

Item: 4

Orkney Islands Area Licensing Board: 18 June 2020.

Licensing (Scotland) Act 2005.

Application for Occasional Licence.

Iain Laird – Live Music Nights at Orkney Auction Mart, Hatston, Kirkwall – 7/8 and 8/9 August 2020.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application from Iain Laird for an occasional licence for two Live Music Nights at Orkney Auction Mart, Hatston, Kirkwall on 7/8 and 8/9 August 2020.

2. Recommendations

It is recommended:

That the Board determines the application from Iain Laird for an occasional licence for two Live Music Nights at Orkney Auction Mart, Hatston, Kirkwall on 7/8 and 8/9 August 2020.

3. Policy Aspects

3.1.

In terms of its Statement of Licensing Policy, the Board has delegated to the Clerk authority to determine the following description of application under the Licensing (Scotland) Act 2005 (the Act) in consultation with those members of the Board who may be available by telephone or email at any given time and at no time less than five members:

- occasional licence – outwith the Board's normal licensing hours policy – where no objections or representations have been received, the Police have not lodged a notice recommending refusal of the application and any report by the Licensing Standards Officer does not recommend refusal.

3.2.

The Clerk may elect not to exercise delegated powers in a particular case and has determined not to do so in this case, taking into account concerns expressed by Members in the past regarding consideration of applications meeting the criteria referred to at section 3.1 above.

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 24:00 Sundays to Thursdays and 01:00 Fridays/Saturdays and Saturdays/Sundays.
- Terminal on-sale operating hour of 02:00 Fridays/Saturdays and Saturdays/Sundays for premises which, in terms of their operating plan and the Board's understanding, will be operating as nightclubs.
- 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.

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

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

4. Application

4.1.

Iain Laird (the applicant) is the holder of a personal licence and is entitled to apply for occasional licences.

4.2.

On 28 February 2020, the applicant submitted an application for an occasional licence in respect of two Live Music Nights at Orkney Auction Mart, Hatston, Kirkwall on 7/8 and 8/9 August 2020. No persons under the age of 18 years will be permitted entry.

4.3.

The application is for on-sale operating hours only from:

- 20:00 on Friday 7 August to 02:00 on Saturday 8 August 2020.
- 21:00 on Saturday 8 August to 02:00 on Sunday 9 August 2020.

4.3.1.

The terminal operating hour requested is outwith those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

4.4.

The applicant has submitted supporting information about the events, which is attached as Appendix 1 to this report.

4.4.1.

The applicant states within his supporting information that if the application for a terminal hour of 02:00 on 7/8 and 8/9 August 2020 is not granted, he seeks an earlier terminal hour on those dates. On his application form, he specifies an earlier hour of 01:00. A terminal hour of 01:00 on the relevant dates is within those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

4.5.

The applicant states within his supporting information that "... in our neighbouring counties of Caithness and Shetland weekly drinking times of 3am are common place ...".

4.5.1.

The Licensing Policy Statement published by Highland Licensing Board provides that on-sales premises may generally operate from 11:00 to 01:00 any day. Late opening premises, identified by the Board as nightclubs or discotheques offering significant entertainment, may operate on-sales from 11:00 to 03:00 on Thursdays/Fridays, Fridays/Saturdays and Saturdays/Sundays.

4.5.2.

The Highland Licensing Board Policy Statement also includes the following provisions regarding occasional licences and operating hours:

"The Board's policy is that occasional licences for on sales ... should normally be subject to the same opening/closing times as set out in the Board's core policy hours. These are:

On sales - Monday to Sunday: 1100 hours to 0100 hours the following day ...

... Outwith the dates identified each year by the Board as the dates between which the festive period hours policy will apply, the Board will grant occasional licences for hours beyond its core policy hours only on cause shown in the case of exceptional special events and only where the applicant satisfies the Board that this will not conflict with any of the licensing objectives."

4.5.3.

The Licensing Policy Statement published by Shetland Islands Licensing Board contains the following provisions:

“20.4.

Having regard to the licensing objectives, and particularly that of protecting and improving public health, as a starting point, but subject to considering the individual merits of each case, for on-sale licensed premises the Board has approved the following for terminal hours.

The guideline **terminal hours** are –

1 a.m. on any night for the generality of premises and **3 a.m.** on weekend nights for premises which are operating as a nightclub. For this purpose the Board regards premises or a part of premises which meet the following criteria as a night club:-

- recorded music is played live by a person or persons; and
- an area is specifically laid out for dancing; and
- a fee is charged for entry;

Whilst each case will be considered on its merits, the Board will generally consider applying the following additional conditions on premises seeking to operate as a nightclub. These conditions are:-

- CCTV coverage;
- A Personal Licence holder is present on the premises during late hours opening;
- The use of Security Industry Authority licensed door supervisors.

20.6.

With respect to **occasional licences** and **extended hours applications** reference is made to [paragraph 12] above. Additionally as a guideline the Board would be prepared to approve applications which fall within the general guideline hours set out above for on-sale premises, namely with an opening hour of 11am and a terminal hour of 1am.”.

4.6.

The reference to a terminal on-sales operating hour of 03:00 in neighbouring licensing board areas is arguably erroneous, as such provisions within the relevant licensing board policy statements relate to permanently licensed premises identified by the relevant licensing boards as nightclubs or similar rather than unlicensed premises used and licensed from time to time for events on an occasional basis.

4.6.1.

With reference to section 3.3 above, one licensed premises in Orkney has historically been identified as a nightclub and operates on-sale licensed hours of:

- 11:00 – 24:00 Mondays to Wednesdays inclusive.
- 11:00 – 01:30 Thursdays/Fridays.
- 11:00 – 02:00 Fridays/Saturdays and Saturdays/Sundays.
- 12.30 – 14:30 and 18:30 – 24:00 Sundays.

4.7.

The applicant was advised that his application would require to be considered at the Meeting of the Licensing Board on 23 April 2020. That Meeting was cancelled due to the national Covid-19 situation. The applicant was subsequently advised that his application would require to be considered at the meeting on 18 June 2020. He was asked to attend the meeting and was advised that attendance would require to be via Microsoft Teams. By email dated 28 April 2020, the applicant stated “At this moment it looks highly unlikely this event will go ahead due to covid 19 but I wish to proceed with the application encase restrictions do get lifted sooner , although I can't see that being the case.”.

5. Consultation

5.1.

The required notices were issued to the statutory consultees, being Police Scotland, the Scottish Fire and Rescue Service and the Licensing Standards Officer (LSO), on 28 February 2020. The application was published on Orkney Islands Council's website from 29 February 2020. The last date for objections or representations to be received from Police Scotland, the Scottish Fire and Rescue Service or the public was 7 March 2020.

5.2.

An LSO may, within 21 days of receipt of a notice of an application for occasional licence, prepare and submit to the Board a report setting out the officer's comments on the application.

5.3.

By email dated 2 March 2020, Police Scotland advised that they had no objection or observations in relation to the application.

5.4.

No response was received to the public consultation or from the Scottish Fire and Rescue Service.

5.5.

By email dated 26 March 2020, the LSO advised that he had no objection to the application, subject to the information that a licence would not authorise any person or organisation to deviate from current or future UK or Scottish Government instructions on special measures to control the spread of Coronavirus/Covid-19.

6. Financial Implications

The appropriate application fee of £10 has been paid.

7. Legal Aspects

7.1.

Regulation 6 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 as amended – Restrictions on gatherings – provides as follows:

“No person may participate in a gathering in a public place of more than two people except –

(a) where all the persons in the gathering are members of no more than two households,

(b) where the gathering is essential for work purposes,

(c) to attend a funeral, or

(d) where reasonably necessary –

(i) to facilitate a house move,

(ii) to provide care or assistance to a vulnerable person,

(iii) to provide emergency assistance, or

(iv) to participate in legal proceedings or to fulfil a legal obligation.”

7.2.

Regulation 2 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 as amended – The review of need for restrictions – provides as follows:

(2) The Scottish Ministers must review the need for restrictions and requirements imposed by these Regulations at least once every 21 days, with the first review being carried out by 16 April 2020.

(3) As soon as the Scottish Ministers consider that any restriction or requirement set out in these Regulations are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in Scotland with coronavirus, the Scottish Ministers must revoke restriction or requirement.

7.3.

In terms of the Act, the Board may, on the application of the holder of a premises licence, holder of a personal licence or a representative of any voluntary organisation, in relation to any premises (other than licensed premises) within the Board's area, issue a licence referred to as an occasional licence authorising the sale of alcohol on the premises.

7.4.

An occasional licence has effect for such period of not more than 14 days as the Board may determine.

7.5.

Any person may, by notice to the Board, object to an application for occasional licence on any ground relevant to one of the grounds for refusal specified in the Act or may make representations to the Board, including representations in support of the application or as to conditions which the person considers should be imposed.

7.6.

The Board must 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.

7.7.

The grounds for refusal under the Act are as follows:

7.7.1.

The premises to which the application relates are excluded premises. These are essentially garages or garage shops, but there is an exemption for premises which are the principal source, in their community, for groceries as well as petrol or deriv.

7.7.2.

The application must be refused if, generally, to grant it would result in the applicant exceeding the statutory limit on the numbers of days permitted for occasional licences; or it seeks generally banned 24 hour opening or prohibited off-sale hours.

7.7.3.

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.

7.7.4.

Having regard to:

- The nature of the activities proposed to be carried on in the premises to which the application relates,
- The location, character and condition of the premises or
- The persons likely to frequent the premises,

The Board considers that the premises are unsuitable for use for the sale of alcohol.

7.8.

In relation to the suitability of premises, Regulation 3 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 as amended – Requirement to close premises and businesses – provides as follows:

“(4) A person responsible for carrying on a business or providing a service which is listed in Part 2 of Schedule 1 must cease to carry on that business or to provide that service.”

7.9.

Part 2 of Schedule 1 of the above Regulations – Businesses subject to restrictions or closure – includes the following:

“23. Auction houses except for livestock auctions.”

7.10.

In determining the application, the Board must take into account any report from the LSO.

8. 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.

9. Appendix

Appendix 1 – Supporting information from applicant.

Event Proposed & Location

The event proposed is County Show Weekend @The Mart 2020 featuring two live bands each playing for half the evening each, so 2 bands on Friday night and 2 bands on Saturday night.

The event is to be located at Orkney Auction Mart Ltd within their general purpose hall. Orkney Auction Mart is located close to Kirkwall town centre with pavements and street lighting along the route.

There will only be certain areas of the building used on the night. With one entry and exit point to control people entering the event. The entrance is into a foyer which provides access to the male, female and disabled toilets and then into the hall.

The main event is located in the hall which is approx 15m x24m. There will be a staged area for the band and a bar area at one end of hall. The main hall has 4 1.7m double door fire exits, each of which will be manned at all times by fully qualified SIA security.

The stage is to be ^{7.2m x 3.6m} ~~6m~~ x ~~4m~~ of pre fabricated construction. The stage will be surrounded by pedestrian barriers. A raised structure licence will be applied for.

There will be a bar area at either end of hall, it is of wooden construction, 1.2m high and 0.6m wide and 7.2m long at one end of hall and 9.6m long at other end of hall. The bar will be supervised by other personal licence holders as well as myself.

There shall be a gated off area outside for a smoking area which will also be manned by security at all times.

The event area is all fully accessible

We have successfully ran events the same as these at this venue and I also have previous experience of events like this run at local sports arena and at local shows.

We wish to apply for an occasional licence for County Show Weekend 2020 @ The Mart, we wish to apply for the following hours

2000 07/08/20 to 0200 08/08/20 also 2100 08/08/20 to 0200 09/08/20

If unsuccessful we would still wish to get a licence but for an earlier time each night.

I have several reasons for applying for a 2am licence.

We ran 2 events the same as these last year which both proved to be very popular. Both nights would have been even more successful if we could have operated until 2am. People wish to stay out longer, in our neighbouring counties of Caithness and Shetland weekly drinking times of 3am are common place, I wish only for 2am for large events such as these.

We run our events very professionally with adequate numbers of SIA licenced door staff & several personal licence holders working on bar. I put a lot of time into planning. At our latest event we provided a free shuttle bus running from the venue to the travel centre before and after the event. This proved popular and ensured people got home safely, this was provided free with the costs being met by us, we would seek to provide this service again, if we are successful in our application.

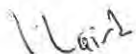
We have a good working relationship with Police Scotland, following on from this event last year we had chats with several police officers and they were happy with how we ran the event, we had no trouble at all. The one thing that they did say for crowd control was that if we had a 2am licence, the pubs would all have closed by the time we closed so they would be more available to attend the closing of our event and it would make for a more relaxed atmosphere leaving the venue.

For this event we are planning on taking bands from south, from as far away as London, as well as using local bands, for which we are so lucky to have so many of. The people of Orkney like seeing bands coming from out with the County but there is huge costs involved with this, another reason for a 2am licence, to make these events viable.

I hope you can see that we are trying to run events that appeal to people within Orkney, and that we run them professionally. We are not trying to take business away from any other local establishments as we are only putting on events on nights when large numbers of patrons are out in Orkney. I have a zero-tolerance approach to drugs and misbehaviour and this is well respected by all patrons attending our events.

I hope our application is successful and appreciate your help.

Yours



Iain Laird Events and Security