

The Highland Licensing Board

Meeting – 19 February 2019

Agenda Item	7.2
Report No	HLB/015/19

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

The End of the Line Distillery Company, building to the west of filling station, Station Road, Kyle of Lochalsh, IV40 8AE

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for the grant of a premises licence in respect of The End of the Line Distillery Company, building to the west of filling station, Station Road, Kyle of Lochalsh, IV40 8AE.

1.0 Description of premises

1.1 The End of the Line Distillery Company is a retail unit situated in Kyle of Lochalsh and consists of a single storey detached café bar/specialist alcohol shop and outdoor drinking area. The sale of alcohol for consumption on the premises will not be restricted only to persons taking a meal on the premises.

2.0 Operating hours

2.1 The applicant seeks the following **on sale** hours:

On sales:

Monday to Sunday: 1100 hours to 0100 hours

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

Off sales:

Monday to Sunday: 1000 hours to 2200 hours

3.0 Background

3.1 On 31 December 2018 the Licensing Board received an application for the grant of a premises licence from Baoighill Aoigheachd Ltd.

The application was accompanied by the necessary section 50 certification in terms of Planning, Building Standards and Food Hygiene, together with a Disabled Access Statement.

- 3.2 The application was publicised during the period 11 January 2019 until 1 February 2019 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 notices of objections/representation have been received and are appended:
- (1) Letter of objection dated 18 January 2019 from Chris Hallas, Planning and Development Service (**Appendix 1**);
 - (2) Letter of objection dated 30 January 2019 from Isobel Jackson (**Appendix 2**);
 - (3) E-mail – representation dated 1 February 2019 from Mr P Barton for and on behalf of Chictrade Ltd (**Appendix 3**).
- 3.6 The applicant and the objectors have been invited to attend the hearing. They 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 are: -

1. that the premises are excluded premises;
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 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 applicant company operates from small shop premises adjacent to Central Filling Station in Kyle. I note that the authorised use of the building for planning purposes is Class 1 retail use only (shop);
- (ii) The premises are a single storey building and are located within an area also occupied by a fuel filling station and its associated services. There is a shared access to the site and the applicant has confirmed that they own the building and a portion of the access road. I attach some images showing the relationship between the applicant's premises and the filling station (**Appendix 4**). The businesses operate independently and the applicant's premises are not excluded premises in terms of section 123 of the Act as they are not premises used as a garage or which form part of premises which are so used;
- (iii) The main entrance to the premises is located at the front facing east and opens directly onto the shared access road and is approximately 5 metres from the filling station building and around 20 metres from the filling station forecourt and fuel pumps. I note that a cage containing LPG gas cylinders is located at the west end of the filling station building and around 4 metres from the applicant's premises;

- (iv) I am advised by the applicant that the principal use of the premises will be as an off sales shop but the operating plan includes on sales, reference to a café, the provision of live and recorded music, an outdoor drinking area and proposals to erect a marquee or other temporary structure in the outdoor drinking area in support of small functions or events. There is no bar counter on the premises;
- (v) I understand that elements of the operating plan may not be acceptable in terms of the current Class 1 retail planning classification and that the applicant is taking advice on that issue. I note that the applicant describes the premises as *“Retail unit under 30m² with outside area. Single storey detached (eg) (sic) Café bar / specialist alcohol shop and outdoor drinking areas located on Station Road, Kyle. The sale of alcohol will not be restricted to person taking a meal on the premises”*;
- (vi) Although the applicant intends to operate a small café bar with off sales shop I am advised by the applicant that a significant future business element relates to their separate intention to build a distillery in an industrial unit to the rear of the premises and that the premises will then become a visitor centre for the distillery;
- (vii) The premises are comparatively small but an outside area, at the rear of the building, has been identified as an outdoor drinking area. The applicant intends to make use of that area to support small functions on the premises for which events a marquee or other temporary structure may be erected. There is direct access from the rear of the premises to the outdoor drinking area;
- (viii) The full list of activities and services to be provided would allow a wide range of functions and events but it would be expected that there will be few occasions when such functions are provided;
- (ix) The proposed alcohol capacity for off-sales of 20.77m² falls below the threshold of 40 m² in terms of the Highland Licensing Board overprovision;
- (x) In respect of terms of entry for children and young persons it is noted that children must be accompanied by an adult but are only permitted on the premises at the discretion of management. There are no restrictions on young persons other than young persons and children are not permitted to sit at a tasting table when a tutored tasting or sampling session is taking place. I am satisfied that the applicant has given due regard to the licensing objective of protecting children and young persons from harm;
- (xi) I am aware of letters of objection from a representative of the adjacent filling station, from a residential neighbour and from Highland Council Planning Department;

- (xii) I have attempted to contact Isobel Jackson, who I understand lives near to the premises, but without success. She refers at point 2 to off sales hours beyond 2200 hours however I confirm the proposed off sales hours are 1000 hours to 2200 hours daily and are within policy;
- (xiii) On 7th February 2019 intimation was received from the applicant that he wishes to amend the application so as to avoid any potential planning issues;
- (xiv) Specifically he wishes to amend the description to "*Retail unit under 30M2 with outside area. Single storey detached specialist alcohol shop and fenced outdoor area located on Station Road, Kyle*" and remove all other listed activities and services listed in the operating plan other than recorded music and outdoor drinking area;
- (xv) He requests that the Board allow the amendments which will have the effect that the premises will only operate as a specialist alcohol shop (Class 1 retail) with off sales and any on sales of alcohol only when as a part of a tutored tasting or sampling session. The premises will no longer offer café facilities or live music and any use of the outdoor drinking area for consumption of alcohol on the premises would be restricted to use during tutored sampling or tasting sessions;
- (xvi) I understand that there may still be a representation from Planning in respect of the outdoor drinking area;
- (xvii) I will contact the objectors to make them aware of the possible amendments to the application;
- (xviii) I have no cause to object to the grant of the amended application.

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.

7.2 Local conditions

Subject to the Board allowing the application to be amended, the Board may wish to consider attaching the following condition from the schedule of local conditions:

- e After 2200 hours, alcoholic or non-alcoholic drinks shall not be consumed in any outdoor drinking area.

7.3 Special conditions

Subject to the Board allowing the application to be amended, the Board may wish to consider attaching the following special condition:

- (1) Alcohol for consumption on the premises may only be sold or served to persons participating in a tutored tasting or sampling session of alcoholic products.

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 para. 7.2 and 7.3 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/RSL/1887
Date: 7 February 2019
Author: Carol Nicolson

- Appendix 1 Letter of objection dated 18 January 2019 from Chris Hallas, Planning and Development Service;
- Appendix 2 Letter of objection dated 30 January 2019 from Isobel Jackson;
- Appendix 3 E-mail – representation dated 1 February 2019 from Mr P Barton for and on behalf of Chictrade Ltd;
- Appendix 4 Images as per item 5.1(ii) of Licensing Standard’s Officer’s comments.



Carol Nicolson
Licensing

Please ask for: Chris Hallas
Direct Dial: 01478 613847
E-mail: Chris.Hallas@highland.gov.uk
Our Reference:
Your Reference: HC/RSL/1887
Date: 18.01.19

Dear Sir/Madam

The planning authority would like to put forward an objection to the granting of the premises licence for The End of the Line Distillery Company, Station Road, Kyle of Lochalsh, IV40 8AE.

The objection is based on the following grounds:

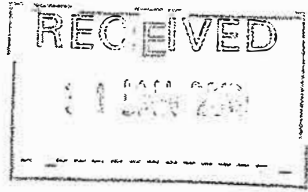
1. the authorised use of the building is for a Class 1 retail use only.
2. The licensing application mentions in questions 1, 2, 5d and 6 the consumption of alcohol on site and within an outdoor drinking area. The retail planning use of the site would not encompass the consumption of alcohol on site which would appear to fall into Class 3 of the Use Class Order and require a further planning permission.
3. The licensing application states in question 5a that bar meals are to be provided on site. The authorised use does not allow for the provision of food to be consumed on or off site. This would also appear to fall within Class 3.
4. The licensing application states in question 5b that receptions and group/club meetings are to be provided on site. The authorised use does not allow for this use on the site. Such a use would appear to fall within Class 11 and require a further planning permission.
5. The licensing application states in question 5c that live music is to be provided on site. The authorised use does not allow for the provision of Live music which would also appear to be a Class 11 use requiring a further planning permission.

If you require any further assistance with regards to this licensing objection please do not hesitate to get in contact with myself or another member of the Portree Planning Team.

Yours sincerely,

Chris Hallas

Professional support Officer – Skye and Lochalsh
Planning & Development Service



Carol Nicolson
Licensing Board
Park Lane
PORTREE
IV51 9GP

Isobel Jackson
Mount Pleasant
KYLE OF LOCHALSH
IV40 8AH

Your Ref: HC/RSL/1887

January 30th 2019

Dear Miss Nicolson

**OBJECTION TO APPLICATION FOR PREMISES LICENCE
THE END OF THE LINE DISTILLERY COMPANY
BUILDING TO WEST OF FILLING STATION, KYLE OF LOCHALSH**

I am here notifying you of my objection to the above application, following the numbered grounds for refusal indicated in your letter to me of the 9th January 2019:

- 1. Excluded Premises.** The area in front of and to the east of the premises that the applicant proposes to use for parking is a right of access for tanker lorries accessing the adjacent filling station tanks and is, and has historically, formed a part of the forecourt of the filling station. Garages are 'excluded premises'. Premises are regarded as garages if the premises *or any part of the premises is used for the sale by retail of petrol or derv*. The premises are therefore excluded.

The area that is contiguous with the filling station is used by customers of the filling station taking and loading gas, coal, logs and containers of liquid fuel, thereby again utilising a *part of the premises used for the sale by retail of petrol or derv* and thereby rendering the premises **Excluded Premises**.

The area between the filling station pumps and the wall of the building is, and has been historically, a multi-use area, being an integral part of the filling station forecourt (making the premises **Excluded Premises**), access to Mount Pleasant (the objector's house), access to the filling station storage tanks, car wash and pallet store.

- 2. Hours.** The objector understands the applicant is seeking licence for off-sales after 10 pm and on that basis the Board must refuse the application.
- 3. Inconsistent with Licensing Objectives.** As things stand, after normal working hours the surrounds to the objector's house are quiet and peaceful. In the event that a licence is granted as applied for the surrounds to the objector's house are certain to be intermittently

occupied by rowdy, intoxicated smokers (joined by non-smokers) creating an intimidating public nuisance.

- 4. Activities / Condition of Premises / Customers.** Having regard to the size and particularly to the location of the premises and to the current use of the area in front of the premises and that they will be used for the consumption of alcohol the Board should consider that the premises are not suitable for the sale of alcohol.

Yours sincerely

Isobel Jackson
Mount Pleasant

From: Chic trade
Sent: 01 February 2019 09:31
To: David Inglis
Cc: !
Subject: Premises Licence application reference HC/RSL/1887 End of the Line Distillery Company

Dear sir,

I have been asked to make representations on behalf of the Gulf fuel station known as Central Filling, Station Road, Kyle of Lochalsh IV40 8AG

Whilst there is an appetite to see some activity within the site in the application, it is with regret that there are very serious implications that should be addressed in our view. Our site is a 24 hour functioning site with outdoor payment terminals. After consultation with the franchise providers Health and Safety officer, the issues below have come to light.

- the application is for 109 patrons – has parking/is to be provided? Concern about parking on forecourt – this would disrupt business. **Public Safety is clearly a concern.**
- Customer parking and/or delivery vehicles would block access/egress for tankers – against DSEAR regulations. 24 hour access is required for our vehicles with our current rights of access being maintained. **This would be detrimental to Public Safety**
- Vehicles reversing (limited version to rear) on forecourt – not able to see moving (potentially inebriated) pedestrians wandering across forecourt. Goes against duties of Sections 2 and 3 of the health and safety at Work Act 1974 in regards to providing a safe environment of employees and visitors (customers). **Public Safety would be at risk.**
- Where will patrons smoke? Concerns about smoking and mobile phone use on/near forecourt. Which contains explosive petroleum substances and compressed gas, further more, full gas bottles within the appropriate cages are less than 4 meters away from the property. Potentially drunk persons entering shop and or picking up petrol dispensing units both through the day or at night. **This has very serious consequences for Public Safety.**
- How would licences keep inebriated patrons separate from vehicle movements. **Public Safety is of concern.**
- Harassment of customers by patrons. **This could cause a Public Nuisance.**
- Damage/vandalism to site equipment from inebriated patrons. **Crime and Disorder will be probable.**
- Odour from distillery affecting site. **This could cause Public Nuisance**

I trust the above meets with your approval and gives you an understanding of our concerns relating to the above application.

Yours Sincerely

Mr P Barton
For and on behalf of Chictrade Ltd
(Owner occupier Central Filling Station)

Appendix 4.





PREMISES

Station Rd



PREMISES