premises licence. Details of the application are provided at sections 5 and 6 below.

5. Extent of Premises

5.1.

A layout plan of the ground floor of the premises is attached at Appendix 1 to this report.

5.2.

The application requests increases in the extent of the licensed premises by the inclusion of areas marked:

- External seating area – Mounthoolie Lane.
- Ancillary Grounds 3.

5.3.

Both areas will be used for outdoor drinking facilities. The applicant has obtained the necessary consent to occupy the pavement area in Mounthoolie Lane from the Roads authority. The area marked as Ancillary Grounds 3 forms part of the building owned by the applicant and does not require consent from the Roads Authority.

5.4.

The on-sale capacity of the premises will increase by 46 persons from 420 to 466.

5.5.

The areas accessible by children and young persons will increase with the inclusion of the 2 additional areas.

5.6.

The extent of the licensed premises currently includes an area which has not been in use for many years. The area is marked as Shop on Appendix 1 to this report. The application requests that the area marked as Shop be brought into use for the purpose of off-sales. The off-sale capacity of the premises will thereby increase by 8.64 square metres.

5.7.

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 areas.

6. Operating Hours

6.1.

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

- On-sales:
 - 11:00 to 24:00 on Mondays to Wednesdays inclusive.
 - 11:00 to 01:00 on Thursdays/Fridays to Saturdays/Sundays inclusive.
 - 12:00 to 24:00 on Sundays.
 - Terminal on-sale operating hour of 01:00 any morning for private functions; functions held on the premises relating to a local festival; or for the festive season.
- Off-sales:
 - 10:00 to 22:00 on Mondays to Saturdays inclusive.
 - 12:30 to 22:00 on Sundays.

6.2.

The application requests the following amendments to the operating hours:

- On-sales to provide outdoor drinking facilities:
 - 11:00 to 21:00 on Mondays to Thursdays inclusive.
 - 11:00 to 22:00 on Fridays and Saturdays.
 - 12:00 to 20:00 on Sundays.
- Off-sales:
 - 12:00 to 22:00 on Sundays.

6.3.

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

6.4.

The on-sale operating hours and the off-sale operating hours on Mondays to Saturdays inclusive detailed at section 6.1 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

7.1.

The required notices were issued to the statutory consultees on 26 February 2019 and the application was published on Orkney Islands Council's website from 28 February 2019. The last date for objections or representations to be received was 21 March 2019.

7.2.

The following submissions were received:

- 20 March 2019 – Mr and Mrs Mike Laing, Buster's Diner, 1 Mounthoolie Place, Kirkwall – attached as Appendix 2 to this report.
- 21 March 2019 – Graeme Clark, Clark Optometrists Ltd, 9 – 13 Mounthoolie Lane, Kirkwall – attached as Appendix 3 to this report.
- 21 March 2019 – Ms Louise Mowat, Mounthoolie Place, Kirkwall – attached as Appendix 4 to this report.
- 21 March 2019 – substantive objection from Mr J Colin King on behalf of himself and his mother, Mrs Jessie M D King, both of Mounthoolie Place, Kirkwall – attached as Appendix 5 to this report.
- 22 March 2019 – two additional photographs from Mr J Colin King as above – attached as Appendix 6 to this report.
- 26 March 2019 – Mr W E Sutherland, Mounthoolie Place, Kirkwall – attached as Appendix 7 to this report.

7.3.

Copies of the submissions were forwarded to the applicant's agent.

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:

- Inclusion of additional areas within the premises.
- Increase in operating hours.
- Increase in capacities.

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.

9.8.

Article 6(4)(d) of the Licensing (Procedure) (Scotland) Regulations 2007 (the Regulations) provides that when a licensing board gives public notice of a premises licence variation application, the notice must specify the date by which objections or representations in respect of the application may be made to the board.

9.9.

Article 6(6)(a) of the Regulations provides that the date by which objections or representations may be made is to be no earlier than 21 days after the date on which the notice first appeared on the board's website.

9.10.

Article 10(2) of the Regulations provides that a board may treat any objection or representation as not made where it receives the relevant notice of objection or representation after the date specified by the board under regulation 6(4) referred to in section 9.8 above.

9.11.

Article 10(3) of the Regulations provides that where a board considers that there are good reasons not to treat an objection or representation as not made despite its being entitled to do so under regulation 10(2) referred to above, the board is to consider whether it is in the interests of justice to postpone or adjourn the hearing at which the application in question is to be determined.

9.12.

In terms of the Board's published process for hearings, persons submitting objections or representations may be heard by the Board. Accordingly, the persons who have submitted the objections or representations referred to at section 7.2. above have been invited to attend or be represented at the hearing to speak to their submissions.

9.13.

The submission of two additional photographs from Mr J Colin King attached as Appendix 6 to this report was received within one day after the date specified by the Board. However, Mr King lodged a substantive objection within the period specified by the Board and the additional photographs are regarded as forming part of that objection.

9.14.

The submission from Mr W E Sutherland attached as Appendix 7 to this report was received five days after the date specified by the Board. A preliminary consideration therefore is whether the Board wishes to consider Mr Sutherland's late submission.

9.15.

Sensitive personal information relating to a third party, which is not directly relevant to the determination of the application under consideration, has been redacted from the public copy of Appendix 7. The applicant's agent has been provided with the redacted copy of Appendix 7.

9.16.

The Board will need to consider, at an early stage, whether it wishes to hear submissions from Mr Sutherland regarding the reasons for the late submission of his representation. Mr Sutherland has been invited to attend or be represented at the meeting to explain the reasons for the late submission.

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. Appendices

Appendix 1: Layout plan of the premises.

Appendix 2: objection from Mr and Mrs Mike Laing received on 20 March 2019.

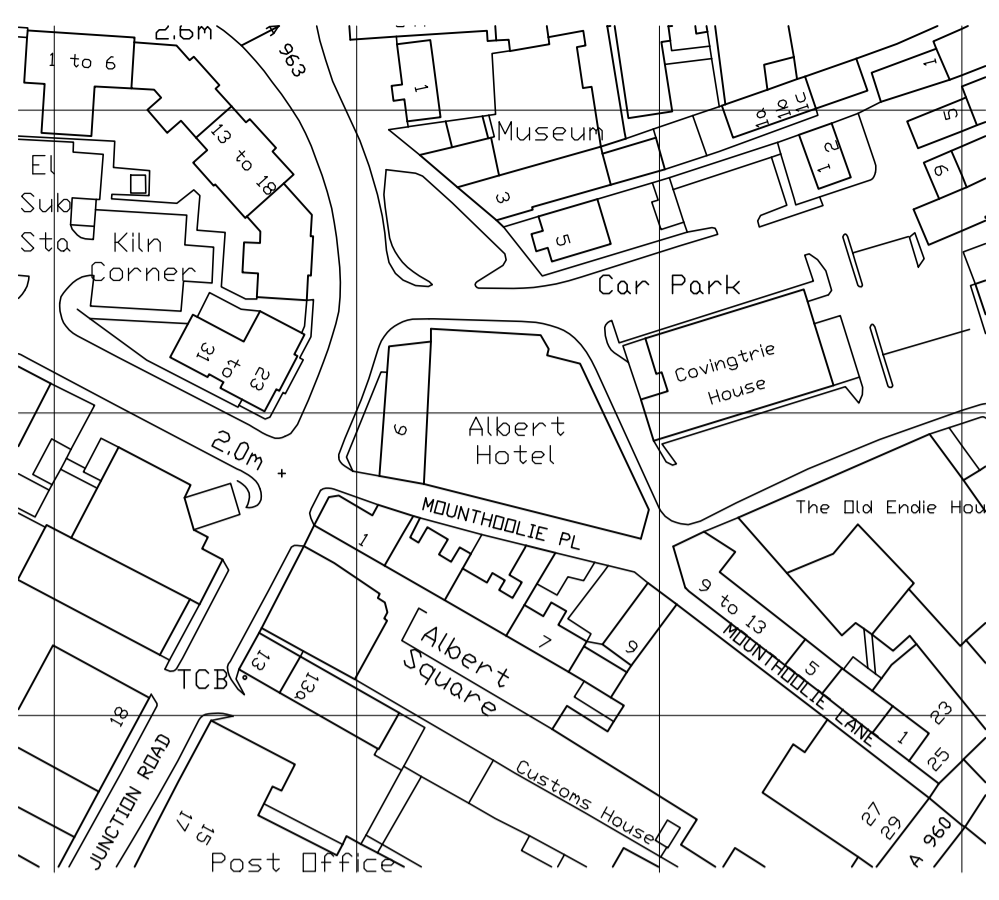
Appendix 3: objection from Graeme Clark, Clark Optometrists Ltd received on 21 March 2019.

Appendix 4: objection from Ms Louise Mowat received on 21 March 2019.

Appendix 5: objection from Mr J Colin King on behalf of himself and Mrs Jessie M D King received on 21 March 2019.

Appendix 6: two additional photographs from Mr J Colin King received on 22 March 2019.

Appendix 7: submission from Mr W E Sutherland received on 26 March 2019.



LOCATION PLAN (1:1250)
 Ordnance Survey © Crown Copyright 2012. All rights reserved. Licence number 100020449

- Albert Hotel Activities
- | | |
|-----------------------|-----------------------|
| 5(a) Accommodation | 1st & 2nd Floors |
| Conference | All public areas |
| Restaurant | All public areas |
| Bar Meals | All public areas |
| 5(b) Receptions | All public areas |
| Club or other Groups | All public areas |
| 5(c) Recorded Music | All public areas |
| Live Performances | All public areas |
| Dance | All public areas |
| Film | All public areas |
| Gaming | Bothy Bar |
| Televised Sport | All public areas |
| 5(d) Outdoor Drinking | All areas edged green |



SCALE
 0 1 2 5 10 METRES
 GROUND FLOOR PLAN (1:100)

GENERAL DRAWING NOTES

- Do not scale off this drawing. All dimensions are in millimetres unless otherwise stated.
- This drawing is to be read in conjunction with all relevant Architectural, Interior, Civil, Structural and Service Engineer's drawings and specifications.
- The contents of this drawing remains the intellectual property of J A Leask Architects Ltd and must not be reproduced or altered without the permission of the copyright holder.

PROJECT SPECIFIC NOTES

This drawing has been produced for use as a Premises Layout Plan as described in the Licensing (Scotland) Act 2005 only.

Any information provided on this layout plan that is not required by the Licensing (Scotland) Act 2005 or regulations made thereunder is provided purely for the purpose of assistance. Such information specifically does not form part of any Premises Licence.

- LEGEND**
 Fire Warning System, Emergency Lighting & Fire Fighting Equipment
- ILLUMINATED EXIT SIGN
 - ILLUMINATED DIRECTIONAL EXIT SIGN
 - NON-ILLUMINATED EXIT SIGN
 - EMERGENCY LIGHT
 - FAN
 - FIRE ACTION NOTICE
 - BREAK GLASS EMERGENCY CALL POINT
 - FIRE ALARM SOUNDER
 - SMOKE DETECTOR / SOUNDER
 - HEAT DETECTOR
 - FIRE BLANKET
 - WATER TYPE FIRE EXTINGUISHER
 - CO2 TYPE FIRE EXTINGUISHER
 - FOAM TYPE FIRE EXTINGUISHER
 - POWDER TYPE FIRE EXTINGUISHER
 - DENOTES EXTENT OF THE LICENSED AREA
 - DENOTES CHILDREN AND YOUNG PERSON AREAS. Children and Young Persons have access to all public areas, with the exception of the Bothy Bar
 - DENOTES AREAS USED FOR OFF SALES DISPLAY
 - DENOTES NEW (PROPOSED FEB 2019) LICENSED PARTS OR PARTS NOW DESCRIBED IN THE OPERATING PLAN

Revision/Date	Description	By
A 16.10.15	Minor amendments due to LB and solicitor's comments	MDK
B 06.11.15	Green line to the external area thickened	MDK
C 16.02.17	Pending formal issue	MDK
D 16.01.18	External seating on Mounthoolie Lane edged in green, red and shaded yellow. Proposed shop details added	MDK
E 12.02.19	Minor client and LSOL updates made.	MDK
F 19.02.19	Ancillary Grounds 2 area added.	MDK
G 20.02.19	Ancillary Grounds 2 unhatched and unedged, ancillary grounds 3 hatched and edged accordingly. Further dimensions added to the shop	MDK

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Client Dawn Flett			
Project The Albert Hotel, Mounthoolie Lane, Kirkwall, KW15 1JZ			
Drawing Title Ground Floor Licensing Plan			
Scale 1:100 @ A1	Date March 2015	Drawn by MDK	Checked by MDK
Job No. OKY 1447	Drawing No. (PLP)-01	Revision G	Issued for Licence
Copyright © 2015 J A Leask Architects Ltd			

Licensing

From: Mike Laing [REDACTED]
Sent: 20 March 2019 07:53
To: Licensing
Subject: Licensing variation Albert hotel

Reference ;GRM/ES/IK000400

Dear Sir/Madam

We wish to note our objection to the proposed outdoor seating/license variation at the Bothy Bar (Albert Hotel Mounthoolie lane , Kirkwall, KW15 1HW).

Grounds: (b)&(c).

Our reasons for this are based on the period that tables and chairs were outside during the summer 2018. During this short timeframe staff at our establishment had to call for an ambulance on two occasions and the police on a further occasion. The afore mentioned incidents of brawling all occurred outside the Bothy Bar. On one occasion the chairs and tables were being used as weapons as well as glasses being thrown and smashed.

It is very concerning that during these incidents there were no staff members from the Bothy Bar either intervening or calling for emergency services. In fact on both occasions it was staff members from Busters Diner who called for the emergency services and administered first aid to those who required it whilst awaiting the ambulance.

On a separate occasion a mass brawl was taking place outside our premises, which started in the seating area. Our staff and customers were extremely concerned at the level of violence witnessed. We were asked by a family who were dining in the restaurant to close the curtains as their 2 small children were afraid of what they were seeing and hearing. Once again there was no presence of any Bothy Bar staff, and a member of our staff called for the police. Once the police arrived we were asked to lock the door until they got the situation under control. These incidents will have been recorded by the services involved.

All sections from (b) covered above.

The general noise levels and anti social behaviour certainly increased during this time period. We also had reports from neighboring residents that glasses were being thrown into their gardens posing a serious risk to their children.

In conclusion the welfare and safety of our business, employees and customers is our priority. There is no doubt that these incidents occurred due to the outside seating and bringing drinking onto the street, as otherwise we generally have had very little bother beforehand.

(covering section 3 from (c) persons likely to frequent the premises.)

In view of the above the granting of this variation and any subsequent seating outside in mounthoolie place/lane, would result i fear in the reoccurrence of last years public nuisance/disorder and the threat to public safety.

Yours sincerely
Mr & Mrs Laing

NB: proforma sent separately.

Licensing

From: Mike Laing [REDACTED]
Sent: 20 March 2019 09:00
To: Licensing
Subject: [Tiny Scanner] Doc 20 Mar 2019, 08:53
Attachments: Doc 20 Mar 2019, 0853.pdf

Reference licence variation application,
Ref:GRM/ES/IK000490

Dear Sir/madam

Please find attached the proforma filled in with regards the above application, further to my email sent this morning.

Regards Mr & Mrs laing

Sent from my iPhone

ORKNEY ISLANDS AREA LICENSING BOARD

LICENSING (SCOTLAND) ACT 2005
OBJECTIONS/REPRESENTATIONS FORM
VARIATIONS OF PREMISES LICENCES

Please read the Board's Guidance on objections and representations – variations of premises licences – above before completing this form.

Please complete this form in typewritten or block capital script, using black ink.

Details of Person Making Objection/Representation	
Full Name of Person	MR & MRS LANEY.
Address of Person, including postcode	BUSTERS DINCH 1 MOUNTHOOLIE PLACE KIRKWALL KW15 7JZ
Telephone Number of Person	
Email Address of Person	
Details of Premises Licence Variation Application	
Address of Premises	ALBERT HOTEL LTD. 8 ALBERT STREET / MOUNTHOOLIE LANE KIRKWALL. KW15 7HP / KW15 17W

Details of Any Objection

Ground of Objection by reference to section 30(5) of the 2005 Act – these tally with the grounds of objection listed as (a) to (d) in the Board's Guidance

(a) N/A.

(b) ALL ITEMS LISTED UNDER THIS SECTION REFER TO EMAILED LETTER.
 (c) (3) FROM LIST. PERSONS LIKELY TO FREQUENT THE PREMISES.
 (d)

Delete as appropriate

If referring to ground (d) – specify locality being referred to. You may lodge copy maps if that would help to clarify the locality.

N/A

Provide further detailed information about your objection. Please submit supplementary A4 sheets if required.

PLEASE SEE EMAILED LETTER

Details of Any Representation

Details of any representation in support of the application. Please submit supplementary A4 sheets if required.

N/A

Details of any modifications which you consider should be made to the operating plan. Please submit supplementary A4 sheets if required.

N/A

Ctd over

Details of any conditions which you consider should be imposed. Please submit supplementary A4 sheets if required.

Signature



Date

20/3/19.




21 MAR 2019

ORKNEY ISLANDS AREA LICENSING BOARD**LICENSING (SCOTLAND) ACT 2005
OBJECTIONS/REPRESENTATIONS FORM
VARIATIONS OF PREMISES LICENCES**

Please read the Board's Guidance on objections and representations – variations of premises licences – above before completing this form.

Please complete this form in typewritten or block capital script, using black ink.

Details of Person Making Objection/Representation	
Full Name of Person	GRAEME CLARK
Address of Person, including postcode	CLARK OPTOMETRISTS 9-13 MOUNTHOULIE LANE KIRKWALL KW15 1LA
Telephone Number of Person	01856 872857
Email Address of Person	
Details of Premises Licence Variation Application	
Address of Premises	THE ALBERT HOTEL KIRKWALL

Details of Any Objection	
Ground of Objection by reference to section 30(5) of the 2005 Act – these tally with the grounds of objection listed as (a) to (d) in the Board's Guidance	<p>(a)</p> <p>(b) PROTECTING PUBLIC HEALTH PROTECTING CHILDREN</p> <p>(c) PREVENTING PUBLIC NUISANCE</p> <p>(d)</p> <p>Delete as appropriate</p>
If referring to ground (d) – specify locality being referred to. You may lodge copy maps if that would help to clarify the locality.	
Provide further detailed information about your objection. Please submit supplementary A4 sheets if required.	<p>1 SHEET ATTACHED</p>
Details of Any Representation	
Details of any representation in support of the application. Please submit supplementary A4 sheets if required.	
Details of any modifications which you consider should be made to the operating plan. Please submit supplementary A4 sheets if required.	
Ctd over	

Details of any conditions which you consider should be imposed. Please submit supplementary A4 sheets if required.



Signature.



Date

21 / 3 / 19



CLARK

OPTOMETRISTS

21/03/2019

For the attention of the Licensing Board

Clark Optometrists Ltd
9 -13 Mounthoolie Lane,
Kirkwall,
Orkney,
KW15 1LA
Tel: 01856 872857
Fax: 01856 873100

As the owner of Clark Optometrists, situated adjacent to The Albert Hotel, I have sufficient concerns regarding the proposal that I wish to object.

My patients on entering and leaving my premises will be in close proximity to the seating area:

- This will be a smoking area – we actively discuss smoking cessation with patients to promote healthy living. Currently the smokers from The Bothy gather at the Bothy door. The proposed seating plan takes them within a few meters from the optometrists front door.
- With consumption of alcohol there will inevitably be coarse language – unpleasant for young and old. The approach from Junction Rd to my shop will be significantly narrowed and patients will have to “run the gauntlet”.
- My building lies to the sun and in the summer afternoon and it’s pleasant to have the front door open. Again the issue of noise/smoke and potentially bad language.
- Cars/vans requiring access will have to drive up the narrowed lane to my front door to do a 3 point turn to get out. At present cars exiting the garages can turn left and drive straight out. A safety issue arises with increased traffic at my front door – a significant number of my patients are visually impaired, elderly or very young.

The proposed arrangement will disrupt the pleasant quietness of an area that I understand is a conservation zone and residential area.



Yours sincerely,

Graeme Clark

ORKNEY ISLANDS AREA LICENSING BOARD**LICENSING (SCOTLAND) ACT 2005
OBJECTIONS/REPRESENTATIONS FORM
VARIATIONS OF PREMISES LICENCES**


Please read the Board's Guidance on objections and representations – variations of premises licences – above before completing this form.

Please complete this form in typewritten or block capital script, using black ink.

Details of Person Making Objection/Representation	
Full Name of Person	LOUISE MOWAT
Address of Person, including postcode	 MOUNTMOOLIE PLACE KIRKWALL KW15 1JZ
Telephone Number of Person	
Email Address of Person	
Details of Premises Licence Variation Application	
Address of Premises	ALBERT HOTEL 7 MOUNTMOOLIE PLACE KIRKWALL KW15 1JZ

Details of Any Objection	
<p>Ground of Objection by reference to section 30(5) of the 2005 Act – these tally with the grounds of objection listed as (a) to (d) in the Board's Guidance</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>Delete as appropriate</p>
<p>If referring to ground (d) – specify locality being referred to. You may lodge copy maps if that would help to clarify the locality.</p>	
<p>Provide further detailed information about your objection. Please submit supplementary A4 sheets if required.</p>	<p>WITH REGARDS TO OBJECTION (B), I BELIEVE THAT IN GRANTING THE APPLICATION, THERE WOULD BE MORE CRIME AND DISORDER - LAST SUMMER</p>
Details of Any Representation	
<p>Details of any representation in support of the application. Please submit supplementary A4 sheets if required.</p>	
<p>Details of any modifications which you consider should be made to the operating plan. Please submit supplementary A4 sheets if required.</p>	
<p>Ctd over</p>	

Details of any conditions which you consider should be imposed. Please submit supplementary A4 sheets if required.

Signature. 

Date 21/3/19

WHEN THE TABLES AND CHAIRS WERE OUTSIDE FOR A SHORT PERIOD OF TIME, THEY WERE THROWN ON ONE OCCASSION AGAINST THE WALL. THIS WOULD ALSO COVER POINTS SECURING PUBLIC SAFETY AND PREVENTING PUBLIC NUISANCE. WE ALSO FOUND MORE BROKEN GLASS IN OUR GARDEN DUE TO CUSTOMERS FROM THE PUB TAKING THEM OUTSIDE OF THE PREMISES AND THROWING THEM INTO OUR GARDEN. WE HAVE A YOUNG CHILD AND DO NOT APPRECIATE THIS.

WITH REGARDS TO PREVENTING PUBLIC NUISANCE (B) AND ALSO (C) (iii), THE LEVEL OF NOISE AND ARGUING/FIGHTING WAS HEIGHTENED WHEN THE TABLES/CHAIRS WERE OUTSIDE LAST YEAR. THIS WAS DUE TO CUSTOMERS OF THE PUB BEING OUTSIDE FOR LONGER PERIODS OF TIME, DUE TO THE TABLES/CHAIRS.

ORKNEY ISLANDS AREA LICENSING BOARD

**LICENSING (SCOTLAND) ACT 2005
GUIDANCE ON OBJECTIONS AND REPRESENTATIONS
VARIATIONS OF PREMISES LICENCES**

This document contains information available in the Licensing (Scotland) Act 2005 and various Regulations made by the Scottish Government. It should be read in conjunction with the Board's pro-forma objections/representations form for variations of premises licences. If you are unclear about the information provided or what to do next, please contact your solicitor for advice.

Objections

Any person may, by notice to the Licensing Board, object to an application for variation of premises licence on one of the following grounds –

- (a) that the application must be refused under the following sections of the Licensing (Scotland) Act 2005 –
- 32(2) – the Board must refuse any subsequent premises licence variation application in respect of the same premises licence and seeking the same variation made before the expiry of the period of one year beginning with the date of the earlier refusal, unless at the time of the earlier refusal the Board directed that section 32(2) would not apply to any subsequent application or the Board is satisfied that there has been a material change of circumstances since the earlier refusal;
 - 64(2) – the Board must refuse an application for 24 hour opening unless it is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period; or
 - 65(3) – the Board must refuse an application for off-sales hours before 10 a.m. or after 10 p.m.;
- (b) that the Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, which are –
- o preventing crime and disorder;
 - o securing public safety;
 - o preventing public nuisance;
 - o protecting and improving public health; and
 - o protecting children from harm;

(c) that, having regard to –

- (i) the nature of the activities proposed to be carried on in the subject premises;
- (ii) the location, character and condition of the premises; and
- (iii) 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;

(d) that, having regard to the number and capacity of –

- licensed premises; or
- licensed premises of the same or similar description as the subject premises,

(taking account of the proposed variation) in the locality in which the subject premises are situated, 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 that description, in the locality.

Note: Anyone lodging an objection on ground (d) above will require to specify the locality on which they are basing their objection.

If the Board determines that none of the grounds for refusal apply, it must grant the application. If it determines that any of the grounds for refusal apply, it must refuse the application.

Where the Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Representations

Any person may also, by notice to the Licensing Board, make representations concerning the application, including, in particular, representations –

- (i) in support of the application;
- (ii) as to modifications which the person considers should be made to the operating plan accompanying the application; or
- (iii) as to conditions which the person considers should be imposed.

General

Where the Licensing Board receives a notice of objection or representation, the Board must –

- give a copy of the notice to the applicant no later than 7 days before the date of the hearing at which the application is to be considered; and
- have regard to the objection or representation in determining the application,

unless the Board rejects the notice because it considers the objection or representation to be frivolous or vexatious. Where the Board rejects an objection or representation on those grounds, it may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

Licensing Board Staff – Contact Details

by writing to: The Licensing Team
 Legal Services
 Corporate Services
 Orkney Islands Council
 Council Offices
 Kirkwall, Orkney
 KW15 1NY

by telephone to: 01856 873535 ext. 2232 / 2229

by email to: licensing@orkney.gov.uk

by fax to: 01856 876941

ORKNEY ISLANDS AREA LICENSING BOARD

**LICENSING (SCOTLAND) ACT 2005
OBJECTIONS/REPRESENTATIONS FORM
VARIATIONS OF PREMISES LICENCES**

Please read the Board's Guidance on objections and representations – variations of premises licences – above before completing this form.

Please complete this form in typewritten or block capital script, using black ink.

Details of Person Making Objection/Representation	
Full Name of Person	John Colin King (Son) Acting on behalf of my mother Jessie MacKay Drever King - with power of attorney.
Address of Person, including postcode	Mounthoolie Place Kirkwall Orkney KW15 1JZ
Telephone Number of Person	
Email Address of Person	
Details of Premises Licence Variation Application	
Address of Premises	Albert Hotel Mounthoolie Lane Kirkwall Orkney KW15 1HW

**Details of Any
Objection**

Ground of Objection by reference to section 30(5) of the 2005 Act – these tally with the grounds of objection listed as (a) to (d)

in the Board's Guidance

(a)
N/A

(b) "Preventing public nuisance. Preventing crime & disorder. Protecting and improving public health".

With respect to the Variation relating to the proposed outdoor seating and drinking in a shared public / residents thoroughfare. No comment herein relates to the off sales which is not opposed.

We already have experience of noise and disturbance from smokers standing outside the Bothy Bar door, with occasional very foul language and in still weather in our garden the strong smell of cigarette smoke. Having personal experience of a colleague's death from passive smoking, we take such unwarranted smoke drift seriously and with this application there will be much more potential smoking taking place, and also will now be much closer to our garden than from the Bothy door area.

The noise and high spirits outside the Bothy bar already intrudes through our triple glazing and after about 9 pm we can no longer enjoy the garden due to the revelry etc nor can we safely access our garage. We have in the past had to complain to The Albert Hotel when in the summer they left the Bothy doors open for the revellers and smokers outside the bar into the small hours, with the bar blaring music literally keeping us awake through closed windows.. They did respond by saying the doors would be kept closed in future. However with a large increase in transit to and from the seating area the noise of the bar will become very intrusive affecting the sleep and health of the residents.

This provision will make a peaceful garden area much more affected in terms of nuisance and of their health, and my 88 year old mother who is now on 2 sticks, will be forced to retreat into the house and miss the important sunlight she requires and garden pottering she enjoys - simply to avoid the inevitable noise and sometimes very foul language and smoke drift.

She has lived in her house since 1960, and it is a lovely clean area, and the current intrusion from activities spilling out into the Lane are just about tolerable in the late evening, but to have virtually the whole day now with drinkers and inevitable revelry and smoking, right outside her front gate will devastate her state of mind & health, and knock on likewise to her 2 sons. She is currently extremely concerned by this proposal and she is losing sleep over the worry. There is no doubt this is already affecting her health and we dread to think what would develop should this Variation be approved.

In addition our neighbours at the west end of the Lane, have advised that during a period last summer unauthorised use of tables and chairs was put in use, as is now requested in this Variation application, and they suffered numerous disorderly crime events, leading to more than one Police intervention, and also to ambulance requirements for injured persons. Chairs were used in some fights and the volume and frequency of glasses and cans thrown over the garden walls in the Lane increased noticeably. The unapproved use of tables and chairs were removed following protest from the neighbour to OIC authorities. This also explains why my mother was complaining on the phone to me at home in Aberdeen of more noise than usual and also when I came home why I found a lot of glass and cans in the garden and on the garage roof, and vomit on our garage door. I didn't know at the time that outdoor drinking had been taking place.

Not I am now retired and moving back to Orkney and will be staying at my mother's house and thus this affects me directly too.

Finally although there is provision in the plans associated with this Variation for car access into the garage by reversing entry, no provision is made for exit from the garages which has to be to the west side of the Lane to drive out in a forward manner until close to the Bothy bar, and would be impossible with tables and chairs to the east of the Bothy bar door. With this proposal residents would have to reverse the whole length of the Lane, which with adjacent tables and chairs, plus public thoroughfare would not be conducive to the risk being as low as reasonably practicable for transit.

It should also be noted that no provision has been made to the garage adjacent to the west of ours for access for their car and their established access rights to their garage. Whilst it is not occupied just now as the owner is working abroad, he fully intends to move back into the property sometime soon and re establish the use of his garage which he did for many years previously..

(c) (i) "The nature of the activities proposed to be carried on in the subject premises".

This is a shared and quite small public area. Drinking in this space proposed space will have a large impact on the public access reduced to an even narrower public thoroughfare. This narrow thoroughfare also has to make a third provision for the 2 residents garages in the Lane and for emergency services. These have been catered for in the plans we have sighted, but the reality is that these space usage demands will compete and inevitably be a cause for concern at busy times. Further other neighbours to the west side of the lane have to park on the residents side of the lane

at times for personal reasons; with established practice. With the proposed tables and chairs, there would be no way for residents east of the parked cars accessing the garages.

At nearly 89 years old my mother is getting quite frail and the only way we have to take her for health appointments, shopping or visiting at various times of the day is by getting her into the car in the lane through our garage. Potentially the time will come where wheelchair access will be needed too. She will be very alarmed should this coincide with high spirits and inevitable colourful language. Further with established practise, her daily carers have to park their cars for upto an hour twice a day in the Lane whilst attending to her needs, which will further restrict the public thoroughfare.

(ii) "The location, character & condition of the premises;
"

The proposed location is a small residents & public access area, and is a busy thoroughfare throughout the working day and into the evening between Junction Road & nearby car parks to the west, and Albert Street shops and businesses. Public access and residents access work well in established harmony. This Variation for the proposed outdoor drinking area, is frankly too much, and akin to squeezing a pint into a half pint pot.

It is a very different situation from that on the Harbour Street front bars where the area is much more open with no residents affected, and passers by have the opportunity to pass on the harbour wall side. Conversely Mounthoolie Lane is very narrow and intimate. The character of the Lane will dramatically change and for the residents who are extremely close to it, will inevitably suffer from loss of the public amenity they currently have at least during the day now, and indeed the public accessing through the Lane will be forced to travel through a long line of tables with drinkers, where on occasions it could well be intimidating for some. There is already some reluctance for some of the public to transit the area when a lot of smokers are congregating; especially late afternoon / evening.

(iii) "The persons likely to frequent the premises"

The clientele frequenting the Bothy appear to enjoy the traditional Scottish character of drinking and it seems a lot of them are smokers too; and the Bothy does well to cater for them. Assuming that this outdoor drinking area will be mostly in the summer we envisage that as this is an almost a closed small area, that the volume of persons not actually seated will be potentially large too.

An additional concern expressed by all neighbours is that

	<p>with off sales now adjacent with this Variation on Junction Road, there is a likelihood that person's will migrate to this area with economical alcohol and create further potential for standing up drinking in the Lane which we believe could be quite impactful at times and restrict the use of public and residents access.</p> <p>I refer to the comments in response (b), where we already know the character of the place and the clientele where Police have been called on numerous occasions for breaches of peace etc, and indeed ambulances too. It is clear from the experiences with Police involvement and residents upset, that there is already questionable control of activities at certain times within the Bothy which spill out into the public / residents area. From the unauthorised trial in 2018 by the Albert Hotel this loss of control was magnified significantly.</p> <p>(d) N/A</p> <p>Delete as appropriate</p>
<p>If referring to ground (d) – specify locality being referred to. You may lodge copy maps if that would help to clarify the locality.</p>	<p>N/A</p>
<p>Provide further detailed information about your objection. Please submit supplementary A4 sheets if required.</p>	<p>Photograph of the lane is attached from 20/3/19 showing a typical day with a construction van parked in the Lane whilst working on the hotel. Further there are deliveries for the other businesses in the lane where vehicles are required to park on the residents side of the area in question. Currently the residents can pass around these vehicles back and fore, but clearly impossible with a long line of tables.</p> <p>This Variation proposal is already alarming all the neighbours including myself in respect to the points already noted above. However for my 88 year old mother who has lived here the majority of her life this fundamental change to the character of her home and the ensuing additional nuisance we firmly believe will result, could be devastating to her.</p>
<p>Details of Any Representation</p>	
<p>Details of any representation in support of the application. Please submit supplementary A4 sheets if required.</p>	
<p>Details of any modifications which you consider should be made</p>	<p>Frankly this tight public area is not conducive to established public access & residents transit with the deployment of tables and chairs, & the associated risks increasing in the areas of nuisance due to prolonged noise</p>

to the operating plan.
Please submit
supplementary A4 sheets
if required.

Ctd over

& revelry throughout the day, with the associated health risks of passive smoking to public & residents using the Lane. Therefore the proposed use of the tables and chairs for outside drinking should not be approved. We would propose that a segregated area adjacent to the Albert Hotel store on Junction Road with hard fence barrier to delineate the outdoor drinking area from pavement. This wate ground is currently used for car parking. This removes the conflict with the Lane's neighbours, gives outside drinking in a more more controlled area & is adjacent to the off sales. Photograph attached.

<p>Details of any conditions which you consider should be imposed. Please submit supplementary A4 sheets if required.</p>	<p>This Variation for outdoor seating & drinking in public/residents shared area should not be approved and alternative on the undeveloped ground alongside the off sales should be explored.</p>
---	---

Signature



.....

Date

21/3/19

.....



the albert hotel

SY14 TVQ



The Bothy Bar
Traditional pub
Food served daily using local produce
Coffee & snacks
Orkney cask ales
Great malt & gin shelf
Spores channels
Folk music sessions
Cosy fire & warm atmosphere
Over 18's only

Licensing

From: Colin [REDACTED]
Sent: 22 March 2019 12:03
To: Licensing
Subject: Albert Hotel Licensing Variation Objection

Hello,

Reference GRM/ES/IK000490

I submitted our objection to the above yesterday. I've just not that due to computer and printing problems, I didn't attach 2 photographs showing the space needed to exit our garage that clashes very badly with the proposed tables to the east of the Bothy bar. I did reference this in my text, but as I said the photos got misplaced.

Licensing

From: Colin [REDACTED]
Sent: 22 March 2019 12:19
To: Licensing
Subject: Fwd: Albert Hotel Licensing Variation Objection

Hello

I'm still having computer problems ! Arghhhh

Photos attached this time hopefully.

Yours Sincerely

John King



The
Bothy
Bar
D

- Fresh fish
- Local produce
- Craft beer
- Charcoal grill
- Great night life
- Sports bar
- All night music
- Live music
- Darts table

