

The Highland Licensing Board

Meeting – 29 March 2016

Agenda Item	9.2
Report No	HLB/029/16

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

Volunteer Arms, 47-49 High Street, Fort William, PH33 6DH

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by David Smillie.

1.0 Description of premises

1.1 The Volunteer Arms is a well established bar, which operates as hybrid premises, and is located on the High Street within the town centre of Fort William, overlooking Cameron Square. The premises consists of a bar on the ground floor with the bar counter to the front of the premises. The area to the rear of the premises accommodates a pool table which is removed when entertainment is provided and the area is utilised as a dance area. There is a stairway before the dance area which leads to the male and female toilets in the basement. There are also external drinking facilities at the front of the premises on the High Street.

There is a lane on one side of the premises with commercial property on the other and residential property above and to the rear of the premises. The High Street is pedestrianised and covered by CCTV.

2.0 Current operating hours

2.1 The premises currently enjoy the following operating hours:

On sales:

Monday to Thursday:	1100 hours to 0100 hours
Friday and Saturday:	1100 hours to 0200 hours
Sunday:	1100 hours to 0100 hours

3.0 Summary of variation application

3.1 Variation sought

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

- (1) Increase core hours on Thursday, Friday and Saturday evenings to 0300 hours the following day.
- (2) Include provision of off-sales, Monday to Sunday from 1100 hours to 2200 hours.
- (3) Amend seasonal variation to include the Board's Festive Policy.
- (4) Update other activities to reflect increase in core hours.

4.0 Background

4.1 On 18 February 2016 the Licensing Board received an application for a major variation of a premises licence from David Smillie.

4.2 The application was publicised during the period 19 February 2016 until 11 March 2016 and confirmation that the site notice was displayed has been received.

4.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & 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. As Fort William Community Council are not currently constituted they could not be notified of the application.

4.5 Further to this publication and consultation process, the following timeous notices of objection have been received and are appended:

1. Letter dated 9 March 2016 from Janice Wallace, Ossian's Hotel, High Street, Fort William;
2. Letter dated 9 March 2016 from Anant Aggarwal, Rishiraj Tomar, Alicja Debicka, Flat 3, 47 High Street, Fort William
3. Letter dated 9 March 2016 from Simant Kumar and Juli Kumari, Flat No. 2, 47 High Street, Fort William.

A location plan is appended identifying the premises and the location of the objectors.

4.6 No objections to the application have been received from Police Scotland, the Scottish Fire & Rescue Service and the Council's Environmental Health, Planning and Building Standards Services.

However, given that the objections received relate to noise, copies of the letters of objection were sent to the Council's Environmental Health Office.

In response, Environmental Health confirmed that they have no outstanding noise complaints in respect of the premises. However, previous complaints about noise had been received from Ossian's Hotel.

As a result of the complaints, the premises licence holder was given guidance from Environmental Health in relation to producing a Noise Management Plan.

The premises licence holder has subsequently provided Environmental Health with a copy of his Noise Management Plan which is appended to this report. Environmental Health have indicated that they consider the Noise Management Plan adequately describes the management procedures currently in place. They further indicated that Mr Smillie had verbally indicated that he is intending carrying out further practical measures to reduce sound transmission.

Environmental Health have advised that there are additional measures which Mr Smillie could consider to further improve noise control which are detailed within Section 2 - Noise Management Arrangements (Items 7 and 8) of the attached Plan relating to sound level limiters and construction of an intervening lobby.

Environmental Health have indicated with the evidence currently available, they would consider it difficult to justify that the above additional measures are essential in view of the fact that there are no outstanding noise complaints. Furthermore, Environmental Health have advised that in response to the previous complaints, improvements have been achieved without the need for such additional measures.

- 4.7 The applicant, objectors and a representative from Environmental Health have been invited to attend the hearing. All parties 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

5.0 Legislation

5.1 Late opening premises

The late opening mandatory conditions apply to late opening premises pursuant to the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007. These premises are defined in the Regulations as premises, the capacity of which, is at least 250 people and which:-

- (a) will regularly provide at any time in the period between 1:00 am and 5:00 am—
 - (i) live or recorded music with a decibel level exceeding 85dB;
 - (ii) facilities for dancing; or
 - (iii) adult entertainment, or

- (b) when fully occupied, are likely to have more customers standing than seated.

They do not include, however, premises which have as their primary function the service of food, or which include, or are part of larger premises which include, at least 6 letting bedrooms, or in respect of which a licence under section 12 of the Theatres Act 1968(1) or section 1 of the Cinemas Act 1985(2) is in force, or which are, or are part of, an art gallery.

- 5.2 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.

- 5.3 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 Volunteer is a well-established bar and has operated as hybrid premises since November, 2013. Children and young persons are not permitted within the premises.

- During the day the premises operate as a traditional public house and entertainment is currently provided on Friday and Saturday evenings, with a mixture of live music and DJ entertainment from 2200 until 0200 hours.
- The applicant, David Smillie became the premises licence holder in April, 2014 and seeks to increase the existing terminal hour until 0300 hours on Thursday, Friday and Saturday evenings.
- The increase in terminal core hours sought on Thursday, Friday and Saturday is within the policy of the Highland Licensing Board.
- The premises seek to include the provision of off-sales and the hours sought are within the Board's policy.
- The applicant wishes to include within the seasonal variation of the operating plan, permission to take advantage of the Board's policy in relation to the Festive Period. He accepts that the relevant mandatory late opening condition, special condition and local condition will apply.
- At the time of preparing this report it has been brought to my attention that objections have been received in respect of this application.
- In November 2014, I was advised of an issue regarding excessive noise coming from the Volunteer Arms. Following discussions with the premises licence holder, it appeared at that time that the source of the noise was due to patrons opening the fire escape door at the side of the premises. The premises licence holder resolved the issue by bringing the matter to the attention of his staff and customers and putting measures in place to prevent a reoccurrence.
- In March 2015, I was contacted by the Environmental Health Service who sought confirmation that I was aware of noise issues in respect of the premises. I updated them in relation to my involvement with the premises in November 2014, as outlined above.
- In September, 2015, it was brought to my attention that a complaint had been made to the Highland Council Environmental Health Service regarding excessive noise in the form of loud music coming from the premises. I spoke with the Environmental Health Service in this regard who confirmed that a complaint had been received which was being addressed with the premises licence holder, Mr David Smillie. I was advised that a monitoring device was to be installed to the music equipment and that a Noise Management Plan was in the process of being prepared. I was advised that the situation would continue to be monitored and I would be informed if any further issues developed.

- On Saturday, 10 October, 2015 at about 2200 hours, I carried out a compliance visit to the premises. Upon approaching the premises I was aware that I could hear music being played from within. I noted that the internal door of the premises was open. I spoke to the premises licence holder, David Smillie within and reminded him of the specific condition in relation to the inaudibility of music to nearby residential property after 2300 hours.

Mr Smillie accompanied me outside the premises to listen to the level of music and agreed to lower the volume and close the doors.

He informed me that the monitoring device which had been fitted to the music equipment had mal-functioned and that a replacement had been ordered. He stated that he was in the process of compiling a Noise Management Plan for the Environmental Health Service. I suggested that in the meantime, during the playing of live music, he should ensure that the door of his premises was kept closed. I also recommended that he carried out a listening test outside the premises on a regular basis in relation to inaudibility. All other matters of compliance were in order.

- To date, no further incidents have been brought to my attention.
- I would recommend that the Noise Management Plan submitted by the applicant is attached to the Premises Licence as a special condition with an additional condition requiring that the internal entrance doors remain closed during the playing of any live or recorded music after 2300 hours.
- The premises are members of Lochaber Pubwatch and attend meetings regularly.
- The premises have been visited on several occasions and found to be compliant in observing the requirements of the Licensing (Scotland) Act, 2005.

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

Existing local conditions will continue to apply and it is recommended that the following additional local condition(s) be attached:

- Q. The licence holder shall submit to the Board and to Police Scotland, prior to 1 December each year, notice of the dates within the festive period on which it is intended that the premises remain open until the festive period terminal hour stated for that category of premises in the Board's Policy Statement. The Premises may remain open until the festive period terminal hour only on those dates for which notice has been given by the licence holder to the Board and to Police Scotland in accordance with this condition.

8.3 Mandatory condition – late opening premises - Late opening conditions

The following mandatory late opening conditions set out in Schedule 3 of the Act will continue to apply as follows:-

1. A person trained to the satisfaction of the Licensing Board in administering First Aid must be present on the premises from 1.00 am (on any day when the premises are open at that time) until whichever is the earlier of:-
 - (a) the time at which the premises next close; and
 - (b) 5.00am
2. A designated person who is the holder of a personal licence must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-
 - (a) the time at which the premises next close; and
 - (b) 5.00am or such other time as the Licensing Board may specify.
3. There must be written policies in existence concerning:-
 - (a) the evacuation of the premises; and
 - (b) the prevention of the misuse of drugs on the premises.
4. A CCTV system must be installed on the premises to the satisfaction of the appropriate Chief Constable and must be kept in good working order.
5. There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.

6. A person who holds a licence granted under Section 8 of the Private Security Industry Act 2001(1) must be positioned at every entrance to the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-
- (a) the time at which the premises next close; and
 - (b) 5.00am or such other time as the Licensing Board may specify.

8.4 HLB special condition

The following Special Conditions are currently attached to the Premises Licence and will continue to apply:

- All glass disposal operations shall cease between the hours of 2300 hours and 0800 hours the following day.
- All live vocals or amplified music will be so controlled after 2300 hours that it shall be inaudible in nearby residential property.

As a result of the objections received, it is proposed that the following additional conditions be attached to the premises licence:-

- 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.
- The external Fire Exit door should remain closed at all times.
- During the playing of live or recorded music after 2300 hours, the internal entrance door within the premises should remain closed.

Recommendation

The Board is invited to determine the above application and if minded to grant the application, to agree the additional proposed Special Conditions detailed at para 8.4. or,

If the Board are 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/RSL/0486

Date: 17 March 2016

Author: AHM:ET/JT

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

Appendices:

1. Letter dated 9 March 2016 from Janice Wallace, Ossian's Hotel, High Street, Fort William;
2. Letter dated 9 March 2016 from Anant Aggarwal, Rishiraj Tomar, Alicja Debicka, Flat 3, 47 High Street, Fort William;
3. Letter dated 9 March 2016 from Simant Kumar and Juli Kumari, Flat No. 2, 47 High Street, Fort William.
4. Location Plan;
5. Noise Management Plan.

Ossians Hotel
High Street
Fort William
PH33 6DH
01397 700857

RECEIVED

9 MAR 2016

CHIEF EXECUTIVE'S SERVICE
LOCHABER

9th March 2016

Clerk to the court,
Highland Licensing Board
Ross, Skye and Lochaber Division
Fort William.

Dear Sirs,

I wish to register my objections over the application by the Volunteer Arms, High Street, Fort William, for a 3am late licence for Fridays and Saturdays.

I have already had to make many complaints regarding the level of music coming from the Volunteer at weekends. Since it can be heard within the hotel, even over the sound of a TV, then it is certainly in contravention of the existing licence conditions, which state "All live vocal or amplified music will be so controlled after 23:00 hours that it shall be inaudible in nearby residential property" This level of music, which regularly increases in volume at 1am, has caused lots of complaints from my guests, as well as disturbing my sleep.

Under the 2005 Act, premises should install soundproofing and sound limiting devices, and other mitigation measures to prevent public nuisance.

Inadequate stewarding. The licensing board requests 1 steward for 50 customers, yet that has not been the case in most instances in these premises.(Local condition J)

Also within licence conditions, (local condition G) a selection of hot and cold foods shall be available. This does not happen, even at the moment with a 2am licence.

These premises are applying for 3am as "hybrid premises". This is a pub which moves furniture aside to create a "dance floor" By granting a 3am licence here, all pubs are then eligible apply for the same.

Yours faithfully
Janice Wallace

(owner, Ossians Hotel)

RECEIVED
- 9 MAR 2016
CHIEF EXECUTIVE'S SERVICE
LOCHABER

Flat-3,47 High Street

Ph33 6DH

Fort William

Date:09/03/2016

Dear Madam/Sir,

I am responding to your recent letter regarding the extending time limit of volunteer Arms till 3:00 A.M on Thursday, Friday and Saturday. At the moment Volunteer Arms is open till 2:00 A.M on weekends and weekdays till 23:00 P.M.

We are currently residing at the above address since 2013. So far we never faced any issues in terms of noise but at present time music is too loud from volunteer Arms.

In terms of our working conditions we are also working early morning shifts and because of plenty noise it is hard to sleep before 3:00 A.M.

We are having trouble in sleeping on all weekend nights. We would like to let you that we are not in favour of extending the time limit again.

We would like to request you if you please could take this matter into consideration and we hope you will make any necessary action to avoid present circumstances to continue.

Thank you,

Kind regards,

Anant Aggarwal

Rishiraj Tomar

Alicja Debicka

SIMANT KUMAR
FLAT NO. 2
47 HIGH STREET
FORT WILLIAM
PH33 6DH

RECEIVED

- 9 MAR 2016

CHIEF EXECUTIVE'S SERVICE
LOCHABER

Date:- 9/03/2016

Subject :- Regarding Neighbour Notification Volunteers
Arms, High Street, FTW.

Dear Sir / Madam

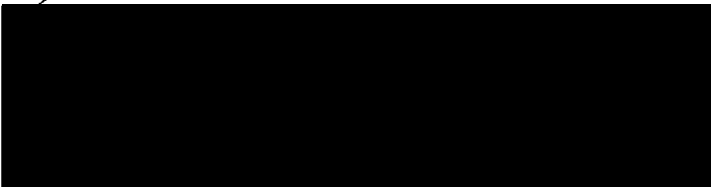
In Response to your letter regarding to increase
the opening Hours of Volunteer Arms.

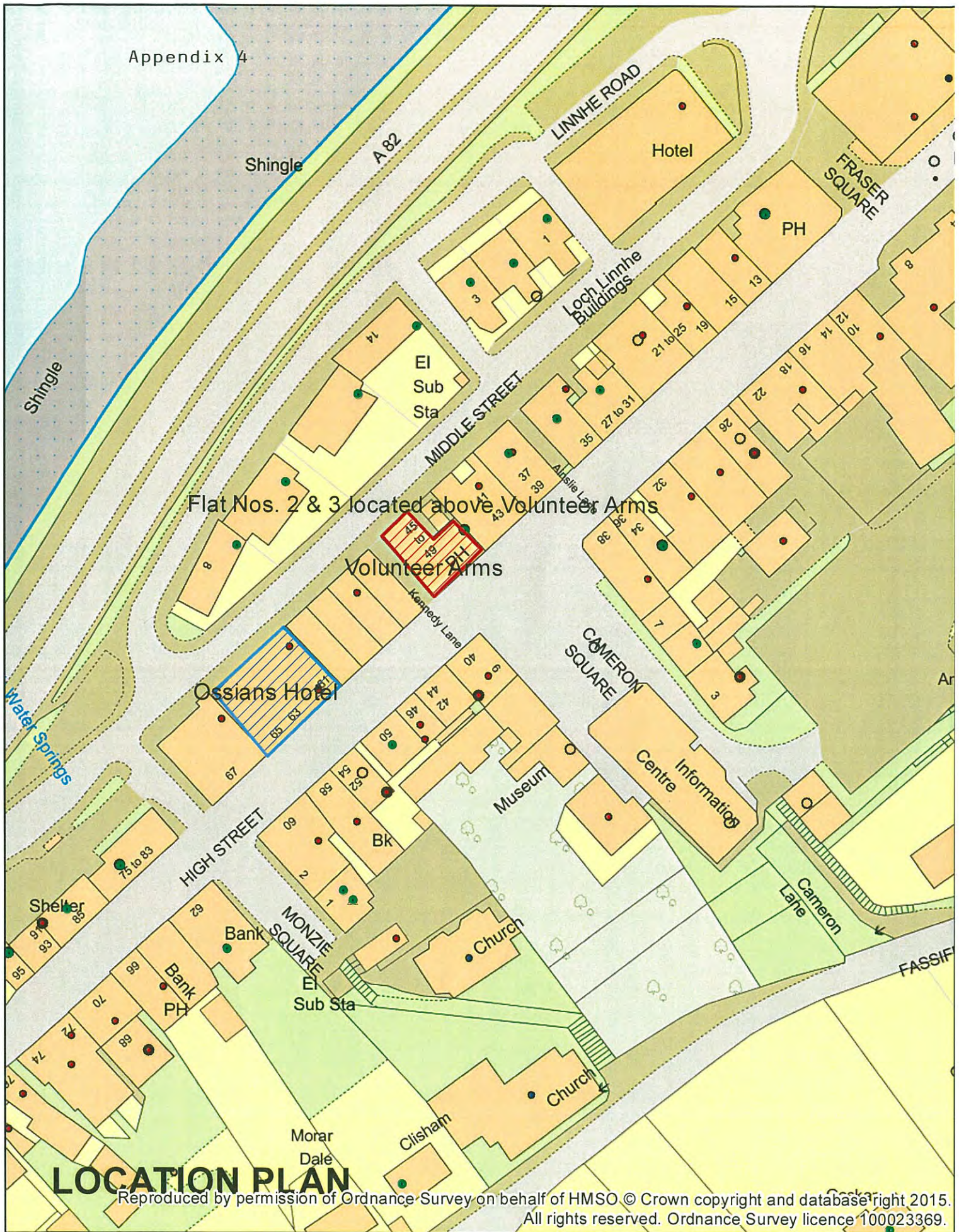
Me and my wife are staying in the same building,
Flat no. 2 Since last 5 years, We never had any problem
in terms of noise but in recent time music is very
loud between 11 pm to 2 Am (closing time) on weekend
Due to loud music my flat keeps vibrating. Because
of this we hardly get any sleep during this hours.

We do not have any issues with the extension of
time limit, Else we would prefer if they can
put their music volume down.

Please take our request on Consideration and look
into the matter. Thank You

Regards,





LOCATION PLAN

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Ref: **Volunteer Arms**
 Date: **Ossiens Hotel**
Flat Nos. 2 & 3, 47 High Street, Ft Wm



Highland Council Community Services – Environmental Health Noise Management Checklist to prevent noise disturbance from licensed premises

The purpose of this Noise Management Checklist is to assist our Service in responding to your liquor licensing application. The checklist should also help you identify sources of noise from your premises that could potentially cause nuisance to neighbours and to prompt you to take certain steps to prevent this.

You are requested to complete this Noise Management Checklist and submit it with your liquor licence application. Failure to do this may result in a delay in the processing of your application and/or objection by Community Services Environmental Health.

Name of Applicant	DAVID SMITHLE	Application Ref. No	_/_/____		
Name and address of premises (inc postcode)	THE VOLUNTEER ARMS 47, HIGH ST. FORT WILLIAM. PH 33. 6DH.				
Section 1: Potential for Noise Nuisance					
By answering these two questions, you will be able to assist the Environmental Health Service in assessing the potential for noise nuisance to arise from your premises.					
Please tick () as appropriate			Yes	No	N/A
1. Do (or will) any of the following activities take place at your premises?					
• Amplified music			✓		
• Singing (including karaoke)			✓		
• Use of public address systems				✓	
• Use of large screen TV or other video displays			✓		
• Outdoor events (i.e. within marquees or outdoor entertainment areas etc.)				✓	
• Firework displays				✓	
2. Can any of the above mentioned activities taking place at your premises be heard, or would likely be heard, by a simple listening test at any of the following "noise sensitive premises"? These may be adjoining or in the vicinity of your premises. This list is not exhaustive.					
• Residential properties/flats			✓		
• Schools				✓	
• Offices				✓	
• Nursing Homes				✓	
• Hospitals				✓	
• Hotels				✓	
• Community Centres				✓	
• Other				✓	
<p>If you have answered "No" to BOTH these questions, then you are unlikely to cause a noise nuisance. Please go the Declaration section and return the completed checklist with your licence application.</p> <p>If you have answered "Yes" to EITHER of these two questions, there is the potential for noise nuisance. Please complete Section 2 – Noise Management Arrangements</p>					

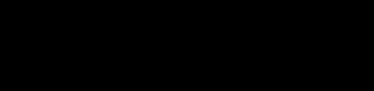
Section 2: Noise Management Arrangements

Where licensed premises have the potential to create a noise nuisance, pro-active management procedures for noise should form an essential part of the day to day business management. The extent or complexity of the procedures required, if any, being proportionate to the potential scale of the problem. Please refer to the attached guidance notes for practical advice on noise control measures.

Please tick () as appropriate	Yes	No	N/A
3. Have you assessed the potential for noise disturbance to arise from your business operations? <i>Such assessments could consist of a simple listening test to comprehensive acoustic surveys by a competent person</i>	✓		
4. Do you have a documented noise management plan for your premises? <i>(See guidance note)</i>	✓		
5. Are windows and doors always kept closed whilst the entertainment is in progress?	✓		
6. Do external entrance doors prevent noise from spilling out when being opened/used?	✓		
7. If you provide amplified music, are limiters installed to restrict the sound levels, e.g. microphone controlled or in-circuit devices?		✓	
8. Is there an intervening lobby between the entertainment room and any conservatory type structure within your premises?		✓	
9. Is amplified music only played within the main building of your premises, rather than in marquees or outdoor entertainment areas?	✓		
10. Do customers use outdoor areas for activities e.g. parties, barbeques, music etc. that could potentially cause nuisance?		✓	
11. Do you have a designated external area suitably located away from neighbouring noise sensitive properties for smokers?		✓	
12. Are all deliveries to or waste collections from the premises restricted to between 0700 hours and 1800 hours?	✓		
13. Do you avoid bottling out or placing waste into an external storage area between the hours of 2300 hours and 0700 hours the next day?	✓		
14. Have you monitoring systems in place to check on compliance with any established noise control procedures?	✓		
15. Have staff received any training/guidance on managing noise associated with activities (i.e. amplified music etc.) taking place at your premises?	✓		

Section 3: Declaration

I fully understand that this checklist will be used by the Council's Environmental Health Service for the purpose of assessing compliance with one of the Licensing Board's primary objectives of preventing public nuisance. I declare that the above Noise Management checklist has been completed accurately and is a true reflection of the arrangements which will be in place at the premises.

Signed:  (Applicant)

Date: 22/3/16

Print Name: DAVID SMILLIE

The completed checklists should be returned to the Clerk's office in the area where you normally reside and accompany your licence application.

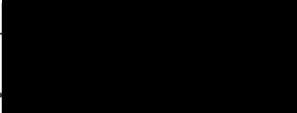
Revised

NOISE MANAGEMENT PLAN

Name of Premises	The Volunteer Arms
Address	47, High Street, Fort William, PH336DH
Licensee	David Smillie
Name of Manager	David Smillie
Date	22/03/2016

Noise Source	Noise Control Measures in Place or to be taken
Internal music, films, TV etc	*Rubber vibration pads have been fitted to speakers by sound engineers to reduce noise level. *The level of music has been reduced to the satisfaction of the immediate neighbours. *The agreed level of music will be communicated to all staff and DJs to ensure compliance with Noise Management Plan.
Outside music	N/A
Deliveries and collections	All between 9am & 5pm
Smoking shelters, external seating areas	*External seating area in use between 11am & 8pm
Gardens and play areas	N/A
Customers and car parks	Customers are duly notified that when leaving the premises after closing time, that we have neighbours and they are asked to respect this fact and to leave quietly.
Refuse and recycling bins, bottles and stores	Refuse and recycling bins are uplifted between the hours of 9am & 5pm.

Complaints procedure	The direct neighbours have been given the PREMISES LICENSE HOLDERS direct contact details in the event that the level of noise increases to an unsatisfactory level and they have been assured that all complaints will be investigated and acted on accordingly.
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Signed: 

Dated: 22/3/16

Further Advice

For further information and advice regarding legal and technical aspects of preventing noise nuisance, please contact your local Environmental Health Office:

Caithness, Sutherland and Easter Ross:

Community Services -Environmental Health
Council Offices
Drummuie
Golspie KW10 6TA
Tel: 01349 886606 email: env.health@highland.gov.uk

Community Services -Environmental Health
Government Buildings
Girnigoe Street
Wick
KW1 4HW
Tel: 01349 886606 email: env.health@highland.gov.uk

Inverness, Nairn, Badenoch & Strathspey:

Community Services -Environmental Health
Town House
Inverness
IV1 1JJ
Tel: 01463 785024 email: EHosinverness@highland.gov.uk

Ross, Skye & Lochaber:

Community Services -Environmental Health
Fulton House
Gordon Square
Fort William
PH33 6XY
Tel: 01397 707007 email: lochaberEH@highland.gov.uk

For further information with respect to liquor licensing issues, please contact your nearest Licensing Standards Officer. Details can be found at;
http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/350/licensing_standards_officers

For further information with respect to details of acoustic consultants specialising in noise surveys and noise control measures you should contact:-

The Institute of Acoustics (I.O.A)
77A ST Peters Street
Hertfordshire
AL1 3BN
Tel: 01727 848195 www.ioa.org