

The Highland Licensing Board

Meeting – 3 October 2017

Agenda Item	9.7
Report No	HLB/114/17

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

Co-op, Woodpark, Dunvegan Road, Portree, Isle of Skye, IV51 9HQ

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by Co-operative Group Food Limited, Dept 10227, 1 Angels Square, Manchester, M60 0AG.

1.0 Description of premises

1.1 The premises is a stand alone supermarket selling fresh and frozen food with off sales provision and with adjacent carpark.

2.0 Summary of variation application

2.1 Variation sought

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

- (1) Variation to layout plan (refit of the premises);
- (2) Increase alcohol capacity from 70.65 m² to 73.675 m².

3.0 Background

3.1 On 10 August 2017 the Licensing Board received an application for a major variation of a premises licence from Co-operative Group Food Limited.

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

3.3 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.

3.4 Notification of the application was also sent to NHS Highland and the local Community Council.

3.5 Further to this publication and consultation process, the following timeous notice of representation has been received and is appended:

- Letter dated 29 August 2017 from Police Scotland

3.6 The applicant and the objector have been invited to attend the hearing. Both 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://highland.gov.uk/hlb_hearings

4.0 Legislation

4.1 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.

4.2 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.

5.0 Licensing Standards Officer

5.1 The LSO has provided the following comments:-

- (i) The premises were granted a licence, on transition, in 2009 at which time the applicant stated that the alcohol capacity was 75.2m² and lodged layout plans showing relevant measurements and the location of the alcohol display.

- (ii) At that time the Board had not produced a policy for overprovision and the licence was granted and produced specifying a headline capacity of 75.2m².
- (iii) In 2012 an application to reduce the capacity from 75.2m² to 70.65m² was granted under delegated powers and relevant plans containing appropriate dimensions were produced in support of the application.
- (iv) In 2013 the Board produced its Licensing Policy Statement which included specific reference to overprovision in respect of larger capacity off-sales premises. The policy created a rebuttable presumption against the grant of an application for a premises licence where the grant of the licence would result in the premises having an off-sales capacity in excess of 40m², or, in the case of premises with existing off-sales capacity in excess of 40m², the grant of any variation would result in an increase in that off-sales capacity.
- (v) In July 2017 the applicant prepared plans for refurbishment of the premises during which process they discovered that the layout plan showing the location of the alcohol display bore the correct dimensions but a basic arithmetical error had been made when calculating the total capacity with the true capacity being 83.005m² and not 70.65m².
- (vi) Had the correct figure been recorded the 2012 application should have been a major variation application and subject to scrutiny by the Board however, at that time there was no policy on overprovision and it is likely that variation would have been granted without comment.
- (vii) The proposed refurbishment will actually result in a reduction in the true capacity from 83.005m² to 73.675m² however, in these particular circumstances, it is appropriate that the application be dealt with as a major variation based on the incorrect capacity figure contained in the licence.
- (viii) There is an argument that the premises have been trading outwith the terms of their licence by having had an unauthorised extra capacity however I am satisfied that there was no intent to mislead the Board or to derive any inappropriate benefit.
- (ix) Having regard to the circumstances I believe it would be appropriate to accept that there is no increase in the actual capacity and that the application should not be considered in terms of the rebuttable presumption against granting an increase in capacity where the existing capacity exceeds 40m².
- (x) I have no cause to object to the grant of this variation application.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-18
- (2) Highland Licensing Board Equality Strategy

7.0 Conditions

7.1 Mandatory conditions

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

7.2 Local conditions

There are no existing local conditions and it is not considered necessary to attach any.

7.3 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/RSL/0169

Date: 15 September 2017

Author: Carol Nicolson

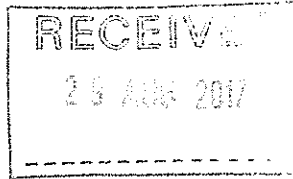
Background Papers: The Licensing (Scotland) Act 2005/Application Form.

Appendix

29/08/2017

Your Ref: HC/RSL/0169

Our Ref: 260072



**POLICE
SCOTLAND**

Keeping people safe

Philip Gormley QPM
Chief Constable

Clerk to the Highland Board
Town House
High Street
Inverness
IV1 1JJ

Divisional Co-ordination Unit
Highland and Islands Division
Police HQ
Old Perth Road
INVERNESS
IV2 3SY

FOR THE ATTENTION OF SUSAN BLEASE

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR THE VARIATION OF A PREMISES LICENCE
CO-OPERATIVE GROUP FOOD LTD
CO-OPERATIVE RETAIL SERVICES L, DUNVEGAN ROAD, PORTREE,
HIGHLAND IV51 9HQ
CO-OPERATIVE GROUP FOOD LIMITED**

I refer to the above application for the variation of a premises licence under terms of Section 29(5) of the Licensing (Scotland) Act 2005.

The variation requested consists of increasing the off sales capacity from 70.65m² to 73.675m².

In terms of Section 29(5) of the Act this request can be considered a variation.

In terms of Section 22(1)(a) of the same Act, I make the following representation.

The applicant applies to vary their premises licence as detailed above. At present their premises licence shows an off sales capacity of 70.65m². The applicant intimates that in 2012 they applied for a minor variation reducing their off sales capacity from 75.2m² to 70.65m². They maintain that this was a miscalculation and should have been 83.005m², a capacity which they intimate they have been trading at since this time which has the store trading outwith the terms of their premises licence. In this instance Police Scotland do not intend to report the applicant for trading outwith the terms of their premises licence.

In terms of section 22(1)(a) of the Licensing (Scotland) Act 2005, I am of the opinion that the variation should be refused on the grounds that it would be outwith with the licensing board's policy of overprovision.

This representation is submitted for your attention in considering this application.

Yours faithfully

Philip Gormley QPM
Chief Constable

For enquiries please contact the Licensing Department on 01463 720817.