

The Highland Licensing Board

Meeting – 2 February 2016

Agenda Item	8.2
Report No	HLB/013/16

Application for a major variation of premises licence under the Licensing (Scotland) Act 2005

Andersons Restaurant, Deshar Road, Boat of Garten PH24 3BN

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for a major variation of premises licence by Steven Anderson, Druimvhor, Grampian Crescent, Boat of Garten PH24 3BJ

1.0 Description of Premises

1.1 Andersons is a 45 seater restaurant with table service. There is a bar area but no seating at the bar. Premises are open 6 days a week for lunch and dinner. The licence holder's house is joined onto the restaurant.

2.0 Current Operating Hours

2.1 The premises currently enjoy the following operating hours:

On sales:

Monday to Saturday: 1100 hours to 2300 hours
Sundays: 1230 hours to 2300 hours

3.0 Summary of Variation Application

3.1 Variation Sought

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

1. Extend on sales terminal hour to 01.00 hrs Monday-Sunday.
2. Amend Sunday opening to commence from 12.00 hrs.
3. Add off sales opening: 11.00-22.00 hrs Monday-Saturday; Sunday: 12.00-22.00 hrs.

4. Amend Children's policy to read:

6(b) terms: "Children under 16 allowed entry for food and soft drink unaccompanied before 2000 hrs at management discretion. After 2000 hrs Children must be accompanied by an adult. Young persons admitted unaccompanied at management discretion at any time."

6(c) ages: "0-17".

6(d) times: "At all trading hours subject to the terms stated at 6(b)."

5. Extend the restaurant and increase capacity from 45 to 60 covers.

6. Provide a takeaway meal service.

7. Change of address for premises manager.

4.0 Background

4.1 On 23 November 2015 the Licensing Board received an application for a major variation of a premises licence from Steven Anderson, Druimvhor, Grampian Crescent, Boat of Garten PH24 3BJ.

4.2 The application was publicised during the period 27 November until 18 December 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, Boat of Garten.

4.5 Further to this publication and consultation process, the following timeous notice(s) of objection has been received and is appended :

Mr & Mrs Milne, Fairview, Deshar Road, Boat of Garten, PH24 3BN

4.6 The applicant and the objector(s) 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

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:-

Anderson's Restaurant is a small boutique restaurant situated within the centre of the Speyside village of Boat of Garten. The premises have traded successfully for several years under the present licence holder and have been the subject of much praise for the quality of their cuisine and service. The premises have not come to the attention of the Police or Licensing Board in an adverse light. Compliance visits have been carried out by the LSO which have shown the premises to be run according to the requirements of the premises licence and other associated legal regulation.

Application has been made to increase the licensed area of the premises by extending the dining area to create capacity for 15 extra covers as at present the owner has to turn away business.

Whilst making the necessary application to vary the premises licence in this regard the applicant has taken the opportunity to modernise his licence within the policy of the Highland Licensing Board. The increase in permitted hours is within the policy hours published by the Board. The off sales are purely to compliment the new activity of take away meals to allow customers to purchase alcohol to accompany a meal. There is a camp site, caravan park and numerous self-catering homes all within walking distance.

The children's policy has been amended and in the view of the LSO complies with the fifth licensing objective concerning the protection of children and young persons from harm for premises with this type of food led operation.

Since the neighbour notification the LSO has been in receipt of enquiries from neighbours with concerns in respect of the application for later hours and the issues this may have in relation to noise and anti-social issues. Advice has been given in that the premises are not changing from a restaurant to a public house and all alcohol will be served at tables. The applicant is even willing to accept a licensing condition that all alcohol sold after 19.00hrs will be ancillary to a meal. Further concerns in respect of indiscriminate parking have been raised as the premises have very little in the way of customer parking available. The applicant has been advised to liaise with the local church which is virtually opposite his premises and can come to an arrangement for use of their facilities.

At the time of writing one timeous objection has been submitted in respect of this application from Mr and Mrs Milne who own property next door to the restaurant. The objection to the application has been submitted on grounds that it conflicts with the third licensing objective concerning preventing public nuisance.

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 (E and G).

(E) After 2100 hours alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area.

(G) Premises open for the sale of alcohol after 0100 hours shall have available a selection of hot and cold foods and shall advertise this within the premises.

8.3 Special Conditions

The Board may wish to consider attaching the following local specific condition(s):

1. During the playing of any live or recorded music all windows and doors will remain shut.
2. No glass disposal shall take place after 23.00hrs or before 07.00hrs.
3. After 19.00hrs all sales of alcohol will be ancillary to a meal provided on the premises.

Recommendation

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/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/INBS/224

Date: 8 January 2016

Author: Wendy Grosvenor

Background Papers:

- The Licensing (Scotland) Act 2005/Application Form.
- Appendix 1 Objection from MR & Mrs A Milne, Fairview, Deshar Road, Boat of Garten, PH24 3BN



**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE
APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes. Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

1. Full Name and Address of person making objection/representation:

ALAN J. MILNE	
Telephone Number:	[REDACTED]
Email Address:	[REDACTED]

2. Address of Premises in respect of which objection / representation is made:

ANDERSONS RESTAURANT, DESHAR RD, BOAT OF SARTEN.
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3. Details of any OBJECTION: (complete only if you consider one of the ground for refusal apply)

State ground of objection (refer to ground of objection by number, see guidance notes, and give details): (Continue on separate sheet if necessary)	
1. Excluded Premises	SEE ATTACHED
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	SEE ATTACHED

4. Details of any REPRESENTATION: (complete only if you wish to make a representation in respect of the application)

State details of any representation (refer to representation by number, see guidance notes, and give details): (Continue on separate sheet if necessary)	
1. in support of application	INPT ON WEBSITE
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature:..... [REDACTED] Date..... 15/12/2015

We object to the following clauses in the application:

2,3,4: Extension of the sales terminal hour 22:00 to 1:00am

The restaurant is located on a street in a residential area in a small village. We object to a blanket license that permits the serving of alcohol and takeaway food after 22:00. It is not in keeping with the residential area, particularly in a quiet rural village. We would support a limit of ten occasions allowing the restaurant to do special functions with extended hours.

Licensing Representation:

We moved to our house in Deshar Road next to Andersons Restaurant in 2011. As the popularity of the restaurant has increased so the noise and disruption has increased. In particular in the summer time. We have relocated our kitchen to the back of the house. People gather outside speaking on mobile phones and smoking in front of our property.

We are running a start - up holiday rental business which has been impacted by increased noise and disturbance. The clients who rent our property in the summer time have complained about late night disturbance. Any extension in opening times will negatively impact our business.

Congestion in the main street is an ongoing concern. There is very limited parking in the street and only three car parking places associated with the restaurant. The expansion of the restaurant from 45 to 60 covers, a thirty three percent increase and with a take-away service is a significant increase. During peak periods the flow of traffic on Deshar Road is impeded because of parking on the pavements on both sides of the street. Parking is particularly acute across the T junction between Church Drive and Deshar Road.