

**THE HIGHLAND LICENSING BOARD**

Minute of the meeting of the Highland Licensing Board held in the Council Chamber, Council Headquarters, Glenurquhart Road, Inverness, Wednesday 1 November 2017 at 1.15pm.

**Present:**

Dr I Cockburn, Mr J Bruce, Mr G Cruickshank, Mr A Jarvie, Ms E Knox, Mrs L Macdonald, Mr D Macpherson, Mrs P Munro, Mr K Rosie and Mr C Smith

**In Attendance:**

Ms S Blease, Clerk  
Ms C McArthur, Depute Clerk  
Mr I Cox, Licensing Standards Officer  
Mr D Inglis, Licensing Standards Officer  
Ms A Macrae, Committee Administrator

**Also In Attendance:**

Sergeant B Gray, Police Scotland

Items 7.1 and 7.3: Mr S Wright for the applicant and Mr P McLuckie, solicitor for the applicant

Item 7.4: Mr C McLoughlin, applicant

Item 8.2: Ms T Bloomfield, applicant and Mr A Hunter, solicitor for the applicant

Item 8.3: Mrs L Murray, solicitor for the applicant

**Briefing on Protocol for Webcasting of Meetings.**

The Convener advised the Board that the meeting would be filmed and broadcast over the internet on the Highland Council website and would be archived and available for viewing for 12 months.

**1. Apologies for Absence  
Leisgeulan**

There were no apologies for absence.

**2. Declarations of Interest  
Foillseachaidhean Com-pàirt.**

There were no declarations of interest.

**3. Confirmation of minutes  
Dearbhadh a' gheàrr-chunntais**

There was submitted for confirmation as a correct record the minute of the meeting of the Highland Licensing Board held on 3 October 2017.

The Minute was held as read and **APPROVED**.

**4. Licensing (Scotland) Act 2005  
Licences granted under delegated powers  
Achd Ceadachd (Alba) 2005  
Ceadachdan a bhuilicheadh fo ùghdarras air a Thiomnadh**

There had been circulated Report No HLB/119/17 detailing licences which had been granted under delegated powers by the Clerk to the Board during the period 1 September 2017 to 19 October 2017.

The Board **NOTED** the report.

**5. Licensing (Scotland) Act 2005  
Occasional licences and extended hours  
granted under Delegated Powers  
Achd Ceadachd (Alba) 2005  
Ceadachdan Corra-uair agus uairean sìnte a bhuilicheadh fo ùghdarras  
air a thiomnadh**

There had been circulated Report No HLB/120/17 detailing occasional licences and extended hours applications which had been granted under delegated powers by the Clerk to the Board during the period 1 September 2017 to 19 October 2017.

The Board **NOTED** the report.

**6. Chief Constable's Report 2016 to 2017  
Aithisg an Àrd-Chonstabail 2016 gu 2017**

There had been circulated the Chief Constable's Report to the Highland Licensing Board for the period 1 April 2016 to 31 March 2017.

Sergeant B Gray, Police Scotland, presented the report. He spoke of the success of the partnership working and joint approach undertaken over the period by Police Scotland and the Licensing Standards Officers and licensing staff and with Pubwatch, Highland Licensing Forum, and the Security Industry Agency.

Thereafter, Sergeant Gray provided an overview of offending in relation to the Licensing (Scotland) Act 2005 and reported that the number of offences in Highland was extremely low given the large number of licensed premises distributed across a vast geographical area.

The Convener thanked Police Scotland for the positive report and their timeous reports and regular attendance at the Board.

The Board **NOTED** the report.

**7. Licensing (Scotland) Act 2005  
Applications for provisional premises licences  
Achd Ceadachd (Alba) 2005  
Iarrtas airson ceadachdan thogalaichean le cumha**

### **7.1 Ref: HC/INBS/614**

**Applicant:** T J Morris Ltd, Portal Way, Axis Business Park, Gillmoss, Liverpool, L11 0JA per DWF, Solicitors, 5 St Paul's Square, Old Hall Street, Liverpool

**Premises:** Home Bargains, Unit 2, Aviemore Retail Park, Grampian Road, Aviemore

**Type:** Off Sales

There had been circulated Report No HLB/121/17 by the Clerk which invited the Board to determine the application.

The Board **AGREED:** to **GRANT** the application subject to mandatory conditions only.

### **7.2 Ref: HC/INBS/615**

**Applicant:** Kinrara Distillery Ltd, Lochindorb Lodge, Lochindorb, Grantown-on-Spey

**Premises:** Kinrara Distillery Limited, Lynwilg Farm Steading, Lynwilg, Aviemore

**Type:** Off Sales

There had been circulated Report No HLB/122/17 by the Clerk which invited the Board to determine the application.

The Board **AGREED:** to **GRANT** the application subject to mandatory conditions only.

### **7.3 Ref: HC/RSL/1840**

**Applicant:** T J Morris Ltd t/a Home Bargains per DWF LLP, Solicitors, 5 St Paul's Square, Old Hall Street, Liverpool

**Premises:** Home Bargains, Unit B, Fort William Retail Park, North Road, Fort William

**Type:** Off-Sales

There had been circulated Report No HLB/123/17 by the Clerk which advised that a timeous objection had been received from NHS Highland in response to the application. The Board was invited to determine the application.

The Clerk reported that an update on the number of premises in Highland and in Lochaber which exceeded a capacity of 40m<sup>2</sup> had been circulated to all parties. In summary, this showed there had been no significant change from the original assessment carried out in 2013. She explained that the Board was required to consider the number and capacity of licensed premises at the time of determining the application.

Mr McLuckie on behalf of the applicant, spoke in support of the application during which he advised that:-

- his clients were a significant and respected operator of stores nationwide, and also held a number of premises licences across the Highlands with no issues being reported in terms of the licensing objectives;

- a number of robust measures and processes would be implemented by his clients to ensure compliance with the licensing objectives at the premises, details of which he provided;
- the display capacity area being sought was 0.8 m<sup>2</sup> above the capacity of 40 m<sup>2</sup> set out in the Board's overprovision policy and therefore could not be considered to be a material addition or to be any less acceptable on public health grounds than a capacity slightly below what could be considered to be an arbitrary threshold;
- the reason for the application was to allow the applicant to use an end of aisle display to ensure alcohol products were not sandwiched between other products;
- the sale of alcohol was ancillary to the applicant's principal business as a retailer of general household goods and the off-sales capacity sought was less than 5% of the overall display area in the store;
- the applicant's marketing strategy was not to carry out specific price or product promotions, and that given alcohol products formed such a small part of the applicant's offering, prices were often higher than that offered by other retailers; and
- the offering at the premises did not include spirits which he suggested would be more harmful than the lower strength products to be sold.

In conclusion, Mr McLuckie submitted that the alcohol sales capacity being applied for was not a material addition and approval of the application would have no material impact on public health. The Board should therefore exercise its discretion and rebut the presumption set out in the overprovision policy.

Ms E Smart, Consultant in Public Health, NHS Highland circulated all parties with information on the number of alcohol-related deaths in Highland, from 2011 to 2015, which had been collated by Local Community Partnership. Ms Smart then spoke in relation to NHS Highland's objection as follows:-

- overconsumption and misuse of alcohol imposed substantial short and long term health, social and financial costs on individuals, families, friends and communities;
- the evidence showed that controlling the overall availability of alcohol could prevent and reduce alcohol misuse;
- the Board had an important contribution to make as part of a range of measures to protect public health from the harmful effects of alcohol;
- the introduction of the Board's overprovision policy in 2013 reflected changes in drinking habits and the fact the majority of alcohol was now consumed in the home environment;
- survey data from sources such as the Scottish Health Survey showed that individuals currently exceeding the weekly safe allowance of units of alcohol was 25.8% of the population in Scotland; in addition individuals binge drinking was 19.5% and individuals problem drinking was 17.8% of the population;
- in developing the overprovision policy and in terms of accessibility, calculations had shown that 94% and 66% of the population in Highland were within a ten minute drive or walk time respectively of a licensed premises; the figures in respect of off sales were 90% and 59% respectively;

- in addition 71% of people surveyed strongly agreed with the statement that there were enough places selling alcohol in the place they lived;
- the levels of alcohol related health harm in Highland remained a concern and the data for 2016 showed that there were 61 alcohol related deaths, the highest number of deaths since 2010; and
- recent information obtained from the National Records of Scotland showed that Lochaber was above the average for the number of alcohol related deaths per 100,000 of the population, and had a higher rate than other areas in the Highlands.

In summary, Ms E Smart suggested that Board's area was well provided for in terms of alcohol provision and that on the basis of the evidence provided the overprovision policy should be upheld on the grounds of protecting and improving public health.

During discussion, Members raised the following issues:-

- it was suggested the figures provided for alcohol related deaths in Lochaber involved relatively low numbers spread out over a wide geographical area and therefore caution should be exercised in relation to the statistics on the basis there was a high margin for error;
- alcohol sales figures in Lochaber should also take account of the large number of tourists visiting Fort William;
- the Board should exercise its discretion in respect of the application on the basis the capacity being applied for was not significantly over 40 m<sup>2</sup>; and that approval of the application would not place any additional pressure on NHS Highland or increase alcohol misuse;
- it was suggested that a considerable amount of work and research had been undertaken in developing the overprovision policy and it was in place for good reasons and should be upheld on the grounds of protecting and improving public health;
- it would be possible for the applicant to replicate the shelving at its other stores to comply with the overprovision policy; and
- concern that departing from the Board's overprovision policy would create a precedent for future applications.

Mr A Jarvie moved that the application be granted on the grounds it would not be inconsistent with the licensing objective of protecting and improving public health but on failing to find a second the amendment fell.

Thereafter, and on hearing from the Clerk, Mr McLuckie advised that his clients were content to amend the application so that the single off-sales display capacity area at the premises was no more than 40 m<sup>2</sup>. He confirmed that an amended plan in this regard would be lodged in due course.

The Board **AGREED** to **GRANT**:-

- i. an amended major variation application to allow the applicant to have a single off-sales display capacity area of no more than 40 m<sup>2</sup>, subject to mandatory conditions only; and
- ii. delegated powers to the Principal Solicitor to issue the varied licence once the applicant has submitted an amended plan showing a display

area of no more than 40 m<sup>2</sup> and which has been approved by the Licensing Standards Officer.

#### **7.4 Ref: HC/RSL/1843**

**Applicant:** Fabulously Scottish Hotels per MacPhee & Partners, Airs House, An Aird Fort William

**Premises:** The Garrison (formerly Fort William Police Station), High Street, Fort William

**Type:** On Sales

There had been circulated Report No HLB/124/17 by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application subject to mandatory conditions, local conditions and the special conditions as set out at 7.2 and 7.3 respectively of the report.

### **8. Licensing (Scotland) Act 2005**

**Applications for variation (major) to premises licences**

**Achd Ceadachd (Alba) 2005**

**Iarrtasan airson Caochladh (Mòr) a thaobh ceadachdan thogalaichean**

#### **8.1 Ref: HC/INBS/50**

**Applicant:** Bridge End Filling Station Ltd, Station Road, Beauly

**Premises:** Bridgend Filling Station, Station Road, Beauly

**Type:** Off Sales

There had been circulated Report No HLB/0125/17 by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the major variation subject to mandatory conditions only.

#### **8.2 Ref: HC/RSL/1117**

**Applicant:** Lidl UK GmbH, 19 Worples Road, London, SW19 4JS

**Premises:** Lidl UK GmbH, Camanachd Crescent, An Aird, Fort William

**Type:** Off-Sales

There had been circulated Report No HLB/126/17 by the Clerk which advised that a timeous objection had been received from NHS Highland and a representation from Police Scotland in response to the application. The Board was invited to determine the application.

The Clerk explained that her introduction to Item 7.3 above in relation to the number of off-sales premises in the Board's area as at October 2017, also applied in respect of this application

Mr A Hunter for the applicant, explained that his clients would be content to amend the application to provide for a single off-sales display area of 54.75 m<sup>2</sup> throughout the year and to amend the layout plan to show the non-seasonal element to provide certainty for both the applicant and Licensing Standards

Officer. His clients would also be content for this to be a condition of any grant of a licence.

Mr Hunter then spoke in support of the application, during which he advised that:-

- the application was not intended to challenge the Board's overprovision policy but instead was part of a national process by his clients to remodel and re-merchandise its stores;
- in terms of alcohol products the plan was to expand their selection of Scottish craft ales, and over the festive period to meet significant additional demand from customers for seasonal products;
- in regard to the overprovision statement, this was a policy and should not fetter the Board's discretion to grant applications where it had been demonstrated there was sufficient justification for departing from that policy;
- there were no issues arising in respect of Lidl's operations in the Highlands which were inconsistent with the licensing objectives;
- the proposal was for small change in the off-sales capacity area relative to the overall capacity of the store and which was significantly below the capacity of some of the other main supermarkets in the locality;
- a point that if his clients had not previously applied for minor variations to its premises licence to reduce its alcohol sales capacity, then the premises would currently benefit from a capacity of 50.04 m<sup>2</sup> under grandfather rights
- in regard to the above, if the application was refused his clients would essentially have lost out through the responsible and honest approach they had taken to comply with the legislation;
- his clients did not operate in such a way as to promote or target more alcohol sales or stock the type of products which may be attractive to underage customers;
- the Board's overprovision policy, by limiting incumbent premises to a capacity of 40m<sup>2</sup> while at the same time permitting new stores to open, did not address overprovision in the area and by its very nature affected competition and was unfair; and
- there was no statutory requirement for the Board to set a limit in relation to off-sales capacity areas and the legislation required only that the Board identified localities within its area.

Sergeant B Gray advised that Police Scotland's representation related to the fact the application was outwith the Board's overprovision policy. Police Scotland considered there was no good reason for exceeding the limit in respect of this particular application, and in addition was concerned that approval of the application would create a precedent for future applications.

Ms E Smart, Consultant in Public Health, spoke in relation to NHS Highland's objection to the application and advised that her submission in relation to Item 7.3 above also applied to this application. She advised that her concern related to protecting and improving the health of the population and suggested that the Board's overprovision policy was one part of a number of measures to support public health, and the policy should be upheld in respect of this application.

The Clerk clarified that the Board had not set a limit in its overprovision policy. She explained that the policy set out a threshold for off-sales capacities over which there was a presumption against grant, which was rebuttable if the Board was satisfied both with the justification put forward by the applicant's representative and that departure from that policy would not impinge on the licensing objectives. She also advised that regulation of competition amongst the trade was not a licensing objective in terms of the Licensing (Scotland) Act 2005.

During discussion, Members raised the following issues:-

- the argument that the policy should not apply in this case on the basis the premises had previously benefited from a larger off-sales capacity area was not convincing;
- a contrary view was expressed that the application should be granted on the basis that the applicants had previously benefited from a capacity over the overprovision threshold under grandfather rights;
- Lidl was a major supermarket with a large customer base and it was unfair to restrict their capacity to 40 m<sup>2</sup> when there were several other supermarkets in the area with a significantly larger capacity;
- it was also reasonable to allow the applicant additional seasonal capacity to respond to demand for additional seasonal products and it was considered this would not be inconsistent with the licensing objectives;
- in particular it was suggested that increasing the off-sales capacity to allow additional seasonal products to be stocked would not necessarily increase alcohol sales and lead to more alcohol misuse;
- the overprovision threshold had been set following extensive research into public health issues and was designed to protect and improve public health, and the Board should also be mindful of the evidence provided in NHS Highland's submission in this regard;
- it was important that all applicants should be treated equally in terms of the policy and it was suggested that sufficient justification had not been provided for deviating from policy in respect of the application;
- concern that if the Board approved the application then this could potentially set a precedent and result in a significant number of applications in respect of other stores in the area; and
- the Board should be mindful that in terms of the legislation it was required to review the overprovision policy going forward and that this would be subject to wider consultation.

Thereafter, Mr A Jarvie seconded by Mr C Smith moved to grant an amended variation application to allow the applicant a single off-sales display capacity area of 54.75m<sup>2</sup> on the grounds the licence holder had previously benefited from this capacity and that this would allow additional seasonal products to be stocked at the premises which it was considered would not breach the licensing objectives.

The Convener seconded by the Vice Convener moved as an amendment that the application be refused on the grounds of overprovision and on the basis it was not considered sufficient that justification had been provided for departure from the overprovision policy.



Prior to a vote being concluded, Mr Hunter for the applicant, advised that his clients were content to amend the application so that the single off-sales display capacity area at the premises was no more than 40 m<sup>2</sup>, and that an amended plan would be lodged in due course.

The Board **AGREED** to **GRANT**:-

- i. an amended major variation application to allow the applicant to have a single off-sales display capacity area of no more than 40 m<sup>2</sup>, subject to mandatory conditions only; and
- ii. delegated powers to the Principal Solicitor to issue the varied licence once the applicant has submitted an amended plan showing a display area of no more than 40 m<sup>2</sup> and which has been approved by the Licensing Standards Officer.

**8.3 Ref: HC/CSR/0741**

**Applicant:** Shyam Karthikeyan, per Lorna Murray, Solicitor, 45 Culduthel Road, Inverness

**Premises:** Ord Filling Station, Great North Road, Muir of Ord

**Type:** Off Sales

There had been circulated Report No HLB/127/17 by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the major variation subject to mandatory conditions only.

The meeting ended at 2.40pm.

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