

## The Highland Licensing Board

Meeting – 14 May 2013

Agenda Item	9.4
Report No	HLB/056/13

### Application for a major variation of a Premises Licence under the Licensing (Scotland) Act 2005

**Tipsy Laird, 68 High Street, Kingussie PH21 1HZ**  
**Report by the Clerk to the Licensing Board**

#### Summary

REF: HC/INBS/98

This Report relates to an application for a major variation of Premises Licence.

**Premises:** Tipsy Laird, 68 High Street, Kingussie PH21 1HZ

**Applicant:** Punch Partnership Limited, Jubilee House, Second Avenue, Burton Upon Trent, DE14 2WF per TLT LLP, Solicitors One Redcliff Street, Bristol, BS1 6TP

## 1 Description of Premises

Basic Local Public House with one bar operation and restaurant with bunk house facility sleeping 30 persons. Offering On and Off Sales.

### 1.1 Current Core Operating Hours

#### **On-Sales:**

Mon. to Wed. - 11.00 to 24.00

Thurs. to Sat. - 11.00 to 01.00

Sunday - 12.30 to 24.00

#### **Off-Sales:**

Mon. to Sat. - 11.00 to 22.00

Sunday - 12.30 to 22.00

## 2 Summary of Variation Application

### 2.1 Variation Sought

Variation to permitted **on sale** hours:

Monday to Saturday 11.00 to 01.00

Sunday 12.00 to 24.00

Variation to permitted **off sales** hours:

Sunday 12.00 to 2200

### **3 Background**

3.1 The premises are licensed for on and off sales and were converted under the transition to the Licensing (Scotland) 2005 Act.

On 11 March 2013 the Licensing Board received an application for a major variation of a Premises Licence from the applicant's agent, TLT LLP, Solicitors, Bristol.

3.2 The application was publicised during the period 25 March to 15 April 2013.

3.3 In accordance with standard procedure, Police Scotland, Highlands & Islands Fire & Rescue Service, the Council's TEC Services (Environmental Health), Planning, Building Standards were consulted on the application.

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

3.4 Objections have been received from:

- Donald Thomas Maclagen, 1 Victoria Court, 72 High Street, Kingussie PH21 1HZ, on 23 March 2013; and,
- Hamish and Lesley Cromarty, 'Achbuie', Breachloch, Culbokie, Ross and Cromarty IV7 8GY on 15 April 2013.

Both objectors have been invited to attend the meeting.

- A letter of representation dated 8 April 2013, has also been received from the Kingussie and Vicinity Community Council, who have also been invited to attend the meeting.

Copies have been forwarded to the applicant and are attached as an Appendix hereto.

### **4 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, if 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 (i) 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 over provision of licensed premises or licensed premises of that description in the locality.

- 4.2 The Board has power where, if they would refuse the application as made, but if a modification is proposed by them and accepted by the applicant, the application can be granted as modified.

## 5 Licensing Standards Officer's Comments

The Topsy Laird is a popular bar and restaurant in the High Street of Kingussie, it also has a bunkhouse facility at the rear of the premises to provide bargain accommodation for hill walkers and the like. It is at the edge of the commercial area of Kingussie's main thoroughfare and is in close proximity to some residential property.

The Premises Licence is held by Punch Partnership Limited a well known Pubco who lease the premises to a tenant who takes on the role of Premises Manager. A recent change of tenant has seen the new Premises Manager, Mr Joseph Sweeney, take over the day to day operation. The Premises has, up until this application, never been reported to the Police or Licensing Board in an adverse light. Mr Sweeney operates other premises within the Highland Licensing Board area, namely the Picture House, Dingwall, which has a trouble free licensing history.

Application has been made to modernise the Premises Licence with the installation of a new tenant and to bring the licensed hours of the Premises up to the full complement allowed for under the Highland Licensing Board Policy. As such, with all major variation type applications, the necessary neighbour notification has taken place. As a consequence of which, letters of complaint have been received from a Donald Maclagan, residing next door to the premises at 1 Victoria Court, Kingussie, and also from Mr Hamish Cromarty who is the landlord of neighbouring residential property inclusive of that occupied by Mr Maclagan.

Mr Maclagan recognises the rights of his neighbour to maximise trade and although disturbed as recounted in his letter by customer noise, if this is at the weekends he has a 'live and let live' approach. However if the capacity to have customers on the Premises until 1am six nights a week is granted he feels this is too much to bear in being able to enjoy his property and a decent night's sleep.

The LSO has examined the location and Mr Maclagan's home is in a small courtyard directly next to the Topsy Laird and indeed sharing a common access to the Bunkhouse facility. It is literally a matter of 5 metres away from the Premises and will undoubtedly experience disturbance of the type recounted in the letter of objection.

It is the LSO's opinion that the modernisation of the Licence is as much a gesture of goodwill to a new tenant as it is a matter of economic necessity. It is unlikely that in the early part of a week that the Premises will trade until 1am, should there be a need for extended hours on an occasion by occasion basis then this is seen by the LSO as a more proportional and expedient route, with potentially additional conditions attached to help mitigate community issues.

It is the opinion of the LSO that this major variation should be refused as it infringes the third Licensing Objective in respect of Public Nuisance.

## **6 HLB Local Policies**

The following policies are relevant to the application:-

- (i) Highland Licensing Board Policy Hours
- (ii) Highland Licensing Board Policy Statement
- (iii) Schedule of Local Conditions
- (iv) Highland Licensing Board combined Equality Scheme

## **7 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 conditions apply.

## **Recommendation**

The Board is invited to determine the above application.

Designation: Clerk to the Licensing Board  
Reference: HC/INBS/98  
Date: 10/04/2013  
Author: Wendy Grosvenor

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

Appendix: Letter of representation from Mr D Maclagen  
Letter of representation from Mr & Mrs H Cromarty  
Letter of representation from Kingussie and Vicinity Community Council

*Hamish & Lesley Cromarty*  
"Achbuie", Breachloch, Culbokie, Ross & Cromarty, IV7 8GY  
Tel: 01349 877770

14 April, 2013

RECEIVED  
15 APR 2013

Clerk to the Board  
Chief Executive's Office  
The Town House  
INVERNESS  
IV3

Dear Sirs

**Highland Licensing Board**  
**The Licensing (Scotland) Act 2005**  
**Application for Variation of Premises Licence**  
**Premises: Topsy Laird, 68 High Street, Kingussie, PH21**

As proprietors and landlords of 4 rented properties next door to the Topsy Laird we would like to strongly object to the variation in hours as per your letter dated 08 April, 2013. Our reasons for objecting are as follows:-

Our four flats all look out on to the close we share with the Topsy Laird. We have had both verbal and written complaints from our tenants re noise coming from the Topsy Laird. Since smoking has been banned in pubs people are congregating outside in the close with a lot of noise. Doors and windows are also left open in summer and customers from the premises have been seen urinating in said close. Our tenants should be entitled to peace in their own homes and not bombarded with noise every night of the week until revellers have eventually gone home from 01.00 onwards. When these flats were first rented out our tenants could enjoy a quiet life but this no longer applies.

Yours faithfully,

Hamish Cromarty/ Lesley Cromarty/

RECEIVED  
15 APR 2013

**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:**

HAMISH AND LESLEY CROMARTY ACHBUIE, BREACHLOCH, CULBOKIE IV7 8GY	
Telephone Number:	01349 877770
Email Address:	lescrom@hotmail.co.uk

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

TIPSY LAIRD 68 HIGH STREET KINGUSSIE PH21
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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	PLEASE SEE ATTACHED LETTER
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

**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	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Sign:

ate.....14.04.13.....

- **Submission of Objections/Representations:**

Objections/Representations should be addressed to the Clerk to the Licensing Board and sent to the nearest area office:-

<b>Inverness, Nairn, Badenoch &amp; Strathspey Area at</b>		
Town House High Street Inverness, IV1 1JJ  Tel: (01463) 724265		
<b>Caithness, Sutherland &amp; Easter Ross Area at</b>		
Council Offices Market Square Wick, KW1 4AB  Tel: (01955) 607790	Council Offices Main Street Golspie, KW10 6RB  Tel: (01408) 635205	
<b>Ross, Skye &amp; Lochaber Area at</b>		
Council Offices High Street Dingwall IV15 9QN  Tel: (01349) 868541	Council Offices Tigh na Sgìre Park Lane Portree, IV51 9GP  Tel: (01478) 613826	Council Offices Lochaber House High Street Fort William, PH33 6EL  Tel: (01397) 707233



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

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

Donald Thomas Maclagan 1 Victoria Court, 72 High Street Kingussie PH21 1HZ	
Telephone Number:	01540 662431
Email Address:	maclagan@fsmail.net

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

Tipsy Laird 68 High Street Kingussie PH21 1HZ
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**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. Excluded Premises	3. The premises are in the midst of a residential area with 6 homes immediately adjacent and 1 home immediately opposite to the premises. I personally rise at 6.30 a.m. six mornings a week, Sunday to Friday, to go to work and to be disturbed by pub noise till 1.00 a.m. every night is unacceptable.
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

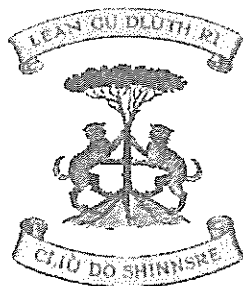
**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

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

Signature

Date..... 18 March 2013 .....





# KINGUSSIE AND VICINITY COMMUNITY COUNCIL

Clerk of the Licensing Board.,  
Alasdair MacKenzie.  
Chief Executive's Office.,  
The Town House,  
Inverness IV1 1JJ.

Replies to:  
KVCC Secretary,  
Drumlins  
Newtonmore Road  
Kingussie PH21 1HD

Tel.: 01540 661962  
Email: ecubed@btinternet.com

RECEIVED  
Dated: 15<sup>th</sup> March 2013.

Dear Mr. MacKenzie,

Reference to; Application for Major Variation of Premises Licence.  
In regard of THE TIPSY LAIRD., 68 High Street, Kingussie PH21 1HZ.

I write in connection to the above stated application, proposing variation to the existing terms of a public house/restaurant licence and would like to record the following comments on behalf of Kingussie and Vicinity Community Council.

The community council has no objection to renewal of the said licence, in the original form, as previously operated by the TIPSY LAIRD premises. We do not have major objection to the renewal details, as supplied by your office, however would raise the following points for consideration by the board.

The further extension to opening hours, beyond those previously granted, would on Monday's through to Wednesday's create the only public house licence in Badenoch with premises open beyond midnight on the stated nights.

- During the Christmas and New Year period (2012-13) the said Topsy Laird was opened for this additional hour on a number of days and resulted in a significant migration from other hostelrys towards midnight with additional noise and nuisance to local residents. In the same period there were two instances where police were called to fracas in the street adjacent to the Topsy Laird.
- On one occasion, being known to be accurate, a motor car made three round trips from Newtonmore around midnight to bring a group of revellers from the Balavil Hotel for a 'last drink'. While we do not infer any wrong doing by the driver of said vehicle, there is an element of risk with cars beetling back and forward at night, on an already dangerous road.
- In respect of section 5(c) we note that reference is made to 'gaming' with poker being listed under section 5(f) and would request clarification as to whether a separate Gaming Licence, has been applied for.
- In reference to section 5(g) we note that no completion has been made in respect of noise. It should be noted that there have been issues in respect of noise with these premises. Equally

from previous observation there would tend to be more patrons standing than seated on busy occasions.

- With the premises being of a bar/restaurant type there is no objection to children on the premises during the approved times and in accord with normal policies/restrictions, however for clarity we would suggest that section 6(c) should simply show an age range of ; Up to and including 17 years. This covering the eventuality of families with toddlers wishing to dine on these premises.

Alan W Davidson, Chairman,  
Kingussie & Vicinity Community Council