

Item: 4

Orkney Islands Area Licensing Board: 8 March 2018.

Licensing (Scotland) Act 2005.

Application for Variation of Provisional Premises Licence.

Orkney Distilling Ltd – Proposed Distillery and Visitor Centre at Ayre Road, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by Orkney Distilling Ltd for a variation of a provisional premises licence held in respect of a proposed Distillery and Visitor Centre at Ayre Road, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application by Orkney Distilling Ltd for a variation of a provisional premises licence held in respect of a proposed Distillery and Visitor Centre at Ayre Road, 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 (which includes provisional 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.

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 12 midnight 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.

3.4.

Sections 2.9 to 2.17 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 2.9 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.

3.5.

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

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

4. Introduction

4.1.

At its meeting held on 24 August 2017, the Board noted:

4.1.1.

That Orkney Distilling Ltd had submitted an application for a provisional premises licence in respect of the Distillery and Visitor Centre at Ayre Road, Kirkwall.

4.1.2.

That the premises, to be operated as a working distillery, producing Orkney gin and other spirits, and a visitor centre, were to be constructed and no licence was currently held in respect of the premises.

4.1.3.

That the application was for both off-sale and on-sale operating hours, within those permitted in terms of the Board's Statement of Alcohol Licensing Policy, as follows:

- Off-sale operating hours – 10:00 to 22:00 on Mondays to Sundays inclusive.
- On-sale operating hours:
 - 10:00 to 00:00 on Sundays to Thursdays inclusive.
 - 10:00 to 01:00 on Fridays/Saturdays and Saturdays/Sundays.

4.1.4.

That the off-sale capacity sought was 19.52 square metres.

4.1.5.

That the on-sale capacity sought was for 110 persons.

4.1.6.

That an objection had been received from Mr Alastair MacLeod, attached as Appendix 2 to the report by the Clerk to the Board, in relation to the application from Orkney Distilling Ltd for a provisional premises licence in respect of the Distillery and Visitor Centre at Ayre Road, Kirkwall.

4.2.

The Board resolved that the application from Orkney Distilling Ltd for a provisional premises licence in respect of the Distillery and Visitor Centre at Ayre Road, Kirkwall, be granted, subject to the following:

- Off-sale operating hours of 10:00 to 22:00 on Mondays to Sundays inclusive.
- On-sale operating hours as follows:
 - 10:00 to 00:00 on Sundays to Thursdays inclusive.
 - 10:00 to 01:00 on Fridays/Saturdays and Saturdays/Sundays.
- Off-sale capacity of 19.52 square metres.
- On-sale capacity of 110 persons.

5. Layout Plan and Capacities of the Proposed Premises

5.1.

On 15 January 2018, Orkney Distilling Ltd submitted an application for variation of the provisional premises licence. The application requests an increase in the footprint of the proposed premises, to incorporate part of the Storage areas, to enable the provision of additional toilet facilities.

5.2

The existing layout plan of the proposed premises is attached at Appendix 1 to this report.

5.3.

The amended layout plan of the proposed premises is attached at Appendix 2 to this report.

5.4.

The current off-sale display capacity of the proposed premises of 19.52 square metres will not be affected by the proposed variation.

5.5.

The application requests reduction of the on-sale capacity of the proposed premises from 110 persons to 100 persons. This reduction on its own, as a minor variation, would not have required to come before the Board.

6. Consultation

The required notices were issued to the statutory consultees on 17 January 2018 and the application was published on Orkney Islands Council's website from 19 January 2018. The last date for objections or representations to be received was 9 February 2018. No submissions were received.

7. Financial Implications

The appropriate application fee of £100 has been paid.

8. Legal Aspects

8.1.

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.

8.2.

The Act provides that provisional premises licences may be granted in relation to premises which are yet to be, or are in the course of being, constructed or converted for use as licensed premises.

8.3.

A provisional premises licence does not take effect unless and until it is confirmed by the licensing board. The Clerk to the Board has delegated authority to confirm provisional premises licences. If it is not confirmed before the end of the provisional period, then at the end of that period the licence is treated as revoked. The provisional period is 4 years from the date of issue of the provisional premises licence. The provisional period can be extended by the Board where completion of the construction or conversion of the premises has been delayed and the delay has been caused by factors outwith the provisional premises licence holder's control.

8.4.

The Act provides that provisional premises licences may be varied, by application, before they are confirmed.

8.5.

While provisional premises licence applications must be accompanied by a certificate in relation to planning, they do not require to be accompanied by certificates in relation to building standards and food hygiene and there is no requirement to name a premises manager. These items must be submitted at a later date with the application for confirmation.

8.6.

Applications for variation of premises licences do not require to be accompanied by any certificates in relation to planning, building standards or food hygiene.

8.7.

With reference to section 3.4 above, it is noted that the relevant service has advised that there is an outstanding final Stage Building Warrant approval in connection with the development of the proposed premises.

8.8.

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.

8.9.

The grounds for refusal under the Act are as follows:

8.9.1.

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.

8.9.2.

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.

8.9.3.

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.

8.9.4.

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.

8.10.

Anyone lodging an objection on the ground detailed at section 8.9.4 above must specify the locality on which they are basing their objection.

8.11.

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

8.12.

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.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

10. Appendices

Appendix 1: existing layout plan of the proposed premises.

Appendix 2: amended layout plan of the proposed premises.