

## The Highland Licensing Board

Meeting – 17 June, 2014

Agenda Item	9.1
Report No	HLB/075/14

### Application for the Provisional Grant of a Premises Licence under the Licensing (Scotland) Act 2005

#### Report by the Clerk of the Licensing Board

##### Summary

**Ref: HC/INBS/562**

This Report relates to an application for the Provisional Grant of a Premises Licence for:

**Premises:** Harleys Cocktail and Grill Bar, 19 Leopold Street, Nairn IV2 4BE

**Applicant:** Richard Sharp, c/o Harleys Cocktail and Grill Bar, 19 Leopold Street, Nairn IV2 4BE

#### 1.0 Background

##### 1.1

The premises were previously licensed under the 1976 Act, and known as the Regal Lounge - a semi-detached building situated in the town centre of, Nairn. It has been re-developed and now comprises a Lounge Bar with separate toilet facilities, and a Public Bar with a separate entrance and separate toilet facilities. There is disabled toilet provision. The premises have a fully fitted kitchen, cellar area, dry store and office.

- 1.2 On 5 March 2014 the Licensing Board received an application for the provisional grant of a Premises Licence from the applicant, Mr Richard Sharp, 14 Couthally Terrace, Carnwath, ML11 8HY.

The application was accompanied by the necessary Section 50 Certification in terms of Planning and the statutory fee.

- 1.3 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 (10 March 2014 to 31 March 2014). Confirmation of display of the Site Notice has been received.

- 1.4 In accordance with standard procedure, Police Scotland, Highlands and Islands Fire and Rescue Service, The Council's TEC Services (Environmental Health), and 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.

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

1.5 A letter of objection to the application was received from Mr Iain Bain, Rosebank House, Leopold Street, Nairn IV12 4BE on 31 March 2014. This was made available to the Licensing Board Meeting of 13 May 2014.

## **2.0 Legislation**

2.1 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 ground of refusal may be –

1. The premises are excluded premises;
2. The grant of the application will be inconsistent with one or more of the licensing objectives,
3. that having regard to; (i) the nature of the activities 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 the sale of alcohol.
4. that having regard to the number and capacity of licenced premises of the same or similar description in the locality, the Board considers that if the application were to be granted, there would, as a result be over-provision of licensed premises of that description in the locality.

2.2 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.

## **3. Summary of Application**

**On Sales:** Monday to Thursday 11.00 hrs to 24.00 hrs,  
Friday to Sunday 11.00 hrs to 01.00 hrs

## **4. Policies**

The following policies are relevant to the application:

Highland Licensing Board Policy Hours

Highland Licensing Board Policy Statement

The Highland Licensing Board combined Equality Scheme

Schedule of Local Conditions

## **5 Licensing Standards Officer's Comments:**

5.1 Application has been made by Mr Richard Sharp for a Provisional Licence for these Premises which were formerly licensed as the Regal Lounge under the for Licensing (Scotland) Act 1976 and which have been vacant and unused for a number of years. Substantial renovation and rebuilding work has been undertaken.

The Applicant has submitted the relevant Section 50 Certificate in respect of planning. He has submitted a Provisional Premises Licence Application which is within the Policy of the Highland Licensing Board. The Application has been reviewed by the LSO and it is seen to be a competent application within the current policy provisions in respect of hours operated by the Highland Licensing Board.

Mr Sharp has obtained the necessary Personal Licence to enable him to act as the Premises Manager. Baby changing facilities have been installed.

During the statutory consultations carried out by the Board in respect of the application, a letter of representation has been received from an occupier of neighbouring property namely Mr Iain Bain, Rosebank House, Leopold Street, Nairn. Mr Bain has made representation on the grounds of Licensing Objective 3 concerning preventing public nuisance. Under previous ownership, Mr Bain had experienced considerable noise nuisance and as the activities of Recorded music, Live Performances and Dance facilities he has concerns that such issues may manifest themselves again, especially as the Premises has single glazing on a number of full ceiling to floor windows. A specific condition requiring doors and windows to be closed during such performances has been proposed.

The applicant and Mr Bain have met and discussed issues and although concerns have been reduced to an extent, Mr Bain still wishes to register his representation.

Mr Bain has also alluded to the potential for noise issues to be caused by smokers utilising the pavement area on Leopold Street, adjacent to his property. This in the view of the LSO is a legitimate concern but one which could be negated by the diligence of the applicant in managing his customers to use an area adjoining King Street which is a commercial district as opposed to a residential one.

In finding a way forward, a noise self-assessment has been sent to Mr Sharp to complete and return, giving details of how he and the Licence Holder will manage/reduce potential noise nuisance issues.

Following the Board's deferral of this application at their last meeting on 13 May, 2014 pending completion of a noise assessment by the Applicant, the LSO met with the Applicant at the Premises on Thursday, 29 May, 2014.

The Applicant has completed and submitted a noise management plan, a copy of which is attached to this Report, covering the use of the smoking area on King Street and also the control of the volume of music inside the Premises. The Premises comprise of two customer areas. The first is a substantial all seated restaurant area to the front of the Premises. This is accessed via double swing doors which are fitted with self-closing mechanisms to prevent inadvertent opening. The Premises have also been equipped with air conditioning in order to maintain customer comfort without having to open windows and doors during the hotter months. Background

music will be played for customers benefit in the restaurant; this was put on during the LSO's visit and no external noise could be detected by the LSO when standing outside the Premises.

The second customer area is a Public Bar. This is virtually a room within a room, as it is in the centre of the building, with other rooms surrounding it. Sound proofing has been incorporated within the walls of the bar. Again the Applicant was asked to put on the sound system to a level reflective of what would be played for customers' benefit. Whilst this was loud within the bar, when standing outside the Premises on Leopold Street, where the complainer lives, no external sound could be heard. There is also no access door from the bar out onto Leopold Street.

In summation, should music be played at the levels which were occasioned during the LSO's visit, then no conflict in respect of the Licensing Objectives is foreseen by the LSO.

The smoking area on King Street was also reviewed. It provides a sheltered alcove for customers as far removed as is possible from Leopold Street. Bespoke signage and ashtrays have been commissioned. Internal information via signage inside the Premises will direct customers to this area and staff training will incorporate an element of awareness of use of this area and the need for staff to be vigilant to enforce its use. CCTV is also installed which will help ongoing monitoring.

## **6 Local Conditions**

The following Local Conditions are recommended by the LSO for attaching to this Licence if the Board are minded to grant:

- 6.1 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. Objective 5
- 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. Objective 5.
- 6.2 c) Notwithstanding condition (b) children must not sit or remain at the bar counter at any time. Objective 5.
- 6.3 h) Dartboards and any pool table will be situated in a location to be approved by the Licensing Standards Officer. Objective 2 and 5.

### **Specific Conditions.**

During any Live Performance or playing of Recorded Music all windows and doors are required to be shut. Objective 3.

## **7 Mandatory Conditions**

- 7.1 If the application is approved the Mandatory Conditions set out in Schedule 3 of the Act will apply.

## **8 Recommendation**

The Board are invited to determine the application and the proposed Local Conditions detailed at Paragraph 6 above.

Designation: Clerk of the Highland Licensing Board

Reference: HC/INBS.562

Author: Wendy Grosvenor

Date: 30/05/2014.

Background Papers: The Licensing (Scotland) Act 2005.

Noise Management Checklist- TEC Services- Environmental Health.

Noise Management Plan- Harley's Cocktail Bar and Grill.

Appendices: Letter of objection from Mr I Bain  
Noise Management Plan



## **NOISE MANAGEMENT PLAN**

### **INTERNAL MUSIC, TV ECT**

#### **FRONT BAR/RSTAURANT**

Music in this part off the bar will only be background music there are 6 small speaker located around the room away from doors and windows. There area also 2 sets of double doors with self closing devices on the main entrance which will reduce any noise coming from restaurant staff will monitor music levels. All windows and fire exits will be kept closed.

#### **BACKBAR**

There will be music, jukebox, pool table and DJ Friday and Saturday night in here there are 4 medium sized speakers in here. This room has had sound proofing to a certain level there are no windows or door direct to the outside from in here. This room is effectively a room inside a room fire exits will be kept closed at all times unless in an emergency and staff will monitor music levels.

### **DELIVERIES AND COLLECTIONS**

These will be limited to times from 0700-1800 hours during weekdays only and as far away from residents as possible cellar deliveries will be made on king street.

### **SMOKING AND SHELTERS**

Smoking outside harleys will be on king street and as far away from residents as possible there is a sheltered area which will have ash trays and be monitored by CCTV on a Friday and Saturday night this area will be monitored my stewards will be kept clean daily staff will be trained to direct customers to the sheltered area for smoking which will also be clearly signed

### **CUSTOMERS**

#### **FRONTBAR**

There will be a zero tolerance to anti-social behaviour drinking will not be permitted outside CCTV will be in use and will work with local taxi company to disperse of customers as quickly as possible at the end of an evening.

#### **Back bar**

There will a zero tolerance to anti-social behaviour drinking will not be permitted outside Friday Saturday night door steward will monitor customers and smoking area there is also CCTV in use to deter any anti-social behaviour also working with local taxis to disperse at the end of an evening

### **BOTTLE RECYCLING**

All empty bottles will be put into recycle bins between 0900-1900 hours

### **CONSIDERATIONS**

HARLEYS is situated in the town centre of nairn very little residents live near by in the immediate vicinity of HARLEYS there is the A96, bus station, fire station and police station

RECEIVED  
31 MAR 2014

ROSEBANK HOUSE,  
LEOPOLD ST,  
NAIRN,  
NAIRNSHIRE,  
IV12 4BE

TEL. 01667 452356

March 27, 2014

The Clerk,  
Highland Licensing Board,  
Town House,  
High Street,  
Inverness IV1 1JJ

Dear Sir,

**Application for a provisional grant of licence at Harley's Cocktail Bar and Grill,  
19 Leopold St., Nairn, IV12 4BE by Mr Richard Sharp**

I write to express my concerns regarding the above licence application in respect of Harley's Cocktail Bar and Grill (formerly The Regal Bar) by Mr Richard Sharp. These focus on the disturbance which the proposed operation may create. They essentially follow the points I have made in earlier objections to applications for occasional licences at these premises. My contention is that this is inconsistent with licensing objectives in that a public nuisance may be created. The character and condition of the premises is a related issue as to their suitability. I base my comments on my experience as a neighbour of previous operations of the Regal Bar. I accept that Mr Sharp is taking a somewhat different approach initially but I do not think adequate steps have been taken to control noise from the premises.

I am a near neighbour to the site and my house is directly opposite to the former Regal complex on the opposite side of Leopold Street.

I should stress that I do not object to the principle of a catering establishment here. In fact the premises were erected in the late 1930s as the Regal Tea Room. They also have some history as licensed premises with a small bar being established in the late 1960s or very early 1970s to cater for clients of the then Regal's bingo club.

But in latter years the original bar came to occupy all the premises and with an adjacent disco it became a very noisy establishment indeed. In the late 1980s I objected on several occasions to the management when noise pervading the street became untenable. When Mr Tommy Tweedie took over in the early 1990s, I was asked by Mr Robert Smith, the then manager of Dallas Jewellers (now Brambles) to accompany him on a visit to Mr Tweedie to express our concerns about noise. Mr Smith lived in the house above the jeweller's shop and represented a number of residents on that side of the street who had been upset by the noise from the Regal.

Mr Tweedie listened to us but while he ceased to run regular discos, musical performances were then undertaken in the main bar area which were actually worse. It was my personal belief that the large windows, which are probably the 1930s originals, did not provide adequate sound-proofing. The situation was exacerbated when windows and the door were left open in the summer and for ventilation if the place was busy. Over the years through the 1990s and into the 21<sup>st</sup> century I complained regularly to both the Regal management and to the police regarding noise from the building, up to the point when the bar was finally closed some years ago

My concern now is that in the refurbishment presently being undertaken nothing has been done to address noise emission. The windows are still the same and have only received cosmetic treatment. A louvered window facing my property still exists and no doubt will be used again to provide ventilation.

Since Mr Tweedie's time the law regarding smoking has changed and licensed premises commonly have outside areas where smokers can gather. There has been no indication where Harley's smokers may congregate and I am concerned that this may well be in Leopold Street, creating more disturbance. I am aware that the curtilage of the property extends over part of the pavement area in Leopold St adjacent to the bar and this may be used for this purpose.

I note that in recent applications for a new licence at The Playhouse and for developments at the Braeval Hotel considerable attention has been paid to the control of noise and for the provision of smoking areas. There appear to have been no planning applications in regard to the present refurbishment at the Regal/Harleys. Perhaps they are not required but I believe the Board should be concerned about potential noise emissions and the eventual location of the smokers' area.

Yours faithfully,

Iain Bain