

The Highland Licensing Board

Meeting – 11 August 2015

Agenda Item	9.6
Report No	HLB/089/15

Application for a major variation of premises licence under the Licensing (Scotland) Act 2005

Lidl UK GmbH, Camanachd Crescent, An Aird, Fort William, PH33 6XZ

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for a major variation of premises licence for Lidl UK GmbH, Camanachd Crescent, An Aird, Fort William, PH33 6XZ.

1.0 Description of Premises

1.1 The premises were granted a licence, on transition, on 1 September 2009 and operate as a supermarket.

2.0 Current Operating Hours

2.1 The premises currently enjoy the following operating hours:

Off sales:

Mondays to Sundays 1000 hrs to 2200 hrs

3.0 Summary of Variation Application

3.1 Variation Sought

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

- (1) Amend the layout plan to provide an additional alcohol display area.
- (2) Following from the changes to the layout, increase the alcohol display capacity for off-sales from 38.12m² to 44.24m².

4.0 Background

4.1 On 21 May 2015 the Licensing Board received an application for a major variation of the premises licence from Lidl UK GmbH. The applicant has submitted a statement in support of the application, copy attached, together with the proposed layout plan (Appendix 1).

- 4.2 The application was publicised during the period 29 June to 20 July 2015 and confirmation has been received that the site notice was displayed during this time.
- 4.3 In accordance with standard procedure, Police Scotland, the Scottish Fire and 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.
- 4.5 Further to this publication and consultation process, the following timeous notice of representation has been received and is appended:
- Observation from Police Scotland dated 29 June 2015 (Appendix 2).
- 4.6 A late objection from NHS Highland was received on 23 July 2015, after the deadline. As such it cannot be considered automatically and has not been circulated. The Board may, having heard from the late objector and the applicant, consider the late objection if:

- (a) the failure is due to mistake, oversight or other excusable cause, and
- (b) the Board considers it appropriate in all the circumstances to relieve the failure to meet the deadline.

The late objection will be circulated if the Board agrees to consider it.

- 4.7 The applicant and the above Agencies have been invited to attend the hearing. All have been advised of the hearings procedure which will be followed at the meeting and which may also be viewed via the following link:
- http://www.highland.gov.uk/downloads/download/428/liquor_licence_objections_appeals_notices_of_determination

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.
- 5.2 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.

5.3 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.

5.4 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 Highland Licensing Board policy statement for 2013–2016, in relation to their overprovision assessment, creates a rebuttable presumption against, inter alia, the variation of a premises licence where the grant would result in a capacity for off-sales in excess of 40m² or, where the existing capacity is in excess of that figure, the grant of the variation would result in an increase in that off-sales capacity.

6.2 The proposed increase in capacity from 38.12m² to 44.24m² conflicts with Board policy.

6.3 The applicant has submitted a statement in support of their application.

6.4 The increase in capacity of 6.12m² will be accommodated within an existing end-of-aisle display attached to the gondola units directly opposite the existing alcohol display shelves and which will be brought within an enlarged single accessible area for the display of alcohol. The new display would be located directly opposite the most regularly used 2 of the 4 checkout / tills in the store.

6.5 All premises licences are subject to mandatory condition 13(1)(a) as contained in schedule 3 of the Act. It requires that alcohol for off-sales may be displayed only in a single area of the premises agreed between the Licensing Board and the holder of the licence.

6.6 A short report published in the journal “Social Science and Medicine” 108 (2014) (68-73)” on the subject “Sales impact of displaying alcoholic and non-alcoholic beverages in end-of-aisle locations: An observational study” contains the abstract –

In-store product placement is perceived to be a factor underpinning impulsive food purchasing but empirical evidence is limited. In this study we present the first in-depth estimate of the effect of end-of-aisle display on sales, focussing on alcohol. Data on store layout and product-level sales during 2010e11 were obtained for one UK grocery store, comprising detailed information on shelf space, price, price promotion and weekly sales volume in three alcohol categories (beer, wine, spirits) and three non-alcohol categories (carbonated drinks, coffee, tea). Multiple regression techniques were used to estimate the effect of end-of-aisle display on sales, controlling for price, price promotion, and the number of display locations for each product. End-of-aisle display increased sales volumes in all three alcohol categories: by 23.2% ($p < 0.005$) for beer, 33.6% ($p < 0.001$) for wine, and 46.1% ($p < 0.001$) for spirits, and in three non-alcohol beverage categories: by 51.7% ($p < 0.001$) for carbonated drinks, 73.5% ($p < 0.001$) for coffee, and 113.8% ($p < 0.001$) for tea. The effect size was equivalent to a decrease in price of between 4% and 9% per volume for alcohol categories, and a decrease in price of between 22% and 62% per volume for non-alcohol categories. End-of-aisle displays appear to have a large impact on sales of alcohol and non-alcoholic beverages. Restricting the use of aisle ends for alcohol and other less healthy products might be a promising option to encourage healthier in-store purchases, without affecting availability or cost of products.

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- 6.7 It is clear from the application and the supporting statement that the applicant intends to promote “international theme weeks” of both alcoholic and non-alcoholic products and, when the additional alcohol capacity is not used for promoted alcohol, the shelves will be used to display premium wines.
- 6.8 In support of the licensing objective of protecting and improving public health the applicant highlights that “Lidl were the first major retailer in the UK to remove confectionary from the checkout / till area to reduce impulse buying of unhealthy items. Instead Lidl display healthier alternatives.”
- 6.9 If it is accepted that alcohol is an unhealthy item and taking into account the final 2 sentences of the above abstract and the applicant’s statement, the Board may take the view that the applicant has not demonstrated that grant of the application in conflict with Board policy would not undermine the licensing objectives, in particular that of protecting and improving public health, by accommodating the increased capacity at an aisle-end closest to the busiest checkout /till area.
- 6.10 It is noted Lidl emphasise in their statement that locating their alcohol section at the furthest area from the customer entrance ensures that it is not necessary for customers to walk past the section to reach different areas of the store or reach the till counters to reduce the likelihood of impulse purchases. The proposed increased capacity alcohol section is situated directly opposite the most frequently staffed and busiest tills. That does

permit supervision of the alcohol section as rightly highlighted in the statement but may also increase opportunities for impulse purchases by customers queuing for service at the tills.

6.11 Lidl is undoubtedly a responsible retailer and their stated commitment to supporting the principles of the licensing objectives has much to be commended. However, I remain to be convinced that this application to increase the capacity is supported by robust and reliable evidence to rebut the Board's presumption.

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

No local conditions apply.

Recommendation

The Board is invited to determine the above application.

Reference: HC/RSL/1117

Date: 27 July 2015

Author: AHM:DI/JT

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

Appendices:

Appendix 1 - Applicant's statement in support of application and extract of layout plan identifying proposed alcohol display area

Appendix 2 - Letter of observation dated 29 June 2015 from Police Scotland

Licensing (Scotland) Act 2005 – Application for Variation
Lidl U.K. GmbH, Camanachd Crescent, Fort William
Licence Number: RSL/L/1117

Statement in Support of Non-Minor Variation of Premises Licence

In this application, Lidl UK GmbH ("Lidl") are applying to vary the premises licence to increase their off sale capacity from 38.12m² to 44.24m².

The application seeks to create an additional off sale display area in the display shelves opposite the existing alcohol display area and immediately adjacent to the customer till area. The location of the area allows full supervision of the display area by management and staff of the premises.

The purpose of the application is to allow Lidl to display additional wines during forthcoming international theme weeks. The international theme weeks will be "store wide" and not restricted to alcohol. Therefore an Italian theme week will be presented both in respect of wine (in this additional display area if granted) and Italian grocery being showcased to customers for the period of the theme. Lidl envisage running themes for the food and drink of the nations, including Germany and France.

Following the completion of the international theme weeks, the area shall ordinarily be used for display of premium wines.. It is anticipated that this display shall ordinarily be reserved for Lidl's Award Winning Wines. A list of just some of the Award Winning Wines can be seen at: <http://www.lidl.co.uk/en/6318.htm> - NB: this link shows Award Winning spirits as well – these would not be displayed in this area.

It is Lidl's submission that the grant of this additional display area will not result in overprovision of off sale display area in this locality and in particular, the grant of this variation is not inconsistent with the licensing objectives.

Lidl are a very responsible operator, who prides itself on its diligence and training of staff in all aspects of their work but with particular attention to the sale of age restricted products.

Furthermore, and with a view to meeting the licensing objectives in store, Lidl adopt the following policies:

Protecting and Improving Public Health

- All Lidl stores merchandise the alcohol section as the furthest area from the customer entrance. As well as assisting with security, it also ensures that it is not necessary for customers to walk past the section in order to reach different areas of the store or reach the till counters. This reduces the likelihood of customers 'impulse purchasing' alcohol.
- Lidl were the first major retailer in the UK to remove the sale of tobacco in all stores.
- Lidl were the first major retailer in the UK to remove confectionary from the checkout / till area to reduce impulse buying of unhealthy items. Instead, Lidl display healthier alternatives.

- Lidl operate a converted 'Health Bus' which visits schools across Scotland with the aim of promoting healthy eating and active lifestyles: <http://www.lidlhealthfactor.co.uk>.
- Lidl participates in the Department of Health's fruit and vegetable Responsibility Deal.
- Alcohol sold by Lidl focuses on quality not price. Lidl do not stock low price, high volume fortified wines or super-strength beers/lagers or any other products that might be more readily associated with problem drinkers.
- The Lidl till system cannot process alcoholic items either before 10am or after 10pm. This makes it impossible for licensing hours not to be adhered to.

Protecting Children / Young People From Harm

- Lidl follow our 'Think 25' procedure which requires all customers who appear to be under the age of 25 to provide valid proof of age documents should they wish to purchase an age restricted product.
- Lidl's tills automatically prompt the cashier that an age restricted item has been scanned and will not allow the sale to continue unless the cashier confirms the Think 25 procedure has been followed.
- The Lidl ID procedure also supports this objective as the senior manager on duty (a personal licence holder) must authorise all ID verification as required through the Think 25 procedure before a sale can be authorised. The existence of two members of staff completing the age verification process mitigates against under age sales and separately acts as a deterrent to underage persons attempting purchases.
- Lidl does not merchandise any sweets etc near the alcohol section; this reduces the likelihood for children / young people being near alcoholic products.

Preventing Crime and Disorder

- Lidl have installed EAS tagging systems in all stores with high theft risk items, including some alcohol lines. This acts as both deterrent and detection method for potential theft.
- Lidl employs stringent training practices which develop staff to be aware of potential issues and how to manage difficult circumstances should they arise.
- No member of Lidl staff is permitted to undertake checkout duties until all relevant training has been completed.
- Lidl are an approved provider of SCPLH training and therefore all training and refresher training is undertaken within the company. Lidl are graded by the BII as "Grade 1", which is the highest grading that can be achieved.
- Lidl contract SIA accredited Security companies to supply SIA accredited Guards in stores which are deemed to require support to manage any crime or disorder issues.
- Lidl install state of the art CCTV systems in all stores. Images are retained and may be available as required by the police or licensing standards officer.

Securing Public Safety

- As above SIA accredited Security Guards are present in stores which require support.
- CCTV as above.
- Lidl undertake daily, weekly and biannual health & safety, trading law and maintenance checks in all stores, to ensure compliance. Our compliance procedures and policies are regularly reviewed.

Preventing Public Nuisance

- As above SIA accredited Security Guards are present in stores which require support.
- CCTV as above
- Waste receptacles for customers are provided for disposal of litter.
- All by-products of our premises are responsibly disposed of, and where possible, recycled.



29 June 2015

Your Ref: HC/RSL/1117:AHM/JT
Our Ref: NP7109/15

The Highland Licensing Board
Council Offices
High Street
Dingwall
IV15 9QN

Highlands & Islands Policing Division
Divisional Co-ordination Unit
Divisional Headquarters
Old Perth Road
INVERNESS
IV2 3SY

RECEIVED
- 3 JUL 2015
CHIEF INSPECTOR

01463 720209

highlandislandlicensing @scotland.pnn.police.uk

Dear Sir

**HIGHLAND LICENSING BOARD – ROSS, SKYE AND LOCHABER
APPLICATION: PREMISES VARIATION – INCREASE OF OFF SALES
CAPACITY
APPLICANT: LIDL UK GmbH, 19 WORPLE ROAD, LONDON
PREMISES: LIDL UK GmbH, CAMANACHD CRESCENT, AN AIRD, FORT
WILLIAM**

I refer to correspondence of 24 June 2015 and can advise that there is a Police observation in relation to this application:

Observation

- The application in this case for the variation of a premises licence to increase off-sales capacity from 38.12 sq m to 44.24sq m is outwith Board Policy in relation to overprovision.

Yours sincerely

**Mairi MacInnes
Chief Inspector
Divisional Co-ordination Unit**



RECEIVED

20 JUL 2015

CLERK OF THE DISTRICT COUNCIL

REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes. Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

1. Full Name and Address of person making objection/representation:

Elisabeth Smart Consultant in Public Health, Directorate of Public Health and Policy, Assgnt House, Beechwood Drive, V23BW	
Telephone Number:	01463 706890
Email Address:	elisabeth.smart@nhs.net

2. Address of Premises in respect of which objection / representation is made:

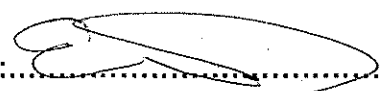
Lidl Uic GmbH, Camarachd Geisert, Fort William
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3. Details of any OBJECTION: (complete only if you consider one of the ground for refusal apply)

State ground of objection (refer to ground of objection by number, see guidance notes, and give details): (Continue on separate sheet if necessary)	
1. Excluded Premises	5. See additional sheet
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

4. Details of any REPRESENTATION: (complete only if you wish to make a representation in respect of the application)

State details of any representation (refer to representation by number, see guidance notes, and give details): (Continue on separate sheet if necessary)	
1. in support of application	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature: 

Date: 14.07.2015

Objection on the grounds of overprovision – Lidl UK GmbH,, Camanachd Crescent, Fort William

Introduction

Following the Licensing (Scotland) Act 2005¹ the Directorate of Public Health and Policy is asked to comment on the public health implications of most alcohol license applications.

The Highland Licensing Board agreed an alcohol overprovision statement August 27 2013 accepting the evidence put forward and that licensing has a role to play in reducing alcohol related harms. In developing the statement it was recognised that alcohol has an important place in Highland culture and contributes significantly to the economy.

The alcohol overprovision statement is based on the three factors of accessibility, affordability and availability. Changes in these three factors have resulted in increased alcohol consumption and a corresponding increase in alcohol related harms health.

The key features of the alcohol overprovision statement are to consider Highland as one area rather than looking at smaller geographies or localities and to focus on off-sales where the capacity is 40 square meters and over.

Details about the alcohol overprovision statement are available on the Council's website)

http://www.highland.gov.uk/downloads/download/426/consultation_on_overprovision_policy_statement

A summary of some of the evidence used to develop the alcohol overprovision statement follow.

Health harm

The levels of alcohol related health harm in the Highland Council area remain of concern even though in recent years there is a slight downward trend in some of the data such as mortality and hospital admissions. Standardised Death Rates (SDR), comparing Scotland and selected European countries, show that Scotland has one of the highest SDR for chronic liver disease². It is estimated in Highland there are 11,400 males and 4640 females aged 18 and over who are alcohol dependant³.

The 40.5% of the Highland population exceeding weekly and/or daily drinking limits and the 17.1% of individuals drinking double or more than above twice the daily recommended limit remains of grave concern⁴.

Social trends

The impact of the downward trend of on-sales and upward trend of off-sales have led to less people drinking in public houses or other such venues and more people

purchasing alcohol through off-sales and drinking in the home environment. The affordability of alcohol means it is perceived by many as a daily commodity rather than for special occasions.

Accessibility

The overprovision statement provides evidence of the population's ease of access to alcohol. 94% of the population of Highland are within a 10 minute drive time and 66% are within a 10 minute walk time of a licensed location. For off-licenses only the percentage falls slightly to 90% of the population being within a 10 minute drive time and 54% being within a 10 minute walk time⁵.

The view of the public

Two surveys were undertaken to find out about the public's view of alcohol provision and overprovision in Highland. The results indicated that the public were aware of the harmful drinking culture; concerned about the impact of alcohol on children; and confirmed the social trend of buying alcohol from off-sales premises. The public also cited the role of licensing in controlling the supply of alcohol⁶.

In conclusion

This evidence was used to develop the alcohol overprovision statement which was accepted by the Licensing Board. The Public Health position is to recommend that this application is refused on the grounds laid out in the alcohol overprovision statement. This will contribute to protecting harm to the public arising from alcohol misuse.

References

1. Scottish Government (2005) Licensing (Scotland) Act
<http://www.legislation.gov.uk/asp/2005/16/contents>
2. ScotPHO (2012) Scotland and European Health For All Database 2012
<http://www.scotpho.org.uk/comparative-health/scotland-and-european-hfa-database>
3. Rehm J & Sheild DK (2012) Alcohol Consumption, Alcohol Dependence and Attributable Burden of Disease in Europe
4. Scottish Health Survey (2008-11) The Proportion of Individuals Drinking Above Daily and/or Weekly Recommended Levels
<http://www.gov.scot/Publications/2013/09/3684/0>
5. Directorate of Public Health and Policy (2013) The Spatial Distribution of Alcohol Licensing Locations in the Highlands
6. Highland Alcohol Overprovision Reports (2013)
<http://www.alcohol-focus-scotland.org.uk/search/>