

## The Highland Licensing Board

Meeting – 9 August 2016

Agenda Item	8.3
Report No	HLB/068/16

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

Scot House Hotel, Newtonmore Road, Kingussie, PH21 1HE

#### Report by the Clerk to the Licensing Board

##### Summary

This Report relates to an application for a major variation of premises licence by Mark Carswell, Columba House Hotel, Manse Road, Kingussie, PH21 1JF.

#### 1.0 Description of premises

1.1 Detached small family hotel with nine bedrooms, in the centre of Kingussie. The premises are situated in a mainly residential part of town and have a substantial outdoor drinking area.

#### 2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

##### On sales:

Monday to Thursday: 1100 hours to 2400 hours  
Friday to Saturday: 1100 hours to 0100 hours  
Sunday: 1230 hours to 2400 hours

#### 3.0 Summary of variation application

##### 3.1 Variation sought

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

(1) Terminal hours Monday to Thursday to be extended to 0100 hours rather than 2400 hours.

(2) Sunday hours to commence at 1100 hours rather than 1230 hours and terminate at 0100 hours rather than 2400 hours.

(3) Off sales to be provided 1000 hours to 2200 hours Monday-Sunday.

(4) Activity of gaming to be provided.

(5) Televised Sport to be provided out with hours and will be available at all times to residents.

(6) Childrens' Policy redesigned to allow more access as follows:

6(b) Children are permitted access when accompanied by a responsible adult. Young persons can access the premises unaccompanied until 2200 hours, after which time they require to be accompanied by an adult.

6(c) 0-17 years.

6(d) Children and young persons can access the premises at all times according to the terms of 6(b).

6(e) all public areas.

(7) The premises will seek to operate according to any period of extended licensed hours offered by the Highland Licensing Board, such as, the 'festive hours extensions' and any other period.

(8) Varying the internal layout of the premises, a new reception counter has been built, lounge area is now a dining area, reception area is now a lounge area.

(9) Layout Plans have been re-configured.

#### **4.0 Background**

4.1 On 3 June 2016 the Licensing Board received an application for a major variation of a premises licence from Mark Carswell.

4.2 The application was publicised during the period 13 June until 4 July 2016 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.

4.5 Further to this publication and consultation process, the following timeous notice(s) of objection/representation have been received and are appended:

Michael and Silvia Cornwall  
Mr and Mrs N Hannah  
Kingussie and Vicinity Community Council

- 4.6 The applicant and the objectors 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)

## **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:-

(i) The Scot House Hotel is a detached small family hotel situated in the centre of Kingussie. The premises have a substantial outdoor drinking area to the front of the premises. The premises are situated in a mainly residential part of the town.

(ii) Recently the premises have changed ownership, and the current operator Mark Carswell, has sought to re-energise the hotel and increase its turnover. This has been done through exterior and interior works to the hotel, offering an

environment that caters for a wide age range of customers, particularly targeting, the local customer groups. This is a marked difference from the previous operation where the through put of trade had dwindled substantially.

(iii) Accordingly, as part of the modernisation process, Mr Carswell has submitted a major variation application. Within this application amendment to existing core hours is sought, by increasing the terminal hour Monday to Thursday until 0100 hours. Sunday trading is to be increased from 1100 hours until 0100 hours. The ability to provide off sales on a 1000 hours to 2200 hours basis, purely as an ancillary service to customers and guests is asked for. All these changes to hours are within the Highland Licensing Board's Policy.

(iv) It is requested that section 5 of the operating plan be amended to allow the activity of gaming, potentially to allow charity whist and bingo nights, should community groups wish to stage such events. It is further requested that televised sport be authorised outwith core hours for the benefit of residents.

(v) The children's policy has been amended to allow greater freedom of access by young persons until 2200 hours unsupervised, to allow such persons access to the premises to purchase food and soft drinks.

From inspecting the premises the LSO views this as reasonable and in keeping with the fifth licensing objective.

(vi) The lay out of the premises has been slightly altered with a new reception desk being built, the former residents' lounge becoming a dining area and the former reception area becoming a residents' lounge. Appropriate layout plans have been submitted with the application.

(vii) The seasonal variation currently available on the premises licence to operate extended hours on Christmas eve and Hogmanay has been requested to be broadened to allow extended hours in line with the Board's festive hours policy.

(viii) Following the public consultation on this application one letter of representation and one letter of objection have been received, these being from the proprietors of two neighbouring bed and breakfast premises, who have complained about increases in noise and anti-social behaviour since the hotel has changed its method of operation under Mr Carswell's tenure. A general comment has also been received from Kingussie and Vicinity Community Council.

(ix) The LSO and Sergeant Bruce Gray of the Licensing Unit of Police Scotland called at the premises on Friday 8 July 2016 and spoke with Mr Carswell. It is fair to say, Mr Carswell is setting his stall out to run a good and flourishing business and in his own words, his initial success has taken him somewhat by surprise. He acknowledges there have been a few occasions where his neighbours will have been disturbed by his customers. He also feels, however, that part of the issue is that, his premises are simply more popular and busier than before, and this is a marked difference from the previous regime, in which

the premises were barely trading and seeking a buyer. Mr Carswell genuinely presents as a licence holder, who wishes to operate fairly by the licensing objectives.

(x) It has been suggested to Mr Carswell by the LSO, that it may be prudent, to amend the current condition on his premises licence for the outside drinking area, to require its closure at 2200 hours instead of the current limit of 2300 hours. This would be except for the weekend of the “Thunder in the Glen” Harley Davidson motorcycle rally, where Speyside sees huge visitor influx, particularly around licensed premises in the evenings, for an event which is truly locally significant, in which case, for that weekend only, the outside drinking area could revert to closure at 2300 hours .

(xi) Secondly, as functions seem now to be a core element of the operating plan, a condition has been suggested by the LSO, that all windows and doors should be kept closed during the playing of live or recorded music. Glass disposal/collection should not occur between 2300 hours and 0700 hours.

(xii) Lastly, as the issues and hopefully their resolution are based around noise and its management, the applicant has been requested to complete a noise management plan which will subsequently be incorporated within the operating plan as a specific condition.

## **7.0 HLB local policies**

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-18
- (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 condition (e) should be deleted from the licence as well as existing condition (g) “premises open for the sale of alcohol after 0100 hours shall have available a selection of hot and cold foods and shall advertise this within the premises”.

Amended Local Condition (e) should be added as follows:

“After 2200 hours alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area; except for the occasion of the weekend of Thunder in the Glen Motorcycle Rally when the time shall be from 2300 hours.

### 8.3 Special conditions

The Board may wish to consider attaching the following special condition(s):

- (1) During the playing of any live or recorded music all windows and doors will remain shut. (licensing objective 3).
- (2) No glass disposal shall take place after 2300 hours or before 0700 hours. (licensing objective 3).
- (3) 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).

On any occasion when the premises are permitted to open after 0100 hours the following conditions shall apply:

- (1) A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 0100 hours.
- (2) A designated person who is the holder of a personal licence must be present on the premises from 0100 hours. (licensing objectives 1 and 2).

#### **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local and special conditions detailed at paras. 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/INBS/16

Date: 12 July 2016

Author: Marjory Bain

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

Objection from Michael and Silvia Cornwall

Representation from Mr and Mrs Hannah

Comment from Kingussie and Vicinity Community Council



**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE  
APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes or emailed to [licensing@highland.gov.uk](mailto:licensing@highland.gov.uk). Remember, if an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

Michael & Silvia Cornwall Avondale House, Newtonmore Road, Kingussie, Inverness-shire, PH21 1HF	
Telephone Number:	01540 661731
Email Address:	[REDACTED]

**2. Address of Premises in respect of which objection / representation is made:**

Scot House Hotel Newtonmore Road, Kingussie, Inverness-shire
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**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. Excluded Premises	Please see letter
2. Off-Sales Hours/24 hour drinking	
3. Licensing Objectives	
4. Activities/Premises/Customers	
5. Over Provision	

**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

<b>State details of any representation (refer to representation by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1. in support of application	
2. seeking an amendment to the operating plan, or	
3. seeking to add additional conditions to the licence	

Signature: [REDACTED]

Date: 30.6.2016



**REGISTERED**

Ms Susan Blease  
Regulatory Services  
The Town House  
Inverness IV1 1JJ

RECEIVED  
- 4 JUL 2016

30 June 2016

**Application for major variation of Premises Licence  
Scot House Hotel, Newtonmore Road, Kingussie PH21 1HE**

Dear Ms Blease,

We refer to your letter of 6 June 2016 in respect of the above.

We are the owners of Avondale House Bed & Breakfast in Kingussie, located directly opposite the Scot House Hotel.

Since change of management in 2015, we have been subjected to late and out of hours disturbances which are having a negative effect.

Very much to our distress, mostly Fridays and Saturdays but sometimes also during the week, we and our guests have experienced disorder, public nuisance, even fighting in the street, and general disrespect for the neighbourhood, during and after opening hours. Time and again, drunken guests from the pub within the Scot House Hotel spill out onto the front lawn of the Hotel where there are more than a dozen wooden benches with tables. We have asked the Manager on several occasions to keep the noise level outside the pub to a minimum after 11 p.m., however, this seems to fall on deaf ears as the disturbances are repeated the next weekend. Only on 18 June 2016, a noisy hen party descended on to the Scot House Hotel just before 11 p.m., once again disturbing the neighbouring accommodation providers and their guests for some time! And again last weekend, we experienced another noisy night! When guests from the pub within the Scot House Hotel finally leave, we have the added bonus of car doors slamming, engines being revved up, while the occupants of the cars continue to talk loudly! We have called the Police



on several occasions, however, they do not consider this an emergency, so by the time they finally get here, the noisy crowd has disappeared and the Police continue with their nightly tour!

Bearing in mind that Kingussie is a Highland village in the beautiful Cairngorm National Park which attracts 1'000s of visitors from around the world, we fear that granting an extension of opening hours for the whole week, in addition to off sales as well as televised sport for outwith hours, would have an adverse effect on the tourism on which many in Kingussie rely on as their livelihood. Furthermore, with social media now part of our daily life, negative reviews will have a very severe impact on several accommodation providers situated around the Scot House Hotel, as well as on Kingussie remaining a popular tourist destination within the Scottish Highlands.

We are not against people enjoying themselves, but we ask that one considers those that may be affected as a result of such actions.

We hope that our concerns for our livelihood are taken into account when deciding on the licensing for the Scot House Hotel.

Yours sincerely,

Michael & Silvia Cornwall

**REPRESENTATIONS OR OBJECTIONS IN RELATION TO A PREMISES LICENCE APPLICATION UNDER THE LICENSING (SCOTLAND) ACT 2005**

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**1. Full Name and Address of person making objection/representation:**

MR & MRS N. HANNAH	
[REDACTED]	
Telephone Number:	[REDACTED]
Email Address:	[REDACTED]

**2. Address of Premises in respect of which objection / representation is made:**

SCOT HOUSE HOTEL NEWTONMORE ROAD  
KINGUSSLE PH21 1HE

**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1.	Excluded Premises
2.	Off-Sales Hours/24 hour drinking
3.	Licensing Objectives
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<b>State details of any representation (refer to representation by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)	
1.	in support of application
2.	seeking an amendment to the operating plan, or
3.	seeking to add additional conditions to the licence

We are concerned about the management of noise level & consideration for neighbours from the Scot.

Signature

[REDACTED]

Date: 29.06.2016

See sheets include

We are not against The Scot House Hotel extending their licencing hours in principal. We can't pass comment on what happens inside the hotel but what happens outside has a knock on effect on us. We have a guest house to the side of the hotel and we can be bothered by noise from the hotel and that in turn affects our business as it disturbs the sleep of our guests. In general there doesn't seem to be consideration given to neighbours.

We are in a quiet little town and our guests come here to enjoy that fact and it is upsetting for us if they have been disturbed by outside noise. Arden House has been run by ourselves for the last 6 years and we have built up a good reputation and gained a few accolades. It would be disappointing to lose this through no fault of our own.

We did have dialogue with Mr. Carswell 18.06.2016 regarding a few recent incidents. The first one being staff at the back of the hotel were noisy. We had asked on a few occasions if they could turn down music and not talk so loudly as a group, outside our bedroom windows. These requests have been made after 11.30. We also mentioned to him a rather loud party of youths celebrating outside on the 16.06.2016 and this was after midnight. It was the evening of the 17.06.2016 the kitchen staff were particularly loud and that was when we decided to talk Mr Carswell. He did say that he would put up a sign and a fence to help with the noise at the back of the hotel. Both Mr Carswell and ourselves agreed that we need to be able to work side by side. We also brought to his attention that an elderly man left the hotel with his bicycle, parked it against the hedge separating our properties and in full view of our lounge and indeed the church opposite, urinated against the hedge in broad day light. Also we told him about a group of noisy youths a week or so earlier, coming from the direction of his hotel sitting on the wall of the church and then I saw one of them briefly going in to the church before they all ran away. Again this was well after midnight. On 23.05.2016 there was a fair amount of noise outside the hotel with shouting and car a car engine roaring. We have also gathered a fair number of bottles and glasses that have been thrown into our garden over the last year.

Unfortunately there was a party on the evening of the 18.06.2016 and the noise started from early evening at the front seating area of the Scot with some youths carrying their drinks from the hotel up and down the street. This particular evening was the worst noise.

A police car drove passed the hotel around 11.00 and we assumed that they would have checked the noise. However it did continue with our guests being subjected to foul language and loud noise well into the early hours of the morning from both the back and front seating area of the Scot.

On 25.06.2016 the noise started up again at the front seating area of the hotel and continued until 1.00 in the morning. Again our guests were subjected to this noise (one girl screaming and crying) and a group of youths standing around the front of the hotel conversing loudly. The music from the bar was particularly loud as the front doors of the hotel were open. We did try to contact Mr Carswell on the phone but could not get through. As we considered the level of noise a disturbance at that time of night we phoned the police.

The outside bar/seating area at the front of the Scot House unfortunately backs on to our garden. I believe drink can be consumed /sold outside until 11.00 in the evening. That unfortunately pushes the boundaries of what is tolerable for our guests.

A large marquee was erected for Christmas /New Year 2015 in the Scot House car park. There was entertainment 26.12.2015 31.12.2015.and 01.01.2016. This was in close proximity again to guest and private bedrooms. It was erected originally without any information being given to us. When we eventually had the opportunity to object/raise concerns we felt it too late as the marquee was in position and everything organised. The music on the first night went on passed the allotted time and on the third night it was particularly loud as it was a live band. We did leave a phone message that evening with Mr. Carswell. We did unfortunately have to block out rooms that faced on to the Marquee and if something similar is organised again this year we will find it easier just to close.

These incidents are a few examples of the noise levels and disturbances we have had.

I hope some of our concerns can be addressed when you look into the licencing for The Scot House Hotel.

Thank you for your time in looking into our concerns.

Kindest Regards,

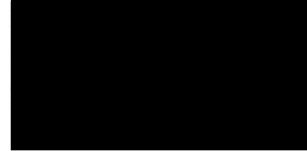
Norrie and Jenny Hannah



# KINGUSSIE AND VICINITY COMMUNITY COUNCIL

Clerk to the Board  
Susan Blease  
Regulatory Services  
The Town House  
Inverness

Replies to:  
KVCC Secretary,



15<sup>th</sup> June 2016

**Application for new grant of premises licence  
Scot House Hotel, Newtonmore Road, Kingussie PH21 1HE**

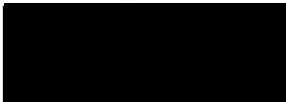
**Your Ref: MB/HC/INBS/16**

Dear Ms Blease,

With reference to the application for the above licence. While not objecting to this application we have concerns with regard to the possibility of patrons causing noise or disturbance to adjacent properties, given the proposed hours of closure (1am).

The Scot House Hotel is situated adjacent to, and opposite existing bed and breakfast establishments and private dwellings, and also in close proximity to the largest hotel in Kingussie. Consequently we would ask that care is taken to minimise the risk of noise or disturbance to nearby residents and visitors.

Yours sincerely,



Ailsa Schofield  
Chairwoman  
Kingussie & Vicinity Community Council