

The Highland Licensing Board

Meeting – 2 April 2019

Agenda Item	8.6
Report No	HLB/036/19

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

Commercial Bar, High Street, Invergordon

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by O'Brien Brothers (Taverns) Ltd in respect of Commercial Bar, High Street, Invergordon.

1.0 Description of premises

1.1 The Commercial Bar is a public house in the centre of Invergordon consisting of a public bar and lounge bar/function room. The premises was granted a premises licence, on transition, on 1 September 2009.

2.0 Current operating hours

2.1 The premises currently has the following operating hours:

On sales:

Monday to Thursday: 1100 hrs to 2400 hrs
Friday: 1100 hrs to 0100 hrs
Saturday: 1100 hrs to 2400 hrs
Sunday: 1230 hrs to 2330 hrs

Off sales:

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

3.0 Summary of variation application

3.1 Variation sought

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

- (1) increase on-sales hours on Saturdays to Thursdays to terminate at 0100 hrs the following day and, on Sundays to commence at 1100 hrs;
- (2) increase off-sales hours on Sundays to commence at 1100 hrs daily;
- (3) add seasonal variation to take advantage of any period of extended hours agreed by the Board for the festive period;
- (4) to list of permitted activities/entertainment during core hours add receptions, clubs and indoor sports;
- (5) to list of other activities add "cafe-style services of providing snacks, teas and coffees may be provided";
- (6) delete and substitute existing terms of entry for children and young persons;
- (7) delete and substitute existing premises description on licence.

4.0 Background

- 4.1 On 28 January 2019 the Licensing Board received an application for a major variation of a premises licence from O'Brien Brothers (Taverns) Ltd.
- 4.2 The application was publicised during the period 4 to 25 February 2019 and confirmation that the site notice was displayed is awaited.
- 4.3 In accordance with standard procedure, Police Scotland, the Scottish Fire and 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, who have lodged an objection (see Appendix).
- 4.5 The applicant and the objectors 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

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.
- 5.2 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.

5.3 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.

5.4 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.

5.5 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 premises currently operate as a public house with on-sales hours Monday to Thursday and Saturday 1100 to 2400 hrs, 1100 to 0100 hrs the following day on a Friday and 1230 to 2330 hrs on a Sunday. Off-sales hours on a Sunday commence at 1230 hrs and, on other days, they commence at 1100 hrs daily.

Following the appointment of a new premises manager, the applicant has reviewed the business model and wishes to increase on and off-sales hours to the maximum available in accordance with Board policy to allow a degree of flexibility, mainly in connection with indoor sports competitions and an occasional small private function on the premises. The applicant seeks a terminal hour of 0100 hrs Saturday to Thursday. Subject to those infrequent demands it is unlikely that the premises will remain open until 0100 hrs other than on Friday and Saturday nights.

An opportunity is also being taken to update the operating plan for the premises and to clarify the terms of entry for children and young persons arising from receptions and indoor sports now being offered on the premises.

In particular, children who are accompanied by an appropriate adult may be permitted on the premises only until 2200 hrs and if attending a private function. In respect of young persons they too must also be accompanied by an adult and are only permitted on the premises after 2200 hrs if attending a private function or participating in a sporting event.

As there are no nappy changing facilities on the premises, children aged under 5 years are not permitted on the premises.

I note that an objection has been lodged by Invergordon Community Council raising concern about noise from and around the premises. They have also requested conditions be imposed including a requirement for stewards

I have considered the concerns and consulted with the Police. I note that the premises did have a reputation for noise and other issues but that there has been a dramatic reduction in incidents reported to the police over the last 12 months. I am not satisfied that requiring stewards to be on the premises would be proportionate, however, should circumstances change the premises licence could be brought before the Board for review and a relevant condition imposed.

In respect of the other matters raised by the Community Council, the applicant has submitted a noise management plan which addresses some of their concerns. I have also had discussions with the premises licence holder and the premises manager.

The entrance to the premises is located off a pedestrian lane which affords access from the High Street to the residential properties located nearby, to the harbour area and to another licensed premises which is located in a residential area. It is difficult to link increased noise and footfall to the sale of alcohol on these particular premises, however, I am aware that the applicant does take the potential for noise nuisance into account and staff do monitor persons loitering outside the premises through checks and also through CCTV which has been installed to cover the entrance.

The Community Council has requested that no live music is played after 2300 hrs. The applicant has stated that live music would rarely be played after 2300 hrs but for functions he believes that 2400 hrs would be a reasonable compromise.

Subject to strict compliance with the noise management plan and an acceptance that functions will not be taking place on a regular basis, I am of the opinion that ceasing live music by 2400 hrs is reasonable.

I note that the Community Council does not see the need for the premises to open at 1100 hrs on a Sunday however Board policy permits such a commencement hour.

I have made various attempts to contact a representative of the Community Council to discuss their concerns and the applicant's response to them but, as yet, with no success. I will provide a verbal update at the meeting.

I am satisfied that the applicant has given due consideration to the licensing objectives and I gave no cause to object to the grant of this variation application.

7.0 HLB local policies

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2018-23
- (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 the following additional local condition(s) be attached:

- (k) 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.
- (u) Any music or live performance in the premises will cease at 2400 hrs.
- (x) Dartboards and any pool table will be situated in a location of the premises approved by the Licensing Standards Officer.

8.3 Special conditions

The Board may wish to consider attaching the following special conditions:

- (1) A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 0100 hrs (on any day when the premises are open at that time) until whichever is the earlier of—
 - a. the time at which the premises next close; and
 - b. 0500 hrs
- (2) A designated person who is the holder of a personal licence must be present on the premises from 0100 hrs (on any day when the premises are open at that time) until whichever is the earlier of—
 - a. the time at which the premises next close; and
 - b. 0500 hrs or such other time as the Licensing Board may specify.

- (3) 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.

Recommendation

The Board is invited to determine the above application.

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/0742
Date: 19 March 2019
Author: G Sutherland

Appendix: Email dated 10 February 2019 from Invergordon Community Council

[REDACTED]

From: [REDACTED]
Sent: 10 February 2019 17:23
To: Licensing
Subject: Commercial Bar Invergordon - Variation of Licence.

Dear Sir/ Madam,

Commercial Bar Invergordon - Variation of Premises Licence.

Operating Plan

1 - Increase on-sales licensed hours Saturday to Thursday to terminate at 0100hrs the following day and on Sunday to commence at 1100hrs.

Invergordon Community Council objects to the above variation on the following grounds.

- Increased noise and footfall in a residential part of the High Street until the early hours of the morning. There are residents in properties adjacent to and opposite the bar.
- Many elderly residents live to the rear of the bar on Clyde Street and Outram Street. They already suffer from increased noise levels and anti- social behaviour especially at the weekend. This variation would allow the same pattern of behaviour every night of the week.
- We also do not think that on-sales need to begin at 1100 on a Sunday.
- Conditions - If this variation is passed we wish to request conditions e.g.
- Stewards [with appropriate accreditation] to be on duty.
- Music - no live music after 11pm
- Doors - to be kept closed when music playing.

Thank you for your attention.

Yours sincerely

Fiona Porter [Secretary]

Sent from Windows Mail