

## **HIGHLAND LICENSING BOARD**

During the coronavirus period, the Licensing (Scotland) Act 2005 has been temporarily amended to allow Board meetings to take place remotely.

Minute of the meeting of the Highland Licensing Board held remotely on Tuesday 7 September 2021 at 1.00pm.

### **Present:**

Mr J Bruce, Mr A Jarvie, Ms E Knox, Mrs L Macdonald (Convener), Mr D Macpherson, Mr K Rosie, and Mr C Smith.

### **In Attendance:**

Mr I Meredith, Clerk to the Board  
Ms R Banfro, Solicitor  
Mr G Cameron, Licensing Standards Officer  
Mr I Cox, Licensing Standards Officer  
Mrs A MacArthur, Administrative Assistant  
Ms A Macrae, Committee Administrator

### **Also In Attendance:**

Sergeant K Duncan, Police Scotland  
Mr M MacDonald, Police Scotland

Item 9.1: Mr G Holding, licence holder and Mr N Hassard, solicitor

## **Briefing on Protocol for Webcasting of Meetings**

The Convener advised the Board that the meeting would be filmed and broadcast over the internet on the Highland Council website and would be archived and available for viewing for 12 months.

### **1. Apologies for Absence Leisgeulan**

There were no apologies for absence.

### **2. Declarations of Interest Foillseachaidhean Com-pàirt.**

There were no declarations of interest.

### **3. Confirmation of minutes Dearbhadh a' gheàrr-chunntais**

There was submitted for confirmation as a correct record the minute of the meeting of the Highland Licensing Board held on 3 August 2021.

The Minutes were held as read and **APPROVED**.

**4. Licensing (Scotland) Act 2005  
Licences granted under delegated powers  
Achd Ceadachd (Alba) 2005  
Ceadachdan a bhuilicheadh fo ùghdarras air a Thiomnadh**

There had been circulated **Report No HLB/074/21** detailing licences which had been granted under delegated powers by the Clerk to the Board during the period 15 July 2021 to 25 August 2021.

The Board **NOTED** the report.

**5. Licensing (Scotland) Act 2005  
Occasional licences and extended hours  
granted under Delegated Powers  
Achd Ceadachd (Alba) 2005  
Ceadachdan Corra-uair agus uairean sìnte a bhuilicheadh fo ùghdarras air a thiomnadh**

There had been circulated **Report No HLB/075/21** detailing occasional licences and extended hours applications which had been granted under delegated powers by the Clerk to the Board during the period 15 July 2021 to 25 August 2021.

The Board **NOTED** the report.

**6. Licensing (Scotland) Act 2005  
Extended hours policy – 2021 Royal National Mod in Inverness  
Achd Ceadachd (Alba) 2005  
Poileasaidh uairean leudaichte – Mòd Nàiseanta Rìoghail 2021 ann an Inbhir Nis**

There had been circulated **Report No HLB/076/21** by the Clerk inviting the Board to consider whether to promote guidelines in relation to extended licensing hours for the 2021 Royal National Mod Event which takes place in Inverness between 8 and 16 October 2021.

The Board **APPROVED** the following guidelines for applications for extended hours under section 68:

- i. Friday 8 October to Saturday 16 October: until 0200 the following day; and
- ii. the special condition apply that additional hour be used only for the provision of live, traditional music entertainment.

**7. Gambling Act 2005  
Proposed Consultation Draft Policy Statement 2022-2025  
Achd na Cearrachd 2005  
Aithris Phoileasaidh Dreachd Cho-chomhairle a Thathar a' Moladh 2022-2025**

There had been circulated **Report No HLB/077/21** by the Clerk inviting the Board to approve the publication and issue of the proposed Consultation Draft Policy Statement set out in the Appendix as a formal Consultation Draft and to invite statutory consultees and members of the public to submit consultation responses.

The Board **APPROVED** the publication and issue of the proposed Consultation Draft Policy Statement set out in the Appendix as a formal Consultation Draft and to invite consultation responses.

**8. Licensing (Scotland) Act 2005  
Applications for variation (major) to premises licences  
Achd Ceadachd (Alba) 2005  
Iarrtasan airson Caochladh (Mòr) a thaobh ceadachdan thogalaichean**

**8.1 Ref: HC/RSL/1459**

**Applicant:** Lochaline Social Club

**Premises:** Lochaline Social Club, Lochaline, Morvern, Argyll

**Type:** On and Off-sales

There had been circulated **Report No HLB/078/21** by the Clerk which invited the Board to determine the application.

The Clerk confirmed that a satisfactory fire safety checklist had now been received from the applicant.

The Board **AGREED** to **GRANT** the application for major variation of the premises licence subject to the mandatory conditions, local condition (k), and the following special conditions:

- On any occasion that the premises are open after 0100hrs, a designated person who is the holder of a personal licence shall be present on the premises until they close;
- On any occasion that the premises are open after 0100hrs, a designated person who is the holder of a current first aid qualification shall be present on the premises until they close.

**9. Licensing (Scotland) Act 2005 Section 38  
Application for review of premises licence**

**9.1 Licence holder: Gordon Holding  
Premises: Havelock House Hotel, Crescent Road, Nairn, IV12 4NB**

**Mr D Macpherson was not present for the entirety of this item and therefore not entitled to participate in any vote. Mr D Macpherson took no part in the discussion and determination of this application for review of premises licence.**

There had been circulated **Report No HLB/079/21** by the Clerk together with a report by the Licensing Standards Officer in relation to a premises licence review application.

Mr N Hassard, solicitor for the licence holder, submitted that:-

- his client had an excellent record in operating licensed premises in the area. A letter of support had been received from neighbouring residents and the Licensing Standards Officer had commented that his client and his wife were diligent operators who ran a quality establishment;
- the application for a premises licence review by Mr J Haggerty was extremely succinct and scant in detail and had been submitted without prior dialogue with his client. He suggested this made it difficult for the Board to make a judgement as to whether grounds for review had been established;
- the applicant had cited breach of the preventing public nuisance licensing objective as grounds for the review. He considered that a complaint from one person was not sufficient to constitute the 'public' in this regard;
- the claim by the applicant that the noise at the premises was 'unbearable' was his subjective view. Having contacted the Licensing Standards Officer and Police Scotland in relation to the premises, there was no evidence to objectively establish there was a public nuisance; and
- no other parties had come forward to the Board to substantiate there was a nuisance at the premises and Licensing Standards Officer's discussion with the neighbours was not sufficient to substantiate there was an intolerable level of noise.

Mr Hassard therefore submitted that no grounds for review had been established in this case.

The Licensing Standard's Officer advised that while this was a well- run premises there would be noise associated with the general running of the outdoor area in busy periods. [REDACTED]

[REDACTED] If this was a fresh application it was likely a closure time would be imposed on the outside area as a safeguard for residents.

The Clerk advised that in his view one person could constitute the 'public' for the purposes of the licensing objectives. The application for a review of the premises licence involved a two-stage process and the option to vary the premises licence to cap the use of the outdoor area could only be considered if the Board first agreed that the grounds for review had been established.

In discussion, Members raised the following issues:-

- the application for review was an extremely short submission which lacked detail. There was no quantifiable data from a sound professional or evidence in relation to the noise profile at the premises to demonstrate the level of noise was unacceptable in terms of the licensing objectives. The grounds for review had not been established and no action be taken on this matter; and
- the applicant was a member of the public and there were grounds for review based on public nuisance in view of the evidence provided in the written complaint and the Licensing Standards Officer advice [REDACTED]

The Licensing Standards Officer stated that the complainant was not a sound professional and this was not type of noise that was quantifiable or would result in complaints to the Police as it related to the general hubbub caused by customers in the outdoor area.

Mr Hassard advised that the noise caused by patrons would be quantifiable by a decibel reader and the onus was on the applicant to demonstrate to the Board, as opposed to assert, there was an unbearable level of noise.

The Clerk advised that the applicant's complaint was sufficient for the Board to consider whether there were grounds for review. The Board had to balance this assertion in its own right against the evidence provided by the applicant's solicitor and the Licensing Standards Officer.

Thereafter, Ms A Jarvie seconded by Mrs L Macdonald **moved** that the grounds for review were not established.

**As an amendment**, Ms E Knox seconded by Mr K Rosie **moved** that the grounds for review had been established on the basis the behaviour detailed in the complaint was inconsistent with the licensing objective of preventing public nuisance.

There being no further amendments, the matter was put to the vote with votes being cast as follows:

**Motion (4):** Mr J Bruce, Mr A Jarvie, Mrs L Macdonald, Mr C Smith

**Amendment (2):** Ms E Knox, Mr K Rosie.

## **Decision**

The Board **AGREED** that the grounds for review were **NOT ESTABLISHED**.

The meeting ended at 1.50pm.

---