

## The Highland Licensing Board

Meeting – 11 June 2013

Agenda Item	9.1
Report No	HLB/074/13

### Premises Licence Review Application

Glen Affric Bar, Cannich, By Beauly, IV4 7LW

### Report by the Clerk to the Licensing Board

#### Summary

A premises licence review application in terms of section 36 of the Licensing (Scotland) Act 2005 has been received from nearby residents, Mr & Mrs Paul McKinley, and the Board must hold a Hearing to determine the application.

#### 1.0 Background

1.1 The premises to which the review application relates is known as the Glen Affric Bar, Cannich By Beauly, IV4 7LW. It operates as a Licensed Bar/Restaurant situated in its own grounds in the village of Cannich, occupying part of the ground floor of the Glen Affric Hotel.

**On Sales** 11.00 to 01.00 Monday to Friday, 11.00 to 12.30 Saturday, 12.00 noon to 24.00 on Sundays.

**Off Sales:** 11.00 to 22.00 Monday to Saturday, 12.00 noon to 22.00 Sundays. Occasionally, a marquee may be erected in the grounds.

The operating plan includes outdoor drinking.

#### 2.0 Legislation

2.1 In terms of section 36(1) of the Licensing (Scotland) Act 2005 any person may apply to the Board in respect of any licensed premises in relation to which a premises licence has effect, for a review on any of the following grounds:-

(a) That one or more of the conditions to which the premises licence is subject has been breached, or

(b) Any other ground relevant to one or more of the licensing objectives.

#### 3.0 Premises Licence Review Application

3.1 A premises licence review application dated 22 May 2013 and received on 23 May 2013 has been submitted to the Board by Mr and Mrs Paul McKinley Benevean, Cannich, Beauly, IV4 7LN, nearby residents to the Hotel and is attached to this Report as Appendix 1.

The application intimates that there has been a breach of the following Licensing Objective: 4 (c) Preventing public nuisance.

#### **4.0 Review Hearing**

**4.1** Section 38 (1) of the Act provides that where the Board receives a premises licence review application it must hold a Hearing for the purposes of considering and determining the application.

**4.2** Section 38 (4) of the Act provides that the Licensing Standards Officer must, before the review hearing, prepare a Report on the application which the Board must take into account. This Report dated 24 May 2013 is attached as Appendix 2.

**4.3** A copy of this Report and the premises licence review application have been sent to the Premises Licence Holder, Mr Ronald Munro Jenkins, who has been invited to attend the Hearing.

**4.4** Mr and Mrs McKinley has also been invited to attend the Hearing.

#### **5.0 Board's powers on review**

In terms of section 39 of the Act the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the Hearing) take the following steps:

- (a) issue a written warning to the Licence Holder,
- (b) make a variation of the licence,
- (c) suspend the licence for such period as the Board may determine,
- (d) revoke the licence.

In terms of section 84 of the Act where, in the course of a review hearing in respect of a premises licence, the Board makes a finding in relation to a personal licence holder who was working in the licensed premises that the licence holder concerned acted in a manner which was inconsistent with any of the licensing objectives then the Board must hold a further Hearing.

#### **6.0 Recommendation**

The Board is invited to determine the premises licence review application by way of a review hearing.

Designation: Clerk of the Licensing Board

Date: 24 May 2013

Ref: HC/INBS/207

Background Papers:Licensing (Scotland) Act 2005.

Appendix 1: email letter from Mr & Mrs Paul McKinley received 23 May 2013

Appendix 2: Report from Ian Cox Licensing Standards Officer dated 24 May 2013

For the attention of the Licensing Standards Officer, Inverness, Nairn and Badenoch & Strathspey  
Town House  
INVERNESS IV1 1JJ

Mr & Mrs P McKinley  
Benevean  
Cannich  
BEAULY IV4 7LN

Our tel: 01456 415776  
email: paul-mckinley@btconnect.com

Our ref: PM/2205131

Date: Wednesday 22<sup>nd</sup> May 2013

Subject: GLEN AFFRIC BAR, CANNICH

Dear Mr Cox

May I raise fresh concerns regarding the use of the Glen Affric Bar, which is situated immediately opposite the house where we live in Cannich?

In Jan 2009, you came to Cannich and it was helpful to discuss these issues with you. At the time we were hopeful that the disturbance which the bar created for us would abate. Recently there has been increased disturbance which we are concerned may persist if the situation is not freshly addressed, and as the summer approaches.

The most common problem now (as at that time) is that the external decking area is frequently used by patrons until late hours. For example last Friday and Saturday night, we were kept awake till the early hours of Saturday and Sunday morning.

Such activity breaks the conditions of the planning permission originally granted for the external extension – conditions which we had accepted in good faith, not wishing to obstruct the social amenity of the facility. These conditions stated that the tables and chairs should not be used at late hours, and that music should not be heard from that area at late hours.

The use of the decking referred to above seems to affect solely ourselves because of the proximity of our house opposite. However, people who live elsewhere in the village have been able to hear some very noisy events, such as a birthday party and disco held last July. Last October for Halloween, the disco at the time was so loud that I had to cross the road and shut the door which was being left open by drinkers coming and going onto the bar's external decking area.

We wonder whether good practice should include effectively closing the decking area from around 9.30pm, where the tables and chairs are stacked, and the decking area lights turned off? Similarly, the doors and windows to the front may need to be closed to keep the noise inside – though as warm weather approaches we are sensitive to the need for ventilation inside the bar. Perhaps the owner could find alternative ventilation via the side door or side windows?

Thank you for your attention.

Yours Faithfully

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**Highland Licensing Board Meeting – Tuesday, 11<sup>th</sup> June, 2013**

**Review Hearing in terms of the Licensing (Scotland) Act, 2005 Section 38 (1)**

**Premises: Glen Affric Bar, Cannich, Inverness shire, IV4 7LW.**

**Report by Licensing Standards Officer**

**1.0 Summary:**

1.1 This Report has been prepared in response to notification from the Clerk to the Highland Licensing Board in terms of Section 38(3)(b)(ii) of the Licensing (Scotland) Act, 2005 that a review hearing is to be held in respect of the Premises Licence for the Glen Affric Bar, Cannich, Inverness shire held by Mr Ronald Munro Jenkins, 527 King Street, Stenhousemuir, Larbert, FK5 4JT.

**2.0 Licensing History:**

2.1 A Premises Licence for the Glen Affric Bar was granted by the Highland Licensing Board, under transitional arrangements, on 1<sup>st</sup> September 2009 Mr Ronald Munro Jenkins.

2.2 The Premises operate as a public house, largely on a seasonal basis which reflects customer demand in this rural location. The main season is April until October.

Ronald Munro Jenkins has been the premises manager since the grant of the Licence.

**3.0 Legislation:**

3.1 The premises licence is subject to:-

- Mandatory Conditions in accordance with Schedule 3 of the Licensing (Scotland) Act, 2005;
- Local Conditions attached by the Highland Licensing Board in accordance with Section 27(6) of the Licensing (Scotland) Act, 2005.

**4.0 Description of premises:**

4.1 The Premises are situated in a wing of the former Glen Affric Hotel which is now defunct. This wing is a two storey building and the bar occupies the lower storey of the premises. There is a kitchen area also on this floor. The owner's flat is located on the upper storey. External to the front of the bar is a decking

area which is populated with tables and chairs for the use of customers. This is an approved activity at section 5 of the Premises Operating Plan.

- 4.2 The Premises operate on a seasonal basis largely through the spring and the summer. In winter the premises open at the weekends. Mr Jenkins closes the bar during the week and comes up from his home address in Central Scotland to open the Bar at weekends, in summer he bases himself here and uses the owners flat above the Premises for his domicile.

## **5.0 Synopsis:**

- 5.1 on 24<sup>th</sup> May, 2013 I received notification from the Clerk of the Highland Licensing Board that an application for a Review of the Premises Licence had been received from a Mr & Mrs Paul McKinley, Benevean, Cannich. The issue cited by Mr & Mrs McKinley in an e-mail, reported public nuisance caused by patrons using the external tables and chairs until the late hours, largely caused by noise. Also on occasions when musical entertainment is provided noise nuisance can be occasioned by the doors and windows of the Premises being left open, often inadvertently by customers coming and going.
- 5.2 Mr & Mrs McKinley's dwelling is directly opposite the Glen Affric bar across the public roadway which runs through the centre of the village. I have had previous dealings with this matter in 2009 when Mr & Mrs McKinley made similar complaints to myself. At this time I mediated the matter between the parties and a voluntary agreement was made by Mr Jenkins to control the use of the outside area and monitor customer behaviour. In the intervening time until this subsequent complaint no further issues were reported.

The operating plan of the Glen Affric Bar has as an authorised activity the operation of an outside drinking area at Section 5. There is no further condition attached to the Premises Licence regulating the hours of operation of this facility. Music and Live Performances are also authorised activities.

- 5.3 It is my view a possible resolution to this matter would be the application of Local Licence Conditions which are enforceable if required by the Licensing Standards Officer and ultimately the Board if required.

## **6.0 Measures taken by Licence-holder**

- 6.1 Previous voluntary solutions arranged in 2009 have had limited success but are too loose to ensure continued observance and application.

## **7.0 Supplementary information:**

- 7.1 On a general basis the operating history of the venue is relatively trouble free.
- 7.2 On occasion Mr Jenkins relies on his local staff to run the Premises on occasions that his presence is required elsewhere. It would be a facet of staff

training that all staff would be made aware of the Local Conditions applicable and proactively adhered to by them.

7.3 Mr Jenkins has been spoken to on routine Licensing matters by the Licensing Standards Officer on several occasions and has always proved to be co-operative.

#### **8.0 CONCLUSION:**

- It is my suggestion that the following Local Conditions should be added to the Premises Licence in order to help resolve this issue;
- “After 22.00 (or such other time as maybe specified by the Licensing Board) alcoholic or non alcoholic drinks shall not be consumed in an outdoor drinking area”.
- “After 22.00 all tables and chairs shall be removed from the outdoor drinking area”
- “During any music or live performance after 22.00 all doors and windows will be kept closed so as to prevent any noise nuisance to nearby residential property.

The latter conditions are to prevent patrons making impromptu use of the seating at the conclusion of core hours causing them to loiter and cause a noise nuisance and during times when musical entertainment is provided to help ensure it is contained within the Premises as far as possible.

Ian Cox

Licensing Standards Officer

24th May, 2013