

Item: 4

Orkney Islands Area Licensing Board: 5 December 2019.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

**The Edinburgh Woollen Mill Ltd – The Edinburgh Woollen Mill,
17 Albert Street, Kirkwall.**

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by The Edinburgh Woollen Mill Ltd for a variation of a premises licence held in respect of The Edinburgh Woollen Mill, 17 Albert Street, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application by The Edinburgh Woollen Mill Ltd for a variation of a premises licence held in respect of The Edinburgh Woollen Mill, 17 Albert Street, Kirkwall.

3. Policy Aspects

3.1.

In accordance with the Licensing (Scotland) Act 2005, 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).

3.2.

The Board's Statement of Alcohol Licensing Policy generally permits off-sale operating hours of 10:00 to 22:00 each day.

3.3.

Sections 2.8 to 2.15 of the Board's Statement of Alcohol Licensing Policy set out the relationship between licensing legislation and other statutory health and safety requirements, such as planning, building standards and food hygiene. Section 2.8 of the Policy provides that the Board will avoid duplication with other regulatory regimes and will not use its powers under the Act to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies.

3.4.

The full policy document is available from the Related Downloads section of the following Council webpage:

<https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.

4. Introduction

4.1.

A premises licence has been held at 17 Albert Street, Kirkwall, since 1 September 2009, by The Edinburgh Woollen Mill Ltd.

4.2.

On 2 September 2019, The Edinburgh Woollen Mill Ltd submitted an application for variation of the premises licence. Details of the application are provided at sections 5 to 7 below.

5. Operating Hours

5.1.

The premises are currently licensed for off-sales only, as follows:

- 10:00 to 19:00 on Mondays to Fridays inclusive.
- 10:00 to 17:30 on Saturdays.
- 12:00 to 16:00 on Sundays.

5.2.

The application requests the following off-sales operating hours:

- 10:00 to 22:00 on Mondays to Sundays inclusive.

5.3.

The proposed variation of the off-sale operating hours is within those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

6. Changes to Activities

6.1.

The application requests provision of the following activities to be carried on in the premises for the first time:

- Club or other group meetings.
- Live performances.

6.1.1.

The activity of recorded music is already provided in terms of the current premises licence.

6.2.

The applicant's agent has provided the following information about the proposal:

- "Tastings will take place. Santa's Grotto may be available throughout the months of November and December. By way of example, permission for Live performances is sought to allow for a piper or a Christmas choir."
- "There is no change to the client's business. [We] have been instructed to undertake a review of the Edinburgh Woollen Mill's premises licences with a view to modernising these and making sure that they reflect the store's current operation. Various licensing agents have dealt with the premises licences over the years so the terms of the premises licences vary from store to store and for due diligence purposes it was thought best to unify these (subject to Licensing Board approval). Any live performances, e.g. a piper, would be ancillary to the established retail operation."

6.3.

With reference to section 3.3 above, it is noted that the relevant service has advised that, subject to the extent of the activities of club or other group meetings and live performances, there may be a requirement for appropriate planning consent approval.

7. Capacity

The current off-sale capacity of the premises of 0.84 square metres will not be affected by the proposed variation.

8. Consultation

The required notices were issued to the statutory consultees on 4 September 2019 and the application was published on Orkney Islands Council's website from 9 September 2019. The last date for objections or representations to be received was 30 September 2019. No submissions were received.

9. Financial Implications

The appropriate application fee of £100 has been paid.

10. Legal Aspects

10.1.

The Licensing (Scotland) Act 2005 (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.

10.2.

The following elements of the application mean that it is not a minor variation and therefore must be determined by the Board:

- Increase in operating hours.
- Introduction of new activities of club or other group meetings and live performances.

10.3.

Any person may, by notice to the Licensing 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.

10.4.

The grounds for refusal under the Act are as follows:

10.4.1.

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.

10.4.2.

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.

10.4.3.

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 or
- 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.

10.4.4.

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.

10.5.

Anyone lodging an objection on the ground detailed at section 10.4.4 above must specify the locality on which they are basing their objection.

10.6.

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 10.4.2 above, the Board must specify the licensing objective or objectives in question.

10.7.

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.

11. Contact Officers

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