

The Highland Licensing Board

Meeting – 11 May 2021

Agenda Item	6.1
Report No	HLB/028/2021

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

Birch, Bayfield Road, Portree, Isle of Skye, IV51 9EL

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 Birch, Bayfield Road, Portree, Isle of Skye, IV51 9EL.

1.0 Description of premises

1.1 The Birch is situated in Portree and consists of a recently renovated small ground floor café/bistro serving light lunches during the day and cheese and wine in the evenings.

2.0 Operating hours

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

On sales:

Monday to Sunday: 1100 hours to 2400 hours

3.0 Background

3.1 On 2 March 2021 the Licensing Board received an application for the grant of a premises licence from Niall Munro.

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 10 March 2021 until 31 March 2021 and confirmation that the site notice was displayed has been received.

3.3 In accordance with standard procedure, Police Scotland, the Scottish Fire and 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:

1. Letter dated 23 March 2021 from Jihong Yun;
2. E-mail dated 29 March 2021 with additional information on objection from Jihong Yun.

3.6 As a hearing cannot be held in person due to coronavirus, the Licensing Board, before reaching a decision, must give any person who would have been given the opportunity to be heard at the hearing the opportunity to be heard instead by alternative methods. Consequently, the applicant has been invited to attend a virtual hearing and/or submit a written representation to state their case.

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 to be known as Birch is a small café/bistro, on the ground floor of a double storey terraced building near the centre of Portree, Isle of Skye.
- (ii) The premises are intended to be run predominantly as a coffee shop with light meals and snacks during the day, thereafter during the evening it is intended to offer cheese and wine as well as other light meals and alcohol.
- (iii) This application for a grant of licence is to allow for the on sale of alcohol to customers.
- (iv) The hours applied for are within the policy of the Highland Licensing Board, and are appropriate for the premises.
- (v) The activities sought would appear to be reasonable and appropriate for the proposed operation of the premises.
- (vi) The layout plan submitted complies with the required specifications.
- (vii) The children and young persons policy is suitable and considered within the Highland Licensing Board Policy.
- (viii) There would not appear to be any matter contained within the application that is inconsistent with the licensing objectives.
- (ix) During the period of consultation, an objection was received from Mr Jihong Yun of Tomita Japanese Restaurant, 2 Bayfield Road, Portree. The objection is based on two suggested points, overprovision of premises selling alcohol in the centre of Portree and the danger of disorder and violence emanating from Birch should it be granted a licence.
- (x) I would suggest neither of these suggested objections are valid given the "overprovision" as described is not recognised within the Highland Licensing Board Policy and the suggested likelihood of disorder and violence is not based on any fact or evidence.
- (xi) I have attempted to speak to Mr Yun or his representative on a number of occasions by telephone but have been only able to communicate by e-mail.

(xii) I have detailed clearly Highland Licensing Board Policy as well as tried to explain grounds for objection, I have also explained I would not support his objections within my report.

(xiii) As LSO I have no objection to this application.

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

No local conditions are considered necessary.

7.3 Special conditions

No special conditions are considered necessary.

Recommendation

The Board is invited to determine the above application.

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/1966

Date: 26 April 2021

Author: Carol Nicolson

Appendix 1: Letter dated 23 March 2021 from Jihong Yun;

Appendix 2 E-mail dated 29 March 2021 with additional information on objection from Jihong Yun.

Appendix 1

25 MAR 2021

Highland Licensing Board
Town House
High Street
Inverness, IV1 1JJ

RECEIVED

Tomita Japanese Restaurant
2 Bayfield Road
Portree, IV51 9EL

An Objection to Application for Premise License

Application Address:

BIRCH
Bayfield Road
Portree
IV51 9EL


Application REF: HC/RSL/1966

Dear sir/madam,

I strongly object to this application for a grant of premise license, as it would lead to an over-provision in Bayfield Road. Bayfield Road is a small one-way street with already one liquor shop, and quite a few takeaways, restaurants, and pubs. There are also a lot of licensed premises in Wentworth Street and Somerled Square which are all in Bayfield Road's surrounding area.

Can you kindly take consideration of my objection, please?

With regards,


Jihong Yun
25th Mar 2021

Appendix 2

From: [REDACTED]
Sent: 29 March 2021 11:36
To: Garry Cameron [REDACTED]
Subject: Re: RE: Contact

An Objection to Application for Premise License

Application Address:

BIRCH

[Bayfield Road](#)

[Portree](#)

[IV51 9EL](#)

Application REF: HC/RSL/1966

Hi Garry,

Sorry. English is not my mother language. So I prefer writing instead of talking if you don't mind.

Below is additional information relevant to my objection.

Grounds for objection:

1. The Birch Cafe is too small. It is only 20 or even less than 20 square meters in size, in which the table area is also included. It simply does not have sufficient space for effectively de-escalating/controlling violence and/or restraining aggressive or violent people under the effect of alcohol, who can easily walk out of the cafe and cause disruption to other people or businesses on the street.
2. We already have a large number and capacity of licensed premises at Bayfield Road and the surrounding area, as I will list below.

There are 8 bars, restaurants, and a wine shop within a 100-meter radius of Birch Cafe:

Tongadale Hotel (restaurant and bar)

Portree Hotel (restaurant and bar)

Cuchullin Restaurant

Tomita Japanese Restaurant (No 2 Down the Lane)

West Highland Bar

MacNab Bar (The Royal Hotel)

The Caledonian Cafe (license restaurant)

Isle of Skye Distillers (wine shop)

And another 8 licensed premises within a 500-meter radius:

Caroy House

The Isles Inn

The Granary

The Royal Hotel

Co-op Supper-market

Taste of India

Cafe Arriba

Eighteen Twenty

Moreover, our local area has an almost 80% higher rate of admissions to the hospitals for detoxification than the national average (2008 study).

All the above information and data should be sufficient enough to show that we should not approve of any more license applications in the center area of Portree.

Yours sincerely

Jihong Yun