

The Highland Licensing Board

Meeting – 2 August 2017

Agenda Item	8.2
Report No	HLB/088/17

Application for the provisional grant of a premises licence under the Licensing (Scotland) Act 2005

Smashburger, Unit 4, Falcon Square, Eastgate Shopping Centre, 11 Eastgate, Inverness, IV2 3PP

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for the provisional grant of a premises licence in respect of Smashburger, Unit 4, Falcon Square, Eastgate Shopping Centre, 11 Eastgate, Inverness, IV2 3PP.

1.0 Description of premises

1.1 The Smashburger is situated in Falcon Square in the centre of Inverness and consists of an American style burger eatery with both indoor and outdoor seating areas.

2.0 Operating hours

2.1 The applicant seeks the following **on-sale** hours:

On sales:

Monday to Sunday: 1000 hours to 2400 hours

The applicant seeks the following **off-sale** hours:

Off sales:

Monday to Sunday: 1000 hours to 2200 hours

3.0 Background

3.1 On 7 June 2017 the Licensing Board received an application for the provisional grant of a premises licence from ALV Trading Limited.

The application was accompanied by the necessary section 50 certification in terms of Planning.

- 3.2 The application was publicised during the period 12 June until 3 July and confirmation that the site notice was displayed has been received.
- 3.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 3.4 Notification of the application was also sent to NHS Highland and the local Community Council.
- 3.5 Further to this publication and consultation process, no timeous objections or representations have been received.
- 3.6 The applicant must nevertheless be given the opportunity to be heard before the Board determines the application and has accordingly been invited to the meeting. The applicant has been advised of the hearings procedure which may also be viewed via the following link:

http://highland.gov.uk/hlb_hearings

4.0 Legislation

- 4.1 The Licensing Board must, in considering and determining the application, consider whether any grounds of refusal apply and, if none of them applies, the Board must grant the application.

Relevant grounds of refusal are: -

1. that the premises are excluded premises;
2. that the Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
3. that the grant of the application would be inconsistent with one or more of the licensing objectives;
4. 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 the premises are unsuitable for use for the sale of alcohol, or
5. that 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, in the locality.

4.2 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

5.0 Licensing Standards Officer

5.1 The LSO has provided the following comments:-

(i) The applicant intends to operate an American-style burger eatery located on the ground floor of the Eastgate centre with a frontage onto Falcon Square, where there will be an outdoor dining / drinking area. Sales of alcohol will not be restricted to those members of the public taking a table meal on the premises. Alcohol will be dispensed from the serving counter.

(ii) The business will be food-led and the applicant seeks licensed hours of 1000 to 2400 hrs daily for on-sales in line with Board policy for such an operation. They also intend to offer off-sales as a service with licensed hours 1000 to 2200 hours daily. There will be no display of alcohol for off-sales with orders being fulfilled from a secure store. In such circumstances, there is no conflict with the Board's policy on overprovision and no off-sales alcohol capacity is recorded.

(iii) A full range of activities and services may be provided and are reasonable for this type of business. The premises may open prior to the commencement of licensed hours.

(iv) The outdoor dining/drinking area is to be located within a pedestrianised square which falls within the area of The Highland Council Prohibition of Consumption of Alcohol in Designated Public Places (City of Inverness and Beaulieu) Byelaws 2012. The byelaw does not apply in any place for which there is an alcohol licence issued in terms of the Licensing (Scotland) Act 2005

(v) In respect of children and young persons, all children must be accompanied by an adult, and are only permitted on the premises for the purposes of consuming a meal or when attending a function. There is no restriction on entry to the premises by young persons.

(vi) The application is for licensed hours within policy and the activities and services referred to in the operating plan, are appropriate for this type of operation. I am satisfied that the applicant has given due consideration to the licensing objectives and have no cause to object to the grant of a premises licence.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-18
- (2) Highland Licensing Board Equality Strategy

7.0 Conditions

7.1 Mandatory conditions

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

7.2 Local conditions

Should the Board grant the application as applied for, the Board may wish to consider attaching the following conditions from the schedule of local conditions:

- (e) After 2200 hours alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area.
- f(2) Alcohol may be sold on the premises prior to 1100 hours only to persons taking table meals.
- (l) The boundaries of any outside area governed by a Pavement Permit will be effectively demarcated to the satisfaction of the Licensing Standards Officer.
- (k) Within 30 minutes of the conclusion of permitted hours for any outside area governed by a Pavement Permit, all tables and chairs, parasols and other moveable furniture will be removed
- (m) The licence holder shall ensure that all outdoor tables covered by a Pavement Permit are regularly cleared of all used cutlery and crockery.
- (q) The licence holder shall submit to the Board and to Police Scotland, prior to 1 December each year, notice of the dates within the festive period on which it is intended that the premises remain open until the festive period terminal hour stated for that category of premises in the Board's Policy Statement. The Premises may remain open until the festive period terminal hour only on those dates for which notice has been given by the licence holder to the Board and to Police Scotland in accordance with this condition.

7.3 Special conditions

The Board may wish to consider attaching the following special conditions:

- (1) All children must be in the company of, or supervised by an appropriate responsible adult and are only permitted on the premises for the purposes of having a meal or while attending a function.
- (2) All alcoholic and non-alcoholic drinks for consumption within the outdoor area shall only be sold and served in cans or in plastic or polycarbonate containers.
- (3) Any alcohol for consumption in the outdoor drinking area will be only in the licensed premises.

Recommendation

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local and special conditions detailed at paras. 7.2 and 7.3 above.

If the Board is minded to refuse the application, the Board must specify the ground for refusal and, if the ground for refusal is in relation to a licensing objective, the Board must specify the objective in question.

Reference: HC/INBS/610

Date: 12 July 2017

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Background Papers: The Licensing (Scotland) Act 2005/Application Form.