

## The Highland Licensing Board

Meeting – 7 August 2018

Agenda Item	9.2
Report No	HLB/086/18

### Application for the provisional grant of a premises licence under the Licensing (Scotland) Act 2005

Caroy House, Somerled Square, Portree, Isle of Skye, IV51 9EH

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

##### Summary

This report relates to an application for the provisional grant of a premises licence in respect of Caroy House, Somerled Square, Portree, Isle of Skye, IV51 9EH.

### 1.0 Description of premises

1.1 The Caroy House is situated in Portree town centre and is a boutique hotel with 8 guest rooms and restaurant with bar on the ground floor. It is a detached building with a large garden to the rear.

### 2.0 Operating hours

2.1 The applicant seeks the following **on sale** hours:

#### On sales:

Monday to Sunday: 1100 hours to 0100 hours

The applicant seeks the following **off sale** hours:

#### Off sales:

Monday to Sunday: 1000 hours to 2200 hours

### 3.0 Background

3.1 On 20 June 2018 the Licensing Board received an application for the provisional grant of a premises licence from Caroy House Ltd.

The application was accompanied by the necessary section 50 certification in terms of Planning.

3.2 The application was publicised during the period 25 June 2018 until 16 July 2018 and confirmation that the site notice was displayed has been received.

- 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:

Letter dated 13 July 2018 from Sharon Williamson.

- 3.6 The applicant and the objector have been invited to attend the hearing. They 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](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 are: -

1. that the premises are excluded premises;
2. that the Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
3. that the grant of the application would be inconsistent with one or more of the licensing objectives;
4. that having regard to;
  - (i) the nature of the activities 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, or
5. 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 For the purposes of the Act, the licensing objectives are-

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.

4.3 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

## **5.0 Licensing Standards Officer**

5.1 The LSO has provided the following comments:-

- (i) Caroy House is a detached traditional town house located, with access directly from the pavement, on the west side of the main square in Portree town centre. It is in the process of being converted into boutique hotel with 8 letting bedrooms, restaurant, lounge bar and associated facilities. A large garden, located at the rear of the premises, has been identified as an outdoor drinking area for use during licensed hours and in which barbecues may also take place;
- (ii) The centre of Portree is a predominantly commercial area of shops, offices, dining establishments and licensed premises. Caroy House is located in between detached licensed premises with accommodation and a Masonic Hall which also contains a suite of offices. The garden area is located at the rear of the premises and backs onto a street of mainly residential properties;
- (iii) The application is for on and off sales. Off sales of alcohol will be dispensed from an area inaccessible to the public and there is no conflict with the Board's policy on over-provision in respect of off sales premises;
- (iv) The licensed hours applied for are within policy and the activities or services to be provided are appropriate for this type of business. The premises may open for business prior to the commencement of licensed hours;
- (v) I have had sight of an objection to the grant of the licence which implies that it is on grounds inconsistent with one or more of the licensing objectives. The author has a commercial interest in neighbouring licensed premises and refers to historic issues in relation to their own use of an outdoor drinking area which resulted in their voluntarily ceasing use of the outdoor drinking area after 2100 hours on any day notwithstanding that the Board had not imposed any condition restricting use of that area;

- (vi) In view of the comments made and that there are neighbouring residential private properties the Board may consider appropriate to impose a condition requiring that alcoholic and non- alcoholic drinks may not be consumed within the outdoor drinking area after 2100 hours on any day. I have discussed that with the applicant who would have no issues if such a condition was imposed;
- (vii) I have noted the comments concerning capacity. The premises are currently operating under the terms of an occasional licence and the capacity for the premises is limited to 60 persons which is also the capacity stated on this application. While it may be the case that “opening night” attracted a large number of people I was advised by local police that there had been no issues on the premises that night and that there were people queueing to enter which tends to suggest that there was some control over numbers on the premises. It is open to the Board to impose a condition requiring that a procedure be put in place to record the number of people on the premises at any one time however it is also a requirement of the licence that the holder operates in accordance with the operating plan for the premises which limits capacity to 60 persons. If the licence holder fails to operate in accordance with the operating plan the licence could be reviewed by the Board and an appropriate condition imposed if any grounds for a review were established;
- (viii) I have also noted the comments concerning children and young persons. The licence holder is required to engage with the licensing objectives which includes that of protecting children and young persons from harm. The applicant is fully aware of his responsibilities and made the point to me that the business is to be very much food-led and is not a “pub” in the traditional sense. He is content that he can maintain engagement with the licensing objective if unaccompanied young persons are on the premises and is aware of the possible consequences if there is any failure to maintain engagement with the objective;
- (ix) 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 this provisional premises licence.

## **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

Should the Board grant the application as applied for, the Board may wish to consider attaching the following conditions from the schedule of local conditions:

- a Children under the age of 16 are excluded from any room where there is a bar counter after 2200 hours except during private functions or for the purpose of viewing live entertainment or where the child is in the room for the purpose of taking a meal. This condition does not apply to any child who is in the bar solely for the purpose of passing to or from some other part of the premises being a part to or from which there is no other convenient means of access or egress;
- b Whilst in any room with a bar counter all children must be in the company of or supervised by an appropriate responsible adult. This condition does not apply to children of the licence holder or children who are resident on the premises;
- c Notwithstanding conditions (a) and (b) children must not sit or remain at the bar counter at any time;
- e After 2100 hours alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area.

#### **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local conditions detailed at para 7.2 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/1867

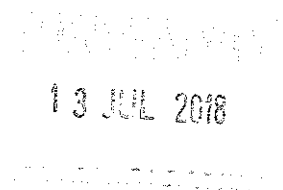
Date: 17 July 2018

Author: Carol Nicolson

Appendix: Letter dated 13 July 2018 from Sharon Williamson

13<sup>th</sup> July, 2018

Your Ref: HC/RSL/1867



Dear Sir/Madam,

Please disregard my previous letter and take this as my reply for the below application.

**Application for provisional grant of premises licence for Caroy House, Somerled square, Portree, Isle of Skye, IV51 9EH.**

I would like to object to the above application under section four of the summary grounds for refusal.

Serving alcohol in the garden has also been requested along with BBQs. We, as they, will have residents sleeping in the rooms and customers drinking in the garden until 1am will result in noise not acceptable at that time of morning, I would also add that we have a church beside us and there is one on the other side of them, the garden also backs onto a residential area. We also have a (or had) a beer garden, we never allowed it to be in use after 9pm and have actually closed it due to the number of complaints we received from residents about noise and this was before 9pm. I would therefore ask if you do allow the beer garden to be used you, you impose a curfew of perhaps 9pm after which alcohol cannot be drunk in the garden area.

I also object under section three inconsistent with licensing objectives. As above preventing public nuisance, BBQs in the garden will result in noise not acceptable when people are trying to sleep and also to people attending church services. Children in without an adult at the discretion of management I feel would encourage 16 and 17 years old to use Caroy House as a Bar. Children with an adult is a much better option.

I do hope that this is not a forgone conclusion, as they opened last Saturday, the bar was busy, people were in the street as they couldn't get in the door. ( Maximum capacity is 60 people.) perhaps to ensure numbers are kept at the correct limit they could be asked to check, on certain nights of the week, that no more than 60 people are in attendance. Thankyou.

Yours faithfully,

Sharon Williamson

Isles Inn, Portree.