

The Highland Licensing Board

Meeting – 5 November 2013

Agenda Item	11.14
Report No	HLB/139/13

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

Ossians Hotel, High Street, Fort William, PH33 6DH

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 Ossians Hotel, High Street, Fort William, PH33 6DH.

1.0 Description of Premises

Ossians Hotel is a four storey building located in the centre of Fort William's High Street. On Friday and Saturday evenings a discotheque takes place within the function room of the premises until 0200 hours the following day.

The premises comprise of a coffee shop on the ground floor with a lounge bar/restaurant and a restaurant/function room on the first floor. Letting bedrooms are located on the second and third floors of the premises.

1.1 Current Core Operating Hours

The premises currently enjoy the following operating hours:

On-Sale:

Monday to Thursday: 1100 hours to 0100 hours
Friday & Saturday: 1100 hours to 0200 hours
Sunday: 1200 hours to 0100 hours

2.0 Summary of Variation Application

2.1 Variation Sought

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

- (1) Remove local condition relating to all drinks being served in plastic when operated as Late Opening Premises.
- (2) Increase Core Terminal Hour on Friday and Saturday evenings from 0200 hours to 0300 hours.

- (3) Increase Core Opening Hour on Sunday from 1200 hours to 1100 hours.
- (4) Revision of Seasonal Variation to include Board's Festive Policy.
- (5) To include Gaming as an activity taking place during core hours within the premises.
- (6) To include Adult Entertainment as an activity taking place during core hours within the premises in full compliance with the stipulated local conditions. The application states that Adult Entertainment may involve a "Stripper" attending a Hen/Stag Group or the occasional booking of an "erotic dance group".
- (7) Update Children's Policy to reflect Adult Entertainment.

3.0 Background

3.1 On 24 September 2013 the Licensing Board received an application for a major variation of a Premises Licence from Derek and Janice Wallace.

3.2 The application was publicised during the period 27 September 2013 until 18 October 2013 and confirmation that the site notice was displayed has been received.

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 A location plan identifying the premises is attached as Appendix A.

3.5 A timeous representation to the application was received from Fort William Community Council on 18 October 2013, a copy of which is attached as Appendix B.

3.6 The applicant and a representative from Fort William Community Council have been invited to attend the Hearing.

4.0 Legislation

4.1 Late Opening Premises

The Late Opening Mandatory Conditions apply to late opening premises pursuant to the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. These premises are defined in the Regulations as premises, the capacity of which, is at least 250 people and which:-

- (a) will regularly provide at any time in the period between 1:00 am and 5:00 am-

- (i) live or recorded music with a decibel level exceeding 85dB;
 - (ii) facilities for dancing; or
 - (iii) adult entertainment, or
- (b) when fully occupied, are likely to have more customers standing than seated.

They do not include, however, premises which have as their primary function the service of food, or which include, or are part of larger premises which include, at least 6 letting bedrooms, or in respect of which a licence under section 12 of the Theatres Act 1968(1) or section 1 of the Cinemas Act 1985(2) is in force, or which are, or are part of, an art gallery.

- 4.2 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.

- 4.3 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 applicant seeks to remove the local condition in relation to drinks being served in plastic or polycarbonate after 2100 hours. This is in line with the policy adopted by the Board on 1 October, 2013. There has been one report of an isolated incident involving a patron being

assaulted having been struck by a glass bottle. This matter was addressed and appropriate measures taken. There have been no further incidents. The premises are well managed and the management will ensure that glass is collected on a regular basis by dedicated staff.

- The additional increase in core hours sought on a Sunday from 1100 hours is within the Board's new policy adopted by the Board on 1 October, 2013.
- The additional hours applied for in respect of Friday and Saturday evenings until 0300 hours are within the Board's existing and new policy adopted by the Board on 1 October, 2013 in relation to Late Opening Premises.
- The applicant seeks to include within the Seasonal Variations section of the Operating Plan, a statement permitting the festive policy as agreed by the Board, negating the requirement to submit application by way of extended hours. The applicant accepts the requirement to notify the Board and the police of any proposed dates to be utilised within the required period.
- The application states that the music level will exceed 85db and when fully occupied there is likely to be more customers standing than seated.
- The combined capacity of the lounge bar/restaurant and restaurant/function room as detailed within the current Premises Licence is more than 250, namely 360 persons.
- I have met with the applicant who confirms that she can comply with the conditions relating to Adult Entertainment contained within the Highland Licensing Board's policy.
- The application details that the premises will operate only in accordance with their Code of Conduct which shall include all of the provisions set out in the Adult Entertainment Local Conditions. A Code of Conduct document has been prepared by the Licence-holder for approval by the Licensing Board.
- In line with the existing Late Opening Mandatory Conditions, CCTV of an approved standard covers the proposed performing area. There are no private booths and the Premises operate with adequate stewarding. No children or young persons will be permitted within the designated area ie. function room on the day that the adult entertainment will take place. Changing facilities for performers will be provided within a bedroom(s) meeting the recommendations contained within The Scottish Executive Adult Entertainment Working Group report of 2006.
- The children's policy has been updated to reflect the inclusion of Adult Entertainment in line with the Board's policy.

6.0 HLB Local Policies

The following policies are relevant to the application:-

- (i) Highland Licensing Board Policy Hours (Appendix C)
- (ii) Highland Licensing Board Adult Entertainment Conditions (Appendix D)

- (iii) Highland Licensing Board Policy Statement 2013-16
- (iv) Schedule of Local Conditions
- (v) 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 Late Opening Conditions

The Mandatory Late Opening Conditions are currently attached.

7.3 HLB Adult Entertainment Conditions

If the application is approved, the Highland Licensing Board Schedule of Adult Entertainment Conditions will apply.

7.4 HLB Local Conditions

As a consequence of the Licensing Board's new Policy Statement 2013-16, it may be appropriate to remove all existing Local Conditions and substitute with the following:

- A. Children under the age of 16 are excluded from any room where there is a bar counter after 2200 hours except during private functions or for the purpose of viewing live entertainment or where the child is in the room for the purpose of taking a meal. This condition does not apply to any child who is in the bar solely for the purpose of passing to or from some other part of the premises being a part to or from which there is no other convenient means of access or egress.
- B. Whilst in any room with a bar counter all children must be in the company of, or supervised by an appropriate responsible adult. This condition does not apply to children of the licence holder or children who are resident on the premises.
- C. Notwithstanding conditions (a) and (b) children must not sit or remain at the bar counter at any time.
- G. Premises open for the sale of alcohol after 0100 hours shall have available a selection of hot and cold foods and shall advertise this within the premises.
- H. Dartboards and any pool table will be situated in a location to be approved by the Licensing Standards Officer.
- I. Any music or live performance will cease at 0245 hours.

- J. After 2200 hours, when the premises is operating as Late Opening Premises, the premises licence holder shall ensure that there is adequate stewarding at all relevant entrances and egresses to the premises and within the premises.
- N. The licence holder shall ensure the provision of an effective means of recording the capacity during the premises hours of operation.
- O. On any day for which the terminal hour specified in this licence is later than 0100 hours the following day, alcohol may be sold on the premises after 0100 hours only while entertainment as detailed in the operating plan is being provided and has been provided continuously from no later than 2200 hours.
- Q. 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.

7.5 **HLB Special Conditions**

As a consequence of the Licensing Board's new Policy Statement 2013-16, it may be appropriate to remove all existing Specific Conditions and substitute with the following:

- All glass disposal operations shall cease between the hours of 2300 hours and 0800 hours the following day.
- All Live vocals or amplified music will be so controlled after 2300 hours that it shall be inaudible in nearby residential property.
- Any under 18 event will be run according to the rules and conventions of Blue Light Disco's and with the approval of Police Scotland.

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. 7.4 of the report;
- (ii) If the Board are minded to grant the application as outlined at para. 2.1, in addition to the Mandatory, Adult, Late Opening and Local Conditions, consideration be given to attaching the proposed Special Conditions as referred to at Para 7.5 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/1570

Date: 22 October 2013

Author: AMK:ET/JT

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

Appendices: (A) Location Plan
(B) Representation from Fort William Community Council
(C) HLB Policy on Hours
(D) HLB Adult Entertainment Conditions

HIGHLAND LICENSING BOARD**ADULT ENTERTAINMENT LOCAL CONDITIONS (ADOPTED 1 OCTOBER 2013)**

The Board may require that the provisions contained in the local conditions below are incorporated also as an operating code in the operating plans of premises which include adult entertainment as an activity in their operating plan. Any of the following local conditions may also be applied as licence conditions to premises providing adult entertainment. They will be applied for the purposes of one or more of the licensing objectives. These objectives are:

1. Preventing crime and disorder
2. Securing public safety
3. Preventing public nuisance
4. Protecting and improving public health
5. Protecting children from harm

1.	The licence holder shall have in place a code of conduct for behaviour of staff and customers. A copy of this code will be made available to staff and customers and be displayed prominently within each public area of the premises. The code will deal with matters such as information for performers, on distance to be maintained from customers during a dance, prohibitions on sexual behaviour and propositioning, and what to do if a customer breaches the rules.	1,2 & 3
2.	The licence holder will maintain a register of performers engaged to perform in the licensed premises. The register will show the name, age and current address of the performer. The licence holder will require to obtain photographic proof of each performer's identity. Foreign nationals must be asked to exhibit their passport and the licence holder should take appropriate steps to ensure that there are no restrictions on the performer's entitlement to work in the United Kingdom.	1,2 & 3
3.	Performers should only perform in open public areas of the licensed premises, which should at all times be appropriately stewarded and covered by CCTV cameras which are of a standard approved by the Chief Constable.	1,2,3 & 4
4.	No dance entertainment should take place in private booths and performers' genitalia should be covered at all times. There should be no touching between performers and patrons at any time during the performance, the only contact allowed being the hand-to-hand payment of money at the conclusion of the performance.	1,2,3 & 4

5.	Performers remaining in the public area before, following or between performances should be suitably clothed at all times with no exposure of breasts or genitalia. Any advertising of performances outwith the licensed premises, whether by way of newspaper advertisement or any other public notices within or without the premises, including on-line advertisement, may only depict performers suitably clothed as aforesaid. Performances involving the removal of clothes should not be visible from outwith the premises.	1,2 & 3
6.	The licensed premises shall have stewards in all public areas in addition to at least one steward positioned at each entrance to and/or exit from the premises. All public dance areas, entrances and exits should be monitored constantly while the premises are open to the public with the use of CCTV.	1,2 & 3
7.	Where in terms of the operating plan, children and young persons are permitted on the premises, they will not be permitted on the premises on any day on which adult entertainment takes place. Where the premises is an hotel which has children or young persons resident, children and young persons shall be excluded from any part of the hotel used for adult entertainment on any day on which adult entertainment takes place.	1,2,3 & 5
8.	The licence holder must notify Police Scotland of any forthcoming adult entertainment event at least 24 hours in advance of the event taking place.	1, 2 & 3
9.	A personal licence holder must be present in the area of the premises in which adult entertainment is taking place for the duration of the adult entertainment.	1, 2 & 3