

The Highland Licensing Board

Meeting – 14 June 2016

Agenda Item	10.1
Report No	HLB/053/16

Personal licence section 83 hearing

Licence holder : Alan Robert Agnew

Licence number : HC/RSL/S/3050

Report by the Clerk of the Licensing Board

Summary

A notice has been submitted by the Chief Constable under section 83(4)(b) of the Licensing (Scotland) Act 2005 confirming that the personal licence holder has been convicted of relevant offences and recommending that the personal licence be endorsed, suspended or revoked.

The Board must hold a hearing to consider the convictions and the Chief Constable's recommendation.

1. Background

In terms of section 83 of the Licensing (Scotland) Act 2005 if a personal licence holder notifies the Board of a conviction, the Board must notify the Chief Constable who must then submit to the Board a notice confirming the existence of the conviction and confirming whether it is a relevant offence in terms of the Act. The Chief Constable may also include in the notice a recommendation that the personal licence be revoked, suspended or endorsed.

2. Notice submitted under section 83(4)(b)

A notice under section 83(4)(b) dated 20 May 2016 has been submitted to the Board by the Chief Constable and is attached to this report at appendix 1.

The notice confirms that the personal licence holder, Alan Robert Agnew, was convicted on 15 March 2016 of two offences under the Licensing (Scotland) Act 2005 offence 1 – section 63(1) (allowing consumption of alcohol on the premises outwith licensed hours, and offence 2 - section 114(1) (premises manager drunk while on the premises). These are relevant offences in terms of the Licensing (Scotland) Act 2005.

The notice includes a recommendation by the Chief Constable that the personal licence be endorsed, suspended or revoked.

3. Hearing

Section 83(7) of the Act provides that where the Board receives from the Chief Constable a notice confirming the existence of a relevant conviction the Board must hold a hearing.

A copy of this report and the section 83(4)(b) notice submitted by the Chief Constable have been sent to the personal licence holder, who has been invited to attend and/or be represented at the hearing.

A representative of the Chief Constable has also been invited to attend the hearing.

4. Board's powers at the hearing

In terms of section 83(8) and (9) of the Act the Board may, after giving the licence holder and the Chief Constable's representative an opportunity to be heard and having had regard to the conviction and the Chief Constable's recommendation 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 that personal licence for such period, not exceeding 6 months, as the Board considers appropriate, or
- (c) endorsing that 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.

5. Recommendation

The Board is invited to hear from the representative of the Chief Constable 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/S/3050

Date: 25 May 2016

Author: Carol Nicolson

Appendices: Appendix 1: Notice from the Chief Constable dated 20 May 2016

20/05/2016

Your Ref: HC/RSL/S/3050

Our Ref: Person 36153

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



**POLICE
 SCOTLAND**

Keeping people safe

Philip Gormley P.M.
 Chief Constable

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

FOR THE ATTENTION OF SUSAN BLEASE

Dear Sir,

**LICENSING (SCOTLAND) ACT 2005 - PERSONAL LICENCE HOLDER DUTY
 TO NOTIFY LICENSING BOARD OF CONVICTIONS**

Alan Robert Agnew, 10/08/1951

Hampton Cottage, Main Street, Dunvegan, Isle of Skye, IV55 8WA.

I refer to the above and your correspondence. In terms of Section 83(4) (b) of the Licensing (Scotland) Act 2005, I have to advise you that Alan Robert Agnew has been convicted of the following relevant offence(s).

Date	Court	Crime/Offence	Disposal
15/03/2016	Portree Sheriff Court	1) Licensing (Scotland) Act 2005 Sec 63 (1)(b) allowing consumption	£500 Fine
		2) Licensing (Scotland) Act 2005 Sec 114 (1)	£250 Fine

The Misty Isle Hotel, Dunvegan, Isle of Skye operates with a premises licence issued by Highland Licensing Board, licence number HC/RSL/0179, which is held by John Neil, 22 Waverley Street, Larkhall, ML9 1PY. The premises manager is Alan Agnew who is the holder of a personal licence issued by Highland Licensing Board, licence number HC/RSL/S/3050. Alan Agnew has been designated premises manager of the Misty Isle Hotel since 15 July 2011.

The Misty Isles Hotel is a three storey building with five bedrooms available for let, a bar and a restaurant. 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

Sales of alcohol are to cease at the given times in accordance with the premises licence. In relation to the operating plan, other than the provision of restaurant facilities, there are no activities and services to be provided out with core licensing hours.

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.

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.

At 0130 hours on Thursday 23 July 2015 Police officers from Police Scotland were on patrol in the Dunvegan area. At that time they carried out a licensed premises check of the Misty Isle Hotel. On attendance 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 and consuming alcohol. There was also a boy, approximately 12 years of age, within the bar area playing on an electronic tablet device. Due to the large number of persons within the premises the Police officers were not in a position to take details of the child, however it was blatantly obvious to the attending officers that the child was not 18 years of age.

Mr Agnew was then approached by Police whereby he failed to acknowledge them. He was thereafter challenged as to why he was allowing the consumption of alcohol, by both himself and other persons within the bar, 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 left the premises and Mr Agnew was then informed that the circumstances would be reported to the Procurator Fiscal as a result of which he was convicted as previously detailed.

Crime prevention objective

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

Mr Agnew's 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.

Protecting children from harm objective

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.

Preventing public nuisance objective

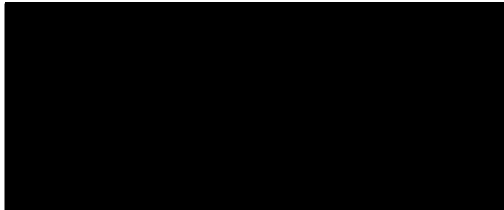
While considering their policy on licensing hours the Highland Licensing Board would have considered the potential for nuisance arising from noise and other issues occurring when patrons leave licenced premises. Board policy allows for qualifying licenced premises to be open until 0100 hours after due 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 22nd 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.

In terms of Section 83(5)(a)&(b) of the Licensing (Scotland) Act 2005, the Chief Constable in having regard to the previously detailed information recommends that the Personal Licence for Alan Robert Agnew be endorsed, suspended or revoked.

Yours faithfully



Philip Gormley P.M.
Chief Constable

For enquires please contact the Licensing dept. on 01463 720817