



Item: 7

Orkney Islands Area Licensing Board: 9 May 2024.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

KH Orkney Limited – Kirkwall Hotel, Kirkwall.

Report by Clerk to the Board.

1. Overview

- 1.1. A premises licence has been held at the Kirkwall Hotel, since 1 September 2009, firstly by Mrs Debra M Low and then by KH Orkney Limited.
- 1.2. On 1 March 2024, KH Orkney Limited submitted an application for variation of the premises licence, details of which are provided at section 3 below.

2. Recommendations

- 2.1. It is recommended that members of the Board:
 - i. determine the application from KH Orkney Limited for variation of a premises licence held in respect of Kirkwall Hotel, Kirkwall.

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 person” 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. In terms of the existing premises licence held in respect of the Kirkwall Hotel, the operating plan provides that no children or young persons will be permitted access to the public bar (known as Skippers).
- 3.4. The application requests modification to permit access by children and young persons in the public bar area (Skippers) on Mondays to Fridays between 11:00 and 17:00, while accompanied by a responsible adult.

- 3.5. The mandatory layout plans associated with premises licences require that areas to be accessed by children and young persons be identified. An updated layout plan of the ground floor of the premises, identifying that children and young persons will be permitted access to the public bar (Skippers), is attached as Appendix 1 to this report.

4. Consultation

- 4.1. The required notices were issued to the statutory consultees on 7 March 2024 and the application was published on Orkney Islands Council's website from 11 March 2024. The last date for objections or representations to be received was 1 April 2024. No objections or representations were received.

5. Policy Position

- 5.1. 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). The full policy document is available from the Related Downloads section [here](#).

6. Legislative Position

- 6.1. 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.
- 6.2. Because the application requests an increase in access by children and young persons, it is not a minor variation and therefore must be determined by the Board.
- 6.3. 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.
- 6.4. The grounds for refusal under the Act are as follows:
- 6.4.1. 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.

6.4.2. 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.

6.4.3. 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.

6.4.4. 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.

6.5. Anyone lodging an objection on the ground detailed at section 6.4.4 above must specify the locality on which they are basing their objection.

6.6. 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 6.4.2 above, the Board must specify the licensing objective or objectives in question.

6.7. 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.

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 KH Orkney Limited.

Appendix

Appendix 1 – – Updated layout plan of the ground floor of the premises.

