

The Highland Licensing Board

Meeting – 05 January 2016

Agenda Item	6.1
Report No	HLB/004/16

Application for a major variation of premises licence under the Licensing (Scotland) Act 2005

Encore (formerly Karma Lounge) 5-9 Young Street, Inverness IV3 5BL

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for a major variation of premises licence by Caledonian Heritable Ltd, 4 Hope Street, Edinburgh EH2 4DB per Lorna Murray, 45 Culduthel Road, Inverness IV2 4HQ.

1.0 Description of Premises

- 1.1 The premises consist of a licensed restaurant and late night entertainment venue occupying part of the ground and first floors of a tenement building in a mainly commercial area on the fringes of the City Centre.
The premises trade as a restaurant during the day with meals served until late. In the evenings the premises change in character to an entertainment venue catering for the late night economy.
Musical entertainment is by DJ, with occasional live band performances. The premises have a professional sound and lighting system and a sizeable dedicated dance floor.
The premises meet the conditions set out in the late opening premises Regulations.

2.0 Summary of Variation Application

2.1 Variation Sought

The applicant seeks to vary the premises licence as follows:-

Operating Plan

1. Premises Name to be changed to 'Encore'.
2. 'Yes' to Seasonal Variations. The premises shall seek to operate any period of extended hours offered by the Highland Licensing Board such as festive extensions.
3. Remove the restriction at 5(f) - 'between the hours of 1200 hrs and 1900 hrs daily alcohol sales will be restricted to persons having meals as an ancillary to that meal'.
4. Add carry out meals at 5(f).

5. At 6(d) children and young persons will also be permitted on the premises until 2200 hours daily whilst attending a private function.

6. New premises manager.

Layout Plan

1. Full 'strip out'. Relocation of bar counter. New windows to front of main area (changed to bi-folding). Smoking area formed to right-hand side - street windows removed and moved back within building. New kitchen fit-out with new servery. Relocation of DJ booth and dance floor areas.

4.0 Background

4.1 On 2 November 2015 the Licensing Board received an application for a major variation of a premises licence from the applicant's agent, Lorna Murray, Solicitor, 45 Culduthel Road, Inverness IV2 4HQ.

4.2 The application was publicised during the period 6 November 2015 until 27 November 2015 and confirmation that the site notice was displayed has been received.

4.3 In accordance with standard procedure, Police Scotland, the Scottish Fire and Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.

4.4 Notification of the application was also sent to NHS Highland and the local Community Council, Park.

4.5 Further to this publication and consultation process, no timeous objections or representations have been received.

4.6 The applicant must nevertheless be given the opportunity to be heard before the Board determines the application and has accordingly been invited to the meeting. The applicant has been advised of the hearings procedure which may also be viewed via the following link:

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

5.0 Legislation

5.1 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. the grant of the application will be inconsistent with one or more of the licensing objectives;

2. 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, the Board considers the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;
3. having regard to the number and capacity of 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 overprovision of licensed premises or licensed premises of that description in the locality.

5.2 The Board only has power either to grant the application and make a variation of the conditions to which the licence is subject or to refuse the application.

If the Board refuses the application, the Board must specify the ground for refusal and if the ground for refusal relates to a licensing objective, the Board must specify the objective in question.

6.0 Licensing Standards Officer

6.1 The LSO has provided the following comments:-

The premises are a well-established venue in Tomnahurich Street, Inverness, which have been closed for a period of time but are at the present time undergoing an extensive refurbishment which is core to this application.

The premises name is being changed from Karma Lounge to Encore.

The applicants have requested the addition of a seasonal variation at Section 3 of the operating plan to allow automatic entitlement to any extended period of licensed hours offered by the Highland Board such as the Festive Season. The applicants accept the local licensing condition requiring notification of dates when extended hours will be utilised to both the Highland Licensing Board and Police Scotland.

Alterations are requested to the existing Section 5(f) in the operating plan, to remove the current restriction of only selling alcohol between 1200 and 1900 hours when supplied with a meal. The LSO is supportive of this as the premises will be food led in the main, particularly during the earlier part of its trading hours. It might be considered unfair to disadvantage these premises in selling solely alcohol to customers when such a restriction is not placed on other similar premises, after all the sale of any alcohol irrespective of time must be responsibly done. In addition, the facility of takeaway meals is requested to be endorsed within the operating plan to allow the premises to take advantage of the installation of new kitchen facilities and also be able to service numerous office workers seeking snack lunches.

The children and young persons' policy has been amended to allow children and young persons to be on the premises until 2200 hours daily. This is in keeping with the fifth Licensing Objective concerning the protection of children and young persons from harm.

Substantial investment and alteration to the layout, fixtures and fittings has been made. The premises during the refitting have been visited by the LSO. A substantial dance floor remains, complete with DJ booth to provide the substantial entertainment which is a core requirement of the late hours part of the Licence, as required within the context of the current Highland Licensing Board Policy Statement. A smoking area has been created in a recessed area at street level. This will require to be managed with good supervision particularly during late hours' operation so that no public nuisance issues such as noise are caused by customers.

In a more general sense the premises are situated within a commercial and residential district, with retail outlets occupying the lower levels of buildings and residential flats on the higher levels. Previously there have been complaints of noise concerning the premises. From speaking to the applicants this issue has not escaped their attention and they have given assurances that appropriate sound-proofing will be installed during the ongoing construction phase. Accordingly at the time of writing the applicants have been requested to submit a noise management plan which will, if sound and workable, be incorporated within the operating plan.

7.0 HLB Local Policies

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-16
- (2) Highland Licensing Board Equality Strategy

8.0 Conditions

8.1 Mandatory conditions

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

8.2 Local conditions

The following Local Licensing Conditions should be **removed**, 1,2 :

Friday and Saturday evenings only-

- 1. After 2100 hours alcoholic and non-alcoholic drinks shall be sold or served in plastic or polycarbonate glasses.*
- 2. No persons will be permitted into the premises after 2400 hours. For the purpose of this condition, outdoor drinking areas are deemed to be not part of the premises.*

Existing local conditions: 3, 4, 5, 6, 7, 8, and 9 will continue to apply and no additional local conditions are considered necessary.

(3) Any music or live performance will cease at 0245 hours.

(4) The premises licence holder of premises open after 0100 shall make available a plentiful supply for sale of prepared hot and cold foods, freely available drinking water and other non-alcoholic beverages.

(6) 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 conventional means of access or egress.

(7) 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 when not in the bar areas.

Monday to Sundays (all days):

(5) After 2100 hours or any other such time as may be specified by the Licensing Board on Friday, Saturday and Sunday evenings, the premises licence holder shall ensure that there is adequate stewarding at all relevant entrances and egresses to the premises and within the premises.

(8) Notwithstanding conditions (6) and (7) children must not sit or remain at the bar counter at any time.

(9) Dartboards and any pool table will be situated in a location to be approved by the Licensing Standards Officer.

8.3 Specific conditions

The following additional specific local licensing conditions are recommended:

(1) During the playing of any live or recorded music all windows and doors will require to be kept closed. (Licensing Objective 3)

(2) A written noise management plan acceptable to the Highland Licensing Board must be in place for the premises and any relevant activity or service being provided must be conducted in accordance with that plan. (Licensing Objective 3).

(3) During any time that the premises are operating after 0100 hours the outside smoking area will require to be monitored by an SIA licensed steward. (Licensing Objectives 1,2 and 3)

(4) After 2200 hours no alcoholic or non-alcoholic beverage shall be consumed within the designated smoking area. (Licensing Objective 3)

(5) All glass disposal to external bins shall cease by 2300 hours and no collection shall take place prior to 0700 hours. (Licensing Objective 3)

Recommendation

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/special condition(s) detailed at para(s). 8.2 and 8.3 above.

If the Board is minded to refuse the application, the Board must specify the ground for refusal and if the ground for refusal is in relation to a licensing objective, the Board must specify the objective in question.

Reference: HC/INIBS/508

Date: 03 December 2015

Author: Wendy Grosvenor

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