

The Highland Licensing Board

Meeting – 3 October 2017

Agenda Item	9.9
Report No	HLB/116/17

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

Union Tavern, 29 High Street, Fortrose

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by Union Tavern, 29 High Street, Fortrose.

1.0 Description of premises

1.1 Union Tavern was granted a premises licence, on transition, on 1 September 2009. The premises operate as a public bar offering the usual range of activities and services.

2.0 Summary of variation application

2.1 Variation sought

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

- (1) Add bar meals, receptions, club and other group meetings and live performances to the list of activities and services to be provided during core licensed hours

3.0 Background

3.1 On 21 August 2017 the Licensing Board received an application for a major variation of a premises licence from The Union Tavern Fortrose Limited.

3.2 The application was publicised during the period 28 August to 15 September 2017 and confirmation that the site notice was displayed is awaited.

3.3 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.

3.4 Notification of the application was also sent to NHS Highland and the local Community Council.

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

- Bryan and Beverley Smith

The following notice of support has also been received:

- Maureen Naughton

3.6 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://highland.gov.uk/hlb_hearings

4.0 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. 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. that 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 the same or similar description as the subject premises, in the locality.

4.2 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.

5.0 Licensing Standards Officer

5.1 The LSO has provided the following comments:-

5.2 The premises currently operate as a public house. The licence was granted with grandfather rights in September 2009. In 2016 a major variation was granted permitting the premises to be open from 1100 to 0100 hrs daily in accordance with Board policy

- 5.3 The premises currently have on-sales licensed hours Monday to Sunday of 1100 hrs to 0100 hrs the following day and off-sales hours are 1100 hrs to 2200 hrs.
- 5.4 The premises are located on High Street, Fortrose. There are some commercial properties in the area but the majority of premises in close proximity are residential properties.
- 5.5 The premises have a narrow footprint and can accommodate a maximum of 60 customers. Entry to the premises is directly from the pavement off the High Street and is a double door with a spring closing mechanism. An emergency exit in the lane alongside the premises is not routinely used. Patrons wishing to smoke tend to do so on the pavement outside the premises where a wall-mounted ashtray is located. There is no encouragement to use the adjoining lane so as to avoid potential nuisance to residential properties bordering the lane.
- 5.6 The business operates as a traditional public house and offers the limited services and activities normally associated with such premises and includes music (jukebox), gaming (machine), indoor sports and televised sport. No persons under the age of 18 are permitted on the premises.
- 5.7 There is a history of complaints of noise arising directly from the premises or attributed to customers entering or leaving the premises or smoking outside. I have had frequent conversations with the complainer and the licence holder in an attempt to reduce the perceived nuisance. I have also carried out informal noise level monitoring outside the premises and noted peaks and troughs associated with customers entering and leaving the premises. I have also noted that traffic noise and noise from pedestrians with no link to the premises cause an increase in noise levels.
- 5.8 In July 2017 I was made aware that live music had been performed on the premises despite that type of entertainment not being permitted in terms of the operating plan. I subsequently confirmed with the premises licence holder that live music had taken place but without her knowledge. I also established that, as a consequence of customers singing along to jukebox music, certain popular songs which encourage customers to sing along had been removed from the machine in an attempt to minimise nuisance noise.
- 5.9 While there is no intent to have live music as a regular occurrence the licence holder now seeks to vary the licence to allow live music and, so as to avoid any doubt, add to the operating plan that receptions such as weddings, funerals, birthdays etc may be permitted during which food provided by outside caterers may be provided on the premises.(It is noted that that there is no kitchen on the premises but responding Yes to the provision of bar meals is intended to make it clear that food may be available in support of functions and other events on the premises)

- 5.10 I have had sight of the representation and objection from Mr and Mrs Smith who reside about 15 metres from the premises on the opposite side of the road. I note that some of the matters referred to are not relevant to this application but are matters of which I am aware and are the subject of continuing interest to me.
- 5.11 The applicant has completed a noise management plan which has been passed to Environmental Health for comment. I understand that the plan is broadly acceptable but subject to the addition of some fine detail which is currently being worked on. The final version will be available prior to the Board meeting.
- 5.12 To address the relevant objections and representations from Mr and Mrs Smith the plan will specify the management's responsibilities to ensure that the behaviour of customers inside and outside the premises is monitored and controlled and that windows and doors are kept closed so as to minimise "leakage" of noise from the premises.
- 5.13 In relation to live music, karaoke and playing music on the jukebox the applicant has confirmed that –
- There will be no amplification of any musical instruments used in a live performance.
 - The jukebox volume will be controlled so as to ensure that the noise level will not exceed 85Db.
 - If karaoke is performed with a microphone the volume will be controlled so as to ensure that the noise level will not exceed 85Db.
 - Any live performance or karaoke will cease by 2330 hrs.
- 5.14 The premises licence contains a seasonal variation which allows the applicant to take advantage of any period of extended hours agreed by the Board for the festive period. For the avoidance of any doubt the precise terms of the noise management plan must be adhered to at all times.
- 5.15 Subject to the production of an acceptable noise management plan I am satisfied that the applicant has given due consideration to the licensing objectives and I have no cause to object to the grant of the application.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-18
- (2) Highland Licensing Board Equality Strategy

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**

Existing local conditions will continue to apply.

7.3 **Special conditions**

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

1. A written noise management plan acceptable to the Highland Licensing Board must be in place for the premises and any relevant activity or service being provided must be conducted in accordance with that plan.
2. No amplification of any musical instrument used in a live performance shall be permitted.
3. The volume control of any jukebox or karaoke machine shall be controllable so as not to exceed a noise level of 85Db
4. Any live music or karaoke performance shall cease by 2330 hrs.

Recommendation

The Board is invited to determine the above application and if minded to grant the application, and to agree the proposed special conditions detailed at para 7.3 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/CSR/0595

Date: 19 September 2017

Author: G Sutherland

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

Appendix: Letter dated 15 September 2017 from Bryan and Beverley Smith

Email dated 25 August 2017 from Maureen Naughton

Representation and Objection in relation to a Premises Licence application under the Licensing (Scotland) Act 2005

Mr & Mrs B J Smith

Application for Variation of Premises Licence Union Tavern, 29 High Street, Fortrose IV8 8PF

We are neighbours of the Union Tavern, our home situated on the opposite side of the road approximately 15 metres away.

We have resided here for the last 10 yrs, it is our home and business premises.

Living near to a pub, we expect and accept a certain level of disturbance but this has increased over the years for a few reasons –

The banning of smoking on premises which now means that patrons smoke on the pavement outside the front of the pub.

The extension of their hours of trading until 1 am. What is tolerable at 11pm is not at or after 1 am.

Patrons now staying until after the last bus which means increased Taxi and other pick up activity after 1 am with accompanying noise and door slamming well after 1 am.

An increase in events, live music, live performances and karaoke. The provision of a loud Jukebox which patrons often sing along to.

The moving of the bus stop to immediately opposite the Tavern (queuing outside our house).

Hostility extending to social media supported by the manager when they believe that we have made complaint about their breaches of their current licence. Fear of such repercussions, especially in a small community, make it difficult for other neighbours to bring forward their concerns, experiences and the impact on their lives and businesses.

We experience the worst nuisance and disturbance when the Tavern puts on events, especially those involving live music and performance or karaoke. This is worse when an amplifier is used. These events are well attended and the premises easily become full and hot, the patrons 'spilling' onto the pavement to the front of Tavern. When these events have occurred, the sound emanating from the pub can be heard at an unacceptable volume in Cathedral Square, on the other side of 3 storey buildings.

The Union Tavern is an old building with most of the front occupied by windows, glass and door.

Notices of Objection

5 - Over provision

There is currently another licensed premises (Cafe Bar 'IV10') approximately 23 m from the Union Tavern.

IV10 is licensed for the same activities as the Union Tavern is applying for and for the same closing time. (1am)

They are both sited in a predominantly residential street in a village.

Both premises are set onto the road, the Union Tavern having no outside space of its own to the front and minimal un used space to the rear.

(There is also another licensed premises 'the Anderson' approximately 50 m away

The likely scenario of IV10 and the Union Tavern holding events on the same nights i.e. Friday /Saturday and public holidays such as Christmas period would mean that up to 160 (permitted) patrons could be leaving the premises at the same time (1am+) emerging into a residential area with poor pavement space and a lack of adequate Taxi transport / means of getting away.

3 - Objectives - From past experience most nuisance has been associated with events, parties and live performances, live and amplified music whether impromptu or planned. ***Although the Union Tavern was not licensed for these activities it has regularly held them and advertised them.*** The extension of their hours granted last year has exacerbated the nuisance caused by patrons leaving the premises 1-2 hours later than had been the case previously.

The Tavern has no allocated outside space for smoking and patrons use the public pavement outside. The opening and closing of the door as the smokers enter and leave the premises causes peaks of excessive noise emanating from within the premises when amplified music and sing along sessions etc are taking place.

The door is often propped open especially when the Tavern is busy and it gets too hot inside. This does not allow for containment of music and noise within the premises.

Patrons smoking or congregating outside also have a tendency to sing along with the music when in high spirits.

The last bus is around 12.40am and the 2 bus stops are opposite each other and very near approximately 4 m from the pub. This inhibits the natural dispersal of patrons leaving the pub and on rowdy nights facilitates a noisy triangle of interaction between the outside smokers and the bus passengers. This can be light hearted but noisy or involving scuffles and foul language.

Taxi provision is poor which means that patrons wait, often noisily, outside for Taxis to make repeat runs.

Cars 'showing off' to smokers and others outside the pub cause considerable nuisance as does the sounding of horns to announce the 'Taxi'.

Occasions of live performances continuing in the street as patrons leave the premises and await their transport.

When there are large numbers (as associated with events) they spill off the pavement and into the road oblivious of the traffic and their own safety.

On busy nights the Tavern Lane is used for urination.

On busy nights patrons carry their drinks outside which is against the local law.

1– Excluded premises It would appear that the Tavern has difficulty containing the noise and music within its premises, particularly when full, during events and when live and or live amplified music is being played. The juke box is also clearly audible from within our home as is the karaoke session.

The lack of on premises facilities for smoking necessitating the frequent opening and closing of the front door by smokers accessing the pavement outside is a particular problem causing waves of noise.

The premises apparently overheat when full and events are taking place and the front door is then propped open allowing escape of sound.

The use of the Lane as an urinal when the premises is busy may mean that the access to the toilets from inside the premises is restricted when full or during events.

Representation.

I would ask the board to consider how the premises can contain the noise and music. Both by sound proofing of the premises and patterns of behaviour such as finding another space for smoking and keeping the front door shut.

Possibly a limit to the numbers of smokers allowed outside on the pavement at any one time.

I would ask that live music, karaoke and loud singalongs to the juke box should cease at 11pm. This would also perhaps allow a phased dispersal of patrons during the subsequent couple of hours and be more acceptable to local residents.

That amplified music is excluded in these small premises.

That the owner and manager are aware of the potential for nuisance in this residential street and are committed to minimise this.especially as they have not previously adhered to their license even though they are experienced in the trade.

That the manager and staff commit to not fuelling antagonism against neighbours.

That granting a licence for premises so near (approximately 23 metres) to another with same opening hours and with the same operating plan may be considered over provision in this small residential village street.

How this small residential village street could cope with up to 160 patrons emerging onto it at 1am and how they will disperse and obtain means of transport away.

Bryan J Smith
Beverley G Smith
15 September 2017

Geraldine Sutherland

From: Maureen Naughton
Sent: 25 August 2017 16:38
To: Geraldine Sutherland
Subject: Neighbour Notification - Union Tavern, 29 High Street, Fortrose.

I refer to above communication.
I have no objection to above and welcome same

Maureen Naughton, .