

The Highland Licensing Board

Meeting – 12 August 2014

Agenda Item	11.3
Report No	HLB/095/14

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

The Playhouse, Church Street, Nairn IV12 4AP

Report by the Clerk to the Licensing Board

Summary

REF: HC/INBS/302

This Report relates to an application for a Major Variation of Premises Licence.

Premises: The Playhouse, Church Street, Nairn IV12 4AP

Applicant: Peter Gerald Moore, Second Floor Flat, 36 High Street, Nairn IV12 4AU
per Lorna Murray Solicitor, 45 Culduthel Road, Inverness IV2 4HQ

1 Description of Premises

On and Off Sales

Lounge bar and late night entertainment venue occupying part of the ground floor in a commercial area in the centre of Nairn. The premises trade as a lounge bar offering meals and every Friday and Saturday evening from 22.00 hrs offer a mixture of live music and DJ entertainment, to cater for the late night economy. The premises have a substantial dance floor and professional sound and lighting facilities.

1.1 Existing Core Operating Hours

On Sales:

Monday to Wednesday: 11.00 hrs to 24.00 hrs

Thursday: 11.00 hrs to 01.00 hrs

Friday and Saturday 12.00 hrs to 02.00 hrs

Sunday: 11.00 hrs to 00.30 hrs

Off Sales:

Monday to Thursday and Saturday 11.00 hrs to 22.00 hrs

Friday and Saturday 12.00 hrs to 22.00 hrs

2 Summary of Variation Application

2.1 Variation Sought

1. Local Condition k: amend time for cessation of live music to 2.45 hrs (or such other time as specified by the Board) on those days when the premises are licensed until 03.00 hrs).

2. Operating Plan:

On sale hours on Fridays and Saturdays to commence at 11.00 hrs and to continue until 03.00 hrs the following day.

On sale hours on Sundays to continue until 01.00 hrs the following day.

3 Background

- 3.1 On 6 June 2014 the Licensing Board receipted an application for a major variation of a Premises Licence on behalf of the applicant, from the applicant's agent, Lorna Murray, Solicitor.
- 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 (30 June to 21 July 2014). Confirmation of display of the 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), and Planning and Building Standards were consulted on the application.
Notification and a copy of the application have been sent to NHS Highland, and the local Community Council.
- 3.4 Notice of the application has been sent to and all the people listed under S21 (1) of the Act.
- 3.5 The Highland Council's Planning Department have submitted a report which highlights Condition 4 in the Planning Permission granted for this premises, which details a stipulation for noise levels which may not be exceeded after 23.00 hrs (Appendix 1 attached). A copy has been forward to the applicant's agent.
Three letters of support have been received (Appendix 2 attached) in support of the application, from Ms Wilma Wilson, 1 Portland Terrace, Church Street, Nairn; Ms Debbie Smith, 11 Portland Terrace, Church Street, Nairn and Mr Raymond MacGregor, 2 Portland Terrace, Church Street, Nairn.

No objections have been received in respect of the application.

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. that the grant of the application will be inconsistent with one or more of the licensing objectives;
2. that having that 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. that 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 Licensing Standards Officer's Comments

The Playhouse, Nairn is a Lounge Bar/Live entertainment venue situated in Church Street Nairn. The Premises have a satisfactory operating history and Peter Moore one of the connected persons holding the Premises Licence is chair of the local Pub Watch.

Currently the Premises enjoy Late Opening Hours on Fridays and Saturdays when live entertainment is provided on the Premises. The Premises have a purpose designed stage area and dance floor. Compliance visits have been carried out by the LSO and have revealed a high degree of compliance with all conditions attached to the Premises Licence including the Mandatory Late Night Conditions.

Application has now been made to increase the trading hours on Friday and Saturday until 3am. The Premises are in a mixed commercial and residential area and the Operators are very pro-active in liaising with nearby residents to ensure their Premises cause as little disruption as possible.

In addition, the applicant seeks to allow trading from 11.00 hrs on Fridays and Saturdays. Whilst there is little doubt that the customers at this hour of the day will not be the same customers during the later operating hours, this does create the prospect of a 16-hour trading day which is outwith the current Policy Hours contained within the Board's existing Policy Statement. This has been brought to the Applicant's attention who state that if necessary they would be willing to compromise on this aspect of the application when heard by the Board.

In line with Board Policy Sunday trading is asked to continue until 1.00am.

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

The existing Local Conditions attached to the Premises Licence shall continue to apply.

Local Condition K will be required to be altered if the Application is granted to read as follows:

“Any music or live performance will cease at 02.45hrs (or another such time as specified by the Board).

8 Recommendation

The Board is invited to determine the above application.

Designation: Clerk to the Licensing Board

Reference: HC/INBS/507

Date: 23 June 2014

Author: Wendy Grosvenor

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

Licensing Board Policy Statement from 1 December 2013 to November 2016

Appendix 1: Representation from Planning

Appendix 2: Letters of support

PLANNING PERMISSION

Reference No: 10/03011/FUL

To:
Mr Peter Moore
Per Agent

Per:
Ashley Bartlam Partnership
41 Moss Street
Elgin
IV30 1LT

Town & Country Planning (Scotland) Act 1997 as amended by the Planning Etc. (Scotland) 2006 Act

DECISION NOTICE

**Proposed Change of Use From Nairn County Social Club to Public / Sports Bar
Nairn County Social Club Church Street Nairn IV12 4AP**

The Highland Council in exercise of its powers under the above Acts **grants planning permission** for the above development in accordance with the particulars given in the application and the following plans/drawings:

Type of Plan	Plan Number	Version No.	Date Plan Received
General Plan	1/1		13.07.2010

This permission is granted subject to the following conditions: -

- (1.) The development to which this planning permission relates must commence within **THREE YEARS** of the date of this decision notice.

Reason In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.

- (2.) No development shall start on site until the completed Notice of Initiation of Development (NID) form attached to this planning permission/approval of matters has been submitted to and acknowledged by the Planning Authority.

Reason In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.

- (3.) Upon completion of the development the completed Notice of Completion form attached to this decision notice shall be submitted to the Planning Authority.

Reason In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.

- (4.) Noise generated by the provision of musical entertainment on the premises, when measured or calculated at any other noise sensitive premises must not result in: the interval levels exceeding:- a. 40dBA Laeq (1hour), between 0700 hours and 1900 hours b. 35dBA Laeq (1 hour), between 1900 hours and 2300 hours c. 30dBA Laeq (1 hour),

Dated: 7th October 2010

Area Planning Manager

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between 2300 hours and 0700 hours ii) Any increase in the internal ambient noise level in the 63 and 125 hertz octave bands, measured or calculated as a one minute unweighted Leq between 2300 hours and 0700 hours. A greater than 5 decibel increase in the internal ambient noise level in the 63 and 125 hertz octave bands, measured or calculated as a one minute unweighted Leq between 1900 hours and 2300 hours. To demonstrate compliance with this Condition, the applicant shall submit a noise management plan for the premises, including the external smoking areas. The noise management plan must identify how the noise is to be monitored and ensure that suitable noise control measures are in place and maintained all to the satisfaction of the planning authority and prior to the implementation of the use hereby granted permission.

Reason: To ensure the development hereby approved conforms with current legislation and in the interest of amenity.

- (5.) All plant, machinery and equipment associated with ventilation, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that any associated operating noise does not exceed NR 20 when measured or calculated within any noise sensitive premises with windows open for ventilation purposes.

Reason: In the interest of amenity.

- (6.) The use hereby granted shall not be implemented until a kitchen extraction system for the effective removal and dispersal of cooking odours from the premises, has been designed and installed and thereafter effectively operated and maintained in order that cooking odours are not detectable, as far as reasonably practicable, at any neighbouring premises.

Reason: In the interest of amenity.

- (7.) Prior to the premises being brought into use for the purpose hereby permitted, a scheme providing for adequate storage of refuse from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and thereafter retained at all times.

Reason: In the interest of amenity.

- (8.) Except as otherwise provided by the terms of this permission, the developer shall construct and operate the development in accordance with the plans and supporting information submitted with the application and docquetted as relative hereto with no deviation therefrom unless otherwise approved in writing by the Planning Authority.

Reason: In order to clarify the terms of the permission hereby granted and to ensure that the development is implemented as approved.

Note to Applicant Please note: Your attention is drawn to the conditions attached to this permission. Any preconditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to meet these conditions may invalidate your permission or result in formal enforcement action.

Dated: 7th October 2010

Area Planning Manager

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Variations

During the processing of the application the following variations were made to the proposal:

1. None.

Section 75 Agreement

An Agreement in terms of Section 75 of the 1997 Planning Act relates to this development. The terms of the Section 75 Agreement are as follows:

1. None.

The full Section 75 Agreement can be inspected at the relevant planning office.

Building Regulations

Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at Building.Standards@highland.gov.uk or on 01349 886608.

NOTIFICATION TO APPLICANT

1. If the applicant is aggrieved by the decision of the planning authority –
 - a to refuse planning permission for the proposed development;
 - b to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission;
 - c to grant planning permission or any approval, consent or agreement subject to conditions;

the applicant may appeal to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months beginning with the date of this notice. The notice of appeal should be addressed to:

Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

Appeals can also be lodged online via the ePlanning Portal at
<https://eplanning.scotland.gov.uk/WAM/>

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Area Planning Manager

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2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

Dated: 7th October 2010

Area Planning Manager
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PEFULZ

RECEIVED
21 JUL 2014

1 Portland Terrace
Church Street
Nairn
IV12 4AS

01667 459377

To whom it may concern

As a near neighbour of the Playhouse, Church Street I would like to advise you that I have absolutely no objection to their application for a 3am extension to their license.

I have never been aware of any noise or disturbance coming from the Playhouse at any time. (unlike the other establishments on Church Street whose noise level is frequently unacceptable)

The Playhouse is a well ordered and well run amenity. The security guards outside at all times are polite and helpful and in my opinion give a welcome sense of security to Church Street.

If any further information should be required please contact me on the above telephone number.

Yours sincerely

Wilma Wilson

RECEIVED
21 JUL 2014

11 Portland Terrace
Church Street
NAIRN
IV12 4AS
07732887936

THE LICENSING BOARD

11 July 2014

Dear sir/madam

EXTENSION TO LICENSING HOURS FOR PLAYHOUSE, CHURCH STREET, NAIRN

Please find this letter in support for an extension to the hours for the Playhouse. I am quite upset that I cannot be there in person to support both Miles Leith and Peter Moore in their request. I cannot fault both men and all the other staff involved in the smooth running of the Playhouse since they had their last extension.

In fact the door staff in particular have been most helpful and supportive of events that have gone on around the Playhouse not involving any patrons who have come from the Playhouse – they phoned the Police when my window was smashed in by vandalism, have given advice when I wanted to challenge the noise that was coming out from the pub at the very end of the road.

As I stated in my last letter of support I have noticed an increase of people coming especially for some of the events that are held in the Playhouse; parties, themed nights etc. which can only increase the revenue coming to the town of Nairn overall. I can see no negative to living next door to the thriving club.

Should you wish to speak with me please get in contact on the above number, I am away on holiday for the actual meeting where this is to be discussed.

I wish everyone in the Playhouse the best and hope that their application is successful.

Yours faithfully

Debbie Smith

RECEIVED
21 JUL 2014

2 Portland Terrace
Church Street
NAIRN
IV12 4AS
07742101031

THE LICENSING BOARD

14 JULY 2014

Dear sir/madam

EXTENSION TO LICENSING HOURS FOR PLAYHOUSE, CHURCH STREET, NAIRN

Please find this letter in support for an extension to the hours for the Playhouse.

As my neighbouring property they have caused no problems at all with the extension they already have. In fact the guys at the Playhouse have been brilliant, the main problem on the street has been the noise coming from the pubs next to it.

I hope the guys get the extension!

Yours faithfully

Raymond MacGregor