

The Highland Licensing Board

Meeting – Tuesday 6 August 2013

Agenda Item	10.12
Report No	HLB/099/13

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

Mingarry Park Guest House, Mingarry, Acharacle, Argyll, PH36 4JX

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for a major variation of Premises Licence in respect of the Mingarry Park Guest House, Mingarry, Acharacle.

1.0 Description of Premises

The Mingarry Park Guest House is situated on the A861 in Mingarry. The Premises consist of a Reception Hall, Dining Room/Lounge, two bedrooms, Self-catering Unit, Kitchen, Laundry and toilets on the ground floor and three bedrooms on the first floor. There is a detached building known as the Am Bothan Bar located within the grounds of the premises.

1.1 Current Core Operating Hours

The premises currently enjoy the following core operating hours:

On-Sale:

Monday to Wednesday and Sunday: 1900 hours to 2400 hours
Thursday to Saturday: 1900 hours to 0100 hours

2.0 Summary of Variation Application

2.1 Variation Sought

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

- (i) Increase on-sale core opening hours as follows:

Monday to Saturday: From 1100 hours (no change to terminal hour)
Sunday : From 1200 hours (no change to terminal hour)

- (ii) Removal of Seasonal Variation which restricted alcohol to be sold in Am Bothan only during the main tourist season.

(iii) Additional activities within operating plan to include:-

- Dance Facilities
- Indoor/Outdoor sports
- Outdoor drinking facilities

and the following activities to take place prior to core opening hours:

- Meetings
- Music
- Live Performances
- Dance Facilities

(iv) Update Children's Policy to accord with Board Policy.

(v) Revision of layout plan to extend footprint of premises to include Outdoor Drinking Facilities and Executive Suite on the first floor of the premises.

(vi) Revision of Premises Description to include Outdoor Drinking Facilities and Executive Suite on first floor of premises.

3.0 Background

3.1 On 17 June 2013 the Licensing Board received an application for a Major Variation of a Premises Licence from John F MacDonald.

3.2 The application was publicised during the period 1 July until 22 July 2013 and confirmation that the site notice was displayed has been received.

3.3 Two timeous representations to the application have been received as undernoted, copies of which are appended to this report:

- Representation received on 17 July 2013 from Reverend Kate Atchley;
- Representation received on 19 July 2013 from Dr Jayne Theaker.

3.4 In accordance with standard procedure, Northern Constabulary, 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.

No objections or representations have been received in respect of the application from the above consultees.

Whilst the Planning Authority have indicated that they have no objections to the application, they have however advised that Am Bothan has planning permission for use as a Licensed Bar with no restrictions on the hours of operation or activities. Mingarry Park Guest House has planning permission for use as a Guest House and in terms of Class 7 of the Town and Country Planning (Use Classes) (Scotland) Order 2007, alcohol may only be served to residents or to persons consuming a meal on the premises.

3.5 The applicant and the two persons who have lodged representations have been invited to attend the Hearing.

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 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 only power to either grant the application and make a variation of the conditions to which the licence is subject or, refuse the application.

If the Board refuses 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.

5.0 Licensing Standards Officer

The LSO has provided the following comments:-

- the increase in core hours applied for is within the policy hours of the Highland Licensing Board;
- the Guest House part of the premises does not contain a bar counter and the revised children's policy is in line with the Board's Policy;
- the layout plan submitted complies with the required specifications;

- there would not appear to be any matter contained within the application that is inconsistent with the licensing objectives;
- with regard to the representations received, I would comment as follows:
 - in relation to outdoor amplified music being played in the outdoor drinking area, I would recommend that a condition be attached to prevent this;
 - in relation to the suitability of the premises for the proposed activities, the current operating plan details that traditional ceilidh style events take place within the Am Bothan Bar which involves live traditional music and instruction in the gaelic language and culture. The applicant is seeking to permit these activities to take place prior to the core opening hours at events such as a Feis with the additional activity of dance facilities;
 - in relation to the representations concerning noise, in the past, one anonymous complaint has been received by myself concerning an event on 9 February 2013 which was brought to the attention of the Premises Licence Holder and appropriate advice given. The complainer was advised to raise any further concerns regarding noise with the local Police and myself. To date, Police Scotland have confirmed that no complaints have been received;
 - In relation to the concerns regarding noisy outdoor sports, the applicant has stated at para. 5(e) within his application that this activity, indoor/outdoor sports, relates to a pool table for residents. There is no reference made within the application to any outdoor sports taking place within the licensed footprint;
 - in relation to the comment regarding outdoor music festivals, if such an event was to include the sale of alcohol outwith the licensed premises, this would require an application to be lodged for an Occasional Licence;
 - It is noted that outdoor drinking areas are proposed. Given the concerns expressed by neighbours, I would recommend that a condition be attached to restrict the time of use of the outdoor drinking area outside the Am Bothan Bar.
- the premises are considered suitable for use for the sale of alcohol in accordance with the proposed variation;
- the premises held a Hotel Licence prior to transition.

6.0 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 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

It is recommended that the undernoted additional local conditions be attached, together with Local Condition G, to seek to address the comments made in the two letters of representation concerning noise:

Local Condition E:

Any alcohol for consumption in the outdoor drinking areas will be sold only in the licensed premises.

Local Condition G:

After 2200 hours (or other such time as may be specified by the Licensing Board) alcoholic or non-alcoholic drinks shall not be consumed in the outdoor drinking area at Am Bothan Bar.

Local Condition J:

Dartboards and any pool table will be situated in a location to be approved by the Licensing Standards Officer.

7.3 Specific Condition(s)

Having regard to the comments received from the Planning Authority, the representations received and the comments from the LSO, the Board may wish to consider attaching the following specific conditions:

1. The Premises Licence Holder is authorised to sell alcohol in Mingarry Park Guest House to persons residing there or to persons taking table meals, for consumption by such a person as an ancillary to his or her meal;
2. No amplified music will be played within the Outdoor Drinking Areas as designated on the layout plan appended to the Premises Licence.
3. After 2200 hours alcoholic or non-alcoholic drinks shall not be consumed in the outdoor drinking area adjacent to the Am Bothan Bar.

Recommendation

The Board is invited to determine the above application and give consideration to:

- (i) Updating the existing Local Conditions as referred to at para. 7.2 of the report;
 - (ii) If the Board are minded to grant the application as outlined at para. 2.1, in addition to the Mandatory and Local Conditions, consideration be given to attaching the proposed Specific Local Conditions, referred to at para. 7.3 of the report;
- or
- (iii) If the Board are 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.

Designation: Clerk to the Licensing Board

Reference: HC/RSL/1450

Date: 23 July 2013

Author: AHM/JT

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

Appendices:

1. Letter of representation received from Reverend Kate Atchley dated 15 July 2013
2. Letter of representation received from Dr Jayne Theaker dated 17 July 2013

RECEIVED

17 JUL 2013

CHIEF EXECUTIVE'S SERVICE
LOCHABER

15 July 2013

Clerk to the Board
Highland Licensing Board
Lochaber House
High Street
Fort William
PH33 6EL

Dear Sir or Madam
Re Major Variation in Premises Licence, Mingarry Park Guest House
Your ref HC/RSL/1450:AHM/JT

My house is nearest to the guest house on the same side of the road, beyond the properties belonging to the licensee's family, and I am writing with reference to the above application.

I ask that the following representations be taken into account when considering the merits of this licence variation:

Whilst I wholeheartedly support the enterprising changes and new facilities being offered at Mingarry Park, I am concerned about the potential effect of noise to surrounding neighbours and businesses. The property is open to the surrounding area without screening or trees which might absorb or dampen noise and there have been episodes of loud noise this Summer. Outside drinking, once permitted, will create further noise.

In the attempt to prevent any public nuisance based on excessive noise during the course of the day or evening, I request that a restriction be applied to the variation in the licence specifically disallowing the use of external speakers, amplifiers or other devices to transmit music or sound to the outside of the licensed premise.

Your sincerely

Reverend Kate Atchley

**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:

Dr Jayne Theaker	
Telephone Number:	
Email Address:	

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

The Mingarry Park Guest House Mingarry Acharacle PH36 4JX
--

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
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	Please see separate sheet
2.	seeking an amendment to the operating plan, or	
3.	seeking to add additional conditions to the licence	

Signature:...

... Date 17 July 2013

Representation concerning major variation of premise licence at Mingarry Park Guest House

I would like to make the following representations with regard to the application for a major variation of the premise licence at Mingarry Park Guest House and Am Bothan Bar. My representations arise from my concerns over the suitability of the venue (with reference to location, character and condition) for the stated purpose, and the nature of some of the activities proposed. These concerns relate to sections 5c and 5d in which permission is sought for entertainment including music, live performances, dance facilities, indoor and outdoor sports, and outdoor drinking facilities both within the extended core hours and outwith these hours. Given the nature of the activities and the times requested, there is a real risk of these activities causing a considerable public noise nuisance to both residents and holiday makers in the small, rural, crofting community of Mingarry. Past events held in the licensed venue have created a significant public noise nuisance from outdoor live amplified music and events held in the Am Bothan Bar. As such, I would like to request amendments to the operating plan with reference to location, timing and suitability of some of these activities to minimise public noise nuisance.

Concerns over outdoor amplified music. Given the application for extended hours and increased footprint with outdoor drinking facilities, I would like to request that no loud or amplified music be played outdoors or broadcast outside from either Am Bothan or the Guest House (into the outdoor seating area or beyond). Noise carries a long way in this rural, residential community and even low levels of externally audible amplified background music would be out of character with the rural crofting nature of the village and would cause a persistent public noise nuisance to residents, visitors and businesses alike.

Evidence as requested: Amplified outdoor music at the licensed venue has caused a significant public noise nuisance in the past; a wedding reception involving amplified outdoor music on Saturday 30th April 2011 was extremely disruptive and prevented and disturbed sleep in neighbouring properties well into the small hours.

Concerns over the suitability of the Bothan Bar for loud music, discos and dancing.

The licensed premises comprise of two very different venues: a modern guesthouse and a separate Bothan Bar; the latter is a small detached converted byre across the car park from the Guest House. The Bothan Bar is a small venue and lacks toilet facilities, double soundproof exterior exit doors and air-conditioning making it an unsuitable venue for loud music, discos and dancing. To access toilet facilities users have to exit the building and cross the uncovered car park to the guest house, which results in considerable sound escape and disturbance to local residents. Similarly, sound escape may occur when doors and windows are opened for ventilation. Such noise is out of character with the location and is detrimental to residential amenity having prevented and disturbed sleep in neighbouring properties in the past. I would like to request that measures and/or facilities be put in place to mitigate against such effects. **Evidence as requested:** A party held in the Am Bothan on Saturday 9th February 2013 (with guests arriving and departing by coach) resulted in nearby properties and businesses being subjected to continual audible music well beyond midnight. This was interspersed with intermittent bursts of loud disco/rock music; the latter caused by the door being opened repeatedly to allow access to the outside and to the toilets across the car park.

...continued over

Concerns over noisy outdoor sports on the premises. Given the application for extended hours and increased footprint, I would like to request that shooting or other noisy activities be excluded from any permissions for outdoor sports in the licensed premises. Such activities have resulted in considerable noise nuisance in the past. **Evidence as requested:** Mingarry Park Guest House (www.mingarryparkhouse.co.uk) advertises itself as a shooting and stag party venue. These activities have taken place on site in the past causing considerable disturbance to neighbours. For example, shooting took place in the grounds of Mingarry Park Guest House for over two hours during a stag event held on the licensed premises on the afternoon and evening of the 8th June 2013.

Concerns over the use of the premises as a festival venue. Given the nature of the premises (a guest house and a small Am Bothan Bar), the permissions sought in 5c and 5d, and the noise sensitivity of the location, I would like to request that the venue is not used for outdoor music festivals. Such events have the potential to cause considerable public noise nuisance and disruption, particularly if involving amplified music or occurring over one or more days (for example, on the scale of Sonafest or Westfest). In addition, there already exists established community venues nearby.

I would like to thank the licensing board for considering my representations.

I would also like to take this opportunity to wish Mr MacDonald the very best with his Guest House business.