

SHETLAND ISLANDS AREA LICENSING BOARD – MEETING 3 JUNE 20111. **Application for Occasional Licence**

<u>Applicant</u>	<u>Premises</u>	<u>Hours Applied For</u>	<u>Event or Occasion</u>
(a) Lerwick Boating Club REFUSED	Lerwick Boating Club 12a Commercial Street Lerwick Shetland ZE1 0AN	11am Thursday 23 June 2011 – 2am Friday 24 June 2011 11am Friday 24 June 2011 – 2am Saturday 25 June 2011 11am Saturday 25 June 2011 – 2am Sunday 26 June 2011	Shetland-Bergen Race (25 th Anniversary), 1000 mile race, and Dutch Triangle Race

LSO comments: The times requested for the sale of alcohol on the premises are until 2am. Sections 12.6 and 12.7 of the Licensing Board's Statement of Licensing Policy, whilst relating to extended hours and licensed premises, state that extended hours may be considered appropriate in the case of a special event of local or national significance.

The Licensing Board may consider that the Shetland/Bergen race meets the criteria of a special event of local or national significance.

A similar application was considered at the Licensing Board Meeting on 22 April 2011 when discussions were held regarding whether an event that consists of predominately daytime activities should be granted a licence until 2am. The application was granted, but restricted to 1am as it was felt this was a daytime event. In this renewed application the applicant has given further information on the event stating that it operates on a 24 hour basis with yachts arriving anytime up to 1 or 2am.

There is no 'time-bar' on reapplications with respect to occasional licences so this similar application can be considered by the Board again.

[NB: The previous application considered by the Board on 22 April 2011 was just for the two days/nights of 24/25 June and 25/26 June 2011.]

2. Application for Personal Licence

Name and Address of Applicant

- (a) Chey Manson, 6 Greenfield Place, Lerwick, Shetland
GRANTED

The Police have given notice of the following relevant offence conviction:

<u>Date</u>	<u>Court</u>	<u>Crime/Offence</u>	<u>Disposal</u>	<u>Police Comment</u>
19 January 2009	Ayr Sheriff Court	Assault to Injury Common Law	Fined £200, compensation £100	It is the opinion of the reporting officer that the offence was an isolated incident, the applicant is deemed to be a suitable individual and is of suitable character to hold such a licence.

3. Application for Provisional Premises Licence

<u>Applicant</u>	<u>Premises</u>	<u>On-Sales/Off Sales/Both</u>
(a) Shetland Arts Development Agency DEFERRED	Mareel Gutter's Gaet Lerwick Shetland ZE1 0WQ	Both

- Core Times

On Sales

	Opening	Terminal
Mon	11am	1am
Tue	11am	1am
Wed	11am	1am
Thurs	11am	1am
Fri	11am	2am
Sat	11am	2am
Sun	11am	1am

Off Sales

	Opening	Terminal
Mon	11am	10pm
Tue	11am	10pm
Wed	11am	10pm
Thurs	11am	10pm
Fri	11am	10pm
Sat	11am	10pm
Sun	11am	10pm

- Seasonal Variation – Festive extensions and other occasional extensions as may be approved by Board Policy from time to time.
- Other Activities – Charity events, fashion shows, food shows, retail, exhibitions, presentations, workshops, courses and classes, educational facilities, demonstrations, shows, screenings, lectures, seminars and related activities, corporate events, concerts, recording studio, rehearsal rooms, broadcasting and multi media production etc.
- Children or Young Persons admitted (on sales only) – Yes, all ages.
- Capacity – 1602 persons
- Premises Manager – None specified at this stage. (NB: An application for provisional premises licence does not require to provide information about the premises manager. That information would only require to be provided, if the application is granted, at the stage of making application for confirmation of the provisional premises licence.)

The applicant originally submitted an operating plan with terminal hours for on sales of 1am every night, but then submitted an amended application with a 2am terminal hour for Fridays and Saturdays.

Lerwick Community Council have submitted the following representation: The amended application was objected to on the grounds that the extended opening hours to 2am on Fridays and Saturdays were unnecessary; however, members would have no objection to the original application.

LSO comments: The Licensing Board whilst considering and determining an application for a premises licence have many factors to consider. Information on these factors is detailed below.

Some issues are particularly specified in the Licensing (Scotland) Act 2005, and the Licensing Board is required by the Act to publish policy on licensing issues. This policy is the Shetland Islands Area Licensing Board Statement of Licensing Policy, which was published in November 2010. The Board considered in its statement of licensing policy that the applicant should have adequate arrangements for management of the premises in order to achieve the licensing objectives.

Excluded Premises (Section 123)

This application does not relate to premises excluded by the Licensing (Scotland) Act and therefore this is not grounds for considering refusal of the application.

Previous Application (Section 25)

An application has not been refused in the previous year; therefore this is not grounds for considering refusal of the application.

Legislative Permitted Hours (Sections 64 & 65)

An application has not been made for 24 hour drinking. The application for off sales is not proposed outwith permitted hours; therefore this is not grounds for considering refusal of the application.

Preventing Crime and Disorder

In determining whether the application meets any licensing objective and specifically the preventing crime and disorder objective, the Board must, in particular, take account of any report or conviction notice made by the Chief Constable.

Capacity/Overprovision

In the Board's Statement of Licensing Policy, the Board's conclusion is that there is no area of overprovision of licensed premises in any area of the Board.

The policy goes on to state that the Board would keep this under review and would be reluctant to allow indiscriminate permission for new premises in any area that is currently served by licensed premises.

Each case will be considered on its merits and the Board stated that it will consider very carefully the type, size and capacity of licensed premises in the particular locality in respect of which the application is made.

The information the Board may wish to have in order to consider this application follows.

The Board has not defined the definition of “area”. One option would be the immediate area surrounding the proposed development and this is discussed first.

The nearest existing licensed premises is a cultural venue with a number of flexible spaces and café/restaurant.

There are 8 other licensed premises within 300 metres of this premises. This 300m area has been chosen, as it is the general area to the north of the town centre between Harbour Street/King Harald Street/Freefield and the harbour. One premises in this area is a members club (members clubs are not considered in overprovision assessments).

Of the remaining 7:

- One is a large cultural venue with a café/restaurant
- One is an off-sales as part of a general store
- Three are restaurants (one with a nightclub venue and off-sales)
- Two are bars (one with a nightclub venue and both with off-sales)

The current on-sales capacity of these seven premises in total is 1,528. This application increases the capacity by 1,260 resulting in an approximate 82% increase in on-sales capacity.

Another option would be to consider provision in the catchment area of the development, which in this case could be considered as being the whole of Shetland, in which case the percentage increase in capacity is likely to be minimal.

In considering off-sales capacity for the 4 other premises in the 300m vicinity of the proposed premises, this is difficult to quantify equitably, as most of the premises are not solely off-sales premises.

The Board may wish to consider whether off-sales is actually appropriate in a venue of this type.

I have spoken to the applicant and clarified the position relating to off-sales. It is proposed that off-sales will be an infrequent occurrence for example where a convention, trade fair or expo is being held in the premises, say in the main auditorium.

Temporary Displays (Suitability of Premises & Securing Public Safety & Protecting and Improving Public Health)

This is a new purpose-built premises and generally there appears no issue with the overall suitability. Building Standards may comment in more detail in this regard and will ensure any issues are resolved prior to issuing a completion certificate and a building standards certificate prior to confirmation of any provisional licence.

However, there is a concern relating to the positioning of the temporary alcohol displays. It is not clear when and how often these displays are to be utilised.

The Board may wish to consider whether the proposed displays in the ground and first floor circulation areas are suitable with

regard to the licensing objective of protecting and improving public health.

In most multi-functional facilities such as cinemas and cultural venues alcohol consumption is ancillary to the purpose, and a person would need to specifically visit the bar to purchase alcohol. Under this proposal it appears that it could be difficult to access any part of the building without being exposed to the offer to buy alcohol.

In addition to this, the proposed ground floor alcohol display causes particular concern, in that the display combined with the fixed under stair seating may cause an obstruction of the fire exits. The extent of the fixed under stair seating is not clear from the drawing.

I have contacted the Highlands and Islands Fire and Rescue Service who enforce Fire Safety Legislation and they have confirmed that it is not appropriate for the area in the foyer to be obstructed, as this area is a means of escape. The Fire and Rescue Service will undoubtedly provide more detailed information in their response.

I have spoken with the applicant regarding this and the extent, location and frequency of use of these temporary alcohol displays has not yet been finalised. I recommended that this be reviewed and further detail provided regarding this and to the extent of the under stair seating on the ground floor.

Terminal Hour (Protecting and Improving Public Health)

This application states a terminal hour of 2am on Friday nights (Saturday mornings) and Saturday nights (Sunday mornings) and 1am the rest of the week.

In the Board's Statement of Licensing Policy the guideline terminal hours are 1am in general. A terminal hour of 2am on weekend nights is applicable for premises that in terms of the operating plan and the Board's understanding will be operating as nightclubs.

There is no information in the operating plan stating that the premises will be operating as a nightclub. Section 5(g) of the application regarding late night premises has not been completed at all.

The Board may wish to consider whether it is their understanding that this premises will be operating as a nightclub.

I have spoken to the applicant regarding this and it is the plan that DJ/nightclub events will be held. I advised that this should be included in their operating plan.

It is essential that this matter is clarified prior to approval being considered by the Board as additional mandatory conditions must be applied to late night venues.

Children and Young Persons' Access (Protecting Children From Harm)

It is indicated that children and young people will not be permitted access to any area in which alcohol is sold unless supervised by an adult. As it is proposed that alcohol be sold in the café, cinema screen 2 and in the ground and first floor foyers then as it

stands no children or young people will be permitted access to these areas unaccompanied.

It is likely that the intention is not as restrictive as this. The operating plan is not clear in this regard.

If it is proposed to sell alcohol in circulation areas and children and young people are being allowed in the building then they cannot be restricted from the circulation areas as these are where the access to toilets and exits are.

I have spoken to the applicant regarding this and the intent is that children and young people will be permitted entry to the premises at all times, however where an event is targeted at over 18s children and young people will not be permitted entry to that event and the premises will be adequately stewarded to ensure this is managed.

Outdoor Drinking Facilities (Preventing Public Nuisance)

It is stated that outdoor drinking facilities are to be provided and a small outdoor area is referred to in the description of premises. However, no area is indicated as an outdoor drinking area on the plans submitted. As Lerwick has an Alcohol Bylaw prohibiting drinking in public areas, a specific external area would need to be identified, marked and included in the operating plan.

The Board may wish to restrict the hours of operation of the outdoor drinking area to say 11pm as depending on the use, size and location of the area this could cause problems with noise at nearby residential premises.

The applicant stated that the proposed outdoor drinking area is the area outside the glazed windows of the café/bar. I advised that this area should be marked on the plan and demarcated while in use, perhaps by the use of moveable post and rope stanchions.

Conclusion

The Board may wish to consider whether it is appropriate to grant this application as it stands, given that there are many and varied areas of concern as to whether the application is consistent with the licensing objectives.

It is not the case that a provisional licence can be granted and issues resolved prior to the confirmation of the premises licence. The Board must grant a confirmation application if they are satisfied that since the provisional licence was granted there has been no variation to the operating plan or layout plan. Therefore these issues require to be clarified at this stage.

I have spoken to the applicant regarding these issues and there are clarifications and explanations available for many of my concerns. I have suggested to the applicant that an entirely revised operating plan and revised floor plans may be appropriate at this stage so that it is actually clear to the Board what is proposed and so that consultees have the full information on which to comment.

Alternatively the Board may propose a modification of the operating plan, which, if agreed by the applicant, would mean that the Board could grant the application as modified.