

The Highland Licensing Board

Meeting – 17 December 2013

Agenda Item	9.14
Report No	HLB/165/13

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

The Waterfront Nightclub and Restaurant, 4 The Shore, Wick

Report by the Clerk to the Licensing Board

Summary

Ref: HC/CSER/1115

Premises: The Waterfront Nightclub and Restaurant, 4 The Shore, Wick

Applicant: Robert J Sutherland

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

1.0 Description of Premises

1.1 The premises tendered a conversion licence under the transitional provisions in 2009. The premises are licensed as a nightclub in Wick.

1.2 Current Core Operating Hours

On Sales:

Thursday 1100 hrs to 0100 hrs

Friday and Saturday 1100 hrs to 0200 hrs

Sunday 1200 hrs to 2345 hrs

Off Sales:

Thursday to Saturday 1100 hrs to 2200 hrs

Sunday 1200 hrs to 2200 hrs

2.0 Summary of Variation Application

2.1 1. Variation to On Sales Hours:

Monday to Wednesday 1100 hrs to 0100 hrs

Thursday to Saturday 1300 hrs to 0300 hrs

Sunday 1100 hrs to 0100 hrs.

2. Variation to Off Sales Hours:

Monday to Wednesday 1100 hrs to 2200 hrs.

3. Add seasonal variation to take advantage of any extended hours for the festive period as permitted by the Licensing Board.

4. Remove local condition (5) requiring the use of plastic glasses after 2100 hrs.

3.0 Background

3.1 On 10 October 2013 the Licensing Board received an application for a major variation of a Premises Licence.

3.2 The Board has advertised the application on the Council's website for a period of 21 days and the applicant has displayed a Notice on site for the same period.

3.3 In accordance with standard procedure, Police Scotland, Scottish Fire and Rescue Service, the Council's Environmental Health, Planning and Building Standards were consulted on the application.

Notification and a copy of the application have been sent to NHS Highland and to the Local Community Council.

3.4 A notice of the application has been sent to all the people listed under S21(1) of the Act.

3.5 No objections have been received in respect of the application.

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 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

- 5.1** The premises operate principally as a nightclub and comprise of a main dance area with bar counter known as The Waterfront and a separate smaller bar room, which may also be operated as a restaurant, known as Silver Darlings and which is also equipped to operate independently as a "nightclub". There is separate access to each of those areas from the street but it is also possible to move between the bars from inside the premises if permitted.
- 5.2** A site visit was made by the former CSER Divisional Board in connection with a variation application and they accepted that the facilities provided within Silver Darlings were sufficient so as to satisfy that Board's policy for late opening premises whether or not the main Waterfront Night Club part of the premises was in operation. While the significant entertainment facilities provided within the Silver Darlings part of the premises are less sophisticated than those within the main "nightclub" they are sufficient to satisfy the current Board's tests for late opening premises. Music and lighting are controlled by a DJ and there is a dedicated dance area (20m²) which equates to approximately 37.5% of the available floor space. Rearrangement of some informal seating can increase that area if required. The main "nightclub" is opened up according to demand or if in excess of 200 customers are present or are expected. Suggested late opening condition (o) that late opening may only be permitted when significant entertainment is taking place from no later than 2200 hrs will prevent any inappropriate advantage being taken of the Board's policy.
- 5.3** The additional hours applied for are within Board policy for standard and late opening premises subject to any local conditions imposed by the Board.
- 5.4** The addition of a seasonal variation is in line with Board policy.
- 5.5** Removal of the plastic glass condition is in accordance with Board policy in the absence of any argument for its retention.
- 5.6** In respect of the provision of adult entertainment as contained in the Premises Licence the applicant has advised me that such entertainment takes place infrequently and as part of pre-booked events or occasions such as hen and stag nights and fund-raising events. He wishes to retain the option to satisfy any occasional demand and is able to comply fully with the relevant adult entertainment conditions.

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 Suggested Conditions

7.1 Following from the Board's adoption of a new policy statement it may be appropriate to remove all existing local and adult entertainment conditions and substitute relevant conditions from the adopted lists of those conditions and add special conditions which relate to under 18 events. I have made the applicant aware of the suggested changes.

8.0 Adult Entertainment Conditions

- 8.1**
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.
 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.
 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.
 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.
 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 out with 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.

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.
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.
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.
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.

9.0 Local Conditions

- 9.1
 - a. Children under the age of 16 are excluded from any room where there is a bar counter after 2200 hrs 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. Children must not sit or remain at the bar counter at any time.
 - e. After 2100 hrs alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area.
 - g. Premises open for the sale of alcohol after 0100 hrs 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.
 - 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 hrs the following day, alcohol may be sold on the premises after 0100 hrs only while entertainment as detailed in the operating plan is being provided and has been provided continuously from no later than 2200 hrs.
- 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.

10. Special Conditions

1. During the hours of operation of any under 18 event on the Premises, a Personal Licence Holder shall be present on the premises for the duration of the event.
2. During the hours of operation of any under 18 event adequate stewarding by SIA registered personnel will be at all relevant entrances and egresses to the premises and within the premises.
3. 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.
4. During the course of any under 18 event all drinks shall be sold or served in plastic or polycarbonate glasses.
5. The CCTV system installed on the Premises shall be used during the duration of any under 18 event.

Recommendation

The Board is invited to determine the above application. The Board is invited to determine the above application, noting that the application for variation is within the policy adopted by the Board on 1 October 2013 as the Board's new policy for 1 December 2013 to 30 November 2016.

Designation: Clerk to the Licensing Board
Reference: HC/CSER/1115
Date: 3 December 2013
Author: G Sutherland

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