

The Highland Licensing Board

Meeting – 5 December 2017

Agenda Item	9.2
Report No	HLB/134/17

Application for the provisional grant of a premises licence under the Licensing (Scotland) Act 2005

MRH Ben Filling Station, North Road, Fort William, PH33 6TQ

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for the provisional grant of a premises licence in respect of MRH Ben Filling Station, North Road, Fort William, PH33 6TQ.

1.0 Description of premises

1.1 The MRH Ben Filling Station is situated on the east side of North Road (A82), just north of Fort William town centre.

The premises trade on a 24 hour basis as a general convenience store adjacent to petrol/derv filling station forecourt. The site has parking for four cars separate from the fuel pumps.

The petrol/derv filling station forecourt area will not form part of the area to be licensed. The premises offer substantial general convenience separate from, and supplementary to, the offer of petrol/derv.

2.0 Operating hours

2.1 The applicant seeks the following **off-sale** hours:

Off sales:

Monday to Sunday: 1000 hours to 2200 hours

3.0 Background

3.1 On 21 September 2017 the Licensing Board received an application for the provisional grant of a premises licence from MRH Ben Filling Station.

The application was accompanied by the necessary section 50 certification in terms of planning. Section 50 building standards and food hygiene certificates are not required to support provisional applications.

- 3.2 The application was publicised during the period 31 October until 21 November 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, 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, no timeous objections or representations have been received. However, to date, no response has been received from Building Standards.
- 3.6 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

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 are: -

1. that the premises are excluded premises (see para 4.3 below);
2. that the Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
3. that the grant of the application would be inconsistent with one or more of the licensing objectives;
4. that having regard to;
 - (i) the nature of the activities 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, or

5. 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 For the purposes of the Act, the licensing objectives are-

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.

4.3 "Excluded premises" for the purposes of ground of refusal 1 above, include premises used as a "garage". "Garage" is defined in section 123 of the Act as a premises used for one or more of the following:

- (a) the sale by retail of petrol or derv,
- (b) the sale of motor vehicles, or
- (c) the maintenance of motor vehicles.

However, premises used for the sale by retail of petrol or derv or which form part of premises so used are not to be treated as excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principle source of petrol or derv or groceries (where the premises are, or are to be, used also for the sale of groceries).

Before the Board may grant this application, the Board must accordingly first satisfy itself that the premises in question are premises on which persons in the locality are, or are likely to become reliant to a significant extent as the principle source of petrol, derv or groceries in that locality.

4.4 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

5.0 Licensing Standards Officer

5.1 The LSO has provided the following comments:-

- (i) The premises in question are a long established petrol station on the outskirts of Fort William. A small convenience shop is situated within the forecourt area and trades in a range of food stuff, newsagent goods amongst other sundries.
- (i) The premises are well known to the LSO and are fit premises for the sale of alcohol in the manner described within the operating plan. The necessary section 50 planning certificate has accompanied the application.
- (ii) The hours applied for are within the hours stipulated for "off sales" within

the Licensing (Scotland) Act 2005.

- (iii) The LSO is of the opinion that persons living in the locality are reliant on the premises as a principal source of petrol and derv; they are situated at the side of the A82 road into Fort William and are heavily used by tourists and local residents. Therefore the premises in the LSO's view are not "excluded premises".
- (iv) The alcohol capacity requested, namely 4.95m², is small and well under the threshold set by the Highland Licensing Board for the consideration of the question of overprovision.
- (v) Malthurst Fuels operate several garage shops with alcohol premises licences and have good practices and procedures established for ensuring compliance with the licensing regulations.
- (vi) From the operating plan submitted the LSO is of the view there is no conflict with the five licensing objectives.

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

It is not considered necessary to attach any local conditions.

7.3 Special conditions

No special conditions are considered necessary.

Recommendation

The Board is invited to:

- (a) agree that it is satisfied in terms of paragraph 4.3 above, that the premises in question are premises on which persons in the locality are, or are likely to become reliant to a significant extent as the principle source of petrol, derv or groceries in that locality; and
- (b) 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/1845
Date: 22 November 2017
Author: IC/JT