

Agenda item	9.1
Report no	HLC/082/18

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 4 December 2018

Report title: Application for the grant of a second hand dealer's licence – Clear Blue Day Limited for premises at Rowan Cottage, Strathkanaird, Ullapool, IV26 2TP (Ward 5 – Wester Ross, Strathpeffer and Lochalsh)

Report by: The Principal Solicitor – Regulatory Services

Purpose/Executive Summary

This Report relates to an application for the grant of a second hand dealer's licence.

Recommendation

Members are asked to determine the application in accordance with the Hearings Procedure.

1. Background

1.1 On 16 October 2018 an application for the grant of a second hand dealer's licence was received from Clear Blue Day Limited in respect of premises at Rowan Cottage, Strathkanaird, Ullapool, IV26 2TP.

1.2 In terms of the Civic Government (Scotland) Act 1982 (the Act) the Licensing Authority have nine months from receipt of the application to determine the same, therefore this application must be determined by 15 July 2019. Failure to determine the application by this time would result in the application being subject of a 'deemed grant' which means that a licence would require to be issued for a period of 1 year.

2. Process

2.1 Following receipt of the application a copy was circulated to the following Agencies/Services for consultation:

- Police Scotland
- Scottish Fire and Rescue Service
- Highland Council Trading Standards Service
- Highland Council Building Standards Service
- Highland Council Planning Service

2.2 Police Scotland, Scottish Fire and Rescue Service, Trading Standards, Building Standards and Planning Service have confirmed that they have no objections to the licence being issued.

3.0 Applicant's request

3.1 On submission of the application for the licence, the applicant attached a letter requesting (1) an exemption from the rules set out in s.25(1) of the Act, - specifically the requirement not to dispose of/ sell any items purchased within the preceding 48 hour period and having to store the items at their premises during this period and (2) an amendment of the standard condition to enable the applicant to keep computerised/electronic records of purchases and sales rather than keeping these records in a bound ledger. A copy of the letter is attached as appendix 1.

4 Legal issues

4.1 Disposing/selling of items within 28 hour period:

4.1.1 Section 25(1) of the Act prohibits a second hand dealer from disposing of any items of his stock-in-trade until the expiry of 48 hours (excluding any time on Saturday or Sundays) after he acquired it.

4.1.2 However, the Council has discretion under s.25(3) of the Act to order that it shall not apply to the disposal by the dealer of any item or any specified item or class of items, of the dealer's stock-in-trade. This is subject to the Council consulting with Police Scotland.

4.1.3 Police Scotland has confirmed that they have no objections to the 48 hour exemption being dis-applied for this application.

4.2 Electronic Records

4.2.1 There have been recent amendments to the metal dealer licensing legislation which allows the required records to be kept “by means of a device for storing and processing information” as an alternative to bound books with serially numbered pages.

4.2.2 By analogy, it seems reasonable, therefore, in the case of second hand dealers that permission to keep records on the computer could also be granted when requested.

4.2.3 As such, it would be prudent to modify the Council’s standard conditions for second hand dealer’s licence to allow for computerised records as an alternative. A separate report is included on the agenda for this meeting of the Licensing Committee recommending this as a permanent change to the standard conditions.

5. Determining issues

5.1 Paragraph 5(3) of Schedule 1 of the Act states that a licensing authority may refuse an application to grant or renew a licence where:

(a) the applicant or anyone else detailed on the application is not a fit and proper person;

(b) the activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused;

(c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to

(i) the location, character or condition of premises or the character or condition of the vehicle or vessel,

(ii) the nature and extent of the proposed activity,

(iii) the kind of persons likely to be in the premises, vehicle or vessel,

(iv) the possibility of undue public nuisance, or

(v) public order or public safety; or

(d) there is other good reason for refusing the application.

5.2 In terms of the Council’s Scheme of Delegation, the Principal Solicitor has a general power to grant “exemptions” under the Act provided the application for exemption (and the application for the licence, if made at the same time) has attracted no relevant objection or representation. However, in terms of the Council’s Scheme of Delegation, the Principal Solicitor does not have

delegated powers to amend the standard condition requiring records to be kept in bound books and therefore the application has to be brought before the Licensing Committee for determination.

5.3 If required the Principal Solicitor – Regulatory Services will offer particular advice on the criteria relating to this particular application.

6. Options

6.1 If Members do not consider that any of the grounds of refusal in paragraph 5 applies, Members must grant the licence application,

6.2 Alternatively should the Committee find that any ground of refusal in paragraph 5 is established, then the application for the grant of the second hand dealer's licence may be refused.

7. Policies

7.1 The following policies are relevant to this application:

7.2 Standard second hand dealer's licence conditions. A copy of these can accessed at

https://www.highland.gov.uk/directory_record/738764/second_hand_dealers/category/499/shop_and_trader

or a hard copy can be supplied where requested.

8. Implications

8.1 Not applicable.

Date: 19 November 2018

Author: Angela Mair

Ref: SHD/21/010

Background Papers: Civic Government (Scotland) Act 1982

Appendices:

Appendix 1 : Letter from applicant

Rowan Cottage
Strathkanaird
Ullapool
IV26 2TP

Tel (UK): 01854 666 252
mail@clearblueday.co.uk

Licensing Department
The Highland Council
High Street
Dingwall
IV15 9QN

15 October 2018

Dear Sir/Madam


SECOND HAND DEALERS LICENCE APPLICATION

Please find enclosed our application for a Second Hand Dealers Licence together with a cheque for the fee of £305. We would like to request the following:

1. A relaxation on the requirements: not to dispose of / sell any items purchased within the 48 hour retention time; to store them at our premises during this period. Reason: there may be times when we have to travel a considerable distance to purchase items. Sometimes it might be possible to line up a sale of those items on the same business trip or to drop them off at an auction house for inclusion in a future sale. Under such, or similar, circumstances it makes no business sense to have to transport the purchased items back to our premises where they must be held for 48 hours before then travelling, potentially hundred of miles, to sell those same items that could have been disposed of to a person, company or by auction close to, or on the way back from, the location where we purchased the items a couple of days before.
2. We would prefer to keep computerised / electronic records of items we purchase and sell rather than having to keep a bound ledger. Reason: it will be easier to maintain such records and to keep computer backups of them.

Thank you very much for your consideration. If you should need any further details please let me, or my colleague Karen Brimm, know.

Sincerely



Brian Reid

Director