

## The Highland Licensing Board

Meeting – 2 August 2017

Agenda Item	10.3
Report No	HLB/093/17

### Application for a major variation of premises licence under the Licensing (Scotland) Act 2005

Isle of Skye Distillers Ltd, The Distillery, Hillfoot, Viewfield Road, Portree, Isle of Skye, IV51 9ES

### Report by the Clerk to the Licensing Board

#### Summary

This report relates to an application for a major variation of premises licence by Isle of Skye Distillers Ltd, The Distillery, Hillfoot, Viewfield Road, Portree, Isle of Skye, IV51 9ES.

#### 1.0 Description of premises

1.1 The premises is a single storey detached gin distillery and office in a residential area of Portree.

#### 2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

##### Off sales:

Monday to Sunday: 1000 hours to 1900 hours

#### 3.0 Summary of variation application

##### 3.1 Variation sought

The applicant seeks to vary the premises licence as follows:-

- (1) Increase off sales licensed hours to terminate at 2200 hours daily;
- (2) Remove special condition 3 - "No member of the public seeking to buy alcohol on the premises or to collect alcohol from the premises is permitted on the premises to which this licence refers";
- (3) Amend description of the premises to remove the reference to members of the public not being permitted on the premises.

## **4.0 Background**

- 4.1 On 20 June 2017 the Licensing Board received an application for a major variation of a premises licence from Isle of Skye Distillers Ltd.
- 4.2 The application was publicised during the period 26 June 2017 until 17 July 2017 and confirmation that the site notice was displayed has been received.
- 4.3 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.
- 4.4 Notification of the application was also sent to NHS Highland and the local Community Council.
- 4.5 Further to this publication and consultation process, the following timeous notice of representation has been received and is appended:

(1) Planning - Development and Infrastructure Service dated 29 June 2017.

- 4.6 The applicant and the objector have been invited to attend the hearing. Both have been advised of the hearings procedure which will be followed at the meeting and which may also be viewed via the following link:

[http://highland.gov.uk/hlb\\_hearings](http://highland.gov.uk/hlb_hearings)

## **5.0 Legislation**

- 5.1 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 may be: -

1. the grant of the application will be inconsistent with one or more of the licensing objectives;
  2. having regard to (i) the nature of the activities carried on or 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 in accordance with the proposed variation;
  3. 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.
- 5.2 The Board only has power either to grant the application and make a variation of the conditions to which the licence is subject or to refuse the application.

If the Board refuses the application, the Board must specify the ground for refusal and if the ground for refusal relates to a licensing objective, the Board must specify the objective in question.

## **6.0 Licensing Standards Officer**

6.1 The LSO has provided the following comments:-

- (i) The applicant was granted a premises licence on 28 March 2017.
- (ii) The licence refers only to the distillery building which is located in the grounds of a private house.
- (iii) The volume of business has exceeded the operator's expectations and there has been a demand for customers, mainly tourists, to call at the premises to collect their purchase rather than rely on delivery.
- (iv) Special condition 3 was imposed to reinforce the licence holder's voluntary position that there would be no personal callers at the premises and which addressed some planning concerns about vehicle movements in a residential area.
- (v) There remains special condition 1 " Alcohol for consumption off the premises to which this licence refers may only be sold and despatched pursuant to an order originating off the premises"
- (vi) As a consequence of this application Planning - Development and Infrastructure service have highlighted issues regarding planning permission, in particular vehicle movements and the introduction of retail use into the site.
- (vii) Matters relating to planning and development are regulated by separate statutes with the Development and Infrastructure service having power to deal with any infractions.
- (viii) The purpose of the Licensing (Scotland) Act 2005 is to regulate the sale of alcohol and it is unlikely that any planning or related matters can be considered as being relevant unless there was a link to engagement with any of the licensing objectives.
- (ix) In his correspondence with other departments the applicant has alluded to other activities and services which may be provided on the premises. For the avoidance of any doubt I have spoken with the applicant who confirms that the application to vary the premises licence remains pertinent but that a further variation application may be lodged in due course.

- (x) The increased hours sought are in line with Board policy. The proposed removal of the special condition and amendment to the premises description does not appear to conflict with any of the licensing objectives. The continued imposition of special condition 1 does not prevent customers from calling at the premises but does not allow them to place any order in person.

## **7.0 HLB local policies**

7.1 The following policies are relevant to the application:-

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

## **8.0 Conditions**

### **8.1 Mandatory conditions**

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

### **8.2 Local conditions**

There are no existing local conditions and it is not considered necessary to attach any.

### **8.3 Special conditions**

Remove special condition 3 – “No member of the public seeking to buy alcohol on the premises or to collect alcohol from the premises is permitted on the premises to which this licence refers”.

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree to the removal of special condition detailed at para. 8.3 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/RSL/1465

Date: 19 July 2017

Author: Carol Nicolson

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

Appendix – Representation from Planning - Development and Infrastructure Service dated 29 June 2017.

Please ask for: Chris Hallas  
Direct Dial: 01478 613847  
E-mail: [Chris.Hallas@highland.gov.uk](mailto:Chris.Hallas@highland.gov.uk)  
Our Reference:  
Your Reference:  
Date: 29.06.17

Dear Sir/Madam

In response to your request for a consultation on the application for Variation of Premises Licence for Mr Wilson at Isle of Skye Distillers we supply for the following comments.

The original planning permission was granted for a production facility only and no retail aspect of the unit was mentioned or considered. Unfortunately, in planning terms, customers visiting the premises to collect pre-paid goods does amount to retail activity – it is the customer movements that are the material consideration for the planning authority. A fresh planning application would need to be submitted to the planning authority for its assessment of the facts and details of the addition of a retail use being added.

The original planning application also had a condition placed on the decision notice relating to noise relating activities on the site.

2. *Upon the first use of the development hereby approved and thereafter, operations for which noise is audible at the boundary of the application site shall only be carried out between:*

- i. 0800 hours and 1900 hours Monday to Friday; and*
- ii. 0800 hours and 1300 hours on Saturdays.*

*Notwithstanding the above, no such operations shall take place at any time on a Sunday or Christmas Day, New Year's Day, 2nd January or Good Friday Bank Holidays (as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended)), unless otherwise approved in writing by the Planning Authority as an exceptional instance for operating outwith these hours.*

*Reason: In the interests of neighbour amenity.*

The addition of a retail use on this site and intensification of the vehicle movements would in our view be a breach of this planning condition.

If you require any further assistance with regards to your proposal then please do not hesitate to get in contact with myself or another member of the Portree Planning Team.

Yours sincerely,

**Chris Hallas**

Professional support Officer – Skye and Lochalsh  
Planning & Development Service