

Item: 4

Orkney Islands Area Licensing Board: 7 December 2023.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Sinclair Breweries Ltd – Orkney Brewery Bottle Shop, 28 Albert Street, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by Sinclair Breweries Limited for variation of a premises licence held in respect of Orkney Brewery Bottle Shop, 28 Albert Street, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application by Sinclair Breweries Limited for variation of a premises licence held in respect of Orkney Brewery Bottle Shop, 28 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.

In relation to overprovision, on 27 April 2023, the Board determined the following:

- There is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.
- The Board concluded that, on a balance of probabilities, there was not a dependable causal link between the availability of alcohol in Orkney and alcohol-related harm, in that, based on the evidence of harm in the locality of Orkney as defined by the Board, it was unlikely, on balance, that alcohol availability was a cause of harm in Orkney, or that increasing the availability of alcohol in Orkney would increase that harm.

3.3.

In accordance with the Licensing (Scotland) Act 2005, the Board's Statement of Alcohol Licensing Policy generally permits off-sale operating hours of 10:00 to 22:00 each day.

3.4.

The Board's Statement of Alcohol Licensing Policy generally permits:

- Commencement on-sale operating hour of 10:00 each day.
- Terminal on-sale operating hours of 24:00 Sundays to Thursdays and 01:00 Fridays/Saturdays and Saturdays/Sundays.
- For local events such as annual agricultural shows, local festivals and private functions, a terminal on-sale operating hour of 01:00 any morning.
- For weddings, a terminal on-sale operating hour of 01:30 any morning.
- For the festive season, being 24/25 December until 2/3 January each year, a terminal on-sale operating hour of 01:00 any morning.

3.5.

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

4. Introduction

4.1.

A premises licence has been held at Orkney Brewery Bottle Shop, 28 Albert Street, Kirkwall, by Sinclair Breweries Limited since 19 January 2023.

4.2.

On 28 September 2023, Sinclair Breweries Limited submitted an application for variation of the premises licence. Details of the application are provided at section 5 below.

5. Operating Hours

5.1.

The premises are currently licensed for both on and off-sales as follows:

- On-sales:
 - 10:00 to 18:00 on Mondays to Saturdays inclusive.
 - 11:00 to 18:00 on Sundays.
- Off-sales:
 - 10:00 to 18:00 on Mondays to Saturdays inclusive.
 - 11:00 to 18:00 on Sundays.

5.2.

The application requests the following amendments to the operating hours:

- On-sales:
 - 10:00 to 21:00 on Mondays to Saturdays inclusive.
 - 11:00 to 18:00 on Sundays.
- Off-sales:
 - 10:00 to 21:00 on Mondays to Saturdays inclusive.
 - 11:00 to 18:00 on Sundays

5.3.

The proposed variations of the on and off-sale operating hours are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

6. Consultation

The required notices were issued to the statutory consultees on 3 October 2023 and the application was published on Orkney Islands Council's website from 4 October 2023. The last date for objections or representations to be received was 25 October 2023. No objections or representations 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.

Because the application requests increased operating hours it is not a minor variation and therefore must be determined by the Board.

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

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

Stuart Bevan, Solicitor, extension 2220, email stuart.bevan@orkney.gov.uk.

Lillian Rendall, Legal Clerk, extension 2229, email lillian.rendall@orkney.gov.uk