

The Highland Licensing Board

Meeting – 5 November 2019

Agenda Item	6.2
Report No	HLB/103/19

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

The Croft Café, South Side, Duirinish, By Kyle, IV40 8BE

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for the grant of a premises licence in respect of The Croft Café, South Side, Duirinish, By Kyle, IV40 8BE.

1.0 Description of premises

1.1 The Croft Café is a detached byre which has been restored to single storey accommodation and functioning as a café. The main business is primarily food led offering soup, sandwiches, afternoon tea and hot meals.

2.0 Operating hours

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

On sales:

Monday to Sunday: 1100 hours to 2300 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 21 August 2019 the Licensing Board received an application for the grant of a premises licence from Mary I M Dobson.

The application was accompanied by the necessary section 50 certification in terms of Planning, Building Standards and Food Hygiene, together with a Disabled Access Statement.

- 3.2 The application was publicised during the period 13 September 2019 until 4 October 2019 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, the following timeous notice of objection has been received and is appended:

Letter dated 2 October 2019 from Vera Naessens (Appendix 1).

- 3.6 The applicant and the objector have been invited to attend the hearing. They 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

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 For the purposes of the Act, the licensing objectives are-

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.

4.3 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 premises in question are situated at South Side, Duirinish, By Kyle, on the west coast of Skye and Lochalsh. This is a detached byre which has been restored to provide single storey accommodation and functioning as a 28 cover café internally with a further capacity of 30 in an outdoor seated area. The main business of the premises is primarily food led offering soup, sandwiches, afternoon tea and hot meals.
- (ii) The applicant would now wish to apply to extend the offering from the business to include alcohol sales, mainly beer and wine to be provided primarily as ancillary to meals but to have the option of table service alcohol sales for customers as a refreshment. There will be no bar counter within the premises and, as such, provision of alcohol will be by table service only.
- (iii) The applicant also request off sales to allow for provision of mainly beers and wine to customers. The off sales will be from an area behind the servery counter and will extend to approximately 3.07m² and is well under the 40 square metre threshold set by the Board in respect of the current policy relating to over provision.
- (iv) The applicant has applied for on sales from 1100 hours until 2300 hours and off sales 1000 hours until 2200 hours and this is entirely within Board policy.
- (v) The LSO has overviewed the application and considers that it is compliant with the licensing objectives.

- (vi) Following the public consultation phase, one timeous letter of objection has been received by the Licensing Board from the following person:-

Vera Naessens, An Lios, Duirinish, Kyle, IV40 8BE.

The text of the letter of objection contains details and concerns in relation to mainly planning and environmental health issues and I would advise there is nothing to suggest there are any adverse issues in relation to any of the licensing objectives. The LSO has liaised with the objector and clarified that her primary concerns relate to planning and environmental health issues to which she had not previously objected. The complainer accepts the limitations of her licensing objections and appreciates, following discussion, that there are no issues raised which are contrary to the five licensing objectives.

- (vii) The LSO has visited the premises personally and finds them entirely suitable for the uses described in the operating plan. They are family friendly and welcoming offering refreshment to locals and tourists alike in this fairly remote corner of Kyle and Lochalsh.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2018-23
- (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:

- l The boundaries of any outside area will be effectively demarcated to the satisfaction of the Licensing Standards Officer.
- m After 2100 hours, alcoholic or non-alcoholic drinks shall not be consumed in any outdoor drinking area.
- n(1) No live or recorded music shall be played in any outdoor drinking area.

- o The licence holder shall ensure that consumption of drinks (alcoholic or non-alcoholic) in any outside drinking area is permitted only by customers seated at the tables and chairs provided in the outside drinking area and not by customers standing in that area.

7.3 Special conditions

No special conditions are considered necessary.

Recommendation

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local conditions detailed at para 7.2 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/1923

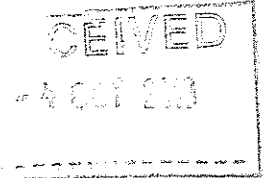
Date: 21 October 2019

Author: Carol Nicolson

Appendix 1: Letter dated 2 October 2019 from Vera Naessens

To: Claire McArthur,
Clerk to the Licensing Board,
Tigh Na Sgìre, Park Lane,
Portree, Isle of Skye, IV51 9GP

Appendix 1



Wednesday, 2 October, 2019

Dear Claire,

Ref: HC/RSL/1923 application for grant of premises licence, The Croft Café Duirinish.
Regarding Objection.

Of course, a glass of wine with a meal sounds acceptable, it is however for my feeling in disagreement with the child friendly signs in place, also I suspect a foot in the door and easier access to late licence, or even full pub licence in the future, also who's to check, once a licence is granted that the limitations of it will be respected...

Forgive me my negative view on this matter...

I've lived in the Village for over 25 years and relations with the families involved have always been friendly. The 1st rumours about the possibility of a café, this was back in 2007 after some land was earmarked for business development in Duirinish, definitely did not concern the current location. The land between the original barn and my property was NOT earmarked. So how they got away with building an extension this close to my boundary: about 50 cm right at the point where my oil tank stands and this also being their fire escape, is frankly beyond me... but they did...

When this safety matter was gently pointed out, the reaction was defensive to say the least. Some people prefer to be blind for their own mistakes and stupidity and don't take kindly to confrontation I suppose.

I must have been really out of my mind and terribly stupid and wrong myself for not objecting in any way against the project and giving them instead my trust... which they choose bluntly to abuse as far as I'm concerned. I think I was intimidated by the fact that I've never been notified of anything in person, ahead of official neighbour notifications I mean, which is a bit hard to take from people who you have come to think of as friends, it might be just ignorance... I don't know which one is worse. Then of course, it was just going to be a seasonal café serving some tea and cakes... without much discomfort for me ... I do remember voicing some careful concern about the trees at the time, maybe having to be removed... oh no, I was assured... in hindsight... some months later, suddenly rumours about the tree's being ill were introduced... ??? IT WOULD NOT HAVE MADE ANY DIFFERENCE, and yes maybe to soften the blow... white lies you call them I believe, but to revert to these kind of tactics... not done!

Hello... they are open 7 days a week, 8 to 8, serving Breakfast, lunch, afternoon tea and dinner. Talk about discomfort... noise all day long, fan blowing fishy grease right up a now unused washing line, in a garden I've come to avoid all together.

The character of the Village in this corner has changed drastically.

I do realise that this seems not directly related to the matter at hand here, my apologies for that and thank you for your time reading it, it does however illustrate how initial intentions seem to change quickly.

It seems to me that there is some resourcefulness at play here, concerning acquiring the right paperwork...

Sincerely yours,
Vera Naessens.

P.S. If they are in order, apologies also for the character of the letter, it was drafted last minute, as I decided earlier on after first receiving the notification, that it wouldn't make any difference anyway putting in an objection I mean, but these last couple of days I've been really on edge... something just doesn't sit right with this whole affair and I'm tired of being challenged in this way.