

The Highland Licensing Board

Meeting – 12 August 2014

Agenda Item	11.6
Report No	HLB/098/14

Application for a major variation of Premises Licence under the Licensing (Scotland) Act 2005

Tidal Bay, (formerly Pancho's) Myrtlefield House, Grampian Road, Aviemore PH22 1RH

Report by the Clerk to the Licensing Board

Summary

REF: HC/INBS/217

This Report relates to an application for a major variation of Premises Licence.

Premises: Tidal Bay (formerly Pancho's) Myrtlefield House, Grampian Road, Aviemore PH22 1RH

Applicant: Upland Properties Limited, per Lorna Murray Solicitor, 45 Culduthel Road, Inverness IV2 4HQ

1 Description of Premises

On sales Restaurant with take-away area. Set in a shared building with neighbours either side and above (all businesses) in the Myrtlefield shopping area on Grampian Road.

1.1 Existing Core Operating Hours

On Sales:

Monday to Saturday 11.00 hrs to 22.30 hrs

Sunday 12.30 hrs to 22.30 hrs

2 Summary of Variation Application

2.1 Variation Sought

Change to operating plan:

1. Children and Young Persons policy to be amended to allow Young Persons to be present in the premises at all times when the premises are open for trade and to allow Children to be present until 23.00 hrs daily. Children under 13 years require to be accompanied by an adult at all times. Children 13 years and over require to be accompanied by an adult from 21.00 hrs daily.

2. The following to be included in the list of other activities to be provided outwith core licensed hours, namely: restaurant facilities and recorded music under explanation that the premises may open earlier than their core licensed hours for the provision of breakfasts, morning teas and coffees when background music may be played.

3. Amend core on-sale hours to 11.00 hrs to 01.00 hrs Monday to Sunday.
4. Add live entertainment during core hours.
5. Remove reference to seasonal variation.
6. Increase to on-sales capacity to 73

Amendment to Layout Plan:

New outside dining area.

Amendment to Local Condition:

Local Condition g to be amended to allow the outside drinking area to be occupied until 22.00 hrs between 1 April and 30 September.

Amendment to Premises:

Remove from the description 'small 8 table'.

New premises name: Tidal Bay.

3 Background

- 3.1 On 2 July 2014 the Licensing Board receipted an application for a major variation of a Premises Licence on behalf of the applicant, from the applicant's agent, Lorna Murray, Solicitor.
- 3.2 The Board has advertised the application on the Council's website for a period of 21 days and the applicant has to display the Notice on site for the same period (7 July to 28 July 2014). Confirmation of display of the site notice has been received.
- 3.3 In accordance with standard procedure, Police Scotland, Highlands and Islands Fire and Rescue Service, The Council's TEC Services (Environmental Health), and Planning and Building Standards were consulted on the application.

HC Community Services have confirmed that there is no requirement for any street café permit as the footpath at the front of the premises is not adopted by Community Services.

Notification and a copy of the application have been sent to NHS Highland, and the local Community Council.

- 3.4 Notice of the application has been sent to and all the people listed under S21 (1) of the Act.
- 3.5 No objections have been received in respect of the application.

4 Legislation

- 4.1 The Licensing Board must in considering and determining the application, consider whether any grounds of refusal apply and if none of them applies, the Board must grant the application.

Relevant grounds of refusal may be: -

1. that the grant of the application will be inconsistent with one or more of the licensing objectives;
2. that having that having regard to; (i) the nature of the activities carried on or proposed to be carried on in the subject premises, (ii) the location character and condition of the premises, and (iii) the persons likely to frequent the premises, if the Board considers the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;
3. that having regard to the number and capacity of (i) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation), in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be over provision of licensed premises or licensed premises of that description in the locality.

4.2 The Board has power where, if they would refuse the application as made, but if a modification is proposed by them and accepted by the applicant, the application can be granted as modified.

5 Licensing Standards Officer's Comments

This application is made following installation of a new tenant to the Premises who accordingly wishes to modify the existing Operating Plan to reflect their business plan.

Firstly the name is changing from Pancho's to Tidal Bay. The text of the description of the Premises has been changed, with the deletion of the words "small 8 table" reflecting the fact that the capacity has increased to 73 persons with the addition of an external drinking area.

The core hours of the Premises are amended to trade potentially for the widest range of core hours available for alcohol premises under the current Highland Licensing Board Policy namely Monday to Sunday 11.00 hrs to 1.00 hrs.

The current Children's Policy detailed at Section 6 of the Operating Plan is proposed for amendment, in requiring adult supervision at all times for Children under 13 years, for Children over 13 years access is required unaccompanied until 21.00 hrs. This is seen as reasonable as the premises are food led with no bar counter and having been visited in the course of this application, a variety of food choices are offered on the menu which will appeal to teenagers. Young Persons will be allowed access throughout trading hours. Again, this is seen as reasonable and in keeping with the Licensing Objectives by the LSO.

Within Section 5 of the operating plan expansion on the existing activities of restaurant facilities and recorded music is requested to allow food provision out-with licensed hours with background music available to customers. Live entertainment has been added to the list of approved activities, but only during core hours. This will be on a small scale basis due to the size of the venue.

The existing seasonal variation is to be removed.

A new outside drinking area has been created and appropriate plans lodged showing its inclusion with the overall licensing footprint. The area will be used between 1 April and 30 September for external dining for customers; its use will terminate at 22.00 hrs which the LSO sees as reasonable, bearing in mind the presence of residential property about 100 metres away. Currently the outside drinking area is conditioned to close for consumption of beverages at 21.00 hrs. Its use has never been the subject of complaint.

If the Board should be minded to grant the variation, the LSO is of the opinion that there will be no adverse issues in respect of the Licensing Objectives.

6.0 HLB Local Policies

The following policies are relevant to the application:-

- (i) Highland Licensing Board Policy Hours
- (ii) Highland Licensing Board Policy Statement
- (iii) Schedule of Local Conditions
- (iv) Highland Licensing Board combined Equality Scheme

7.0 Conditions

7.1 Mandatory Conditions

If the application is approved the Mandatory Conditions set out in Schedule 3 of the Act will apply.

7.2 Local Conditions

The existing local condition applicable to the outside drinking area shall be amended to read as follows:

After 22.00 hrs alcoholic or non- alcoholic drinks shall not be consumed in an outdoor drinking area. Condition E (Licensing Objective 3 Preventing Public Nuisance.)

The current condition listed as E on the existing premises Licence is no longer a Local Licensing Condition of the Highland Board and should be removed.

8 Recommendation

The Board is invited to determine the above application.

Designation: Clerk to the Licensing Board

Reference: HC/INBS/217

Date: 7 July 2014

Author: Wendy Grosvenor

Background Papers: The Licensing (Scotland) Act 2005/Application Form.

Licensing Board Policy Statement from 1 December 2013 to November 2016