

The Highland Licensing Board

Meeting – 12 May 2015

Agenda Item	10.5
Report No	HLB/053/15

Application for a major variation of Premises Licence under the Licensing (Scotland) Act 2005

Deli Mair (formerly Tidal Bay) Myrtlefield House, Grampian Road, Aviemore PH22 1RH

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for a major variation of Premises Licence by Upland Properties Limited, Cairngorm Technology Park, Aviemore PH22 1PGB

1.0 Description of Premises

1.1 The premises consist of a restaurant with a takeaway area set in a shared building with neighbours either side and above (all businesses) in the Myrtlefield Shopping area on Grampian Road. The status of the premises is currently at 'ceased to trade'. The premises do not currently have a premises manager.

2.0 Current Operating Hours

2.1 The premises currently enjoy the following operating hours:

On sales:

Monday to Sunday: 1100 hours to 0100 hours

Off sales:

None

3.0 Summary of Variation Application

3.1 Variation Sought

The applicant seeks to vary the premises licence as follows:-

- (1) Remove all on sales hours
- (2) Add in Off Sales Monday to Sunday 1000 hours to 2200 hours

- (3) Remove the following activities: Restaurant facilities, receptions, music, (outwith hours), live performances, outdoor drinking facilities.
- (4) Remove explanation of activities outwith core hours.
- (5) Capacity to be amended to remove reference to on sales.
- (6) Off sales capacity 6.27 square metres.
- (7) Amend description to read 'Licensed delicatessen part of a larger building in a central location within Aviemore'.
- (8) Change of premises name to Deli Mair.

4.0 Background

- 4.1 On 31 March 2015 the Licensing Board received an application for a major variation of a Premises Licence from Upland Properties Limited, Spey House, Cairngorm Technology Park, Aviemore PH22 1PB per Lorna Murray Solicitor 45 Culduthel Road, Inverness IV2 4HQ.
- 4.2 The application was publicised during the period 7 to 28 April 2015 and the Clerk will update the Board with confirmation that the site notice has been displayed.
- 4.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 4.4 Notification of the application was also sent to NHS Highland and the local Community Council Aviemore.
- 4.5 Further to this publication and consultation process, no timeous objections or representations have been received.
- 4.6 The applicant must nevertheless be given the opportunity to be heard before the Board determines the application and has accordingly been invited to the meeting. The applicant has been advised of the hearings procedure which may also be viewed via the following link:

http://www.highland.gov.uk/downloads/download/428/liquor_licence_objections_appeals_notices_of_determination

****Note – to be deleted: Please circulate the Hearings FAQs and Order of Speakers document to applicants prior to the meeting. This document is available on the shared drive under \Hearings \Attachment to hearing invitations – hearings FAQs and order of speakers****

5.0 Legislation

- 5.1 The Licensing Board must in considering and determining the application, consider whether any grounds of refusal apply and if none of them applies, the Board must grant the application.

Relevant grounds of refusal may be: -

1. the grant of the application will be inconsistent with one or more of the licensing objectives;
 2. having regard to (i) the nature of the activities carried on or proposed to be carried on in the subject premises, (ii) the location, character and condition of the premises, and (iii) the persons likely to frequent the premises, the Board considers the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;
 3. having regard to the number and capacity of licensed premises of the same or similar description as the subject premises (taking account of the proposed variation) in the locality in which the subject premises are situated, 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 that description in the locality.
- 5.2 The Board only has power either to grant the application and make a variation of the conditions to which the licence is subject or to refuse the application.

If the Board refuses the application, the Board must specify the ground for refusal and if the ground for refusal relates to a licensing objective, the Board must specify the objective in question.

6.0 Licensing Standards Officer

- 6.1 The LSO has provided the following comments:-

The premises in question are in a retail unit in the centre of Aviemore. Formerly they were a licensed restaurant run by a tenant of the premises licence holder Upland Properties Limited.

Following a change of tenancy a new tenant will be operating a licensed delicatessen concentrating on off sales provision only. In reflecting this business change the following matters are requested in the variation: on sale hours will stop, off sales will be provided on a Monday to Sunday basis 10.00hrs to 22.00hrs daily. From Section 5 of the Operating Plan the following approved activities are to be removed: restaurant facilities, receptions, music (outwith core hours), live performances and outdoor drinking area.

Textual amendment is made within the licence to remove reference to on sales at Section 7 of the operating plan and insert a new off sales capacity of 6.72 square metres. In the premises licence itself a new description is to be inserted to reflect the business change and also the change in the name of the premises.

The necessary lay out plans have been submitted illustrating changes in the premises layout.

It is the view of the LSO that the operating plan will ensure the premises operate according to the Licensing Objectives.

The hours requested comply with the Licensing (Scotland) Act 2005 in terms of off sales. The proposed display areas comply with the requirements of the Mandatory Licensing Conditions.

7.0 HLB Local Policies

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-16
- (2) Highland Licensing Board Equality Strategy

8.0 Conditions

8.1 Mandatory Conditions

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

8.2 Local Conditions

Existing local conditions will be disapplied and no new Local Conditions will apply.

8.3 Special Conditions

No special conditions are considered necessary.

Recommendation

The Board is invited to determine the above application.

If the Board is minded to refuse the application, the Board must specify the ground for refusal and if the ground for refusal is in relation to a licensing objective, the Board must specify the objective in question.

Reference: HC/INBS/217

Date: 29 April 2015

Author: Wendy Grosvenor

Background Papers: The Licensing (Scotland) Act 2005/Application Form.