

Item: 4

Orkney Islands Area Licensing Board: 20 August 2020.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

St Ola Hotel Ltd – St Ola Hotel, Harbour Street, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by St Ola Hotel Ltd for a variation of a premises licence held in respect of St Ola Hotel, Harbour Street, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application by St Ola Hotel Ltd for a variation of a premises licence held in respect of St Ola Hotel, Harbour 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 full policy document is available from the Related Downloads section of the following Council webpage:

https://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm.

4. Introduction

4.1.

A premises licence has been held at St Ola Hotel, Harbour Street, Kirkwall, since 1 September 2009, by St Ola Hotel Ltd.

4.2.

On 17 July 2020, St Ola Hotel Ltd submitted an application for variation of the premises licence. Details of the application are provided at section 5.3 below.

5. Proposed Increase in Access by Children

5.1.

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.

5.2.

Mandatory operating plans associated with premises licences require licensees to provide specific information regarding access by children and young persons. In terms of the existing premises licence held in respect of St Ola Hotel, the following information is provided:

“Provide a statement of the Terms under which [children and young persons] will be allowed entry:

Young children will not be allowed at any time. Young persons will occasionally under specific events be allowed entry to the lounge bar and outside drinking area only.

Provide a statement regarding the Ages of children and young persons to be allowed entry:

Young persons aged 16 years and above.

Provide a statement regarding the Times during which children and young persons will be allowed entry:

Entry to lounge bar only for duration of function. Entry to outside drinking area during core on-sale hours but not beyond 9 pm on any occasion.

Provide a statement regarding the Parts of the premises to which children and young persons will be allowed entry:

Young persons will be allowed in the lounge bar and outside drinking area and to have the use of toilets.

Supplementary

Young persons (i.e. persons aged 16 or 17) will be permitted to be in the designated areas on the ground floor of the premises and the garden area to 9 pm during licensed hours. Children under the age of 16 will not be permitted within the public bar, lounge bar or garden area of the premises at any time. Residents, including children and young persons, will be permitted access to the guest accommodation and dining room on the first floor of the premises.

It is anticipated that young persons will be present during e.g. sporting events such as football club meetings, prize givings and live music events.

Young persons will not be permitted into the public bar area except for access and will be restricted to using the lounge bar area and the garden area. They will require to be accompanied by a parent or guardian. No alcoholic drinks are to be consumed and young persons are to be clear from the premises at the end of the relevant event / function.

For events running between 8pm and 9pm the applicant will arrange to have a door steward on the premises.”

5.3.

The application requests modifications to permit access by children as well as young persons by amending the mandatory information as follows:

“Provide a statement of the Terms under which [children and young persons] will be allowed entry:

Children and young persons to be permitted entry with accompanying adults.

Provide a statement regarding the Ages of children and young persons to be allowed entry:

All ages.

Provide a statement regarding the Times during which children and young persons will be allowed entry:

Start of lunch service (typically midday) until either a suitable time after the finish of food service or later if in attendance at a private function with accompanying adult.

Provide a statement regarding the Parts of the premises to which children and young persons will be allowed entry:

Lounge bar (restaurant), outdoor seating, access points and toilet facilities.”

5.4.

The applicant has provided the following information regarding the proposed increase in access by children:

“Looking for guidance please, as we start to think about what 'opening back up' could be, I believe [one] critical component will be our focus on local trade. To that end, I'd like to understand what is necessary to change our [operating plan] to allow us to admit children as part of family groups to the restaurant. Currently our [operating plan] only allows Adults and [Young Persons].”

6. Consultation

The required notices were issued to the statutory consultees on 17 July 2020 and the application was published on Orkney Islands Council's website from 20 July 2020. The last date for objections or representations to be received was 10 August 2020. No submissions were received.

7. Financial Implications

The appropriate application fee of £100 has been paid.

8. Legal Aspects

8.1.

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.

8.2.

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

- Increase in access by children, that is persons under the age of 16.

8.3.

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.

8.4.

The grounds for refusal under the Act are as follows:

8.4.1.

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.

8.4.2.

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.

8.4.3.

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.

8.4.4.

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.

8.5.

Anyone lodging an objection on the ground detailed at section 8.4.4 above must specify the locality on which they are basing their objection.

8.6.

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

8.7.

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.

9. Contact Officers

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