

Martin McColl v Aberdeen City Licensing Board Note of Decision

The Board refused an application for a provisional premises licence for an off-sales premises for RS McColls on Union Street on the grounds that granting the application would be inconsistent with the licensing objective of protecting and improving public health.

On appeal the Sheriff has granted the application.

In his judgment the Sheriff considered the tests that had been applied by the Board were more suited to a decision based on overprovision rather than one relating to public health. He made the point that notwithstanding the current situation regarding the Board's overprovision policy; it was still an option for the Board to refuse the application on the grounds of overprovision if it considered the evidence supported such a decision.

The Sheriff noted that the main grounds for the application being inconsistent with the licensing objective of protecting and improving public health was deemed to be the increase in availability but highlighted that the Board had granted two other off sale licences at the same meeting and there was nothing to indicate why this particular application would be inconsistent with the licensing objectives whilst the others were not. He also stated that it was difficult to reconcile that an increase in availability would be contrary to the public health licensing objective but not result in overprovision.

Accordingly he concluded that there was no proper evidential basis for applying the specific breach of licensing objective to this application and no causal link had been established.

The Sheriff has powers to remit the matter back to the Board for reconsideration or to reverse the Board's decision. In this case he has decided to reverse the decision and to grant the provisional licence.

Sandy Munro

Depute Clerk to the Licensing Board