

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO LICENSING BOARD – 28 FEBRUARY 2024

LICENSING (SCOTLAND) ACT 2005

APPLICATION FOR A PROVISIONAL PREMISES LICENCE - HEARING

ALDI, MACDUFF

1 Executive Summary/Recommendations

- 1.1 This report relates to an application for a grant of a provisional premises licence where a representation has been received due to the application being subject to the Board's Licensing Policy Statement in relation to the Overprovision Policy and which requires consideration by the Board. Provisional Premises Licences can only be determined by the Licensing Board.

Recommendations

1.2 It is recommended that the Board considers the materials before them and:-

- (a) Determines whether there is enough evidence before the Board to allow a determination to be made, or whether the Board needs to defer consideration of the matter to the next available Board Meeting for further material to be made available.**
- (b) Where the Board has concluded that there is sufficient evidence to allow a decision to be made, to consider the application, the representation made, the submissions made by the parties at the hearing and determine whether the application should be granted as applied for, or with a different alcohol capacity, in line policy requirements and the provisions of the legal test; and**
- (c) If granting the application, to grant subject to the agreed local and specific conditions as set out within the terms of this report.**

2 Decision-Making Route

- 2.1 An application was lodged for a grant of a provisional premises licence for Aldi, Duff Street, Macduff. The application was lodged on 9th August 2022 by Aldi Stores Limited, Holly Lane, Atherstone, Warwickshire CV9 2SQ by their agent Caroline Loudon, Partner and Alison Smith, Paralegal at TLT LLP. The

application was placed on hold as the original planning consent granted by Aberdeenshire Council was judicially reviewed, planning consent being required to enable a provisional premises licence to be competently made and processed. A further planning application was made following the outcome of the Judicial Review and decided by the Council following which a revised application form was subsequently lodged on 11th September 2023.

Proposal

- 2.2 A copy of the Application including the proposed Operating Plan, proposed Layout Plan, proposed Activities Matrix and Risk Assessment are attached as **Appendix 1** to this report and referred to for their terms.
- 2.3 This application has not previously been before the Board.

3 Discussion

Consultations

- 3.1. The Depute Clerk carried out an initial examination of the application, following which, various matters required to be rectified by the applicant to enable the application to be processed. The application was then processed, and the following bodies were consulted thereon:
- (a) Police Scotland
 - (b) Scottish Fire and Rescue Service
 - (c) The Environmental Health, Planning and Building Standards Services of Aberdeenshire Council
 - (d) The Licensing Standards Officer
 - (e) Public Health
 - (f) The appropriate Community Council and
 - (g) Neighbouring Occupiers.

- 3.2. At the same time as the application was consulted on, the applicants required to display a site notice at the premises, in a location where it could be easily read by members of the public, advertising the fact that an application had been made. The Licensing Standards Officers checked to ensure that the site notice had been appropriately displayed.
- 3.3. The application was also advertised on the Council's Website.

Objections and Representations

- 3.4. Representations were made as follows:
- (a) Licensing Standards Officers
- 3.5. The representation related to the Board's current Overprovision Policy and is attached and form **Appendix 2** to this report.
- 3.6. The representations were copied to the applicant on 9 February 2024.

Overprovision Policy

- 3.7. The sole reason for consideration of this application at a full hearing of the Board is due to the terms of the Board's current Overprovision Policy.
- 3.8. The current Overprovision Policy is attached as **Appendix 3** to this report.
- 3.9. In summary, in relation to Macduff, the Board's Policy found as follows:

	Localities of Banff, Inverurie and Macduff
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2. To create, in the above localities, a rebuttable presumption against the **potential** grant of applications for premises licences, provisional premises licences or variation of premises licences in relation to **off sales** (in terms of the grounds of refusal set out in section 23(5)(e) of section 30(5)(d) of the Act **where:**
- (a) The grant of the application would result in the premises having an off sales capacity in excess of 34.3 square metres, or
- (b) in the case of licensed premises with existing off sales capacity in excess of 34.3 square metres, the grant of any variation sought would result in an increase in that off sales capacity.



The applicant was asked if they wished to reduce the size of the off sales capacity to the Aberdeenshire average figure. or lower, but confirmed that they

wished to proceed on the basis of the capacity set out in the application, as lodged, set at 40.29051m² which is higher than the Aberdeenshire average.

3.10. In terms of the Policy, therefore, the applicant requires to provide justification to the Board with sufficient evidence that would allow the Board to determine whether a departure to the Board’s overprovision policy would be justified in respect of this application, in particular how the operation of the premises will comply with and promote the five licensing objectives and the extent to which the benefits outweigh any harms identified in the Board’s policy, as summarised below.




The level of evidence required in relation to an area over which the Board has set a “watching brief” is not as high as the level required in an area where the Board has declared there is overprovision.








3.11. A summary of the statistical information supporting the Board’s findings extracted from the Board’s policy is set out below for ease of reference.








Watching Brief	
	Having regard to all the evidence submitted to date, and, having considered the number and capacity of off-sales premises in Aberdeenshire, the Board has concluded for the purposes of this Policy Statement that while there is insufficient evidence to demonstrate a causal link between the operation of off-sales premises and alcohol related harm in these localities when considered against the Licensing Objectives, there is sufficient evidence of harm to cause the Board to be concerned that there is potential for these localities to become provided.
	Watching brief on the number of off-sales premises within these localities, particularly where there are applications where there are applications which apply for, or variations to increase, a capacity of alcohol above 36.00m ² .





Macduff met the above criteria as it showed evidence of a higher-than-average level of alcohol-related-harm despite having a low level of availability and lower-than-average risk potential when it came to alcohol-related-harm.
















Findings:

	Potential Risk
Multiple Deprivation	
	No SIMD Data Zones within the most deprived areas within Scotland (top third).
	No SIMD Data Zones within the 10 most deprived areas within Aberdeenshire.

	Macduff however does appear in the top 5 deprived towns within Aberdeenshire based on the MEAN Average of all its SIMD Data Zones.
Income Deprivation	
	More than 10% of the population within each of the SIMD Data Zones for Macduff experience Income Deprivation.
	No SIMD Data Zones within the 10 most deprived areas within Aberdeenshire.
	Macduff however does appear in the top 5 income deprived towns within Aberdeenshire based on the MEAN Average of all its SIMD Data Zones.
Health Deprivation	
	Statistical information in respect of this risk factor will be considered under the 'Evidence of Harm Criteria'.
Deprivation As A Result of Crime	
	Statistical information in respect of this risk factor will be considered under the 'Evidence of Harm Criteria'.
Score	
	Scored 4.00 out of a possible 10.00 for 'Risk Factor' amounting to 40.00% which indicates that Macduff has a lower-than-average potential of risk when it comes to harm caused by alcohol at present.

	Availability of Alcohol
Population	
	Population of 3,830.
	Population aged over 16 amounted to 3,179.
Number of Premises	
	There were 3 off-sales premises within Macduff. AB-N-P047: Scotmid, AB-N-P115: Keystore and AB-P-014: Deveron Direct Ltd.
	There were 3 premises selling both on-sales and off-sales within Macduff: AB-N-P061: The Plough Inn, AB-N-P127: The Old Moray Bar and AB-N-P173: The Knowes Hotel
	There were no on-sales only premises within Macduff.
Density of Premises	
	Density of off-sales premises was lower than the Scottish National Average.
	Density of on-sales premises (incl. those selling both) was lower than the Scottish National Average.
Hours of Premises	
	1/3 of off-sales premises (incl. those selling both) operate using the maximum hours allowed in terms of the legislation this being 84 hours per week (10 am to 10 pm each day).
	The average opening hours for on-sales premises within Macduff was 13.4 hours per day which is less than 14 hours limit hinted at within the legislation.
Capacity of Off-Sales Premises	

	The MEAN average capacity amounted to 22.1m ² which is less than the Aberdeenshire average which amounted to 36.00m ² .
	The m ² capacity of alcohol per person amounted to 0.2m ² which is low.
	Score
	Scored 2.70 out of a possible 11.75 for 'Risk Factor' amounting to 22.98% which indicates that the availability of alcohol within Macduff is low at present.

	Evidence of Harm
Preventing Crime and Disorder	
	40% of SIMD Data Zones have a Crime Rate of 70%+ of the Scottish National Average.
	No SIMD Data Zones within the top 10 highest Crime Rates for Aberdeenshire.
	In the top 5 towns within Aberdeenshire for Crime Rate based on the MEAN average of all its SIMD Data Zones.
	Located within the Banff and Buchan area which has the highest recorded incidents of violence within licensed premises albeit this is down on previous years.
Securing Public Safety	
	No statistics in respect of this Licensing Objective were presented to the Board.
Preventing Public Nuisance	
	No statistics in respect of this Licensing Objective were presented to the Board.
Protecting and Improving Public Health	
	80% of SIMD Data Zones with an Alcohol Related Hospitalisations Rate of 70%+ of the Scottish National Average.
	2 SIMD Data Zones within the top 10 highest Alcohol Related Hospitalisation Rates for Aberdeenshire.
	In the top 5 towns within Aberdeenshire for Alcohol Related Hospitalisation Rate based on the MEAN average of all its SIMD Data Zones.
	Has SIMD Data Zones with both an Alcohol Related Hospitalisation Rate and a Drug Related Hospitalisation Rate of 70%+ of the Scottish National Average in both categories.
	The Alcohol Related Hospitalisation Rate has increased since 2016.
Protecting Children and Young Persons From Harm	
	No statistics in respect of this Licensing Objective were presented to the Board.
	Score
	Scored 9.80 out of a possible 13.50 for 'Evidence of Harm' amounting to 72.59% of the overall and this indicates that Macduff experiences higher-than-average levels of harm as a result of alcohol at present.

Conditions

3.12. If granted, certain mandatory conditions listed in the Licensing (Scotland) Act 2005 will attach to premises licences.

3.13. If granting the application, the following local conditions will apply to the licence, as agreed in advance with the applicant:

- General Management for All Premises – Conditions 1 – 4
- Noise – All Premises – Condition 5
- Lockfast Store – All Premises – Condition 6
- Vulnerability – All Premises – Condition 19
- CCTV – All Premises – Condition 21
- Alcohol Deliveries, Click & Collect & Internet Sales – 43 - 44

3.14. The Board may also attach conditions which are specific to the premises where required. There are none applied to this application.

Appendix 4 contains the list of available local conditions, as set out in the Board's Policy Statement.

Implications

3.15. If the Board determines that the premises licence should be granted with the capacity as sought by the applicant, this will impact the overprovision statistics for the town of Macduff which will require officers to update the supporting information to the Overprovision Policy which will be reviewed as a matter of course.

Procedure

3.11 Each application should be considered on its own merits.

3.12 The legal test is attached as **Appendix 5** to this report.

3.13 The Applicant has been requested to attend the Board

3.14 Those consultees who have lodged representations have been asked to attend the Board.

3.15 Copies of this report together with the Legal Test and Board's Guidance on procedures for Hearings, were issued to all Parties .

3.16. All parties have been given the opportunity to attend the Board Meeting by phone, to lodge written submissions or both. Any written submissions lodged will be circulated to all parties prior to the meeting and will form **Appendix 6** to this report.

3.17. Members should follow the procedure outlined at **Appendix 7** of this report.

3.18. Members' options in disposing of the application are:-

- (a) To grant the application as applied for;
- (b) Refuse the application; Officers would advise that there is no evidence to justify refusal of this application in line with the terms of the Legal Test
- (c) To grant the application subject to a varied alcohol capacity; or
- (d) Determine that further evidence is required in which case the applications should be referred to the next available Board Meeting in order that the applicants may present their case in full or further information can be obtained in the interim.

3.19. When coming to a decision the Board must consider the evidence provided and the contents of the legal test. Supplementary advice and information can be made available by Officers, if required.

4 Priorities, Implications and Risk

4.1 The Board must determine this matter on its own merits in accordance with the legal tests set out in the relevant legislation. The Board is a separate legal entity to Aberdeenshire Council and therefore the Council's priorities do not apply to this report. The application is out with the terms of the Board's policy.

4.2 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial		X	
Staffing		X	

Equalities and Fairer Duty Scotland			x
Children and Young People's Rights and Wellbeing			x
Climate Change and Sustainability			x
Health and Wellbeing		X	
Town Centre First		X	

- 4.3 An Integrated Impact Assessment (IIA) has not been carried out as the processing of the application has not identified any issues that would fall within the remit of the IIA and the Board must determine this matter in line with the legal test.
- 4.4. There are no staffing and financial implications.
- 4.5. The Council's Corporate and Directorate Risk Registers do not apply to the Licensing Board as it is a separate legal entity.
- 4.6. The Council's Town Centre Principle does not apply in respect of this matter as the Licensing Board is a separate legal entity.

5 Governance

- 5.1 The Board can consider this application in terms of paragraph 1.5 of the Scheme of Delegation which provides that consideration of a premises/provisional premises licence is a matter reserved to the Board.

Karen Wiles

Clerk to the Board

Report Prepared by Fiona Stewart, Senior Solicitor (Governance), Depute Clerk to the Board and Harriet Tevendale, Paralegal

Date: 13th February 2024

IDOX REFERENCE NUMBER: LAPROV/02147/22

List of Appendices:

Appendix 1 – Application

Appendix 2 – Representations

Appendix 3 – Overprovision Policy

Appendix 4 – Local Conditions

Appendix 5– Legal Test

Appendix 6 – Written Submissions – where made

Appendix 7 – Procedure for Hearing