

SHETLAND ISLANDS AREA LICENSING BOARD – MEETING 28 FEBRUARY 2014

1. Applications for Premises Licence

<u>Applicant</u>	<u>Premises</u>	<u>On-Sales/Off Sales/Both</u>
(a) Sandness Public Hall Committee	Sandness Public Hall Sandness Shetland ZE2 9PL	On Sales

• Core Times

On Sales

	Opening	Terminal
Mon	1pm	1am
Tue	1pm	1am
Wed	1pm	1am
Thurs	1pm	1am
Fri	1pm	1am
Sat	1pm	1am
Sun	1pm	1am

- Seasonal Variation – None
- Other Activities – Restaurant facilities, bar meals, take away food, meal nights, receptions including christenings, birthdays, weddings, anniversaries, retirements, funerals etc, club/group meetings, recorded music, musical nights, music festivals, live performances, dance facilities, theatre, films, gaming including race nights, bingo, quiz nights, games nights, fundraising events, indoor/outdoor sports, outdoor drinking facilities, school events, community show/pantomime, bairns parties, mens night and private business hire/private individual hire.
- Children or Young Persons admitted - Yes
- Capacity – 100 when seated, 130 if no tables out.
- Premises Manager – Jonathon Oliver

LSO comments: No observations

Community Council comments: None received

Building Standards comments: No observations

Police comments: No observations

Health Board comments: None received

Fire Board comments: None received

ApplicantPremisesOn-Sales/Off Sales/Both

(b) Shetland Recreational Trust

Clickimin Leisure Complex
Lochside
Lerwick
Shetland
ZE1 0PJ

On Sales

- Core Times

On Sales

	Opening	Terminal
Mon	11am	1am
Tue	11am	1am
Wed	11am	1am
Thurs	11am	1am
Fri	11am	1am
Sat	11am	1am
Sun	11am	1am

- Seasonal Variation – None
- Other Activities – Conference facilities, receptions including weddings, funerals, birthdays, retirements etc, Christmas parties, Up Helly Aa, club/group meetings, recorded music, live performances, music concerts, music festivals, dance facilities, theatre, films, indoor/outdoor sports, sports events, sports awards, televised sport, exhibitions and fund raisers for clubs/charities.
- Children or Young Persons admitted - Yes
- Capacity – 1500 people
- Premises Manager – Robert Geddes

LSO comments: No observations

Community Council comments: No observations

Building Standards comments: No observations

Police comments: No observations

Health Board comments: None received

Fire Board comments: No observations

2. Applications for Variation other than a Minor Variation of Premises Licence

<u>Applicant</u>	<u>Premises</u>	<u>Proposed Variation</u>
(a) Brae Stores Limited	Captain Flints Market Cross Lerwick Shetland ZE1 0LL	Amend Operating Plan to:- increase On Sale hours on Friday and Saturday to 11am – 3am and operate as a Nightclub on Friday and Saturday; play live or recorded music on Friday and Saturday; allow fee to be charged whilst operating as a nightclub; amend layout plan to include dancing area; amend Off Sale hours to 11am – 10pm each day (a decrease in existing hours of 10am – 10pm)
LSO comments:	No observations	
Community Council comments:	Concern was raised that residents in the area may be negatively impacted by the noise of people leaving the establishment during the early hours; however, it was granted that a late licence was more controlled rather than people leaving licensed premises before they were ready to go. Members ultimately agreed to raise no objection to the application, conditional to there being no objections raised by any resident(s) in the area.	
Building Standards comments:	No observations	
Police comments:	No observations	
Health Board comments:	None received	
Fire Board comments:	None received	
Public comments:	Letters of support received from Hughson Brothers, Gabor Keszeg, Kathryn Scott, Life Skills and Busta House Hotel. Copies annexed. Over 300 signatures also received from patrons in support of the application.	

<u>Applicant</u>	<u>Premises</u>	<u>Proposed Variation</u>
(b) Ollaberry Community Enterprise Ltd	Ollaberry Community Enterprises Ollaberry Industrial Estate Ollaberry Shetland ZE2 9RT	Seasonal Variation to extend terminal hour from 6pm to 10pm Mondays to Saturdays. This terminal hour only to be used for one off special events in Ollaberry and late night Christmas shopping.
LSO comments:	No observations	
Community Council comments:	None received	
Building Standards comments:	None received	
Police comments:	No observations	
Health Board comments:	None received	
Fire Board comments:	None received	

3. Applications for Occasional Licence

	<u>Applicant</u>	<u>Premises</u>	<u>Hours Applied For</u>	<u>Event or Occasion</u>
(a)	Shetland Folk Festival Society	Islesburgh Community Centre King Harald Street Lerwick Shetland ZE1 0EQ	11am Thursday 1 May 2014 – 2am Friday 2 May 2014	Shetland Folk Festival
	LSO comments:	No observations		
	Police comments:	No observations		
(b)	Shetland Folk Festival Society	Islesburgh Community Centre King Harald Street Lerwick Shetland ZE1 0EQ	11am Friday 2 May 2014 – 2am Saturday 3 May 2014	Shetland Folk Festival
	LSO comments:	No observations		
	Police comments:	No observations		
(c)	Shetland Folk Festival Society	Islesburgh Community Centre King Harald Street Lerwick Shetland ZE1 0EQ	11am Saturday 3 May 2014 – 2am Sunday 4 May 2014	Shetland Folk Festival
	LSO comments:	No observations		
	Police comments:	No observations		

- | | | | | |
|-----|--------------------------------|---|---|------------------------|
| (d) | Shetland Folk Festival Society | Islesburgh Community Centre
King Harald Street
Lerwick
Shetland
ZE1 0EQ | 11am Sunday 4 May 2014 – 2am Monday 5 May 2014 | Shetland Folk Festival |
| | LSO comments: | No observations | | |
| | Police comments: | No observations | | |
| | | | | |
| (e) | Shetland Folk Festival Society | Islesburgh Community Centre
King Harald Street
Lerwick
Shetland
ZE1 0EQ | 11am Monday 5 May 2014 – 2am Tuesday 6 May 2014 | Shetland Folk Festival |
| | LSO comments: | No observations | | |
| | Police comments: | No observations | | |

Hughson Brothers
Gremista Industrial Estate
Lerwick
ZE1 0PX

09/02/2014

Shetland Islands Area Licensing Board
Shetland Islands Council
Legal and Administration
8 North Ness Business Park
Lerwick
Shetland
ZE1 0LZ

To whom it may concern,

Application for Extension of Permitted Hours – Captain Flints

I would like to officially show my support for the aforementioned application. I think that, if granted, would be beneficial to a few of the licensing objectives.

I believe that granting this application would assist in Preventing Crime and Disorder and Preventing Public Nuisance due to Captain Flints' close proximity to the taxi rank, this helps to prevent the customers long walk through residential areas to return home to their abodes. The journey home whilst intoxicated can be quite a disturbance (as I am sure the Police will agree.) so to decrease the distance travelled on foot would reduce the opportunities for Crime and Disorder, in doing so bringing down Public Nuisances.

In addition to this, I believe that although the "night life" can use more resources to control, it is an important back bone to the Lerwick, and Shetland economy as a whole. Increasing the amount of premises can only boost a sector at a time where all businesses are experiencing reductions in margins and increasing overheads.

Yours faithfully,



Carl Cross

Director

John Tulloch (Shetland Products) Ltd T/A Hughson Brothers

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12 FEB 2014

21-104120

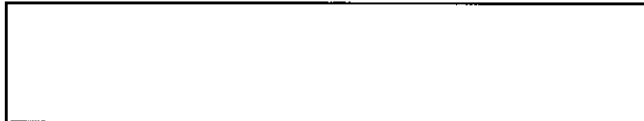
Gabor Keszeg
123 commercial st
LERWICK

Shetland Islands Area Licensing Board
Shetland Islands Council
Legal and Administration
8 North Ness Business Park
Lerwick
Shetland
ZE1 0LZ

To who it may concern,

I would care to provide input into the application currently on the hands of the licensing board regarding Captain Flints change of hours. I started working for Brae stores limited -for Captain Flints- in 2009 until 2013 and believe that not only in my time there but since there has been a large improvement in not just the following of laws and regulations but also in the customers using it. Overtime Flints has changed form being place that no person wants to go in to an bar popular with tourists; students and much of the public. The quality of education given to the staff has been greatly increased and call out for the police did reduced. Ian and Emma and Maurice take huge pride in the care and controlling of the pub and are with out feeling to bar people. Due to this I would believe that Captain Flints would be a very good and reliable venue to have a 0300hours license.

Best regards,
Mr Gabor Keszeg



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12 FEB 2014

11-104121

K.M. Scott

23 Netherdale
Lerwick
ZE1 0SA

10/02/2014

Shetland Islands Area Licensing Board
Shetland Islands Council
Legal and Administration
8 North Ness Business Park
Lerwick
Shetland
ZE1 0LZ

Dear Sirs,

I would like to lodge my approval for the application currently under consultation by the Board. I conceive that the Board should take account of the affirmative influence this will have on the the Licensing objectives.

I think that approval of this application would have a beneficial influence on Preventing Crime and Disorder and also on Securing Public Safety. I believe that this would be achieved as with more premises' open until 3am this would help avoid the "bottleneck" situation that is currently in place -where there is a greater chance of groups that do not get along are forced together as there are few places to be-. Adding another venue will assist in keeping "opposing parties" away from each other decreasing situations that could lead to Disorder and a reduction in Public Safety.

Yours Faithfully,



KATHRYN SCOTT.

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13 FEB 2014

J1 104135

Grant O' Neil
Busta House Hotel
Busta
Shetland
ZE2 9QN

01806 522506

09.02.14

Shetland Islands Area Licensing Board
Shetland Islands Council
Legal and Administration
8 North Ness Business Park
LERWICK
Shetland

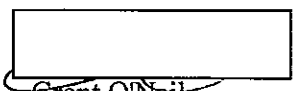
ZE1 0LZ

Application for Extension of Permitted Hours—Captain Flints.

To whom it may concern,

I wish to formally lodge my support for the application above. Acceptance of this application would, in my honest opinion, improve the current coverage of but a few of the licensing objectives.

The granting of this application would have a beneficial influence on Improving public health and Preventing Public nuisance. This is simply due to the location of Captain Flints. The location of Captain Flints is potentially the most detached of the majority of On-trade Licences from areas of dense residential housing. Due to this Captain Flints' application will not cause the problems associated with large quantities of people attempting to vacate a premises at the same time through a residential area. Also the close proximity of late night catering licensed establishments will both stop the need to cross roads to get to them and ensure disturbance to residential property does not occur. This decreases the chance of pedestrian/vehicle accidents, again Securing Public Safety.


Grant O'Neil
Manager
Busta House Hotel

RECEIVED

14 FEB 2014

11 104147

Life Skills
11 Market St
LERWICK
ZE1 0JP

10th February 2014

Shetland Islands Area Licensing Board
Shetland Islands Council
Legal and Administration
8 North Ness Business Park
LERWICK
Shetland
ZE1 0LZ

Dear Sirs,

Application for Extension of Permitted Hours – Captain Flints

I wish to formally register my support for the above application as I firmly believe that the application being considered by the Board will have a positive effect on a number of the Licensing objectives and as such should be granted.

As you will be aware Preventing Crime and Disorder and Preventing Public Nuisance are but 2 of the major considerations of the Board and Police Scotland alike. At the current "closing time" the customers of the premises must vacate and, if they are not ready to finish their night as a significant number are not, proceed to an establishment which is still open. This invariably leads to a number of people walking through the streets of Lerwick, before standing about outside other licenced premises waiting to get in. This often creates a lot of noise and disorder/public nuisance which Police Scotland and local residents will be all too familiar with. Allowing the application will allow customers to stay in their preferred pub until they are ready to go home later in the evening. This pub is perhaps one of the furthest away from residential accommodation and as such noise disturbance to local residents is kept to a minimum. If the application is granted and customers are allowed to stay in the premises this can only have a positive effect the position

Similarly the granting of this application could have a positive effect on securing public safety also. As you will be aware when heading to other pubs the weather is often very poor and the public have to move from one premises to another, often in very cold weather. More importantly however is that when they reach the new establishment the owners have no idea how much/ how little alcohol they have consumed throughout the night and it would consequently be very difficult for them to judge accurately whether that customer is suffering the effects of alcohol or has consumed too much. By allowing the customers to stay in the premises of their choice the bar staff can continue to monitor customers they have been serving during the evening and are better placed to judge matters and thus help secure public safety by ensuring customers drink responsibly.

By allowing the one premises to monitor customers present during the whole of their evening's entertainment it is possible for the licence holder and the staff to not only secure

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13 FEB 2014

J1 104130

public safety but also protect and improve public health by making it far easier to successfully monitor customers' alcohol intake and refusing those who have perhaps had too much. This is much more difficult to monitor if customers are moving from place to place.

Yours Sincerely



JOHN MACLELLAN

Shetland Area Licensing Board
February 2014
Licensing (Scotland) Act 2005 - Fee Setting Policy

1. Introduction

- 1.1 The purpose of this report is to seek guidance from the Board with respect to the charging of fees for Premises Licences.

2. Background

- 2.1 With the implementation of the Licensing (Scotland) Act 2005, the Board set the fees for licences on 21 January 2008. The fees set reflected the terms of the Licensing (Fees)(Scotland) Regulations 2007.
- 2.2 The fees were set at the maximum level prescribed in the 2007 Regulations as per the following table.

Initial Premises Licence Fee	Annual Premises Licence Fee
Category 1 - £200	Category 1 - £180
Category 2 - £800	Category 2 - £220
Category 3 - £1,100	Category 3 - £280
Category 4 - £1,300	Category 4 - £500
Category 5 - £1,700	Category 5 - £700
Category 6 - £2,000	Category 6 - £900

With respect to the above categories 2-6 are by reference to the rateable value of the premises as set out in Regulation 5 of the 2007 Regulations. Category 1 is in respect of certain special types of premises falling within one of the four types set out in Regulation 4.

- 2.3 Two types of premises presented an issue with respect to these prescribed fees:
- (1) rural shops;
 - (2) community halls.
- 2.4 The Board considered these two types of premises at their meeting on 14 November 2008. The solution agreed by the Board at that time was with respect to village shops, that they be regarded as “visitor attractions”.
- 2.5 Visitor attractions are one of the special types of premises set out in Regulation 4. They attract the lowest level of fee. In order to fit within that category the main function of the premises must be to provide a “visitor attraction.” This term is not defined in the Act, nor has it been subject to judicial determination. The Board considered that local shops could be seen as visitor attractions as they were often the first point of contact for visitors and provide a focal point for the community and visitors providing notices, leaflets and postcards. However it

should be noted that the Regulations require the main function is to provide a visitor attraction.

2.6 In addition to the requirement that the premises have as their main function the provision of a visitor attraction, the sale of alcohol on the premises would be subject to restrictions set out in Regulation 4(2). These are -

- (a) that alcohol is not to be consumed on the premises (ie, off sale only); and
- (b) the Licensing Board consider the sale of alcohol as likely to be incidental to other activities carried out on the premises.

The first of these restrictions therefore means that community halls providing on sale facilities would not be capable of falling within that special category.

2.7 Nevertheless, at their meeting on 14 November 2008 the Board decided that village halls should be considered as tourist attractions.

2.8 The Board had lobbied the Cabinet Secretary for Justice at the time that the legislation was being introduced to make him aware of the adverse effect that the feeing structure based on rateable value had on small rural shops and village halls. Both these types of premises provide a useful public service in remote areas.

2.9 The Cabinet Secretary noted the Board's comments and indicated that the Licensing (Fees)(Scotland) Regulations 2007 would be reviewed. The Regulations are currently in the process of a review. The feedback from the Scottish Government is that a steering group made up of representatives of the trade as well as licensing Boards has been established and has carried out research to evaluate the current feeing scheme. This Board contributed data to that research. The recommendations from the steering group have not yet been published, but are expected in early 2014.

2.10 Other Boards with a rural constituency (Orkney, Highland and Moray) were contacted by the Clerk to see what practice was in other areas regarding the interpretation of the feeing regulations for these rural services provided by village halls and village shops. They did not seek to apply the "tourist attraction" exemption in the way this Board has and based the fees on the rateable value of the properties.

2.11 Prior to the submission of this report to the Board I wrote to all premises licence holders who would be affected if the Board were to change their policy on this issue. Only one premises licence holder responded, the holder of the licence for the Aywick Shop. They advised that their business was such that the Board should regard it as a visitor attraction. They advised that about 50% of their business came from people from outside the area specifically coming to view local produce. 3.

3. Potential Impact of Change of the Board's Policy

- 3.1 In the event that the Board accepts that community halls do not fulfil the criteria for visitor attractions then the following options would be available to halls:
- To continue to apply for a Premises Licence paying a fee according to rateable value.
 - To constitute themselves as clubs although that would bring in the restrictions set out in the Licensing (Clubs)(Scotland) Regulations 2007. Clubs fall within category 1.
 - To operate through occasional licensing, the fees for which are £10 per application. This would involve a degree of paperwork and forward planning.
- 3.2 The impact of removing the concession on the currently licensed village hall premises which have to date been regarded as visitor attractions would be that the annual renewal fees would be increased. Currently the annual fees are £180, but they would range from £180-£900 depending on the rateable value of the halls, as set out in paragraph 2.2. However from checking the current rateable values of the halls all the halls would be liable for a fee of £220 or £280. None of the Halls have a rateable value which takes them into the higher brackets. So the most extreme impact would see an increase in the annual fees of £100. (See Appendix 1)
- 3.3 The impact of removing the concession on new applicants would be much greater. The fees increase much more steeply for initial applications as set out in paragraph 2.2 of this report.
- 3.4 for the issue of fee levels for these type of premises came to my attention when a Premises Licence application for the Sandness Hall which was lodged. Under the current interpretation of the Regulations their fee for their initial application was £200 but if the fee had been based on the rateable value it would be £800 (Category 2).
- 3.5 The impact of removing the concession for village shops would see the annual renewal fees increase by £40 for all shops who have benefitted from the "Tourist Attraction" exemption. The shops which have so far benefitted are listed in Appendix 2. Again, the major impact of any change would fall on new applicants for Premises Licences.
- 3.6 For both village halls and village shops the licence holders can surrender their premises licence if they consider that the fees make it not cost effective to continue with the sale of alcohol.
- 3.7 The level of fees being charged for these types of property was being questioned by the Council's Internal Audit Section. The Board can expect external scrutiny of their fee charging arrangements to follow.

- 3.8 The Accounts Commission can in extreme cases censure individual officers or members or suspend members or disqualify members when they establish that there has been an illegality in the conduct of their business.

4. Summary

- 4.1 The argument that the village halls fall within the exemption for “tourist attractions” is not legally sustainable when the halls are primarily providing on sales premises.
- 4.2 The argument that village shops are primarily “Tourist Attractions” is also difficult to justify. The Board needs to consider what the main function of a village shops is. If it is to provide a retail opportunity for residents and visitors then it is not primarily provided as a tourist attraction and therefore cannot properly be classed as a tourist attraction for the feeing regulations.
- 4.3 Classifying properties as “Tourist Attractions” when they do not comply with the requirements of the legislation is ultra vires of the powers of the Board.
- 4.4 There are other ways of the Shetland Islands Council supporting the viability of the important community resources as provided by the community shops and village halls rather than by misapplying the statutory regulations for licensing.

5. Recommendation

- 5.1 I recommend that:

(i) the Board notes the terms of the legal advice provided and no longer deems community shops and/ or village halls as ‘visitor attractions’ for the purposes of the Licensing (Fees) (Scotland) Regulations 2007.

(ii) That the Board considers the premises known as the Aywick Shop and determines whether the main function of those particular premises is to act as a visitor attraction. If the Board does regard the Aywick Shop as a visitor attraction to provide the Clerk with guidance generally as to what type of operations they regard as visitor attractions.

Depute Clerk to the Board

27 January 2014

Appendix 1

Premises	Fee based on Rateable Value
Aith Hall	£280
Baltasound Hall	£220
Bigton Hall	£220
Bixter Hall	£220
Brae Community Hall	£280
Bressay Hall	£220
Bridge-End Community Hall	£220
Burra Hall	£280
Burravoe Hall	£220
Cullivoe Hall	£220
Cunningsburgh Hall	£220
Dunrossness Hall	£220
Fetlar Community Centre	£220
Gulberwick Community Hall	£280
Hillswick Hall	£220
Isbister Hall	£220
Lunnasting Hall (Vidlin)	£280
Mid Yell Hall	£220
Mossbank Hall	£220
North Ness Hall	£220
North Roe & Lochend Hall	£220
North Unst Hall	£220
Ollaberry Hall	£220
Quarff Hall	£220
Scalloway Hall	£280
Skeld Hall	£220
Skerries Hall	£220
Sound Hall	£280
South Nesting Hall	£220
Staney Hill Hall	£220
Sullom & Gunnister Hall	£220
Symbister Hall	£220
Tingwall Hall	£220
Uyeasound Hall	£220
Voe Hall	£280
Walls Hall	£220
Westsandwick Hall	£220
Whiteness & Weisdale Hall	£220

Appendix 2

Premises	Fee based on Rateable Value
Alex Morrison Shop	£220
Andrew Halcrows Shop	£220
Aywick Shop	£220
Brae Garage (Shetland) Limited	£220
C G Williamson (Messrs)	£220
D & G Leslie	£220
Da Keg	£220
Eid Community Co-op Ltd	£220
H Henderson	£220
Hillswick Shop	£220
J I Herculson (Messrs)	£220
J&K Anderson	£220
John Goudie (Messrs)	£220
JWJ (Whalsay) Ltd	£220
Linkshouse Stores Ltd	£220
Lochside Stores	£220
Mail Shop	£220
Mossbank Shop	£220
Ollaberry Community Enterprises	£220
P&T Coaches	£220
R S Henderson	£220
Robinson & Morrison Ltd	£220
Sandwick Baking Company Limited	£220
Scalloway Meat Company	£220
Skellister Stores	£220
Skibhoul Stores	£220
Stackhoull Stores	£220
Tagon Stores	£220
Tetley & Anderson	£220
The Checkout	£220
Ulsta Shop	£220
Universal Stores	£220
Walls Shop	£220