



Item: 5

Orkney Islands Area Licensing Board: 5 December 2024.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Pomona Inn, Finstown.

Report by Clerk to the Licensing Board.

1. Overview

- 1.1. A premises licence has been held at Pomona Inn, Finstown, since 22 August 2024 by Sharon Craigie.
- 1.2. On 17 September 2024, Sharon Craigie submitted an application for variation of the premises licence in respect of Pomona Inn, Finstown, details of which are provided at section 3 below.

2. Recommendations

- 2.1. It is recommended that the Board:
 - i. Determine the application from Sharon Craigie for variation of the premises licence held in respect of Pomona Inn, Finstown.
 - ii. Note that, should the Board be minded to approve the application, cognisance be taken of the advice outlined in section 5.5 of this report.

3. Application for Variation of Premises Licence

- 3.1. Section 147(1) of the Licensing (Scotland) Act 2005 (the Act) provides the following definitions:
 - “Child” means a person under the age of 16.
 - “Young persons” means a person aged 16 or 17.
- 3.2. Mandatory operating plans associated with premises licences require licensees to provide specific information regarding access by children and young persons.
- 3.3. The current operating plan provides for on-sale operating hours, as follows:
 - 11:00 to 24:00 on Monday to Thursday.

- 11:00 to 01:00 on Friday and Saturday.
 - 12:30 to 24:00 on Sunday.
 - Terminal hour of 01:00 in any morning for events held on the premises relating to annual agricultural shows, local festivals and private functions.
 - Terminal hour of 01:00 in any morning during the festive season being 24/25 December until 2/3 January each year.
- 3.4. The current operating plan also provides for access by children and young persons as follows:
- Any child or young person aged 5 years old and under 18 years old will have to be accompanied by a parent or guardian between 11:00 and 20:00 on Monday to Saturday inclusive and between 12:30 and 20:00 on Sunday.
- 3.5. It should be noted that children under 5 years are not permitted on the premises.
- 3.6. The application requests modification to include access by children and young persons as follows:
- Any child or young person aged 5 years old and under 16 years old will have to be accompanied by a parent or guardian.
 - Children and young persons are permitted entry for the duration of a private function.
 - Young persons of 16 and 17 years are permitted to take part in pool and darts league games for the duration of the competitions.

4. Consultation

- 4.1. The required notices were issued to the statutory consultees and the application was published on Orkney Islands Council's website from 24 September 2024. The last date for objections or representations to be received was 15 October 2024. No objections were received. One representation was received.

5. Representation

- 5.1. The Alcohol & Drugs Partnership (ADP) Co-ordinator, NHS Orkney, responded by email on 10 October 2024 to advise that together with Police Scotland and NHS Orkney's Public Health Department they had put together a response regarding the variation for Pomona Inn. The response was provided by Police Scotland by the requested deadline of 15 October. They wanted to email on behalf of the Orkney ADP that they fully support and endorse the response provided by Police Scotland.

- 5.2. The Public Health Manager, NHS Orkney, responded by email on 10 October 2024 to advise that following discussion between Police Scotland, the ADP Co-ordinator and herself, NHS Orkney's Public Health Department were supportive of the response which would be provided by Police Scotland.
- 5.3. A representation was received from Police Scotland by email dated 12 October 2024. As required in terms of the Act a copy of the representation was sent to the applicant by email and post on 28 October 2024. The representation is included at Appendix 1 to this report.
- 5.4. The representation highlights the licensing objectives of protecting children and young persons from harm and protecting and improving public health and requests modification to the variation and conditions to be imposed as follows:
- Young persons of 16 and 17 years old attending the premises to take part in pool and darts league games for the duration of the competitions are to be accompanied by a responsible adult.
 - Children and young people should not sit or remain at any bar counter at any time (including during private functions).
 - During competitions where 16 and 17 year olds are in attendance all efforts should be taken that there is no vertical (upright) consumption of alcohol in the premises.
- 5.5. It is a mandatory condition of all premises licences that alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence. Failure to comply with this condition would constitute a breach. Therefore, should the Board be minded to approve the variation application subject to the conditions requested at section 5.4 the applicant should be requested to provide an amended operating plan.

6. Policy Position

- 6.1. In accordance with the Licensing (Scotland) Act 2005 (the Act), the Board's Statement of Alcohol Licensing Policy provides that decisions on premises licence variation applications shall be made by the Board (with the exception of decisions on minor variation applications which are delegated to the Clerk to the Board).
- 6.2. The full policy document is available from the Related Downloads section [here](#).

7. Legislative Position

- 7.1. The Act provides that the Licensing Board must hold a hearing for the purpose of considering and determining an application for a variation that is not a minor variation.
- 7.2. Because the application requests an increase in the access by children and young persons it is not a minor variation and therefore must be determined by the Board.
- 7.3. Any person may, by notice to the Board, object to an application on any of the grounds for refusal specified in the Act or may make representations to the Licensing Board, including representations in support of the application, as to modifications which the person considers should be made to the operating plan accompanying the application or as to conditions which the person considers should be imposed.
- 7.4. The grounds for refusal under the Act are as follows:
 - 7.4.1 The application must be refused if, generally, it is an application within one year of a previous refusal or seeks generally banned 24 hour opening or prohibited off-sale hours.
 - 7.4.2 The Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, namely:
 - Preventing crime and disorder.
 - Securing public safety.
 - Preventing public nuisance.
 - Protecting and improving public health.
 - Protecting children and young persons from harm.
 - 7.4.3 Having regard to:
 - The nature of the activities proposed to be carried on in the subject premises,
 - The location, character and condition of the premises.
 - The persons likely to frequent the premises.

The Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation.
 - 7.4.4 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 (taking account of the variation), in the locality.

- 7.5. Anyone lodging an objection on the ground detailed at section 7.4.4 above must specify the locality on which they are basing their objection.
- 7.6. Where the Board refuses the application, the Board must specify the ground for refusal. If the ground for refusal is that specified in the ground detailed at section 7.4.2 above, the Board must specify the licensing objective or objectives in question.
- 7.7. The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies. If none of them applies, the Board must grant the application. If any of them applies, the Board must refuse the application.
- 7.8. Where the Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

For Further Information please contact:

Gavin Mitchell, Clerk to the Board, extension 2233, email gavin.mitchell@orkney.gov.uk

Implications of Report

1. **Financial:** The appropriate application fee of £100 has been paid.
2. **Legal:** As above.
3. **Corporate Governance:** In terms of Section 30 of the Licensing (Scotland) Act 2005, a Premises Licence Variation Application is to be determined by the Licensing Board.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** None.
8. **Links to Local Outcomes Improvement Plan:** None.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

List of Background Papers

Application for Variation of Premises Licence by Sharon Craigie.

Appendix

Representation dated 12 October 2024 from Police Scotland.

12/10/2024

Your Ref: OI/662

Our Ref: 862597



Kirkwall Police Station
Burgh Road
Kirkwall
Orkney
KW15 1AH

Dear Sir,

LICENSING (SCOTLAND) ACT 2005. APPLICATION FOR THE VARIATION OF A PREMISES LICENCE. POMONA INN, FINSTOWN, FIRTH, ORKNEY ISLANDS, KW17 2EL. LICENCE HOLDER – SHARON CRAIGIE.

I refer to the above application for the variation of a premises licence under terms of Section 29(5) of the Licensing (Scotland) Act 2005.

The variation requested consists of

- Children and young persons are permitted entry for the duration of a private function.
- Young persons of 16 and 17 years are permitted to take part in pool and darts league games for the duration of the competitions

In terms of Section 29(5) of the Act this request can be considered a variation.

In terms of Section 22(1)(b)(ii) and (iii) of the Licensing (Scotland) Act 2005, I am of the opinion that the variation in its current form should be modified as follows;

1. Young persons of 16 and 17 years old attending the premises to take part in pool and darts league games for the duration of the competitions are accompanied by a responsible adult.

This will provide a measure of control and support for employees at the premises to ensure that the young persons are appropriately looked after. This measure will support and remove some risk towards the Licensing Objectives, namely

Protecting children and young people from harm.

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2. Children and young people should not sit or remain at any bar counter at any time (including during private functions).

This measure will support the Licensing Objectives, namely

Protecting children and young people from harm.

3. During competitions where 16- and 17-year-olds are in attendance all efforts should be taken that there is no vertical (upright) consumption of alcohol in the premises.

This naturally lends to the support of the Licensing Objectives, namely

Protecting children and young people from harm

Protecting and improving public health

Specifically in this regard it supports the Licensing Policy published by the Orkney Licensing Board section 24 and 25.

It is understood that Orkney Licensing Board do not have a set of local or special conditions so the below proposed conditions have been discussed with the Licensing Standards Officer and the applicant, licence holder Sharon Craigie who support the conditions being applied to the licence with the view of protecting and supporting the Licensing Objectives.

Consultation with NHS Public Health Orkney and the Alcohol and Drug Partnership, Orkney has taken place who are in agreement of the measures and conditions proposed to support the Licensing Objectives.

If the variation, or an amended version is approved, I request that the Licensing Board considers that conditions be imposed:

1. During competitions where 16- and 17-year-olds are in attendance all efforts should be taken that there is no vertical (upright) consumption of alcohol in the premises.
2. Children and young people should not sit or remain at any bar counter at any time (including during private functions)
3. Young persons of 16 and 17 years old attending the premises to take part in pool and darts league games for the duration of the competitions are accompanied by a responsible adult.

To qualify the wording of vertical or "upright" consumption of alcohol, this relates to persons consuming alcohol whilst standing in the premises. It is understood there is a good amount of seating in the premises, and it would be possible to have seated only consumption of alcoholic drinks when competitions are running that includes young people.

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I would also request that a policy is developed and produced by the premises with the support of the Licensing Standards Officer and Police and to their satisfaction that outlines and details what employees and the licence holder will do for any circumstances where an offence may occur or a threat to the Licensing Objectives presents itself. This would include having set procedures in place for unattended alcoholic drinks on tables when children and young persons are present within the premises and any incident where there is an allegation or evidence that a child or young person has obtained and consumed alcohol by whatever means.

This representation is submitted for your attention in considering this application.

Yours faithfully



Chief Superintendent Rob Shepherd
Divisional Commander