

The Highland Licensing Board

Meeting – 7 October 2014

Agenda Item	10.1
Report No	HLB/130/14

Premises Licence Review Application

Premises: The Waterfront Nightclub and Restaurant, 4 The Shore, Wick, KW1 4JW

Licence Holder: Robert Sutherland

Report by the Clerk to the Licensing Board

Summary

A premises licence review application in terms of Section 36 of the Licensing (Scotland) Act 2005 has been received from Police Scotland and the Board must accordingly hold a hearing to determine the application.

1. Background

The premises to which the review application relates is known as The Waterfront Nightclub and Restaurant, 4 The Shore, Wick, KW1 4YW.

The premises operate principally as a nightclub and comprise of a main dance area with bar facilities known as The Waterfront and a separate smaller bar room, known as Silver Darlings which is 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.

The premises do not operate on any Monday, Tuesday or Wednesday. On a Thursday permitted hours are 1100 hrs to 0100 hrs the following day, on a Friday and Saturday from 1100 hrs to 0200 hrs the following day and on a Sunday from 1200 to 2345 hrs.

2. Legislation

2.1 In terms of section 36(1) of the Licensing (Scotland) Act 2005 (the “Act”) any person may apply to the Board, in respect of any licensed premises in relation to which a premises licence has effect, for a review on any of the following grounds:-

- (a) That one or more of the conditions to which the premises licence is subject has been breached, or
- (b) Any other ground relevant to one or more of the licensing objectives.

3 Premises Licence Review Application

- 3.1** A premises licence review application dated 18 October 2013 has been submitted to the Board by Police Scotland and is attached to this Report as Appendix 1.

The application alleges that there has been a breach of the licensing objectives relating to prevention of crime and disorder and securing public safety.

4 Review Hearing

- 4.1** Section 38(1) of the Act provides that where the Board receives a premises licence review application it must hold a hearing for the purposes of considering and determining the application.

- 4.2** Section 38(4) of the Act provides that the Licensing Standards Officer must, before the review hearing, prepare a report on the application which the Board must take into account. This report dated 22 October 2013 is attached as Appendix 2.

- 4.3** A copy of this Report and appendices have been sent to the Premises Licence Holder, Robert John Sutherland, who has been invited to attend the Hearing.

- 4.4** A representative of Police Scotland has also been invited to attend the Hearing

5 Board's powers on review

- 5.1** In terms of section 39 of the Act the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the Hearing), take such of the steps listed below as it considers necessary or appropriate for the purposes of any of the licensing objectives:

- (a) issue a written warning to the licence holder,
- (b) make a variation of the licence,
- (c) suspend a licence for such period as the Board may determine,
- (d) revoke the licence.

On making a variation under (b) the Board may provide for the variation to apply only for such period as they may determine.

- 5.2** In terms of section 84 of the Act where, in the course of a review hearing in respect of a premises licence, the Board makes a finding in relation to the personal licence holder who was working in the licensed premises that the personal licence holder concerned acted in a manner which was inconsistent with any of the licensing objectives, then the Board must hold a further hearing.

Recommendation

The Board is invited to determine the premises licence review application by way of a review hearing.

Designation: Clerk of the Highland Licensing Board

Date: 22 October 2013

Ref: HC/CSER/1115

Background Papers: The Licensing (Scotland) Act 2005

Appendix 1: Letter from Police Scotland dated 18 October 2013

Appendix 2: Report from David Inglis, Licensing Standards Officer, dated 22 October 2013

18th October 2013

Our Ref: NJ12723/13 & NJ13022/13



Clerk to the Licensing Board
Highland Licensing Board
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Divisional Co-ordination Unit
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INVERNESS
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RECEIVED

22 OCT 2013

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Mark.mackay@
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Dear Sir

**REQUEST FOR REVIEW OF LICENCE: THE WATERFRONT AND RESTAURANT,
4 THE SHORE, WICK, KW1 4JX**

As agent for the Chief Constable I am moved to request a review of the aforesaid premises licence (The Waterfront Nightclub and Restaurant) which is held by Robert John Sutherland, 40 Union Street, Wick, KW1 5ED. The grounds for review centre on two of the licensing objectives i.e. preventing crime and disorder and securing public safety, being adversely affected, as a consequence of an incident which occurred on the premises.

The Waterfront Nightclub is a popular licensed premise in the Wick. Forming part of the premises, is a bar called "Silver Darlings", which is covered by the same premises licence. Although covered by the same premises licence, the Silver Darlings and The Waterfront Nightclub are in separate conjoined buildings. Public access to the Silver Darlings is mainly from the street, however an internal door connects the two and patrons can move into The Waterfront on payment of the door fee.

The Silver Darlings is a pub and consists of a square shaped bar in the middle of the room with seating around the room. There is a small flagstone dance floor within the bar with the main wooden dance floor in the Waterfront which is the nightclub part of the premises. The Waterfront also has a viewing balcony above the dance floor.

In the early hours of Saturday 24 August 2013, Police Scotland, Highland & Islands Division, received a report of a male having been injured within the "Silver Darlings" part of the Waterfront Nightclub and Restaurant.

During the course of police enquiry into the incident it emerged that the injury sustained was due to drunken, loutish behaviour. It also became apparent that the Premises Licence holder and a male member of staff were affected by alcohol. A report on the circumstances has been submitted to the Procurator Fiscal at Wick.

The fundamental aspect underlying the whole ethos of the Licensing Scotland Act 2005 is the five Licensing objectives, which include

- Preventing Crime and Disorder
- Securing Public Safety

and it is these two objectives that were breached on the night in question.

The Police Scotland view of the events of Friday 23rd/Saturday 24th August in the Silver Darlings pub is that the premises were not being conducted in a manner which could possibly support the Crime and Disorder or the Public Safety licensing objectives.

In relation to crime and disorder, the injury sustained was as a consequence of rowdy behaviour and it is clear that staff did not have control of the premises nor did they take preventive measures. Police Scotland contend that this was because the Premises Licence holder and another member of staff were affected by alcohol. This rendered them either oblivious to, or ambivalent to, the behaviour and demeanour of patrons.

In relation to public safety, again the Police Scotland contention is that public safety was compromised because of the insobriety of the Premises Licence holder and another member of staff. There does not appear to have been any member of staff concentrating on the behaviour and demeanour of patrons resulting in injury to a patron.

I respectfully request that the Board give consideration to this request for a premises licence review.

Yours faithfully,

 **Mark MacKay**
Chief Inspector
Divisional Co-ordination Unit



Highland Licensing Board

Review of Premises Licence – The Waterfront Nightclub and Restaurant, Wick

Report by Licensing Standards Officer

Summary: Licensing Standards Officer's report in terms of section 38 (4) of the Licensing (Scotland) Act 2005 in response to an application for a premises licence review submitted by Northern Constabulary in respect of Robert Sutherland HC/CSER/1115 for The Waterfront Nightclub and Restaurant, 4 The Shore, Wick.

1. Licensing History

- 1.1 Premises licence HC/CSER/1115 for the premises of The Waterfront Nightclub and Restaurant, 4 the Shore Wick was issued to an individual, namely Robert John Sutherland, 40 Union Street, Wick with effect from 1st September 2009 by the former Caithness, Sutherland and Easter Ross Divisional Licensing Board in accordance with the licensed hours and other policies of the Board at that time.
- 1.2 The premises manager since that date is the premises licence holder, Robert John Sutherland the holder of personal licence HC0530 issued by the former Caithness, Sutherland and Easter Ross Divisional Licensing Board with effect from 1st September 2009.
- 1.3 On 14th September 2010 the Caithness, Sutherland and Easter Ross Divisional Licensing Board granted a variation to the premises licence to extend licensed hours, removal of the condition restricting entry to the premises after 2400 hrs and some additions to the permitted services and activities provided on the premises. A site visit was made and the Board accepted that the facilities provided within Silver Darlings were sufficient so as to satisfy the Boards policy for late opening premises whether or not the main Waterfront Night Club part of the premises was in operation.
- 1.4 The premises operate principally as a nightclub and comprise of a main dance area with bar facilities known as The Waterfront and a separate smaller bar room, known as Silver Darlings which is 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.
- 1.5 The premises do not operate on any Monday, Tuesday or Wednesday. On a Thursday permitted hours are 1100 hrs to 0100 hrs the following day, on a Friday and Saturday from 1100 hrs to 0200 hrs the following day and on a Sunday from 1200 to 2345 hrs.

1.6 The premises are subject to Mandatory, Local and Late Opening conditions.

2. Process

2.1 On 18th October 2013, in terms of section 38(2) of the Licensing (Scotland) Act 2005, I received notice of a premises licence review application submitted by Northern Constabulary in respect of Robert John Sutherland HC/CSER/1115 for The Waterfront Nightclub and Restaurant, 4 The Shore, Wick.

3. Circumstances Leading to Review Application

3.1 An incident occurred within the “Silver Darlings” bar around 0114 hrs on Saturday 24th August 2013 resulting in a male person sustaining a head injury for which he required to be hospitalised.

3.2 Police attended to investigate the incident which was a consequence of allegedly drunken, loutish behaviour and spoke with the premises licence holder, Robert John Sutherland who was present on the premises. It was the opinion of the police at that time that Mr Sutherland and another member of staff were affected by alcohol to the extent that their ability to adequately monitor or control the behaviour of patrons was impaired.

3.3 The police review application relates to the failure of the licence holder to engage, positively, with the licensing objectives specifically those of the prevention of crime and disorder and securing public safety arising from the inability of the licence holder as premises manager to properly supervise and control the operation of the premises as a result of his and a staff member’s impairment.

4 Licensing Standards Officer’s Comments

4.1 The premises are licensed premises and Robert John Sutherland is, by virtue of his position as premises manager, a responsible person in terms of Part 8 of the Act. Any member of staff who works on the premises and authorised to sell alcohol is also a responsible person.

4.2 I have spoken with Robert Sutherland. On the night in question only the “Silver Darlings” part of the premises was in use. A maximum of 50 persons were on the premises. Mr Sutherland advised me that 3 bar staff were on duty along with 2 SIA stewards and that it is policy that staff do not drink while on duty.

4.3 The dance area within “Silver Darlings” is overlooked by the DJ booth and the DJ that night was an employee of Mr Sutherland and the holder of a personal licence.

4.4 Mr Sutherland stated that he is the holder of a SIA licence and that he was the first aider on duty that night. He also advised that the other 2 SIA stewards also held first aid qualifications.

4.5 Mr Sutherland stated that he was working that night and was involved in glass removal, monitoring toilets, routine bar and supervisory duties.

4.6 Based on the information provided to me I have no reason to suspect that the premises were not being operated otherwise in accordance with the operating plan and in full compliance with mandatory, local and late opening premises conditions. I cannot make any comment on the level or quality of supervision on the premises on the night in question.

5. Compliance History

5.1 The premises have been visited frequently and no major issues have been identified.

Recommendation

That the Board take this report into account at the hearing.

Signature: David Inglis

Designation: Licensing Standards Officer

Date: 22nd October 2013