

The Highland Licensing Board

Meeting – 4 December 2018

Agenda Item	8.8
Report No	HLB/133/18

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

Co-op, Main Street, Broadford, Isle of Skye, IV49 9AB

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 Angel Square, Manchester, M60 0AG.

1.0 Description of premises

1.1 The premises is a supermarket selling fresh and frozen food with off sales provision with adjacent petrol station and car parking.

2.0 Summary of variation application

2.1 Variation sought

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

- (1) Amendment to layout – full refurbishment and extension of the premises;
- (2) Increase alcohol capacity from 54.36m² to 68.731m.

3.0 Background

3.1 On 3 August 2018 the Licensing Board received an application for a major variation of a premises licence from Hill Brown Licensing on behalf of the Co-operative Group Food Limited.

3.2 The application was publicised during the period 10 August 2018 until 31 August 2018 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, the following timeous notices of objection/representation have been received and are appended:
1. Letter of representation from Police Scotland dated 10 August 2018 **(Appendix 1)**;
 2. Objection from NHS Highland dated 28 August 2018 **(Appendix 2)**.
- 3.6 An objection was also received on 30 August 2018 from The Highland Council's Building Standards Service as no building warrant application was applied for but this objection was withdrawn on 19 November 2018 as a building warrant for the works has been submitted.

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 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 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.

4.4 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.

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. The current alcohol capacity is 54.36m²;
- (ii) The premises are located in the village of Broadford adjacent to the main road through the island. They also operate an adjoining filling station and, by virtue of their being the sole supermarket in the south of the island and the limited sources for fuel on Skye, the customer base extends beyond the village itself. To meet demand the applicant intends to extend the store and carry out a full refurbishment and modernisation. The planned extension will increase the net sales area by approximately 30% and, in line with that extension application is also made to increase the alcohol capacity from 54.36m² to 68.731m² which represents an approximate 24.6% increase in alcohol capacity;
- (iii) Such an increase in capacity is in conflict with the Board's policy on over provision which states:

Section 2.13 page 24 - The 2018 Overprovision assessment.

The effect of this overprovision assessment is to create, throughout the whole of the Highland Licensing Board's area, a rebuttable presumption against the grant of an application for a premises licence, a provisional premises licence or a variation of a premises licence (in terms of the ground of refusal set out in section 23(5)(e) or section 30(5)(d) of the Act) where (a) the grant of the application would result in the premises having an off sales capacity in excess of 40 square metres, or (b) in the case of licensed premises with existing off sales capacity in excess of 40 square metres, the grant of any variation sought would result in an increase in that off-sales capacity;

- (iv) The applicant is aware that each application must be considered on its own merits and has provided some additional information (**Appendix 3**) towards demonstrating that the grant of the variation would not undermine the licensing objectives or that the benefits in granting the application outweigh the Board's overprovision;

- (v) In order to maintain a service the premises, which are one of the only two supermarket premises on the island, will continue to trade while the building works and refurbishment take place. It is accepted that there will be periods when a temporary relocation of stock within the store will be required but the principles of requirements in respect of the display of alcohol will be maintained at all times;
- (vi) I am unable to support the application to increase the alcohol capacity as it is in conflict with the terms of Board policy and I make no specific comment in relation to the additional information provided at Appendix 3 towards rebutting the presumption against the grant of the variation.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2018-23
- (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.

7.3 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/0167

Date: 21 November 2018

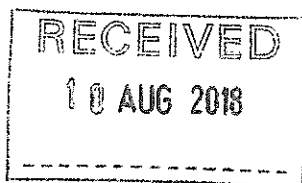
Author: Carol Nicolson

Appendices: Appendix 1 - letter of representation from Police Scotland dated 10 August 2018;
Appendix 2 - objection from NHS Highland dated 28 August 2018;
Appendix 3 – E-mail dated 19 November 2018 from Hill Brown Licensing.

10/08/2018

Your Ref: HC/RSL/0167

Our Ref: 346846



Appendix 1



**POLICE
SCOTLAND**

Keeping people safe

Iain Livingstone QPM
Deputy Chief Constable Designate

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

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

FOR THE ATTENTION OF SUSAN BLEASE

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR THE VARIATION OF A PREMISES LICENCE
CO-OP, MAIN STREET, BROADFORD, ISLE OF SKYE IV49 9AB
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 amending the layout plan and increasing the capacity for off sales from 54.36 m² to 68.731 m².

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

In terms of Section 22(1)(b)(ii) and (iii) of the same Act, I make the following representation.

Increasing the off sales capacity from 54.36 m² to 68.731 m² is out with Board Policy of 40 m² for this type of premise

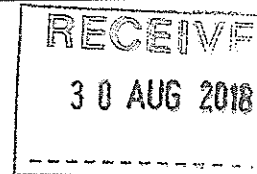
In terms of Section 22(1)(b)(ii) and (iii) of the Licensing (Scotland) Act 2005, I am of the opinion that the variation in its current form should be modified so that the off sales capacity either maintains the status quo of 54.36 m² or is reduced to reflect Board Policy of 40 m² and that the concerns raised in this letter are addressed.

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

Yours faithfully

Iain Livingstone QPM
Deputy Chief Constable Designate

For enquiries please contact the Licensing Department on 01463 720817.



**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, Larch House, Stoneyfield Business Park, Inverness. IV2 7PA	
Telephone Number:	014623 706 890
Email Address:	elisabeth.smart@nhs.net

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

Co-op Main Street, Broadford, Isle of Skye IV49 9AB

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	I object on the grounds that this application is contrary to the Highland Licensing Board's overprovision statement agreed 27 August 2013.
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision X	

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	See additional information.
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature:... E.M Smart

Date.....28.08.2018

The Highland Overprovision Statement was based on a population based approach to dealing with the public health harms associated with alcohol misuse. The Licensing Board is able to contribute to tackling the difficult relationship Highland has with alcohol through licensing and therefore contribute to protecting the population's health and wellbeing.

Furthermore cognisance was given to the importance of alcohol as part of Highland culture and how it contributes to the economy although economic considerations are not an objective of the Scotland Alcohol Act.

The following link will take you to the overprovision policy statement.

http://www.highland.gov.uk/downloads/file/3718/consultation_on_overprovision_policy_statement

The key issues (some data has been updated) outlined in the overprovision statement are:

1. **The changing pattern of alcohol sales:** Patterns of alcohol consumption have changed over recent years with a move from alcohol being consumed in an on-sales setting to the home environment. This has been driven by the increase in availability and affordability through off-sales outlets. Off sales now accounts for 73% of all salesⁱ; this is an increase of 4% from the 69% cited in the overprovision statement.

2. **Prevalence data:** An indicatorⁱⁱ has been agreed to measure the population exceeding weekly and/or daily recommended limits. This was changed in 2016 and men and women are now advised that it is safest not to regularly drink more than 14 units of alcohol per week. If people drink more than 14 units per week this should be spread evenly over 3 or more days. Furthermore women are advised to avoid consuming any alcohol when pregnant or when planning pregnancy.

Individuals currently exceeding the weekly drinking limit are 25% of the populationⁱⁱⁱ (Scotland = 25.3%).

Individuals binge drinking are 16.%^{iv} (Scotland = 19.6%).

3. **Accessibility:** From local data we were able to calculate drive and walk times of the population from a licensed location. 97.7% of the population of Highland are within a 15 minute drive time and 79.7% are within a 15 minute walk time of a licensed location. For off-sales only the percentage falls slightly to 92.9 % of the population being within a 15 minute drive time and 69.9% being within a 15 minute walk time^v.

4. **Public opinion:** To understand public opinion about alcohol overprovision in Highland we carried out a number of surveys. We found that 88% of respondents strongly agreed with the statement that there are enough places selling alcohol in the area where they live^{vi}.

5. **Health harm:** The levels of alcohol related health harm in the Highland Council area remain of concern and the data shows for 2016 there were 71 alcohol related deaths, the highest number of deaths since 2010^{vii}.

Bringing all these five issues together there is sufficient evidence to conclude that there is harm arising from consumption of alcohol and that it is readily available particularly through off sales. Furthermore public opinion supports the view that there are enough places selling alcohol in Highland.

This evidence was accepted by the Licensing Board and to limit the supply, no more off-sales licenses are to be agreed, where the sales capacity is 40 square meters and over.

Recommendation

We ask the Licensing Board to consider the harmful effects of alcohol upon the individual, family and at societal level.

The above evidence underpinned the development of the alcohol overprovision statement and we recommend that the Licensing Board does not agree the application for a major variation of premise license because it exceeds the off-sales capacity of 40m².

ⁱ Alcohol Sales in Scotland NHS Health Scotland 2016 Available Alcohol Focus:
<http://www.alcohol-focus-scotland.org.uk/media/263062/AFS-Resource-Section-1.pdf>

ⁱⁱ Scottish Health Survey Alcohol Data 2012-2015
<http://www.scotpho.org.uk/behaviour/alcohol/introduction/>

ⁱⁱⁱ Scottish Health Survey Alcohol Data 2012-2015
<http://www.scotpho.org.uk/behaviour/alcohol/introduction/>

^{iv} Scottish Health Survey Alcohol Data 2012-2015
<http://www.scotpho.org.uk/behaviour/alcohol/introduction/>

^v Directorate of Public Health and Health Policy, NHS Highland

^{vi} Directorate of Public Health and Health Policy, NHS Highland

^{vii} National Records of Scotland. *Alcohol-related deaths in Scotland, 1979 to 2016*. Edinburgh: National Records of Scotland; 2017. Available from: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/alcohol-related-deaths> [accessed 12 March 2018]

Appendix 3

From: Eilidh McGuire
Sent: 19 November 2018 16:34
To: David Inglis
Subject: Major Variation Application - Co-op, Broadford, Isle of Skye

Good afternoon, David.

I refer to the above application which is due to call at the December Board Meeting.

I note that there were two objections and one representation received in response to this application. The Police representation and NHS objection are on the basis of overprovision and I note that the Board's new policy retains the rebuttable presumption against grant of capacities over 40m². As you'll be aware, this store already has a capacity over that figure (54.36m²) and we are seeking a further increase.

As each application is considered on its own merits, I thought it would be helpful to set out the reasons for the increase sought. The key points here are as follows –

- There is to be a significant increase in the size of the store. The net sales area is to increase from 7,777 square feet to 10,099 square feet following extension. This represents an 29.9% increase. Comparatively, the proposed change in alcohol display capacity represents a 24.6% increase.
- The extended and refurbished store will provide customers with a significantly enhanced grocery offer, extending the grocery range with fresh foods and an improved service till area. The following ranges will be introduced - Health and Well Being, European Range, Home Accessories, Home Entertainment, Books and Toys. There will also be an increase in Free From, Eggs and Promotional ranges. As far as alcohol lines are concerned, there may be some additional lines added which are not offered at present, but this has yet to be confirmed.
- The groceries and alcohol offer on Skye is very limited. There is a small licensed Spar store in Broadford, and two further Co-op stores at the other end of the Island in Portree, over 25 miles away. We understand the nearest supermarkets are over 80 miles away in Fort William. Co-op pride themselves on serving more remote areas and on giving back to those communities. They offer a better range than most stores, including Fairtrade, low alcohol wines etc. While we absolutely appreciate the reasoning behind the Board's overprovision policy, in our view the benefits which the extension of this store and associated increase in capacity will provide to both locals and tourists outweigh the risks of any alcohol related health harm to which this store might contribute. Measures employed in order to ensure that the objective of Protecting and Improving Public Health is promoted are set out in detail below.

As far as the Licensing Objectives are concerned, the following measures will be in place to ensure that these are not undermined –

- Preventing Crime and Disorder
 - There will be 64 CCTV cameras covering the store and carpark, doubling the existing provision
 - It is company policy to refuse alcohol sales when considered necessary/if staff are not comfortable making the sale, whether that is because the customer is aggressive, intoxicated or questionable.
 - There are 9 personal licence holders employed at the store, with at least one on shift at all times.
 - The proposed location of alcohol area allows for careful monitoring. All spirits and high value products which may appeal to shoplifters are located in the inaccessible area.
- Securing Public Safety
 - There will be 64 CCTV cameras covering all corners of the store and the carpark, doubling the existing provision.
 - All staff are trained as part of the CITRUS programme on Health and Safety legislation including training on how to recognise dangers and the correct procedures for dealing with them.
- Preventing Public Nuisance
 - There will be 64 CCTV cameras at the store and 9 personal licence holders, with at least one on shift at all times.
 - Music will be low level background only.
 - External doors will be kept closed.

- Delivery times are always scheduled to ensure that disturbance to local residents is kept to a minimum.
- Protecting and Improving Public Health
 - A large proportion of the lines stocked within the store at present are fresh foods. The fresh food offer will increase following extension of the store.
 - The extension of the store will create additional part time jobs. The availability of employment opportunities will have direct positive impact on the health of the community.
 - Low alcohol beers and wines form part of the product range and all alcohol is clearly labelled with unit information.
 - The Co-operative Group are members of the Wine and Spirits Trade Association and the British Retail Consortium as well as being signatories to the Portman Group Code of Practice.
 - Co-op marketing material always includes an instruction to drink responsibly and refers readers to the Drink Aware website.
- Protecting Children from Harm
 - No alcohol lines appealing to children or young persons will be available.
 - There will be 64 CCTV cameras at the store and 9 personal licence holders, with at least one on shift at all times.
 - Co-op operate an extensive CITRUS Training programme for all staff which includes thorough training on Age Verification Policy on age restricted products and agency sales at the commencement of, and at regular intervals throughout, employment.
 - Challenge 25 is in operation.
 - Co-op use fully age restricted automated tills which require operators to actively engage with customers to assess their age. An electronic register of all age challenges is recorded and weekly reports on each employee are checked by the management.

The above measures considered, our view is that an increase in capacity from 54.36m² to 67.731m² will not have any negative effect whatsoever on promotion of the licensing objectives. Co-op are a very experienced, well regarded operator. They have never been convicted of selling alcohol to a person under 18 or indeed any licensing offence under either the 2003 or 2005 Acts, and have robust procedures in place to ensure their track record continues.

I hope that's helpful and would be very grateful if you would take this information into account in preparing your report. We will, of course, address the above points at the Board meeting, but if I can provide any further information in advance please just let me know.

Many thanks,
Eilidh

Eilidh McGuire
Licensing Solicitor

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