



REPORT TO: MORAY LICENSING BOARD ON 8 FEBRUARY 2023

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR GRANT OF AN OCCASIONAL LICENCE - 22 01951 - PREOCC

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To ask the Board to determine an application for grant of an Occasional Licence received on 8 November 2022 subject to an objection and representation received from statutory consultees and to consider whether to hold a hearing or not for the purpose of determination.
- 1.2 If the Board chooses to hold a hearing, to ask the Board to conduct a hearing to consider and determine an application for grant of an Occasional Licence received on 8 November 2022 subject to an objection and representation received from statutory consultees.
- 1.3 This report is submitted to the Board in terms of Section 16 of the Board's Scheme of Delegation relating to the grant of an occasional licence application where there is notice of objection or representation and or notice from the Chief Constable recommending refusal in relation to the application.

2. RECOMMENDATION

- 2.1 **The Board is responsible for considering and determining the application for grant of an Occasional Licence. In terms of the provisions of the Licensing (Scotland) Act 2005, the Board has the option to:-**
 - (i) **Grant the licence; or**
 - (ii) **Grant the licence with conditions considered necessary or expedient for the purposes of any of the licensing objectives; or**
 - (iii) **Refuse the licence.**
- 2.2 **The Board may choose to hold a hearing for the purposes of considering and determining the application. If so, the Board must hear from all parties and the Board's hearing procedures will apply.**

- 2.3 **If the Board chooses not to hold a hearing, the Board must give the parties the opportunity to make representations in writing before considering and determining the application in accordance with the provisions of the Licensing (Scotland) Act 2005 set out at 2.1 above.**
- 2.4 **The applicant and both parties who have lodged an objection and representation have been invited to attend the meeting in case the Board determines to hold a hearing.**

3. BACKGROUND

- 3.1 The Board has received an application for an Occasional Licence. Where no notice of objection or representation, or report from the Licensing Standards Officer, are made the Board must grant the application. In terms of the Board's existing Scheme of Delegation, the Clerk and/or appointed staff will issue the licence in such circumstances. Where an objection or representation is made, the Board may determine to hold a hearing to consider whether any grounds of refusal set out in the Licensing (Scotland) Act 2005 ("the Act") apply in respect of the application.
- 3.2 The Board must consider the application and reach a final decision on it within 42 days of receipt. The application was received on the 8th November 2022 so any hearing may be outside the prescribed timetable. However in relation to this application the current meeting is the first meeting where it is reasonably practicable to consider the application. As is explained in paragraph 3.7 below the information available and so the judgment of the parties is constantly changing. In this case the consultation period was started after receipt of updated information on 5 January 2023 in order to be meaningful and to avoid the delays of the December festive period. The application is in respect of a public event taking place on 29 and 30 April 2023.
- 3.3 A copy of the application is provided in **Appendix 1**.
- 3.4 A letter of objection dated 19 January 2023 was received on behalf of the Chief Constable and is provided in **Appendix 2**. The letter was received within the statutory time limit.
- 3.5 A letter of representation dated 17 January 2023 was received from the Licensing Standards Officer and is provided in **Appendix 3**. The letter was received within the statutory time limit.
- 3.6 Both the letter of objection and letter of representation recommend that should the application be granted, conditions are attached to the Occasional Licence.
- 3.7 Whilst an objection and representation have been made, the applicant and parties are in constant dialogue. All parties are working towards the scheduled public event taking place but taking place safely. There have also been a number of meetings. The applicant is updating event documents and the events group, including external partners, is providing advice and assistance to the applicant. It was hoped that the parties could reach a mutually acceptable agreement such that the objection and representation could be withdrawn prior to the meeting of the Board and the licence simply

granted. Unfortunately, the matter is not at that stage yet but dialogue is still ongoing. In the meantime, the licence application must follow the legal process and if the Board is required to determine the application then it had to follow the Board diary.

- 3.8 It is open to the Board to defer for consideration given the date of the event therefore a further Board date has been set aside in case it is required.

4. **SUMMARY OF IMPLICATIONS**

(a) **Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Local Outcomes Improvement Plan (LIOP)) in relation to changing our relationship with alcohol where people are healthier and experience fewer harms as a result of alcohol use, a growing diverse and sustainable economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) **Policy and Legal**

Under the Act, where the Board has received a notice of objection or representation the Board **must** consider whether any of the grounds for refusal applies and –

- (i) if none of them apply, the Board must grant the application, or
- (ii) if any of them applies, the Board must refuse the application.

Grounds for refusal

Section 59(6) of the Act sets out that the grounds for refusal are –

- (a) that the premises to which the application relates are excluded premises.
- (b) that the application must be refused under sections 56(6A), 64(2) or 65(3),
- (c) that the Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that having regard to –
 - (i) the nature of the activities proposed to be carried on in the premises to which the application relates,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol.

The grounds of refusal set out at (a) and (b) above are not relevant to the subject application.

The five licensing objectives are:-

- Preventing crime and disorder,
- Securing public safety,
- Preventing public nuisance,
- Protecting and improving public health, and
- Protecting children and young persons from harm.

Where none of the above Section 59(6) grounds apply, the Board is **obliged** to grant the application.

Considerations to which the Board must have regard

When determining the application, the Board must have regard to the objection(s) and the representation(s) made in connection with the application as well as any and all additional information made available at a hearing or in writing.

Granting the Application

The Board must grant the application if satisfied that none of the Section 59(6) grounds of refusal set out above apply.

Where the Board is not minded to grant the application unconditionally, it should first move to consider whether the application should be granted with additional conditions.

The Board can impose such conditions as it considers necessary or expedient for the purposes of any of the licensing objectives. Such conditions can require anything to be done, or prohibiting or restricting the doing of anything, in connection with (a) the sale of alcohol on the premises in respect of which an occasional licence has effect, or (b) any other activity carried on in such premises. For example, a restriction to the hours of operation. Where the Board chooses to impose such conditions, the conditions cannot be inconsistent with, or have the effect of making more onerous or more restrictive, any condition in terms of the Act or prescribed by Regulations, or relate to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

Any condition must be specific and must be within the licence holder's power to do.

(c) Financial implications

None.

(d) Risk Implications

None.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities/Socio Economic Impact

In considering the matter the Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998). In particular –

Article 8 – access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Article 1 of Protocol 1 – the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Article 6 – the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim.

A legitimate aim must be a real consideration that is legal and not discriminatory. Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but it is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Board should have regard to all the applicant's circumstances.

(h) Climate Change and Biodiversity Impacts

None identified.

(i) Consultations

The Chief Constable, Fire Scotland, the Council's Environmental Health, Development Management, Building Standards Services and the Licensing Standards Officer have been consulted. The relevant objection and representation are detailed above. Fire Scotland, the Council's Environmental Health, Development Management and Building Standards Services have made no representations regarding the application.

5. CONCLUSION

5.1 That the Board considers the recommendations set out in Section 2 of the report.

Author of Report:	Sean Hoath, Senior Solicitor
Background Papers:	There are no background papers
Ref:	SAH