

## The Highland Licensing Board

Meeting – 14 June 2016

Agenda Item	11.1
Report No	HLB/054/16

### Licensing (Scotland) Act 2005, section 36

**Application for review of premises licence – Misty Isle Hotel, Dunvegan, Isle of Skye, IV55 8WA**

### 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 the Misty Isle Hotel, Dunvegan, Isle of Skye, IV55 8WA (Premises Licence HC/RSL/0179). 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 the Misty Isle Hotel, Dunvegan, has been received from the Chief Constable dated 31 May 2016.

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 put forward by the Chief Constable in his review application are as follows:-

“(i) One or more of the conditions to which the premises licence is subject has been breached.

(a) Local condition (a) was breached where after 2200 hours a child under the age of 6 years was within the bar area;

(b) Mandatory condition 2(1) was breached where alcohol was consumed on the premises not in accordance with the operating plan.

(ii) Grounds exist relevant to the licensing objective of:

Preventing Crime and Disorder;

Preventing Public Nuisance;

Protecting Children from Harm.”

Further details of these 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 John Neil, and a representative of the Chief Constable 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](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 the representative of the Chief Constable and the licence holder 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 2.2 above and to give reasons for its decision in this regard.

Reference: HC/RSL/0179

Date: 2 June 2016

Author: Carol Nicolson

Background Papers: The Licensing (Scotland) Act 2005

Appendices:

1. Premises Licence Review Application from the Chief Constable dated 31 May 2016
2. Report from the Licensing Standards Officer dated 1 June 2016

31/05/2016

Your Ref: HC/RSL/0179

Our Ref: Premises 22389



**POLICE  
SCOTLAND**

Keeping people safe

Philip Gormley QPM  
Chief Constable

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

The Highland Licensing Board  
Tigh na Sgìre  
Park Lane  
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Isle of Skye IV15 9GP

FOR THE ATTENTION OF SUSAN BLEASE

Dear Sir,

**LICENSING (SCOTLAND) ACT 2005 - SECTION 36**

**PREMISES LICENCE REVIEW APPLICATION**

**Misty Isle Hotel**

**Misty Isle Hotel, Dunvegan Road, Dunvegan, Isle of Skye, IV55 8WA.**

**Premises Licence Holder, John Neil, 22 Waverley Street, Larkhall ML9 1PY**

**1. Grounds for Review:**

It is the view of the Chief Constable that the following grounds for review exist:

- (i) One or more of the conditions to which the Premises Licence is subject has been breached.

Local condition (a) was breached where after 2200 hours a child under the age of 16 years was within the bar area.

Mandatory condition 2(1) was breached where alcohol was consumed on the Premises not in accordance with the operating plan

- (ii) Grounds exist relevant to the Licensing Objective of:

Preventing Crime and Disorder;  
Preventing Public Nuisance;  
Protecting Children from Harm.

**2. Previous Premises Licence Review Applications:**

None

**3. Background to Premises:**

(i) Any recent transfers, variations, etc

None

(ii) Size, location and nature of premises

The premises in question are located within Dunvegan, Isle of Skye and is a three storey building with letting bedrooms, a lounge bar area with seating for approximately 30 persons and a dining area with approximately 10 tables.

The on-sales licensing hours are

Monday	1100 hours to 0000 hours
Tuesday	1100 hours to 0000 hours
Wednesday	1100 hours to 0000 hours
Thursday	1100 hours to 0000 hours
Friday	1100 hours to 0100 hours
Saturday	1100 hours to 0030 hours
Sunday	1230 hours to 2330 hours

(iii) Any community issues pertinent to the premises

None

(iv) Previous information which has been reported to the Board by Police

None

(v) Details of any previous LSO Section 14 compliance notices/Section 39 written warnings/variations or suspensions, etc.

None

**4. History of Premises Management:**

**4. History of Premises Management:**

Alan Robert Agnew, b.10/08/1951 @ Glasgow, Hotel Manager, Misty Isle Hotel, Dunvegan, Isle of Skye has been appointed designated premises manager from 15 July 2011 when he took over running and management of the Misty Isle Hotel, he is tenant of the premise.

**5. Details of Incidents Leading to Grounds for Review:**

NP/3256/12 - 29/03/2012; John Neil notifies police he barred the then current barman due to ongoing issues and consistent breaching of licensing rules and will have Alan Agnew running the premises.

NP/9881/12 - 05/09/2012; Complaint received from members of the public to the effect that they had been resident in the Misty Isles Hotel during which time the barman was serving behind the bar. Whilst serving behind the bar, the barman was drinking alcohol and smoking to the point he became intoxicated and became verbally abusive, swearing at one of the members of the public. The manager Alan Agnew was also present within the bar at that time but made no attempt to curtail the barman's behaviour. Eventually Agnew did make the barman apologise to the member of the public. A letter was sent to the licensee, John Neil.

NP/12422/12 - 16/11/2012; 2 persons searched for drugs who were found within the Misty Isles Hotel due to their behaviour and intelligence received. One of the males being a barman within the hotel. The search was negative.

NP/3388/13 - 30/3/2013; Barman found within the Misty Isles Hotel under the influence of some substance with white powder around his nose. Searched for drugs with a negative result.

NP/8213/15 – About 0400 hours on Wednesday 22 July 2015 Police were on patrol in the Dunvegan area. On passing the Misty Isle Hotel licenced premises loud music and raised voices were heard coming from within the bar area suggesting an ongoing party. Police attempted to gain entry however the doors were locked. About 30 minutes later a male person, who wished to remain anonymous, was seen walking away from these premises in an intoxicated state. When spoken to he indicated that he had been drinking in the bar of the Misty Isle Hotel at a "Lock In" in the company of a large group of holidaymakers who were staying at a nearby campsite. He indicated that "Lock-ins" were a regular occurrence at the Misty Isle Hotel.

Given the Misty Isle Hotel is normally closed during the day the attending officers elected not to make arrangements for colleagues to attend during the day of Wednesday 22 July, rather they would themselves re-attend the premise during their night shift the following day.

As such, at 0130 hours on Thursday 23 July 2015, the Police officers returned to the Misty Isles Hotel to speak with staff regarding the incident from the previous night. On arrival outside the Misty Isle Hotel again there was the sound of loud music and raised voices coming from within the bar area. On entering the bar Police observed Mr Agnew behind the bar drinking lager. He appeared intoxicated. Approximately 15 other persons were observed in the bar, the majority of whom were intoxicated. There was also a boy who appeared to be about 12 years of age, within the bar area playing on an electronic tablet device. Due to the large number of persons within the premise the Police officers were not in a position to take details of the child and no charges were proffered in respect of any offences relating to children or young persons, however it was blatantly obvious to the attending officers that the child was not 18.

**5. Details of Incidents Leading to Grounds for Review:**

Mr Agnew was then approached by Police whereby he failed to acknowledge them. He was thereafter challenged as to why he was continuing to drink alcohol after the terminal hour as stated on their premises licence. Mr Agnew initially stated that the persons within the bar area were residents of the Hotel and were entitled to drink after hours. He eventually conceded that these persons were not residents and that they had been attending a wedding at Dunvegan Castle earlier that day.

All persons within the bar were then escorted from the premises. Mr Agnew was then informed that the circumstances would be reported to the Procurator Fiscal as a result of which he was convicted on 15 March 2016 at Portree Sheriff Court with contraventions of Sections 63(1) and 114(1) of the Licensing (Scotland) Act 2005.

Between the incident on Thursday 23 July 2015 and Wednesday 13 May 2016, 27 Police inspections have been carried out at the Misty Isle Hotel as way of monitoring the premises and attempting to prevent further offending. A local Police officer, whilst off duty has observed lights on and noise emanating from the bar after hours, when speaking with staff thereafter they have denied there had been lock-ins.

The reporting officer in relation to the aforementioned offences, Sergeant David Canning, has written a letter to the licensee, John Neil, explaining the circumstances of the offences and subsequent conviction.

About 0130 hours on Wednesday 04 May 2016, Sergeant Canning, whilst off duty, heard noise coming from the Misty Isle Hotel, and observed approximately 8 persons within to be drinking, sitting at the bar and playing pool, the doors were found to be locked. Sergeant Canning made attempts to have a nightshift Police unit attend however the officers were engaged on other matters and were not in a position to go to the Misty Isle Hotel.

About 1355 hours on Monday 09 May 2016, Sergeant Bruce Gray spoke with Mr John Neil by phone in relation to the Misty Isle Hotel and Mr Neil's responsibility as the licensee.

Mr Neil was asked if he had read the recent letter sent by PS Canning to which he stated he had not, as such the content of the letter was read out to him. On explaining that Alan Agnew had been convicted of contraventions of the Licensing (Scotland) Act 2005, Mr Neil stated he was aware as Agnew had told him.

When asked if Mr Neil had been at the Misty Isle recently he stated he hadn't been there this year and couldn't remember the last time he had been there. Sergeant Gray asked when he intended to go to the Misty Isle given the fact Alan Agnew had been convicted of licensing offences, Mr Neil stated he wasn't sure. Mr Neil went on to say that his mother was in her 90's and had a hip operation so he wasn't sure when he would get up. He was informed it was his responsibility to ensure the premises are being run correctly.

Sergeant Gray then informed Mr Neil that there was a further allegation that there had been after hours drinking on Wednesday 4<sup>th</sup> May 2016 to which Mr Neil said "Well



**5. Details of Incidents Leading to Grounds for Review:**

what can I do?". Again it was stressed that it was his responsibility.

Mr Neil was asked what he planned to do to put things right to which he said he was trying to sell the hotel, he was asked what he had done to sell the hotel to which he stated he had told Alan Agnew to sell it a couple of years ago and that Agnew had informed him that there were posters up advertising the hotel for sale but he (Mr Neil) hadn't actually seen them and didn't know if the hotel is actually for sale or not. He then asked Sergeant Gray if he thought he should close the hotel to which it was explained Police could not advise him, that it is his responsibility to ensure the premises are run in a correct manner.

Mr Neil said it was difficult to get someone else to run it and that he would have anyone. Mr Neil then asked if Philip Ritchie was in charge of running the premises. Sergeant Gray informed him that he did not know who was in charge and that Mr Neil should be aware of who was running his premises. Mr Neil went on to say he will make it his mission to go up at some point but doesn't know when and that if Philip Ritchie is there the Police better arrest him because if Mr Neil arrives and Ritchie is there Mr Neil will hit him.

Sergeant Gray again informed Mr Neil that it is his responsibility to ensure the premises are run properly and that he should make immediate arrangements to attend and review the running procedures. Mr Neil was asked that he attend Portree Police station to speak with the Inspector or duty Sergeant when he arrives to discuss the matter. Again Mr Neil said he would try but doesn't know when he will manage to get up there but assured he will attend at Portree Police Station.

Mr Neil came across as being completely unperturbed regarding the previous incidents at the Misty Isle Hotel nor did he appear interested in taking any action to ensure the premises are run properly.

The operating plan information regarding children and young persons permits children (under 17 years) to be on the premises only within the dining room and rooms. There is an additional statement that children and young persons are only permitted on the premises until 2000 hours but it is accepted that statement refers only to public parts of the premises other than the dining room and bedrooms.

The premises licence is subject to mandatory conditions including mandatory conditions 2 and 3 (Compliance with the operating plan).

2 (1) Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.

2 (2) Nothing in sub-paragraph (1) is to be read as preventing or restricting the doing of anything referred to in section 63 (2).

3 Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.

## **5. Details of Incidents Leading to Grounds for Review:**

In addition, the Highland Licensing Board have imposed local conditions to the premises licence.

(a) 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 convenient means of access or egress.

(b) 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.

(c) Notwithstanding conditions (a) and (b) children must not sit at the bar counter at any time.

### **Crime prevention objective**

Alan Agnew having been convicted of offences in contravention of Section 63(1) and 114(1) of the Licensing (Scotland) Act 2005.

Mr Agnews conduct on the premises showed utter contempt in relation to his engagement with the licensing objectives. Given his intoxication and consumption of alcohol his judgement would most certainly have been impaired inhibiting or preventing his ability to control any potential crime or dishonesty on the premises.

### **Preventing public nuisance objective**

On both 22 July 2015 and 23 July 2015 Police required to attend the Misty Isle Hotel due to loud music and raised voices. Not only could the volume be heard from outwith the premise but on both occasions the disturbance was outwith the premise licenced hours. On 22 July 2015 the occupants did not allow Police access to the premise.

While considering their policy on licensing hours the Highland Licensing Board would have considered the potential for nuisance arising from noise and other issues occurring when patrons leave licenced premises. Board policy allows for qualifying licenced premises to be open until 0100 hours after due consultation with the public and consideration by the Board in conjunction with engagement with the licensing objectives.

These premises were required to cease the sale of alcohol by midnight on Wednesday 22<sup>nd</sup> July 2015 and that no customers would have cause to be on the premises by 0015 hours following conclusion of licensing hours and the period allowed for consumption of alcohol purchased within the period of licenced hours.

Patrons affected by alcohol leaving the premises after 0130 hours were likely to cause a level of nuisance which may have been more acceptable at an earlier hour and indeed it was the noise heard by Police officers from outside the premises that caused them to investigate further.

**5. Details of Incidents Leading to Grounds for Review:**

**Protecting children from harm objective**

At 0130hrs on 23 July 2015 Police entered the Misty Isle Hotel to find a child of approximately 12 years to be within the premise, along with some 15 persons and Alan Agnew, all of whom were drinking and affected by alcohol.

The mandatory and local conditions attached to the premises licence, as previously detailed, and the Highland Licensing Board policy for 2013-2018 make specific reference to requirements in relation to access to licensed premises by children thus giving due regard to this licensing objective.

As detailed in the summary of incident during the early hours of Thursday 23 July 2015 it can be seen that Mr Agnew has shown complete and utter disregard and contempt in relation to the Protecting Children from Harm objective.

Children are at greater risk of harm on licensed premises at a later hour of the day, particularly if in a bar. There is potential for them to be exposed to behaviour, conduct and language which could cause them harm as a consequence of more excessive consumption of alcohol by adult patrons.

**6. Summary of Evidence:**

As at Q5 – all circumstances witnessed by Police Officers.

**7. Police Recommendation:**

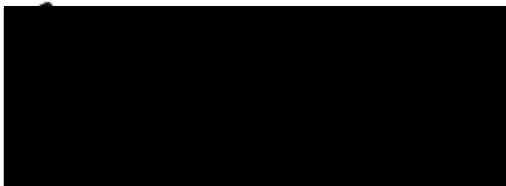
The Chief Constable's view is that, if the Board is satisfied that a ground of review is established, the Board should consider taking such steps as the Board thinks necessary or appropriate for the purposes of any of the licensing objectives referred to above, the steps permitted under section 39(2) being

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

While it is the Chief Constable's view that suspension or revocation of the licence would be appropriate for the purposes of the said licensing objectives, if the Board is minded not to suspend or revoke the licence the Chief Constable would recommend that the Board vary the licence to include a condition that a personal licence holder be present on the premises at all times alcohol is being sold.

In signing this report, I confirm that this Premises Licence Review Application is made under the authority of the Chief Constable of Police Service of Scotland:

Signed:

A large black rectangular redaction box covering the signature of Philip Gormley.

Philip Gormley QPM  
Chief Constable

Date: 31/03/2016

For enquires please contact the Licensing dept on 01463 720817

Agenda Item	
Report No	

**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 Police Scotland in respect of John Neil, HC/RSL/0179 for Misty Isle Hotel, Dunvegan, Isle of Skye**

**1. Licensing History**

**1.1** Premises licence HC/RSL/179 for the premises known as Misty Isle Hotel, Dunvegan Road, Dunvegan, was granted in the name of John Neil, 22 Waverley Street, Larkhall ML9 1PY, on transition, with effect from 1<sup>st</sup> September 2009 by the former Ross, Skye and Lochaber Divisional Licensing Board in accordance with the licensed hours and other policies of that Divisional Board.

**1.2** On 15 July 2011, following the departure of the former premises manager, Alan Robert Agnew, the holder of personal licence HC/RSL/S/3050 issued by Highland Licensing Board was appointed premises manager.

**1.3** The premises operate as a hotel with 5 letting bedrooms, a bar and restaurant. The operating plan permits certain activities during core licensed hours but 'restaurant facilities' is the only activity or service which can be provided outwith the core hours.

**1.4** The premises operate with the undernoted on-sales licensed hours:

Monday to Thursday 1100 to 2400 hrs.

Friday 1100 to 0100 hrs the following day

Saturday 1100 to 0030 hrs the following day

Sunday 1230 to 2330 hrs

Off-sales are also permitted from 1200 to 2200 hrs Monday to Saturday and 1230 hrs to 2200 hrs on a Sunday.

**1.5** The premises are subject to Mandatory and Local conditions.

Mandatory conditions include that there must be compliance with the operating plan including that any activities can only be carried out in accordance with the operating plan.

The undernoted local conditions are imposed:-

a. 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 convenient means of access or egress.

b. 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.

c. Notwithstanding conditions (a) and (b) children must not sit or remain at the bar counter at any time.

e. Any alcohol for consumption in the outdoor drinking area will be sold only in the licensed premises.

## **2. Process**

**2.1** On 25 May 2016, in terms of section 38(2) of the Licensing (Scotland) Act 2005, I received notice of a premises licence review application submitted by Police Scotland in respect of in respect of John Neil, HC/RSL/0179 for Misty Isle Hotel, Dunvegan, Isle of Skye.

**2.2** This report is submitted in accordance with the requirements of section 38(4) of the Act.

## **3. Licensing Standards Officer's comments**

**3.1** I understand that Alan Agnew is the tenant of the premises rather than an employee or agent of the premises licence holder. Never-the-less, primary responsibility for the proper operation of the premises in accordance with a premises licence rests with the premises licence holder.

**3.2** I have not yet managed to make contact with the premises licence holder, Mr Neil, but I suspect that he is very much a licence holder in name only with a limited understanding of his role and responsibilities as a premises licence holder.

**3.3** I can appreciate that the holder of a premises licence for premises being operated by a tenant is unlikely to have any day to day role in the operation of the premises. While there can be complications with landlord / tenant relationships Mr Neil could have abrogated responsibility for the premises licence to the tenant by means of a transfer of the licence.

- 3.4** I made an unannounced visit to the premises on Tuesday 31<sup>st</sup> May at 1500 hrs. The premises were closed but Mr Agnew was present. Major renovations were underway and the only part of the premises available for use by the general public was the bar. Mr Agnew advised me that a significant sum of money was being invested on the premises which were due to fully reopen around the middle of June when up to 10 staff were due to start work. It was also my understanding that the premises have been, or are to be, put up for sale.
- 3.5** At the time of my visit the public bar was not open but all relevant signage and notices were properly displayed. Mr Agnew directed my attention to a new CCTV system which has been installed and which he can monitor from his private quarters when he is not working.
- 3.6** Various matters of good practice in support of compliance with the premises licence and engagement with the licensing objectives were discussed and I have forwarded information for him to consider. I also recommended that Mr Agnew discussed the possibility of submitting a premises licence variation application with Mr Neil. Matters which could be varied include licensed hours, activities and services to be provided during and outwith core hours and the policy in respect of children and young persons.
- 3.7** A search of Licensing Standards Officer records for the preceding 4 years shows no evidence of any inconsistency with the requirements relating to signage and record keeping.
- 3.8** If the premises licence is to continue to have effect the licence holder should put in place a formal arrangement for supervision of the tenant whose conduct and management of the premises has resulted in this review application. It would be difficult to have any confidence that a substitute premises manager or a requirement that an additional personal licence holder be present on the premises would have a significant, beneficial effect if that person was employed by, or otherwise operating under the direction of, the tenant.

### **Recommendation**

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

Author: David Inglis

Designation: Licensing Standards Officer

Date: 1 June 2016

Background Papers: