

# MINUTE

# A&B – PUBLIC

**Licensing Committee**  
**Council Chamber, Town Hall, Lerwick**  
**Monday 24 June 2019 at 10.30 am**

**Present:**

M Bell                    A Cooper  
C Hughson            I Scott  
C Smith                G Smith  
B Wishart

**Apologies:**

S Leask

**In Attendance (Officers):**

K Adam, Solicitor  
P Dinsdale, Team Leader – Environmental Health  
PC McArthur, Police Scotland  
L Malcolmson, Committee Officer

**Chair**

Mr I Scott, Chair of the Committee, presided.

**Circular**

The circular calling the meeting was held as read.

**Declarations of Interest**

Ms Wishart declared an interest in item 1, “Street Traders Licences”, as she has an informal role as an invited observer on Living Lerwick who are an objector to the application. Ms Wishart stated that it was not appropriate for her to remain so she would leave meeting.

07/19        **Minutes**

The minutes of the Licensing Committee held on 20 May 2019, having been circulated, were confirmed on the motion of Mr G Smith, seconded by Mr C Smith.

*(Ms Wishart left the meeting).*

08/19        **Street Traders Licences**

The Committee considered a report by the Team Leader – Environmental Health (ES-05-19-F) that presented an application for the grant of a licence to act as a street trader of knitwear goods from locations identified in Appendix 2.

The Team Leader – Environmental Health introduced the report. She circulated a replacement plan at Appendix 2 that had not copied well with the agenda, an updated Appendix 7 provided by the applicant and a further map in support of the application, all attached as Annex 1 to the minute.

The Team Leader – Environmental Health drew attention to the 4 objections and advised that the applicant, Dr Macgregor, was present.

The Chair invited Dr Macgregor to the table and advised her of the process that would be followed.

The Team Leader – Environmental Health went on to advise that site B had been removed as the vehicle to be used by Dr Macgregor would obscure the signage of MacKay's store. Site A was Dr Macgregor's preferred option. The Team Leader – Environmental Health went on to explain the 50 metre Policy that would apply in this case and gave examples of similar restrictions applied within other local authorities in Scotland and the UK.

In responding the questions from Members, the Team Leader – Environmental Health confirmed that the objection at Appendix 5, "that the application sought to gain advantage over shop based companies as a street trader would not have the same overheads", from Living Lerwick, was competent as it followed the requirements within the Policy where it stated that an objection be in writing, relates to the general conditions in the Policy and that it is signed.

Clarity was sought in regard to the term of "similar goods" and an example was given whereby there is a similar business to the Soap Company that has opened in close proximity. The question was then asked how that is different to a street trader. The Team Leader – Environmental Health explained that shop traders are competitive on a level playing field in that they pay rates for the premises they work from where a street trader do not. She advised that the Street Trader's Policy imposes a 50m restriction that had been applied by the Council in the 1990's.

In responding to a further point of clarity the Solicitor confirmed that the Committee were being asked to consider the application against the standard licensing conditions and whether the applicant either complies or not.

The Chair invited Dr Macgregor to address the Committee in support of her application. Dr Macgregor advised that the additional information had been provided by the Team Leader – Environmental Health and apologised that they had not received it sooner. As set out in the updated Appendix 7, Dr Macgregor explained that when she started her business it was totally different from anyone else as she produced a fine gauge range that did not use Shetland wool. She said that she sourced the best yarn she could which is 100% superfine Marino. Dr Macgregor explained that in terms of funding she had to promote Shetland and she had done this in London and other craft fairs, and further afield to attract new customers. The Committee were advised that she has been trading a market stall but it had become evident that erecting and dismantling the stall was exhausting and the stall was not an appropriate structure in bad weather when it was raining and windy. Dr Macgregor said that she had previously looked into working from a van and there had been LEADER Grant funding available, however she did not have confidence at that time that she had the cash flow to pay for 50% of the van. She said that last autumn when she had confidence in her cash flow there was no funding available. She said that she now had the van ready to go and had hoped to take the van to show the Committee but the paint on the floor was not dry. She said that the van provided a much better, modern and smarter means of working and was much better for her health as she could just drive up and park. Dr Macgregor stated that her work was different from that provided by the shops. She explained that 'Aurora' sells two lines, called Calzeat, which is a Scottish woven textile as well as jewellery and Scottish gifts, 'Ninian' sells modern Fair Isle designs with modern colours and in lambs wool, and

Anderson and Company sells Norwegian Jumpers, yolks and other items in Shetland wool. Dr Macgregor handed out an example of her work that showed she was able to produce a product without the loops on the back so it was a reversible fair isle design. She said that no one else was doing this work, and it was completely different and could not be compared to a Shetland cardigan, for example, and she was enhancing and increasing the scope by providing visitors with a larger offering. Dr Macgregor said that Living Lerwick were scared that she was stealing sales but she believed that people would buy what they want or they would buy nothing at all. She explained that if someone said they wanted to buy a sweater or a pair of gloves she would forward them on to other places. Dr Macgregor said that Living Lerwick states it is important to keep the town centre vibrant and she said that she would bring life and vibrancy to the town. In terms of shop owners having high overheads, she said that it was true that street traders do not pay rates but she pays for a parking permit, a street traders licence and planning permission. Her annual costs would be approximately £360/year and she understood that to be just as high as some of the businesses in the area. Dr Macgregor then read out three letters of support, attached to the minute as Annex 2.

Dr Macgregor was thanked for her presentation and for sight of her products.

During questions Dr Macgregor was asked how she promoted Shetland when she did not use Shetland materials. Dr Macgregor explained that if she were to use Shetland materials she would be competing with everyone else. She said that she had to find something different and it was possible to knit fair isle synthetically, advising that in the 1970's Wilma Malcolmson and Laurence Odie were funded by the Council to attend trade fairs and produced catalogues that included Shetland wool, lamb's wool and cotton. She said that at the moment Ninian are producing knitwear from lambs wool spun in Scotland, but Anderson and Company use Shetland wool. She said that the aim was to open up the market, adding that you would not necessarily see someone in Paris or Rome wearing Shetland wool.

In answering further questions, Dr Macgregor advised that in terms of bringing more life to the street she would trade in a wet March day if she thought it was worth her while. In terms of whether she would pick and choose to come only when visitors would be on the street and she was not necessarily attracting new people, she said that she did attend on Sunday when other shops are closed but if there is no one around why would she come. She said that her business plan only allowed for herself and if she was to attend more often she would have to employ someone. She stated that the whole principle of a street trader was to trade less than that of a shop owner. Dr Macgregor added that she does not come to town for all the cruise liners. In terms of attracting new customers to the town she said that her business was only two and a half years old and through social media 'Bakka' is known for using fine colours and for using certain patterns, but the business is still young.

Dr Macgregor was also asked if she had considered approaching businesses to sell her products and she explained that she had a contract with the Visit Scotland shop who currently have two products in place. She also had items in the Museum Shop but those had been sold. The Museum shop had not reordered, adding that they do hold a large inventory there. She had not approached other businesses as it was unlikely they would take in her products as the margins are not good. In terms of the preferred site at Irvine Place, Dr Macgregor explained that this was a section with single yellow lines where there is regularly three cars parked illegally. She explained that the Roads Service had determined what area was needed for the safe circulation of public around the van.

The Team Leader – Environmental Health was asked how other street traders operate and whether they respect the 50 metre restrictions. She advised that she could not respond with certainty but if they operated outwith the conditions of their licence they would be written to and reminded of their licensing conditions.

Members again referred to the identified sites A and C, and Dr Macgregor explained that she did not like site C as this would involve, for safety reasons, reversing into the area but that would mean that the side door would open onto the middle of the loading zone outside the old spinning wheel premises. She said that the Roads Service expect that she would drive in forwards so that customers can access the van from the pavement, however that would require reversing out onto the public road which she was not comfortable doing.

Dr Macgregor confirmed that she does trade online and although she did not know the exact split of online versus physical sales, and that she had a limited sales history, she expected that online sales would be less than 20% of her business. She said that there was potential for the business to grow but she would have to employ someone for that to happen.

Comment was made that there was no question 'Bakka' produced a high quality product, but in considering the Policy the Licensing Committee had to consider whether the product was the same or a similar class as provided by other outlets in the area. The Solicitor confirmed that this was a matter for the Committee to determine and consideration had to be given to whether the product was clothing, knitwear or knitted products. He added that there was no guidance available in terms of the licensing conditions. Further comment was made that although the product was considered in the same class as knitwear, it was not the same as other products and in fairness it was difficult to find a defensible reason for granting or not granting a licence. That said it was deemed that the product was knitwear and was therefore the same or similar class which caused a problem. Dr Macgregor agreed that it was difficult to determine the definition of class and advised that export policy provides many sub categories and her product is classed as scarfs and there is further subdivision of all parts of knitwear including its makeup.

It was acknowledged that the Policy wording was part of the Policy presented to Councillors in the 1990s but it was not certain where the wording originated. It was also acknowledged that if the Committee were so minded to refuse the application the applicant has the right of appeal through the Sheriff Court, however were it to be approved the objectors did not have the same recourse.

Dr Macgregor explained that when she met with the Directors of Living Lerwick it was clear that they did not mind her product but they want to protect the Members within Living Lerwick. She said that Living Lerwick was not behaving with a competitive spirit and that working as a cartel was not part of Living Lerwick's bid, their priorities were not in the spirit of competition and free trade. Dr Macgregor referred to the planning application and said that she appreciated what the Committee were saying but she needed the option of trading for more than 28 days.

Dr Macgregor was asked if she had considered approaching the Lerwick Port Authority (LPA) to trade on the Pier. She explained that she had and although LPA were not opposed to her vehicle LPA have a policy of no trading and this was written into LPA's business plan.

The Committee expressed sympathy for both sides of the argument. In moving matters forward, Mr Bell acknowledged that there was a problem with the general conditions therefore it was difficult not to recognise that the products were of a similar class as set out in Policy. He said that there needed to be an early review of the Policy as times had changed since the 1990s particularly with the advent of the cruise industry.

Mr Bell moved that the Committee refuse the grant of a street traders licence, on the grounds that the products were of the same or similar class to that sold within 50 metres, but that an early review of the Street Trader Policy conditions be carried out. Mr Cooper seconded.

Mrs Hughson asked that the Committee consider changing the order of the motion and moved, as an amendment that the Committee approve the grant of a street traders licence and that a review of the conditions be carried out in early course.

Mrs Hughson was asked to consider how long she would grant the street traders licence given that a review had been sought but the condition may remain. Advice was given that a licence would normally be for three years but the Committee could decide to approve it for a shorter time.

Mrs Hughson moved as an amendment that the street traders licence be granted for one year provided that the review is carried out within that timeframe. Mr G Smith seconded.

Some comments were made in support of the motion acknowledging the Committee's need to adhere to Policy conditions. Some comments were made in support of the amendment, recognising that the 'Bakka' products would complement rather than compete with other knitwear providers, and acknowledging the public's ability to make their own choices based on what is available to them.

Following summing up, voting took place with a show of hands and the results were as follows:

Amendment (C Hughson)	2
Motion (M Bell)	4

The Chair advised Dr Macgregor of the Committee's decision to refuse the application for a street trader's licence, and advised that she could appeal that decision.

**Decision:**

The Committee REFUSED the grant of a street traders licence, on the grounds that the applicant sought to trade within 50 metres of establishments or premises that sold products of the same or similar class, but that an early review of the Street Trader Policy conditions be carried out.

The meeting concluded at 11.30am.

CHAIR