

The Highland Licensing Committee

Meeting – 17 December 2013

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| Agenda Item | 8.1 |
| Report No | HLC/085/13 |

Late Hours Catering Licences – Applications for Exemption (Ward 15 – Inverness Central)

Report by the Legal Manager

Summary

This Report relates to three requests received for exemption, under Section 42(5) of the Civic Government (Scotland) Act 1982, from the requirement to hold a late hours catering licence.

1.0 Background

1.1 The Highland Council has resolved that in terms of the Civic Government (Scotland) Act 1982 a licence will be required for the operation of a late hours catering premises. A licence is required where the premises are selling food during any of the hours between 11.00pm and 5.00am.

1.2 Section 42(5) & (6) of the abovementioned Act states that:

(5) A licensing authority may, on application made to them, exempt the use of premises requiring a late hours catering licence from the requirement to have such a licence —

(a) in respect of any particular occasion; or

(b) during a specified period not exceeding 2 months in any period of 12 months.

(6) The licensing authority may attach conditions to an exemption granted under subsection (5) above, and the provisions of Part I of this Act relating to the attaching of conditions to licences and subsection (3) above shall apply to the attaching of conditions to exemptions under this subsection.”

1.3 Three applications for exemption have been received in respect of the following premises:

- Zoom Takeaway, 23 Baron Taylor Street, Inverness.
- McDonalds Restaurant, 12-22 High Street, Inverness.
- Topkapi Takeaway, 44 Baron Taylor Street, Inverness.

2.0 Application 1 – Zoom Takeaway, 23 Baron Taylor Street, Inverness

2.1 Mr Mohammed Afif holds a late hours catering licence for the premises at Zoom Takeaway, 23 Baron Taylor Street, Inverness which expires on 23 September 2016.

2.2 The premises are currently licensed for the permitted policy hours for Inverness City Centre late hours catering premises these being:

Wednesday to Sunday – to 3.00am
Monday and Tuesday – to 12 midnight

2.3 On 29 November 2013 a request was received from Mr Afif via his agent, MacLeod and MacCallum Solicitors, for exemption from the requirement to hold a licence under Section 42(5) of the abovementioned Act.

2.4 A copy of the letter from MacLeod and MacCallum Solicitors is attached in Appendix 1 and details the days and hours for which the exemption is sought, these being

- To 4.00am from 18 December 2013 to 4 January 2014 (both dates inclusive).

3.0 Application 2 – McDonalds Restaurant, 12-22 High Street, Inverness

3.1 Mr Craig Duncan holds a late hours catering licence for the premises at McDonald's Takeaway, 12-22 High Street, Inverness which expires on 14 March 2016.

3.2 The premises are currently licensed for the following hours:

Sunday to Wednesday – to 12 midnight
Thursday to Saturday – to 3.00am

3.3 On 2 December 2013 a request was received from Mr Duncan seeking exemption from the requirement to hold a licence under Section 42(5) of the abovementioned Act.

3.4 A copy of the letter from Mr Duncan is attached in Appendix 2 and details the days and hours for which the exemption is sought, these being

- 21, 22 28 and 29 December 2013 - to 4.00am.

4.0 Application 3 – Topkapi Restaurant, 44 Baron Taylor Street, Inverness

4.1 Mr Enbiya Kilig holds a licence for the premises at Topkapi Takeaway, 44 Baron Taylor's Street, Inverness which expires on 8 November 2015.

4.2 The premises are currently licensed for the permitted policy hours for Inverness City Centre late hours catering premises these being:

Wednesday to Sunday – to 3.00am
Monday and Tuesday – to 12 midnight

4.3 On 3 December 2013 a request was received from Mr Kilig seeking exemption from the requirement to hold a licence under Section 42(5) of the abovementioned Act.

4.4 A copy of the letter from Mr Kilig is attached in Appendix 3 and details the days and hours for which the exemption is sought, these being

- To 4.00am from 23 December 2013 to 2 January 2014 (both dates inclusive).

5.0 **Consultation**

5.1 Following receipt of these requests a copy of the same was circulated to the following Agencies/Services for consultation:

- Police Scotland
- Scottish Fire & Rescue Service
- Highland Council Environmental Health Service

5.2 Due to the short consultation period any responses received will be tabled at the meeting.

6.0 **Conditions**

6.1 As detailed in Paragraph 1.2 above if the Committee are minded to grant the exemptions the Act permits the Licensing Authority to attach conditions to the same. Attached in Appendix 4 are the standard licence conditions for late hours catering licences within Inverness City Centre which Members may wish to apply to any exemptions granted together with any additional conditions suggested by Consultees or as Committee may decide.

7.0 **Policies**

7.1 The following policies are relevant to this case:

Standard Late Hours Catering Licence conditions. A copy of these can accessed at:

www.highland.gov.uk/businessinformation/licensing/civicgovernmentlicensing

or a hard copy can be supplied where requested.

The Highland Licensing Board's Festive Season Policy which can be accessed at:

<http://www.highland.gov.uk/NR/rdonlyres/B31EFAE1-7E03-48E4-8246-09286B6A9964/0/201314FestivePolicy.pdf>

or a hard copy can be supplied where requested.

The Festive Season Policy, *inter alia*, states that applications for extended permitted hours will generally be granted to 4.00am for late night opening premises during the period from 13 December 2013 to 2 January 2014 (i.e. it ends on the morning of 3 January 2014).

8.0 Comment

- 8.1** The application from Zoom Takeaway is for a period greater than the period covered by the Licensing Board's Festive Season policy.
- 8.2** During the period covered by the Licensing Board's Festive Season policy only one late night opening venue has been granted or given notice that they intend to implement the extended permitted hours to 4.00am during the entire period.

9.0 Recommendation

- 9.1** Members are **invited** to determine the requests for exemption.

Designation: Legal Manager

Officer Reference: Michael Elsey

Date: 3rd December 2013

Background Papers: Civic Government (Scotland) Act 1982

Appendix 1 - Letter from MacLeod & MacCallum Solicitors

Appendix 2 - Letter from Craig Duncan

Appendix 3 – Letter from Enbiya Kilig

Appendix 4 – Copy of current Late Hours Catering Conditions (Inverness City Centre)

Appendix 5 – Late night liquor premises during the Festive Period



Macleod & MacCallum

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DELIVERY

Michael Elsey, Esq,
Senior Licensing Officer,
Highland Council,
Town House,
INVERNESS.
IV1 1JJ

Our Ref GPW/RM/A.516.8

Your Ref

28 November 2013

FILED
29 NOV 2013

Dear Sir,

Zoom Limited

Zoom Takeaway, 23 Baron Taylor Street, Inverness

We are instructed by Zoom Limited, proprietors of Zoom Takeaway, 23 Baron Taylor Street, Inverness. Our clients currently hold a late hours catering licence for these premises. As you will be aware, the current licensed hours for these premises are Mondays and Tuesdays to 12 midnight, and Wednesdays to Sundays to 3am.

Our clients wish to be able to stay open to serve customers who are leaving late night licensed premises in accordance with the Highland Licensing Board festive season policy which will allow late night premises to open until 4 am during the period from 13 December 2013 until 2 January 2014.

You have advised that it is not technically possible for our clients to apply for variation of their late hours catering licence to include these additional hours in respect of that period. We assume that it is not the Licensing Committee's intention that LHC premises should all be closed one hour before the licensed night clubs close for business, as there is a proven demand as well as recognised public order, health and safety benefits in food and other refreshments being available to patrons when they leave night clubs.

We therefore hereby apply for the committee to make an exemption in terms of Section 42 (5) of the Civic Government (Scotland) Act 1982 for the use of the premises for the sale to or consumption by the public of meals or refreshment during the following hours:-

| | |
|-----------------------------------|--------------------|
| 18 December 2013 | 12 midnight to 4am |
| 19, 20, 21, 22 & 23 December 2013 | 3am to 4am |
| 24 & 25 December 2013 | 12 midnight to 4am |
| 26, 27, 28, 29 & 30 December 2013 | 3am to 4am |
| 31 December 2013 & 1 January 2014 | 12 midnight to 4am |
| 2, 3 & 4 January 2014 | 3am to 4am |

Law Society of Scotland Accreditations:

Morag S. MacIntosh - Specialist in Family Law
Fiona J. Campbell - Specialist in Family Law and a Family Law Mediator
Graham R. Laughton - Specialist in Personal Injury Law David Findlay - Specialist in Crofting Law

Fiona J. Campbell and Morag S. MacIntosh are accredited Collaborative Family Lawyers & Fiona J. Campbell is a Family Law Arbitrator

Please let us know if you require any further information in connection with this application, otherwise we should be pleased if you could confirm that it will be considered at the Licensing Committee Meeting on 17 December 2013.

Yours faithfully



RECEIVED
2 - DEC 2013

Dear Sir,

McDonald's Restaurant, 12-22 High St, Inverness

As you will be aware I currently hold a Late Night catering Licence for my premises at 12-22 High St Inverness. That licence allows me to operate till midnight Sunday to Wednesday and till 3am on Thursdays, Fridays and Saturdays.

I wish to stay open and serve customers who are leaving late night licenced premises in accordance with the Highland Licencing Board festive season policy which will allow late night premises to open until 4am during the period from 13th December 2013 until 2nd January 2014.

You have advised that it is not technically possible for me to apply for variation of my late hours catering licence to include these additional hours in respect of that period. I assume that it is not the Licencing Committee's intention that LHC premises should all be closed one hour before the licenced night clubs close for business, as there is a proven demand as well as recognised public order, health and safety benefits in food and other refreshments being available to patrons when they leave night clubs.

I therefore hereby apply for the committee to make an exemption in terms of Section 42 (5) of the Civic Government (Scotland) Act 1982 for the use of the premises for the sale to or consumption by the public of meals or refreshment during the following hours:-

| | |
|---------------------------|------------|
| 21 st December | 3am to 4am |
| 22 nd December | 3am to 4am |
| 28 th December | 3am to 4am |
| 29 th December | 3am to 4am |

Please let me know if you require any further information in connection with this application, otherwise I would be pleased if you could confirm that it will be considered at the Licencing Committee Meeting on 17th December 2013.

Regards

Craig Duncan
Franchisee

RECEIVED

3 - DEC 2013

3. December 2013

To Highland Council Late hours catering
Licence department.

Dear; Madam, Sir

I am applying to Section 42-5 Civic
Government Scotland act 1982. For Topkapi
Kebab and pizza house take away, 44 Boran
Taylor street IV1 1GF INVERNESS.

I would like to extend our late hours
catering licence during Christmas month,
Between 11 pm to 4 am from 23rd
December 2013 to the 2 of January
2014.

Faithfully

Enbya KILIG

THE HIGHLAND COUNCIL
CIVIC GOVERNMENT (SCOTLAND) ACT 1982

LATE HOURS CATERING LICENCE: SCHEDULE OF CONDITIONS

1. The trader shall not trade in the Highland Council Area as a late hours caterer other than in or from the premises specified in the licence.
2. The trader shall be permitted to trade - [as per current licence conditions]
 - (a) during the hours of to on for the sale of meals or refreshments for consumption on the premises, and /or
 - (b) during the hours of to on for the sale of meals or refreshments for consumption off the premises, from to inclusive.
3. The trader shall comply with any order or instruction given by a constable or an authorised officer of the licensing authority for the prevention of annoyance to the public or to the occupiers of any premises or in connection with any emergency or disturbance or on any occasion when such constable or officer in his direction may consider it necessary in the public interest to give such order or instruction.
4. The trader shall display the licence on the premises to which it relates and shall not in any way alter, erase or deface his licence.
5. The trader shall make arrangements to the satisfaction of the licensing authority for the disposal of litter or other refuse arising from his undertaking.
6. Any trader who holds a licence as a street trader shall also comply with all conditions of such licence, not inconsistent with this licence, as if such conditions were conditions of his late hours catering licence.

Additional Conditions for premises open after 1.00am in settlements which have late opening liquor licences (i.e. after 1.00 am)

7. The trader shall make arrangements to the satisfaction of the licensing authority for the disposal of litter or other refuse arising from his undertaking and will, during operating hours, at the close of business each day and at any other times designated by officers authorised by the Licensing Authority (hereinafter referred to as "Authorised Officers"), collect and remove all litter within a 50m radius of the premise, and sweep the area or pavement outside

his/her premises, that is to say sweep and thereafter remove and dispose of all waste and detritus from the area bounded by premises frontage to the kerb or similar structure.

8. The trader will regularly wash (and at least once weekly) or otherwise cleanse, the area or pavement outside his/her premises, to remove stains, grease, chewing gum etc or to a frequency agreed with Authorised Officers.
9. Steward(s) to be provided at the premises from 11.00pm until the premises close.

Additional Condition for Inverness Premises Only

10. The trader shall hold membership of the Radio Link scheme throughout the term of the licence.

Appendix 5

List of Premises open after 01.00 hrs in the INBS Area for the Festive period:

| Name | Address | Seasonal Variation | Applications /notification |
|------------------------------|---|--|---|
| Johnny Foxes & The Den | Bank Street, Inverness | None on licence | Extended hrs application recvd. To 4 am for entire festive period |
| Vinyl & Play | 9-21 Castle Street, Inverness | YES No notification received | No extension received |
| Private Eyes | 55 Academy Street, Inverness | Applied for at Dec. Board To 4am all days apart from 16 th Dec | Notification received |
| Miami | Baron Taylor Close, 39 High Street, Inverness | NO | No extension |
| Karma Lounge (formerly Nova) | 5-9 Young Street, Inverness | NO | Extension received.to 4am 13,14,20,21,27,28,31 Dec 2am 15,16,17,18,19,22,23,24,25, 26 29,30 Dec |
| UV | Rose Street, Inverness | NONE | No extension |
| Hootananny/ Sofa Bar | Church Street, Inverness | NONE | No extension |
| Ironworks Inverness | 122B Academy Street Inverness IV1 1LX | NONE | No extension |
| Winking Owl | 123 Grampian Road, Aviemore | | |
| Vault | Basement, 96 Grampian Road, Aviemore | | |