

The Highland Licensing Board

Meeting – 21 July 2015

Agenda Item	4.1
Report No	HLB/075/15

Licensing (Scotland) Act 2005, Section 84A

Application for Review of Personal Licence – Graham J McMenemy

Report by the Clerk of the Licensing Board

Summary

This Report relates to an application under Section 84A of the Licensing (Scotland) Act 2005 for review of the Personal Licence held by Mr Graham James McMenemy (HC/RSL/L/3806). The Board requires to hold a hearing to consider this application.

1.0 Background

1.1 An application requesting a review of the Personal Licence held by Mr Graham McMenemy has been received from Police Scotland dated 30 June 2015.

Where the Board receives a Personal Licence review application, the Board requires to hold a hearing for the purposes of considering the application.

1.2 The grounds of review relate to the conduct of the Personal 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 Mr McMenemy's Personal Licence in terms of his conduct being inconsistent with 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 The Personal 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 84(6) of the abovementioned Act, the Board may, after giving the licence holder concerned and a representative from Police Scotland an opportunity to be heard at the hearing and if satisfied that it is necessary to do so for the purposes of any of the licensing objectives, make an order –

- (a) revoking the personal licence held by the licence holder concerned,
- (b) suspending the personal licence for such period, not exceeding 6 months, as the Board considers appropriate, or
- (c) endorsing the personal licence.

The Board may also decide to make no order if satisfied that an order is not necessary for the purposes of any of the licensing objectives.

3.0 Recommendation

The Board is invited to hear from the representative of Police Scotland and from the personal licence holder and then to determine whether to make any order revoking, suspending or endorsing the personal licence.

Reference: HC/RSL/L/3806

Date: 8 July 2015

Author: SB:JT

Background Papers: The Licensing (Scotland) Act 2005

Appendices:

1. Personal Licence Review Application from Police Scotland dated 30 June 2015



30th June 2015

Your Ref:

Our Ref: NP/7036/15

Clerk to the Licensing Board
Lochaber House
High Street
Fort William
PH33 6EL

Divisional Co-ordination Unit
Highland and Islands Division
Police HQ
Old Perth Road
INVERNESS
IV2 3SY

RECEIVED

- 1 JUL 2015

CHIEF EXECUTIVE'S SERVICE
LOCHABER

01463 720209

highlandislandlicensing
@scotland.pnn.police.uk

Dear Sir

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

In terms of Section 84 A (1) of the Licensing (Scotland) Act 2005, the Chief Constable hereby makes application to the Highland Licensing Board for review of the personal licence in respect of Graham James McMenemy, 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 84 A (1) 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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