

The Highland Licensing Board

Meeting – 21 July 2015

Agenda Item	3.1
Report No	HLB/074/15

Licensing (Scotland) Act 2005, Section 36

Application for Review of Premises Licence – Ben View Hotel, Strontian, PH36 4HY

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application under section 36 of the Licensing (Scotland) Act 2005 for review of the Premises Licence in respect of Ben View Hotel, Strontian, PH36 4HY (Premises Licence HC/RSL/1709). The Board is required to hold a review hearing in respect of this application.

1.0 Background

1.1 An application requesting a review of the Premises Licence relating to Ben View Hotel, Strontian has been received from Police Scotland dated 30 June 2015.

Where the Board receives a Premises Licence review application, the Board must hold a hearing for the purposes of considering and determining the application.

1.2 The grounds of review relate to the Premises Licence Holder, Mr Graham McMenemy committing offences in contravention of Section 114 of the Licensing (Scotland) Act 2005 within the Ben View Hotel, Strontian.

Police Scotland are seeking a review of the Premises Licence in terms of infringement of two of the licensing objectives namely:-

- Preventing Crime and Disorder
- Securing Public Safety

Full details of the grounds of review are set out in the review application which is appended to this Report (Appendix 1).

1.3 Where the Board receives a Premises Licence review application, in terms of Section 38(3)(b)(ii) of the abovementioned Act, the Board must seek a report relating to the review application from the Licensing Standards Officer. A copy of the Licensing Standards Officer's report is attached to this Report (Appendix 2).

- 1.4 The Premises Licence holder, Mr Graham McMenemy and a representative from Police Scotland have been invited to attend the hearing. Both have been advised of the hearings procedure which will be followed at the meeting and which may also be viewed via the following link:

http://www.highland.gov.uk/downloads/download/428/liquor_licence_objections_appeals_notices_of_determination

2.0 Legislation

- 2.1 In terms of Section 39 of the abovementioned Act, at a review hearing in relation to any Premises Licence, the Board may, if satisfied that a ground for review has been established, take such of the following steps as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.

- 2.2 Those steps are-

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

- 2.3 It should be noted that, even if the Board is satisfied, after hearing from Police Scotland, that a ground of review is established, the Board is not obliged to take any of the steps listed at paragraph 4.2 above. The Board is entitled to take no action.

Recommendation

The Board is invited to consider the premises licence review application, the appendices and any submissions made by the parties during the hearing and to determine whether a ground for review is established.

Should the Board decide that a ground of review is established, the Board is invited then to consider whether to take any of the steps listed at paragraph 4.2 above and to give reasons for its decision in this regard.

Reference: HC/RSL/1709

Date: 8 July 2015

Author: SB:JT

Background Papers: The Licensing (Scotland) Act 2005

Appendices:

1. Premises Licence Review Application from Police Scotland dated 30 June 2015
2. Report from the Licensing Standards Officer dated 8 July 2015

30th June 2015

Your Ref:

Our Ref: NP/7036/15



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RECEIVED

- 1 JUL 2015

CHIEF EXECUTIVE'S SERVICE
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Dear Sir

**HIGHLAND LICENSING BOARD – ROSS, SKYE AND LOCHABER
APPLICATION FOR REVIEW OF PREMISES LICENCE
PREMISES: BEN VIEW HOTEL, STRONTIAN, ARGYLL. PH36 4HY
PREMISES LICENCE HOLDER: GRAHAM JAMES MCMENEMY**

In terms of Section 36(1) of the Licensing (Scotland) Act 2005, the Chief Constable hereby makes application to the Highland Licensing Board for review of the premises licence in respect of the premises known as the Ben View Hotel, Strontian.

The Chief Constable makes application in terms of Section 36(3) (b) of the Act, on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely:

- Preventing Crime and Disorder
- Securing Public Safety

The Premises Licence is held by Graham James McMenemy, Ben View Hotel, Strontian, Argyll. Graham James McMenemy holds a Personal Licence (Licence number HC/RSL/L/3806) and is also the Premises Manager, as detailed on the Premises Licence.

The circumstances surrounding this request for review centre on Graham James McMenemy committing offences in contravention of Section 114 of the Licensing (Scotland) Act 2005 within the Ben View Hotel, Strontian.

About 2015 hours on the 16th May 2015 Police Constable Campbell attended at the Ben View Hotel and carried out a License Premises Inspection. The chef, Ewan Ferguson, intimated to Constable Campbell that Graham James McMenemy was drunk and could barely stand. Graham McMenemy was traced to the hallway between the lounge and public bar where he was speaking to patrons. He was wearing his chef's attire; he was staggering and holding onto the walls to prevent him

from falling over. Mr McMenemy was slurring his words and claimed to be sober however it was evident that he was heavily intoxicated, he was advised to go to his bed and leave a member of his staff in charge which he refused to do. A Licensed Premises visit was logged by Constable Campbell highlighting the licensee being drunk.

About 1800 hours on the 21st May 2015 Constable Campbell attended at the Ben View Hotel along with Police Constable Kevin Swift. At this time Graham McMenemy was sober but visibly shaking, the previous visit was discussed with him. He acknowledged that he was drunk and had let himself and his staff down; he was advised that there would be continued inspections.

At 1900 hours on the 31st of May 2015 Constable Swift attended at the Ben View Hotel to carry out an inspection and several staff members stated that Graham McMenemy was drunk and not working.

At 1455 hours on the 13th June 2105 Constable Campbell attended at the Hotel and Graham McMenemy was in the bar area heavily intoxicated and helping himself to alcohol. Mr McMenemy was adamant that he was sober and capable of running the establishment however he claimed it was his day off despite it being well advertised as a re-launch night. Due to Mr McMenemy's drunkenness he was advised that a report would be submitted to the Procurator Fiscal and that the Licensing Board would be notified, he appeared unconcerned.

Following the inspection, Constable Campbell contacted the Duty Police Inspector and it was agreed that a full License Premises Inspection would be carried out later that evening due to it being a menu re-launch evening and an expected high attendance. Constables Campbell and Shepherd attended at 1915 hours (13/06/2015) and were informed that the Licence holder was drunk and within his bedroom. There were approximately 35 patrons within.

A report has been submitted to the Procurator Fiscal for contraventions of Section 114 of the Licensing (Scotland) Act 2005 in relation to the incidents on 16th May and 13th June 2015.

About 2040 hours on Wednesday 24th June 2015, Police Constable Kevin Swift attended at the Ben View Hotel so as to carry out a Licensed Premises check. On entering the premises Constable Swift could not locate any staff but found two patrons within who were waiting for a meal.

On carrying out a further check of the premises, Constable Swift located Graham McMenemy slumped behind the door of a storeroom, apparently unconscious through drink. Constable Swift was able to rouse Mr McMenemy who was heavily intoxicated, slurring his words and unable to stand unaided.

Given there were no other staff members working within the Ben View Hotel at that time, Graham McMenemy was advised to close the premises for the night and to go to his bed which he agreed to do. The patrons who were within the premises were relocated to another establishment for a meal and subsequent arrangements were made for their overnight accommodation. There were no other residents or patrons within the Ben View Hotel.

Graham McMenemy will again be reported to the Procurator Fiscal for a contravention of Section 114 of the Licensing (Scotland) Act 2005 in relation to the incident on 24th June 2015.

Preventing Crime and Disorder – Graham McMenemy can not possibly be seen to be Preventing Crime and Disorder when he himself is committing offences as previously detailed on such a regular basis.

Securing Public Safety – During the incident previously detailed on 16th May 2015, when Graham McMenemy was so drunk that he could barely stand, holding onto walls to prevent him falling over, he was seen to be wearing his chef's attire. This causes serious concerns for the safety, and fire risk, of patrons, staff and the licensee himself in the fact Mr McMenemy may attempt to use kitchen equipment. Mr McMenemy was also found slumped behind a door, incapable of looking after himself, let alone ensuring the safety of the public.

Staff of the Police Service of Scotland have attempted to support and assist Graham McMenemy but have no other action open to them than to continue reporting him to the Procurator Fiscal for contraventions of the Licensing (Scotland) Act 2005 or any other crimes or offences he may commit.

In conclusion, the Chief Constable requests that the Licensing Board considers the aforementioned grounds for review and takes steps, as it considers necessary and appropriate for the purposes of any of the Licensing Objectives under the terms of Section 39(2) of the Act.

It is emphasised that the foregoing information is supplied solely for the use of the Licensing Authority when considering this application and for no other purpose.

Submitted for your consideration.

Yours faithfully,

Mairi MacInnes
Chief Inspector
Highland & Islands Division

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Highland Licensing Board

Meeting – 21 July, 2015

Review hearing in terms of the Licensing (Scotland) Act, 2005 Section 38 (1)

Premises: Ben View Hotel, Strontian, PH36 4HY

Report by Licensing Standards Officer

1.0 Summary:

- 1.1 This Report has been prepared in response to notification from the Clerk to the Highland Licensing Board in terms of Section 38(3)(b)(ii) of the Licensing (Scotland) Act, 2005 that a review hearing is to be held in respect of the Premises Licence for the Ben View Hotel, Strontian held by Graham James McMenemy (HC/RSL/1709).

2.0 Licensing History:

- 2.1 A Premises Licence for Ben View Hotel Strontian was granted by the Highland Licensing Board on 12th August, 2014 to Graham James McMenemy.
- 2.2 A Personal Licence was granted by the Highland Licensing Board on 5th August, 2013 to Graham James McMenemy (HC/RSL/L/3806)
- 2.3 Graham James McMenemy is also the premises manager of the Ben View Hotel, Strontian.

3.0 Legislation:

The premises licence is subject to:-

- Mandatory Conditions in accordance with Schedule 3 of the Licencing (Scotland) Act, 2005;
- Local Conditions attached by the Highland Licencing Board in accordance with Section 27(6) of the Licensing (Scotland) Act, 2005.

4.0 Description of premises:

The premises are situated in a rural location approximately 1 mile from the village of Strontian. The premises are detached and comprise of a reception hall, dining room, lounge bar, sun lounge, residents lounge and nine bedrooms. There is an outdoor drinking area located at the front of the premises.

The premises licence holder resides on the first floor which does not form part of the licensed premises.

5.0 Synopsis:

5.1 On 1st July, 2015, I received notification in terms of section 38(3)(b)(ii) of the Licensing (Scotland) Act, 2005 from, A H MacKenzie, Clerk to the Highland Licensing Board, that an application for a review of the premises licence had been received from the Chief Constable, Police Scotland in respect of the above premises. The circumstances leading to the review application being that the Premises Licence Holder, Graham James McMenemy had been found drunk by police officers within the premises on 16th May, 13th and 24th, June, 2015 respectively, contrary to section 114 of the Licensing (Scotland) Act, 2005 and was the subject of a report to the procurator fiscal in respect of these offences. This was deemed by Police Scotland to be ground relevant to one or more of the licensing objectives , namely:-

- Preventing Crime and Disorder and
- Securing Public Safety

5.2 In terms of section 38(4)(a) of the Licensing (Scotland) Act, 2005 I am required to submit a report to the Licensing Board on the review application.

In relation to the proposed ground for review, on the occasions when I visited the premises, I had no cause to suspect that Graham James McMenemy was under the influence of alcohol.

6.0 Compliance History

Since Graham McMenemy became the holder of the Premises Licence, I have carried out several compliance inspections to the premises, both announced and un-announced.

All aspects of compliance have been found to be observed in relation to the mandatory and local conditions and the premises appear to be operating in accordance with the operating plan.

7.0 Recent Compliance Inspections

7.1 I undertook an inspection of the premises on Wednesday 24th June, 2015 when I met with Mr McMenemy and I had no cause for concern.

7.2 On 7th July, 2015, I met with the Premises Licence Holder, Graham McMenemy who confirmed that he was aware of the review application. He appeared to be genuinely concerned regarding the position which he has found himself in. Mr McMenemy stated that he had sought medical advice in relation to the recent incidents and was seeking professional support.

8.0 Conclusion

During my visits, I have found Graham McMenemy to be a co-operative licensee who has a long history of working within the licensed trade.

I have received no complaints regarding the management of the premises and have had no previous concerns.

Recommendation:

That the Board take this report into account when considering the review application.

Elizabeth Treasurer

Licensing Standards Officer

8 July 2015