

## The Highland Licensing Board

Meeting – 3 October 2017

Agenda Item	9.4
Report No	HLB/111/17

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

Dalwhinnie Distillery Visitor Centre and Shop, Dalwhinnie, PH19 1AA

#### Report by the Clerk to the Licensing Board

##### Summary

This report relates to an application for a major variation of premises licence by Diageo Scotland Limited, 5 Lochside Way, Edinburgh Park, Edinburgh, EH12 9DT.

#### 1.0 Description of premises

1.1 Dalwhinnie Distillery is located to the west of A9 Perth-Inverness some 10 miles south of Newtonmore. The premises consists of a visitor centre and shop being a single storey building with area of warehouse and additional room, two other buildings and external area.

#### 2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

##### On sales:

Monday to Saturday: 1100 hours to 2000 hours  
Sunday: 1200 hours to 2000 hours

##### Off sales:

Monday to Sunday 1000 hours to 2000 hours

#### 3.0 Summary of variation application

##### 3.1 Variation sought

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

- (1) Commence on sales at 0900 hours and terminate at 2400 hours daily.
- (2) Change off sales hours to terminate at 2200 hours daily.

(3) Change of wording relative to seasonal variations to read: 'The premises may close earlier from time to time based on differing seasonal demand.'

(4) Inclusion of receptions outwith core hours.

(5) Inclusion of conference facilities, club meetings, music, live performances, dance, theatre and film as permitted activities.

(6) Change in wording in 5(f) re. 'other activities' to simplify and set out other permitted activities to read: 'Conferences, receptions and club meetings: the premises may be used prior to or after core hours for these purposes; Music: music may be played in the premises during the entire hours of operation; Live performances and theatre: live performances and theatrical presentations may take place on the premises, often, but not exclusively, related to the premises licence holder's products; Dance: the premises may be used for dancing at functions and for demonstrations which may take place outwith core hours; Films: films may be shown, often, but not exclusively, related to the premises licence holder's products; External areas: external area may be used for consumption of non-alcoholic beverages prior to core hours. No alcohol will be served outwith core hours for any activity unless an extended hours application is made.

(7) Simplification of working re. admission of children and young persons and to allow young persons to be permitted in the premises without being accompanied to read: 6(b) children will be permitted on the premises only if accompanied by an adult. Young persons will not require to be accompanied; 6(c) All ages of children and young persons will be permitted entry; 6(d) children and young persons will be permitted entry at all times the premises are open; 6(e) children and young persons will be permitted entry to all public parts of the premises.

(8) Change in off sales capacity to 40m2.

(9) Change in on sale capacity to 250.

#### **4.0 Background**

4.1 On 17 August 2017 the Licensing Board received an application for a major variation of a premises licence from Diageo Scotland Limited.

4.2 The application was publicised during the period 24 August until 14 September 2017 and confirmation that the site notice was displayed has been received.

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.
- 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://highland.gov.uk/hlb\\_hearings](http://highland.gov.uk/hlb_hearings)

## **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. that 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, 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.
- 5.3 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:-**

(i) A major variation application has been submitted for Dalwhinnie Distillery via the premises licence holders' agent, Morton Fraser LLP.

(ii) Much of the application is non-contentious and offers no issue, in respect of the licensing objectives. Off sales hours are requested to be increased until 2200 hours daily, which is in line with the national and local licensing policies, this will allow hosted evening tours to purchase products.

(iii) Seasonal variations will include a statement to underpin flexibility on opening hours dependent of seasonal demand, which will likely entail reduced trading hours during the winter months, as opposed to more expansive trading during the summer months, when tourist and whisky enthusiast trade is more prevalent. The activity section of the operating plan has been updated to allow receptions out with core hours and, also to expand on the range of authorised activities, none of which impact adversely on the licensing objectives.

(iv) The children's policy has been amended to allow young persons' to enter the premises and take part in the tours, without the necessity of adult supervision. The capacity total for the display of alcohol has decreased and the person total increased, reflecting further expansion of the licensing footprint. New plans showing the updated footprint have accompanied the application. An updated description of the premises has also been compiled.

(v) However, the most contentious part of the application, is to allow the sale of alcohol for consumption on the premises from 0900 hours daily. This is outwith the current policy of Highland Licensing Board's current "early opening" in that, the premises are not a food-led establishment and indeed, offer no food except some select items of confectionary. The LSO has called at the premises and discussed this aspect of the application in depth with the premises manager, Ewan MacKintosh.

(vi) Dalwhinnie is situated at the southern gateway to the Highland area. The distillery hosts some 50 to 100 whisky enthusiast tours per annum, these are predominantly Scandinavian and German where a lot of whisky clubs have their base. The coach tours are on a strict itinerary and Dalwhinnie is usually their first call. Whilst this works in for those members of the tour who wish to take the distillery tour and thereafter, purchase their off sales at 1000 hours, many visitors have been to a distillery before and do not want to know the intricacies of whisky distillation in further detail, but do wish to sample the product and it is for them that having the authorisation to offer a range of whisky tastings at an earlier hour is sought. These will be supervised and tutored by a member of the distillery staff, who apart from being trained in the product lines, are fully trained in respect of the requirements of the Licensing (Scotland) Act 2005. The distillery has a trouble free operating history and has won several tourism industry awards.

(vii) The coach tours call in scheduled visits at the distillery from 0900 hours each day. The distillery manager has stated the ability to offer tastings, is not about giving people the opportunity to purchase drams, but is very much about brand education in becoming familiar with what Dalwhinnie as a whisky offers, so that a customer may leave without purchasing a bottle, but they have the knowledge in order to make a choice in any retail outlet in the future.

(viii) Whilst this application is out with the current board policy the LSO is of the opinion, that the licensing objectives will be fully met by the supervision on the premises.

## **7.0 HLB local policies**

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-18
- (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 continue to apply and no additional local conditions are considered necessary.

### **8.3 Special conditions**

The Board may wish to consider attaching the following special condition(s):

- (1) Any sale of alcohol for consumption on the premises prior to 1100 hours will only be done as part of a “supervised tasting” carried out and supervised by either the holder of a Scottish personal licence or a person who has completed 2 hours prescribed training as per the Licensing (Training of Staff) (Scotland) Regulations 2007. (licensing objective 4 – public health).

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/special conditions detailed at paras. 8.2 and 8.3 above.

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/89

Date: 15 September 2017

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