

**Shetland Islands Area Licensing Board
Council Chamber, Town Hall, Lerwick
Friday 28 February 2014 at 10.00am**

Present:

P Campbell A Cooper
A Duncan C Smith
G Smith A Westlake

Apologies:

M Bell G Robinson

In Attendance (Officers):

P Wishart, Solicitor
Insp. E Graham, Police Scotland
P Dinsdale, Environmental Health Officer
D Manson, Lead Environmental Health Officer
L Gair, Committee Officer

Chairperson

Mr G Smith, Convener to the Board, presided.

Circular

The circular calling the meeting was held as read.

Declarations of Interest

Mr G Smith declared a non pecuniary interest in agenda item 1 as a member of the Shetland Folk Festival Society and advised that he would leave the Chamber during consideration of their application.

1. **Applications under the Licensing (Scotland) Act 2005 for a Premises Licence, Variation other than a Minor Variation of Premises Licence and Occasional**

The Board considered a report by the Depute Clerk to the Licensing Board (Appendix 1).

1.	Application for a Premises	<u>Decision</u>
(a)	<p><u>Sandness Public Hall</u> The Solicitor introduced the application, and it was confirmed that there were no concerns from the Police and no further comments from the Licensing Standards Officer.</p> <p>Ms Westlake moved that the Board approve the application for a premises licence, Mr Campbell seconded.</p>	Granted
(b)	<p><u>Shetland Recreational Trust</u> The Solicitor introduced the application highlighting that the Trust had previously submitted occasional licences throughout the year but was now applying for a Premises Licence. It was confirmed that there were no concerns from the Police and the Licensing Standards Officer.</p> <p>The Chair invited Mr Geddes, representative for the Shetland Recreational Trust to address the Board. Mr</p>	Granted

	<p>Geddes confirmed that since the changes to the occasional licence procedures, the Trust recognised that the Premises Licence was the way forward and was an easier process to follow.</p> <p>Mr Duncan referred to the events that he had attended at Clickimin Leisure Centre and said that this was a well run establishment that adhered to the licensing hours religiously. Mr Duncan moved that the Board approve the application for a Premises Licence. Ms Westlake seconded.</p>	
2.	Applications for Variation other than a Minor Variation of Premises Licence	<u>Decision</u>
(a)	<p><u>Brae Stores Limited</u> The Solicitor introduced the application, and highlighted that this was an application to allow the premises to operate as a nightclub. Although there were a number of letters of support, the only other comment had been received from the Lerwick Community Council appended to the papers provided.</p> <p>Inspector Graham confirmed that Police Scotland had no objections but added that if the Board were mindful to grant the application the Police would monitor the effect of that closely until the next licensing board to ensure the premises was operating appropriately.</p> <p>The Licensing Standards Officers confirmed that she had no further comment to add.</p> <p>Mr MacGregor, Mr Kelly and Mr Irvine, representatives of Brae Stores Limited, were invited to the table to respond to Members questions. Mr MacGregor was in a position to confirm that the modifications to the floor plan would not be done until approval of the application had been confirmed and the premises would not operate as a nightclub until all measures applicable to a nightclub were in place. Mr MacGregor said that involvement from Police Scotland was welcome and advised that Captain Flints already operated one of the best CCTV systems in Shetland but all other measures would be completed in order to meet the requirements of the application.</p> <p>Mr MacGregor confirmed that the whole premises will be used during the hours that the nightclub is in operation. He confirmed that patrons, who are already on the premises when the nightclub hours begin, will be charged if they wish to stay. Non paying patrons will be asked to leave.</p> <p>Mr MacGregor also confirmed that it would take 2-3 weeks to have all measures in place, and representatives would</p>	Granted

	<p>be happy to liaise with Police Scotland before opening as an additional safeguard.</p> <p>In response to a question regarding the definition of a nightclub, the Solicitor referred to page 18 and 19 of the Board's "Statement of Licensing Policy" and stated that the conditions therein would apply to this application.</p> <p>Members viewed a plan that demonstrated the proposed changes to the layout and the provision of a dance floor. Mr Kelly confirmed that the current layout plan complied with all safety regulations and catered for a certain number of patrons and there was no intention to deviate from that when the nightclub is introduced.</p> <p>Members expressed concern that there may be some difficulty in charging patrons admission from those already on the premises. Mr Kelly advised that it was intended that admission would be collected from 10pm and anyone who did not wish to pay would be asked to vacate the premises. Inspector Graham advised that if it proved difficult this could be overcome by closing the premises at 10pm and reopen shortly thereafter and anyone wishing re-entry would have to pay admission.</p> <p>A Member noted that the application had decreased off sales by one hour. Another Member noted a letter of support had highlighted the close proximity of the taxi rank which was useful for patron leaving at the end of the night.</p> <p>Mr Duncan moved that the Board approve the application for a Variation other than a Minor Variation of Premises Licence. Mr Cooper seconded.</p> <p>Mr MacGregor confirmed that he would take up Police Scotland's offer to visit the premises prior to opening and the Board agreed that this should be communicated to the Licensing Standards Officer once all measures are in place.</p>	
(b)	<p><u>Ollaberry Community Enterprise Ltd</u></p> <p>The Solicitor introduced the application, and it was confirmed that there were no concerns from the Police and the Licensing Standards Officer.</p> <p>Ms Westlake moved that the Board approve the application for a Variation other than a Minor Variation of Premises Licence. Mr Campbell seconded.</p> <p>Mr Duncan commented that it was important to support community shops particularly in light of Tesco Stores intention to introduce home deliveries.</p>	Granted
(Mr G Smith left the Chamber and Mr C Smith took the Chair)		

3.	Application for Occasional Licence	
(a) to (e)	<p><u>Shetland Folk Festival Society</u></p> <p>The Solicitor introduced the application, and it was confirmed that there were no concerns from the Police and no further comments from the Licensing Standards Officer.</p> <p>Mr Rutherford and Mr Nicolson, representatives for the Shetland Folk Festival Society were invited to address the Board.</p> <p>Mr Rutherford said that this was now the 34th year of the festival which was considered of local, national and international interest. He explained that at one time the terminal hour for serving alcohol was 3am and it was now 2am. The application presented is therefore identical to previous years. Mr Rutherford reminded the Board of the arrangements put in place for entry of both adults and children and the use of security staff with a personal licence holder being present at all times.</p> <p>Mr Campbell commented that this was a highly successful event and moved that the Board approve all applications for occasional licences, seconded by Mr Cooper.</p> <p>Mr Duncan commented on the suitability of the premises having attended a similar event a number of times and said that there had never been any problems on those occasions.</p>	Granted

(Mr G Smith returned to the Chamber and resumed the Chair)

2. **Licensing (Scotland) Act 2005 - Fee Setting Policy**

The Board considered a report by the Depute Clerk to the Shetland Islands Area Licensing Board that sought guidance from the Board in respect of the charging of fees for Premises Licences. (Appendix 2).

The Solicitor introduced the report and explained that having received applications for new premises licences, it appeared to the Depute Clerk that the Board's policy on fees applicable to community shops and halls was not correct. Having reviewed the policy and legislation, it is the view of the Depute Clerk that the policy is not compliant with legislation. The Solicitor suggested that the Board reconsider the policy and amend it so community shops and community halls were no longer deemed to fall within category 1 of the applicable regulations, as premises whose main function is to provide visitor attractions. The Solicitor went on to advise that the practical implications of the change would be higher fees for new premises applications and upon renewal of licences, the annual fees would increase from £180 to £220 for the majority of halls and shops with some halls paying £280.

The Solicitor also advised that the Aywick shop had responded to the Board's recent letter, requesting that they be considered a visitor attraction. Therefore a specific decision is required for the Aywick shop.

During lengthy discussion, Members recalled the work that went into finding a solution that allowed Halls and Shops to be compliant with the legislation. The Board had decided at that time to apply the visitor attraction fee level that allowed those premises to pay £200 rather than £800 in initial application fees.

In response to questions, the Solicitor confirmed that there was no statutory definition for what a visitor attraction is, nor is there any case law that makes it clearer. He stated that for any establishment to be considered in that way, their activities as a visitor attraction would have to be the main function of those premises. The Solicitor stressed that the main function of a shop or a community hall was not a visitor attraction. Some members believed that there were definitions available from within industry and that should be taken into consideration.

Discussion took place on whether the Aywick Shop is a visitor attraction and some Members viewed that there was significant interest in what the owner provides in the shop and this attracts visitors from across Shetland. Mr Cooper commented that the Aywick Shop was an emporium and should be considered a visitor attraction.

Following much debate on the subject of what constitutes a visitor attraction and what constitutes a visitor, the Chair drew attention to paragraph 2.6 of the report where it stated that the first restriction means that community halls providing on sales facilities would not be capable of falling within that special category of being a visitor attraction.

The Solicitor responded to a query and advised that maintaining the status quo was not an option as the Board is currently not compliant with the current Licensing Regulations. He also confirmed that the Board was already under scrutiny by the Internal Audit Section and the Board was acting outwith legislation.

The Chair also drew attention to the paragraphs 3.7 and 3.8 and said that in extreme cases the Accounts Commission “can censure individual officers or members or suspend or disqualify members when they establish that there has been any illegality in the conduct of their business”.

Mr C Smith said that when the licensing fees were considered by the last Board, it was never the intention to break the law but to find a way to help shops and halls and the wider community.

Mr G Smith moved that the Board approve the recommendations contained in the report and agree that the Aywick Shop is not to be regarded as a visitor attraction. Mr C Smith seconded.

Mr Cooper moved as an amendment that the Board defer a decision on this matter until a clearer definition of what a visitor attraction is can be obtained. Mr Duncan seconded.

The Solicitor advised that a deferral would not bring any clearer definition as there was no statutory guidance or case law that would provide that.

During short debate Mr Duncan commented that it was important to support local communities particularly now that Tesco stores intended to provide a home delivery service across Shetland.

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

Amendment (Mr Cooper) 3
Motion (Mr G Smith) 3

The Chair used his casting vote, therefore the motion became the decision of the Board.

The meeting concluded at 11.10am

Convener