

The Highland Licensing Board

Meeting – 17 December 2013

Agenda Item	9.4
Report No	HLB/155/13

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

Private Eyes Inverness, 57 Academy Street, Inverness IV1 1LU

Report by the Clerk to the Licensing Board

Summary

REF: HC/INBS/188

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

Premises: Private Eyes Inverness, 57 Academy Street, Inverness IV1 1LU

Applicant: Shane Manning as agent for PECL Ltd, Chapelshade House, 78-84 Bell Street, Dundee DD1 1HN

1.0 Description of Premises

Centrally situated Nightclub comprising Dance Floor, Bar, Seating Areas, Lounge and DJ Desk. The premises provide adult and general entertainment to members of the public and an entry fee is chargeable to patrons. Patrons must be over the age of 18. Where the entertainment is musical, the music is usually provided by way of an amplified sound system operated by a DJ. Music ceases at 2.45am. Adequate stewarding is provided both at the door and inside the premises. On-sales only.

1.1 Previous Core Operating Hours

On Sales:

Mon – Wed 19.00 hrs to 01.00 hrs

Thurs to Sunday 19.00 hrs to 03.00 hrs

2 Summary of Variation Application

2.1 Variation Sought

1. To extend trading hours Monday, Tuesday and Wednesday to 03.00 hrs in line with the hours permitted for rest of week.
2. To remove the requirement to use polycarbonate glasses after 21.00 hrs.

3 Background

- 3.1 On 26 September 2013 the Licensing Board received an application for a major variation of a Premises Licence on behalf of the applicant's agent, Shane Manning on behalf of PECL Ltd, Chapelshade House, 78-84 Bell Street, Dundee DD11 HN.

- 3.2 The Board has advertised the application on the Council's website for a period of 21 days and the applicant has to display the Notice on site for the same period (14 October to 11 November 2013). Confirmation of site notice has been received.
- 3.3 In accordance with standard procedure, Police Scotland, Highlands and Islands Fire and Rescue Service, The Council's TEC Services (Environmental Health), Planning and Building Standards were consulted on the application.
Notification and a copy of the application have been sent to NHS Highland. There is no Community Council formed for this area.
- 3.4 A notice of the application has been sent to and all the people listed under S21(1) of the Act.
- 3.5 Objections have been received:
- by email on 8 November 2013 from Gillian Gunn on behalf of Highland Violence Against Women Strategy Group; and
 - by email dated 8 November 2013 from Dr Margaret Somerville, Director of Public Health, Assynt House, Beechwood Park, Inverness IV2 3BW.

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.

5.0 Licensing Standards Officer's Comments

The Premises are a City Centre Night Club who currently trade as a Late Night Venue on Thursday to Sunday until 03.00hrs. Their operating history is trouble free and the Premises are well managed and stewarded. Recently the category of Adult Entertainment has been added to the list of permitted activities within the Operating Plan. This has been well managed and there has been no increase in disorder or incident.

Application has been made to operate the Club on Monday to Wednesday until 03.00hrs. There is already precedent within the Highland Licensing Board's area for such hours to be granted. In the view of the LSO the Club have demonstrated a sound ability to operate within the licensing objectives as a late hours venue. Several compliance visits carried out in the past have indicated a high level of licensing knowledge and adherence to the Operating Plan and conditions.

The LSO is of the opinion that should the Board be moved to grant the additional Licensing Hours there will be no threat to the Licensing Objectives.

Also within the application is a request to have the existing local condition requiring the use of plastic/polycarbonate glassware to be used from 21.00hrs on any evening the Premises operate late hours. In view of the Premise's trouble free operating history the LSO recommends that this could be relaxed without threat to the Licensing Objectives.

Timeous Objections to this application has been received from NHS and from the Highland Violence Against Women Strategy Group. In the view of the LSO the issues raised in the objections have already been fully debated when the Adult Entertainment activity was approved and was held not to contravene the Licensing Objectives. If the Operating Plan is approved as compliant with the Licensing Objectives for 4 days in the week it does not seem proportional to question its validity for the proposed extension.

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 combined Equality Scheme

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

Existing local conditions to apply with the removal of;

Local Condition (f).

Recommendation

The Board is invited to determine the above application.

Signature:

Designation: Clerk to the Licensing Board

Reference: HC/INBS/188

Date: 11th November, 2013

Author: Wendy Grosvenor

Background Papers: The Licensing (Scotland) Act 2005/Application Form. Licensing Board Policy Statement from 1 October 2013 to November 2016

Appendices:

- Objection from Gillian Gunn on behalf of Highland Violence Against Women Strategy Group; and
- Objection from Dr Margaret Somerville, Director of Public Health, Assynt House, Beechwood Park, Inverness IV2 3BW.

RECEIVED
8 - NOV 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:

Gillian Gunn (on behalf of the Highland Violence Against Women Strategy Group), Violence Against Women Development & Training Manager, Assynt House, Beechwood Business Park, Inverness, IV2 3BW	
Telephone Number:	01463 704724
Email Address:	Gillian.gunn@nhs.net

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

Private Eyes, 57 Academy Street, Inverness, IV1 1LU

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	We object on the grounds that we believe this application in contrary to the Licensing Objectives (see attached sheet) and in relation to the activities on the 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	
2.	seeking an amendment to the operating plan, or	
3.	seeking to add additional conditions to the licence	

Signature:..

... Date...8th November 2013

Objection to Private Eyes application for 'Adult Entertainment'

The Highland Violence Against Women Partnership objects to Private Eye's application to extend their opening hours. The Highland Licensing Board is already aware of the Highland Violence Against Women Partnership's (including the Highland Council) position in relation to 'adult entertainment' as a form of gender based violence and a threat to the achievement of gender equality. The Partnership's position statement is attached as Appendix 1.

Acceptance of Original Application

The original application for Hush Nightclub to host **occasional** 'adult entertainment' evenings was granted by the Highland Licensing Board in May 2013. Since then, despite assurances at the meeting that the 'adult entertainment' would not be held frequently, Hush Nightclub closed, re-branded as Private Eyes and was open five nights a week offering 'adult entertainment'. To extend opening of the premises to seven days a week concerns the Highland Violence Against Women Partnership greatly.

In particular, we are concerned about the even greater harm caused to women involved in lap dancing and in the local community in Highland by agreeing to extend Private Eye's opening hours. We already strongly believe lap dancing does breach the Licensing Objectives (with or without the sale of alcohol) and, therefore, we do not accept that opening hours should be extended to include every night of the week, every week of the year.

Previous research evidence submitted by the Highland Violence Against Women Partnership in relation to the harm caused by lap dancing clubs and their continuing perpetuation of gender inequality was not accepted, in full, by the Licensing Standards Officer as grounds to reject the application. We continue to note that research evidence is clear in relation to the impact on crime and disorder (particularly in view of the links to issues such as trafficking, sexual harassment and sexual violence) and public health, confirming that sexual exploitation is harmful both to the women and men involved, to the wider community and to the shared aim in Scotland and Highland of a more equal society.

Other areas in Scotland and across the UK take a much broader interpretation of the Licensing Objectives and the Licensing Board's legal obligations under the Equalities Act. Other areas demonstrate a commitment to promoting values such as equality and human rights and go beyond a purely legalistic interpretation of the powers of the Licensing Board. They apply this progressively and consistently across all their functions, recognising the intersections between Violence Against Women, the sex industry and licensing. We see no reason why the Highland Board cannot do the same.

We understand that the Licensing Board feels constrained by legislation in relation to decision making powers around a range of issues and that a motion is to be proposed by a Licensing Board member. We strongly urge the Board that if the motion is passed and that there are to be approaches made to COSLA and the Scottish Government, that the issue of the incompatibility of granting Licenses that include

'adult entertainment' with the Board's (and The Highland Council's) legal obligations under the Equalities Act is raised.

Continued Concerns

We note that 'jobs' for women to work in Private Eyes in Inverness continue to be posted on line on the sincityentertainment website. We remain concerned about the money that women are (and aren't earning) whilst self employed at the clubs and fear that increasing the opening hours on Wednesdays until 3am and to open until 3am on Mondays and Tuesdays (days on which the premises is currently closed) will result in more women being affected by this.

We have previously noted to the Board that according to the rates advertised on the 8th November on line for working in the club in Inverness, on a weekend night, where there are a maximum of 20 women working and they are paying £85 each to be there, 170 customers need to pay for a topless dance (assuming it's £10 as originally advertised) for them to break even. Before the doors have even opened for the club, the owners have received £1700 from the women themselves – that could be £3400 for a weekend. Opening hours are from 9pm until 3am. In order for all the women there on a weekend night to make the national minimum wage of £6.31 an hour for over 21s, 246 dances will have to be paid for by customers in the club – even more dances would need to be paid for in order for women to earn the Living Wage (determined to be £7.20 an hour by The Highland Council).

This does not include any costs that the women will have for outfits, accommodation or travel or for paying 'fines' to the management, which is common practice in the industry. Women in lap dancing clubs across the country are also expected to dance in the public areas, and at 'the pole' for **no** remuneration (and are sometimes fined if they don't) in order to 'advertise' themselves in the hope of attracting a customer willing to pay for a dance.

This is a low risk, high profit industry for the owners and managers. They make money **regardless** of whether there are customers present or not – this is one of the ways that the women involved in lap dancing are exploited.

Recent research evidence into how this industry exploits its employees shows that¹:

- Women falsely continue to perceive that working in lap dancing is flexible, cash in hand employment
- Dancers continue to try and undercut each other in what has been termed the 'race to the bottom', which involves breaking the conditions attached to licences including offering additional sexual services to try and make some money
- Owners profit from individual dancers through an exploitative system of fees and fines
- Lap dancing is a business with a low cost investment with high returns and little risk to club owners

We are concerned about the significant impact exposure to all forms of commercial sexual exploitation is having on young people and their relationships. Lap dancing clubs reinforce the concept of women's bodies being only for men's use and sexual

¹ Saunders (2013), "Devalued, Deskilled and Diversified: Explaining the Proliferation of Lap Dancing in the UK"; British Journal of Sociology

pleasure. This is damaging to sexual health and to our young people's sense of sexuality more generally.

The Highland Violence Against Women Partnership asks the Licensing Board to reject Private Eyes application to extend their opening days and hours.

- **Appendix 1**

Highland Violence Against Women Partnership Position Statement on 'Adult Entertainment'

Definitions

Adult Entertainment

The definition of 'adult entertainment' as outlined in "Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007" states:

" 'adult entertainment' means any form of entertainment which -
(a) involves a person performing an act of an erotic or sexually explicit nature; and
(b) is provided wholly or mainly for the sexual gratification or titillation of the audience."

Commercial Sexual Exploitation

"Safer Lives: Changed Lives", published by the Scottish Government and COSLA defines commercial sexual exploitation as:

"Activities such as pornography, prostitution, stripping, lap dancing, pole dancing and table dancing are forms of commercial sexual exploitation. These activities have been shown to be harmful for the individual women involved and have a negative impact on the position of all women through the objectification of women's bodies. This happens irrespective of whether individual women claim success or empowerment from the activity. It is essential to separate sexual activity from exploitative sexual activity".

It is important to note that 'commercial sexual exploitation' constitutes a form of Violence Against Women, as defined by the UN, World Health Organisation, Scottish Government and Highland Violence Against Women Partnership.

Introduction

The Highland Violence Against Women Partnership understands 'adult entertainment' and 'commercial sexual exploitation' as constituting the same sorts of activities. The Partnership adopts the term 'commercial sexual exploitation' in preference to 'adult entertainment' to highlight the harm caused by these activities and to link it to other forms of gender based violence such as prostitution, sexual violence and domestic abuse. We understand that the use of the word 'entertainment' in the latter definition minimises and negates the harm caused by commercial sexual exploitation. Therefore, our use of the term 'adult entertainment' will remain in quotation marks as we understand it to be a euphemism for commercial sexual exploitation.

Response to 'Adult Entertainment' Applications

In Highland, the partners working to end Violence Against Women agree that the appropriate response to applications from prospective Licensees for 'adult entertainment' is an objection issued on behalf of the partnership. We understand 'adult entertainment' to be contrary to the work we are pursuing towards achieving gender equality as well as detrimental to the achievement of the Licensing Board's 5 Objectives of:

- Prevent crime and disorder
- Secure public safety
- Prevent public nuisance
- Protect and improve public health
- Protect children from harm

We will continue to work with the Licensing Board to develop understanding of the issues and provide evidence of risk to achievement of the objectives. We will also support the Licensing Board to raise awareness of the issues in relation to gender equality with their licensees.

Single Agency Responses

The Violence Against Women Partnership involves a number of statutory and voluntary sector partners, including NHS Highland, The Highland Council, Police Scotland, Women's Aid Groups, Children 1st, Rape & Abuse Line, and Victim Support Highland. It is recognised that single agencies may wish to respond separately to applications to the Licensing Board that include reference to 'adult entertainment'. Some agencies also have specific responsibilities in relation to licensing and assessing suitability for activities on licensed premises.

The Highland Council

The Licensing Board is comprised of elected members and supported by Council staff. The Board, currently, does not determine whether or not 'adult entertainment' can take place at a premises. The Board determines whether or not alcohol can be sold during 'adult entertainment' – the applicant is seeking a liquor licence, not permission to hold 'adult entertainment'. The main test for the Board is in relation to the achievement of the Licensing Board's 5 Objectives (outlined above).

Police Scotland

Where a Licensing Board receives a premises licence application (this includes a variation to the Operating Plan which the introduction of the provision of 'adult entertainment' would be), the Board must give notice of the application to the Chief Constable (CC). The CC is limited on what he can base an objection, as the Licensing (Scotland) Act 2005 centres primarily on the regulation of the sale of alcohol. The only grounds for objection are under the licensing objectives. In this specific case, the test for the CC is whether or not he/she is of the opinion, which has to be evidence based, that one or more of the objectives would be adversely affected by the sale of alcohol during 'adult entertainment'. The CC can now also make representations where instances of antisocial behaviour have taken place on, or in the vicinity of, licensed premises. Where neither of these criteria are met, the CC cannot have a competent objection nor make representation.

NHS Highland

Specific guidance for health staff on how to work effectively with those affected by commercial sexual exploitation has been produced by NHS Scotland. This is available for staff on the NHS Highland intranet.

September 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:

Dr. Margaret Somerville, Director of Public Health, Assynt House, Beechwood Park, Inverness. IV2 3BW	
Telephone Number:	01463 704926
Email Address:	margaret.somerville@nhs.net

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

Private Eyes, 57 Academy Street, Inverness, IV1 1LU

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	I object on the grounds that we believe this application is contrary to the Licensing Objectives (see attached sheet) in particular 'protect and improve public health'.
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

Signature:...Margaret Somerville... .. **Date...**8 Nov 2013

Appendix 1: Objection to Private Eyes application for 'Adult Entertainment'

The Licensing Board has previously debated the application May 2013 for the Hush nightclub and agreed to grant the license because it is a license to sell alcohol rather than the adult entertainment activities carried out within the premises. I believe, from a Public Health perspective, that this links to the wider issues of the impact of alcohol in sexually exploitative situations such as created by Private Eyes either within the venue or elsewhere.

Furthermore I am concerned about the employment rights of women. I believe that the manner in which the Nightclub hires women is exploitative because of the fee (of around £85) they pay upfront to the Nightclub and the uncertainty they face in covering this cost every time they perform. There is evidence to show that Nightclubs see this fee as a source of income as well as the activity of adult entertainment and is therefore low risk to the nightclub owner and all the risk being carried by the women (Saunders 2013).

Finally, Highland Council has the power to promote or improve the well-being of their area and/or persons in it (Scottish Executive 2004). I object to this application because the Nightclub's activities will not promote or improve the wellbeing of the area and/or persons especially the women performing the lap dancing.

References

Saunders (2013), "Devalued, Deskkilled and Diversified: Explaining the Proliferation of Lap Dancing in the UK"; British Journal of Sociology

Scottish Executive (2014) Power to Advance Well-Being Guidance