

## The Highland Licensing Board

Meeting – 31 March 2015

Agenda Item	10.2
Report No	HLB/033/15

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

MacDonald Hotel, Fort William Road, Kinlochleven, PH50 4QL

#### Report by the Clerk to the Licensing Board

##### Summary

This Report relates to an application for a major variation of Premises Licence by Purple Grouse Limited, MacDonald Hotel, Fort William Road, Kinlochleven, PH50 4QL.

#### 1.0 Description of Premises

1.1 The MacDonald Hotel is a two storey building situated within its own grounds on the north western outskirts of Kinlochleven.

The ground floor of the premises currently comprises of a reception area, Public Bar, Restaurant/Function Room, Toilets and Kitchen. A veranda area is situated to the rear of the premises which can be accessed from the restaurant area.

The upper level of the premises comprises of 10 en-suite letting bedrooms.

The premises also has existing outdoor drinking facilities located within the grounds of the premises.

#### 2.0 Current Operating Hours

2.1 The premises currently enjoy the following operating hours:

##### On sales:

Monday to Wednesday: 1100 hours to 2400 hours  
Thursday to Saturday: 1100 hours to 0100 hours  
Sunday: 1230 hours to 2345 hours

##### Off sales:

Monday to Saturday: 1100 hours to 2200 hours  
Sunday: 1230 hours to 2200 hours

### **3.0 Summary of Variation Application**

#### **3.1 Variation Sought**

The applicant seeks to vary the premises licence as follows:-

- (1) increase on-sale opening hour on Sunday from 1230 hours to 1100 hours and terminal hour from 2345 hours to 0100 hours
- (2) increase on-sale terminal hour, Monday to Wednesday from 2400 hours to 0100 hours
- (3) increase off-sale opening hour, Monday to Saturday from 1100 hours to 1000 hours and Sunday from 1230 hours to 1000 hours
- (4) increase capacity from 10 to 11 letting bedrooms
- (5) include within seasonal variation that the premises wish to take advantage of the Board's festive policy
- (6) revision to layout plan to incorporate letting bedroom on ground floor and two additional new exits from public bar area via patio doors to a new outdoor decked area
- (7) revision to the description of the premises to reflect changes to layout plan.

#### **4.0 Background**

- 4.1 On 9 February 2015 the Licensing Board received an application for a major variation of a Premises Licence from Purple Grouse Limited.
- 4.2 The application was publicised during the period 16 February 2015 until 9 March 2015 and confirmation that the site notice was displayed has been received.
- 4.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 4.4 Notification of the application was also sent to NHS Highland and the local Community Council.
- 4.5 Further to this publication and consultation process, the following timeous notices of representation and objection have been received and are appended where appropriate:
  - (1) the Planning & Building Standards Authority have indicated that Planning Permission and a Building Warrant require to be applied for in respect of the proposed works;
  - (2) letter of objection from Mr Peter McIntyre dated 7 March 2015 (copy attached);
  - (3) letter of objection from Sheri Murphy dated 5 March 2015 (copy attached).
  - (4) Letter from Purple Grouse Limited dated 16 March 2015 in response to objections received (copy attached).

4.6 The applicant and the objectors have been invited to attend the hearing. Both have been advised of the hearings procedure which will be followed at the meeting and which may also be viewed via the following link:

[http://www.highland.gov.uk/downloads/download/428/liquor\\_licence\\_objections\\_appeals\\_notices\\_of\\_determination](http://www.highland.gov.uk/downloads/download/428/liquor_licence_objections_appeals_notices_of_determination)

## **5.0 Legislation**

5.1 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. the grant of the application will be inconsistent with one or more of the licensing objectives;
2. 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, the Board considers the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;
3. having regard to the number and capacity of 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 overprovision of licensed premises or licensed premises of that description in the locality.

5.2 The Board only has power either to grant the application and make a variation of the conditions to which the licence is subject or to refuse the application.

If the Board refuses the application, the Board must specify the ground for refusal and if the ground for refusal relates to a licensing objective, the Board must specify the objective in question.

## **6.0 Licensing Standards Officer**

6.1 The LSO has provided the following comments:-

- The increase in core hours applied for are within the policy hours of the Highland Licensing Board.
- The layout plan submitted with the application complies with the required specifications.
- The applicant has confirmed that they are currently in the process of applying for the necessary Planning Permission and Building Warrant in respect of the proposed works.

- No issues concerning noise from within or around the premises have been drawn to the attention of the Licensing Standards Officer.
- Given the close proximity of residential dwellings to the premises, (see attached layout plan), I would recommend that consideration be given to the submission of a Noise Management Plan to ensure compliance with the Licensing Objectives.
- In relation to the location of the proposed additional outdoor drinking facilities, I would recommend that Local Condition (e) should apply in respect of this area.
- The premises have been visited on several occasions and found to be compliant in observing the requirements of the Licensing (Scotland) Act 2005.
- The premises appear to be well run with no complaints of any nature having been received.

## **7.0 HLB Local Policies**

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-16
- (2) Highland Licensing Board Equality Strategy

## **8.0 Conditions**

### **8.1 Mandatory Conditions**

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

### **8.2 Local Conditions**

Existing local conditions will continue to apply and it is recommended that condition the following additional local condition(s) be attached:

- (e) After 2200 hours alcoholic or non-alcoholic drinks shall not be consumed on the outdoor decking area adjacent to the Bothy Bar.
- (q) The licence holder shall submit to the Board and to Police Scotland, prior to 1 December each year, notice of the dates within the festive period on which it is intended that the premises remain open until the festive period terminal hour stated for that category of premises in the Board's Policy Statement. The Premises may remain open until the festive period terminal hour only on those dates for which notice has been given by the licence holder to the Board and to Police Scotland in accordance with this condition.

### 8.3 Special Conditions

Given the letters of objection which have been received and the close proximity of the proposed additional outdoor drinking area to neighbouring dwellings, the Board may wish to consider attaching the following special conditions:

- (1) A Noise Management Plan must be maintained to the satisfaction of the Licensing Board.

#### **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local and special condition(s) detailed at para(s). 8.2 and 8.3 above.

If the Board is minded to refuse the application, the Board must specify the ground for refusal and if the ground for refusal is in relation to a licensing objective, the Board must specify the objective in question.

Reference: HC/RSL/0458

Date: 13 March 2015

Author: AHM:ET/JT

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

Appendices:

- (i) letter of objection dated 7 March 2015 from Peter Walker
- (ii) letter of objection dated 5 March 2015 from Sheri Murphy
- (iii) letter dated 16 March 2015 from Purple Grouse Limited
- (iv) layout plan

1, Leven View  
Kinlochleven

REF. RSL/L/0458

Argyll

7<sup>th</sup> March 2015

Dear Sir,

I am writing to you to formally lodge an objection to part of the application made by the MacDonald hotel in Kinlochleven

We do not object to the earlier opening hours for the public bar, but we do have concerns regarding the closing time (1 AM) and with the proximity of our home to the proposed new area, we anticipate that the noise nuisance which is just tolerable at the moment, if we keep our windows closed will quickly become intolerable and indeed a public nuisance.

Our other concern is that our privacy will be compromised as our home and garden area will be overlooked by this new area which is only in the region of one hundred feet away from our home.

The points I have raised seem to be covered by article 8 of the human rights act 1988 and we trust you will take this into

consideration when making your decision

Yours sincerely

# SHERI MURPHY PROPERTY

RIVERSIDE LODGE  
RIVERSIDE ROAD  
KINLOCHLEVEN PH50 4QH

T.N. 01855 831900

email:

FAO: Julie Traynor  
Highland Licensing Board  
Highland Council  
Lochaber House  
High Street  
FORT WILLIAM  
PH33 6EL

5<sup>TH</sup> March 2015

RECEIVED

MARCH 2015

CINEMA

Dear Julie,

**APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE  
HC/RSL/0438: AHM/JT – MACDONALD HOTEL, FORT WILLIAM ROAD, KINLOCHLEVEN**

We refer to your letter dated 9<sup>th</sup> February 2015 regarding the above application and wish to record an objection to the proposed variations especially in respect of the proposed increase to opening/operating hours.

'Leven Homes Ltd' is the owners of 3 no. properties within Leven View which are leased out on long term basis. In writing this letter of objection we represent our tenants; generally young families, the other inhabitants of Leven View as well as future potential tenants of our properties.

Leven View is located directly across the public road from the application premises and will be adversely affected if the proposed openings hours are expanded as indicated. If permitted, the extended hours will bring heightened noise pollution, increased littering (bottles and glasses left lying around) and general acts of vandalism – all common acts associated with the 'spill-out' at closing time. We know of this from the first hand experience of living in close proximity to existing licensed premises and do not wish for our tenants and business to suffer as a consequence of these proposed changes.

We are fully aware that 0100am will not be the end of business. There will persons lingering around the premises waiting for taxis/lifts home, there will be vehicles arriving/leaving, raised voices/shouting and general acts of disruption which we do not believe need to be or should be tolerated during the early hours of the mornings.

The proposals will negatively affect our business by way of forcing our current tenants in Leven View out and putting other future tenants off all because of the disruption caused. Furthermore, we have permissions in place for the construction of a Dwelling House adjacent to Leven View and already a

potential buyer is enquiring about the levels of disruption created at the MacDonald Hotel so a possible sale is already affected.

We would be most grateful if you could confirm receipt of this letter of objection and advise of us of the outcome application.

We look forward to hearing from you by return.

Sheri Murphy





RECEIVED

16 MAR 2015

CHEFFINCHILL  
16 MAR 2015



MacDonald  
hotel & cabins

Fort William Road  
Kinlochleven  
PH50 4QL  
01855 831539  
enquiries@macdonaldhotel.co.uk

Your Ref: HC/RSL/0458

16<sup>th</sup> March 2015

Dear Sirs,

In response to the objections raised by Mr Peter McIntyre and Sheri Murphy we would like to present the following information to be taken into consideration at the Hearing of the Highland Licencing Board on Tuesday 31st March 2015.

In respect of the concerns raised by Mr McIntyre regarding the new decking area we do not believe that the construction of this deck will overlook Mr McIntyre's property as the hotel is situated lower than the level of the road and the deck will not be constructed any higher than the pavement level adjacent to their property. However, to alleviate any concerns that Mr McIntyre may have we would be prepared to plant additional screening shrubbery in the corner of the car park across from Mr McIntyre's property. This would completely mask the view of the decked area in both directions and substantially filter out any potential noise. The construction of the decking is primarily for our guests and local residents to be able to enjoy the view down Loch Leven (Figure 1) and we envisage this to be utilised mainly in daylight. By constructing the deck this will also enable us to move our designated smoking area to an area further away from the properties at Leven View, further reducing any potential noise carrying over to the properties. We would also be willing to place a time restriction on when the deck can be used by our guests and vacate the decked area at a time agreeable to the Board.

With regards to the concerns by both Mr McIntyre and Ms Murphy towards the Lam Licence extension we would like the board to take into consideration that we are not a 'pub' and over 90% of our guests are outdoor enthusiasts, walking the west highland way and taking advantage of the other activities available in the area. As licensee, Mark takes his responsibilities very seriously and upholds the objective of 'Preventing Public Nuisance'. We were disconcerted to learn that Mr McIntyre finds 'the noise nuisance just about tolerable at the moment' as since purchasing the hotel we have had no incidents or complaints of this nature, and understand that since the houses were constructed in 2008 there have been no complaints recorded.

The current Licence is to midnight Sunday-Wednesday and 1am Thursday-Saturday. We would like the board to take into consideration that the other licensed premises in the village (who are both in highly populated residential areas) both have 1am Licences Monday-Sunday.

Ms Murphy raised concerns about 'increased littering' we do not envisage this being the case as we check the outdoor areas twice daily for any litter and generally our guests are too respectful to litter the area. Ms Murphy also refers to 'general acts of vandalism' which we have never

experienced since being here. We also do not experience what Ms Murphy refers to as a 'spill-out' at closing time, and the comparison that Ms Murphy makes with living in close proximity to existing licensed premises is not proportionate, as the premises being referred to is the Pub in the centre of the village with Sky Sports etc, which is predominately patronised by locals who do tend to stay until they are requested to leave.

We do not envisage 'persons lingering around the premises waiting for taxis/lifts home, vehicles arriving/leaving or general acts of disruption' as 90% of our guests will be leaving to return to accommodation either in the hotel or in the cabins at the rear of the property. The majority of our guests also arrive on foot whilst walking the West Highland Way and have already walked over 80 miles to get here. We have signs at both our exit points reminding guests that we have neighbours and to leave the premises with consideration for them.

We have made a life changing decision to live and work in a place with one of the most beautiful views in the area and as part of this we are fully committed to developing the hotel to its full potential. We are already providing much more employment in the area, and whilst the hotel enjoys maximum occupancy during the summer months, we are confident that we can improve the off-season occupancy and provided continual employment for some of our seasonal team members.

We are also heavily involved with the local community and area and Helen is both a director of the Kinlochleven Community Trust and a Committee Member of Glencoe & Loch Leven Marketing Association and committed to do what we can to increase tourism in the area whilst maintaining its natural beauty.

We would be grateful if the Board could take the above information into consideration and we are also willing to undertake any reasonable actions to alleviate the concerns of the two objectors.

Yours Sincerely,

Mark Brotherton & Helen Thompson

Owners, MacDonald Hotel & Cabins

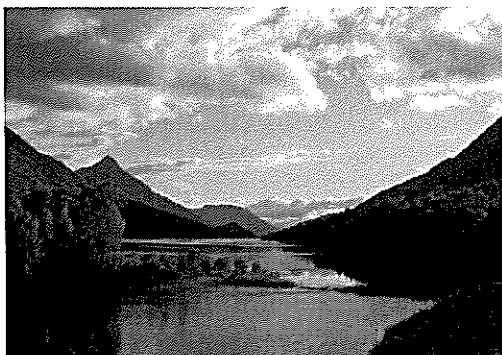
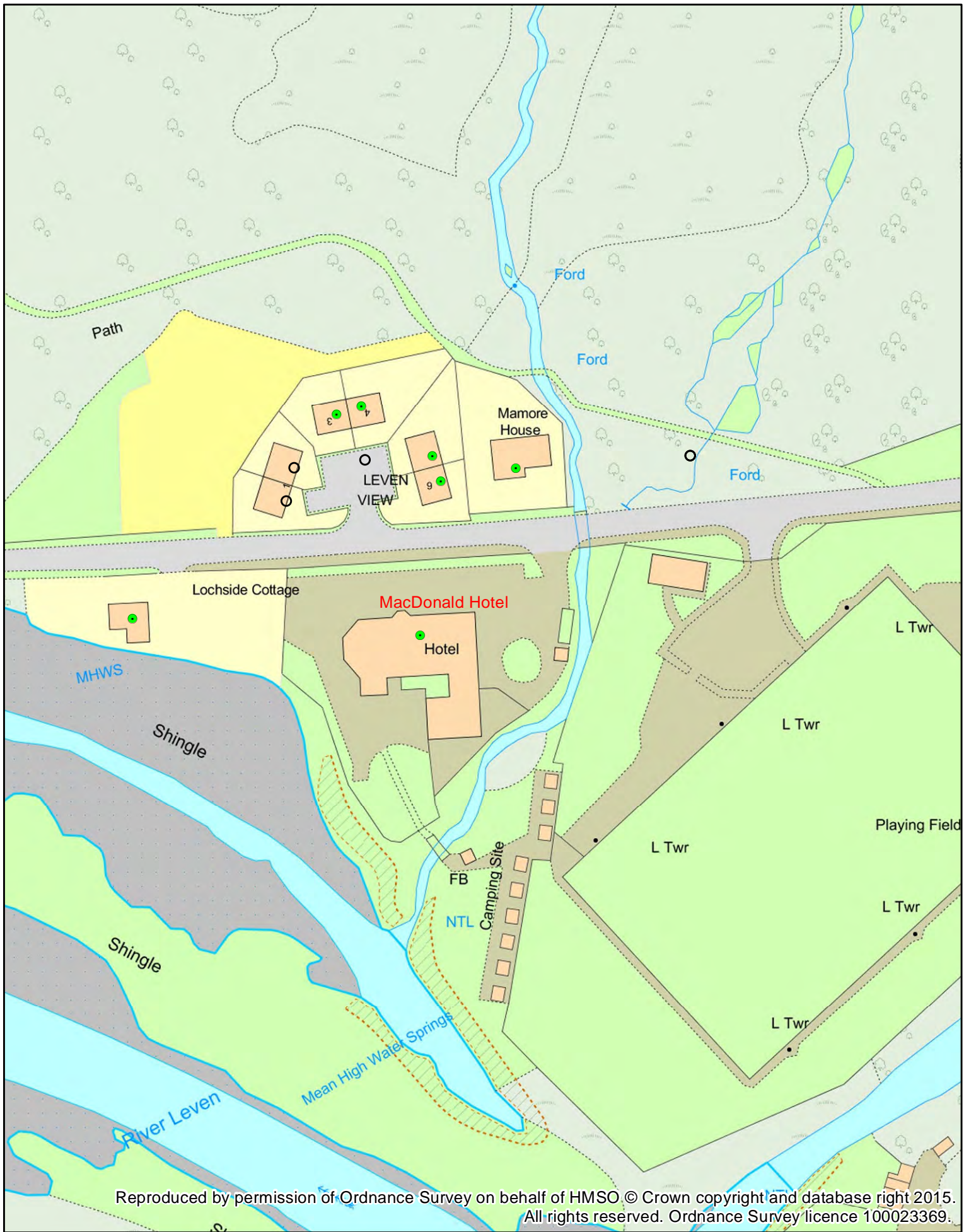


Figure 1: View from the proposed decking area



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