

## The Highland Licensing Committee

Meeting - 4 October 2015

Agenda Item	6.1
Report No	HLC/070/16

### Application for the grant of a public entertainment licence – Ewan Maxwell (Ward 9 – Dingwall and Seaforth)

#### Report by the Principal Solicitor - Regulatory Services

#### Summary

This Report relates to an application for the grant of a public entertainment licence.

This item is subject to a formal hearing procedure.

#### 1.0 Background

1.1 On 12 July 2016 an application for the grant of a public entertainment licence under the Civic Government (Scotland) Act 1982 (“the Act”) was received from Mr Ewan Maxwell in respect of the Black Isle Country Park, Drumsmittal, North Kessock.

1.2 In terms of the Act the Licensing Authority has six months from receipt of the application to determine the same. Therefore this application must be determined by 11 January 2016. Failure to determine the application by this time would result in the application being subject of a “deemed grant” which means that a licence would require to be issued to Mr Maxwell for a period of 1 year.

#### 2.0 Consultation responses

2.1 Following receipt of the application a copy of the same was circulated to the following agencies/services for consultation:

- Police Scotland
- Scottish Fire and Rescue Service
- Highland Council Environmental Health Service
- Highland Council Community Services (Roads)
- Highland Council Planning Service
- Highland Council Building Standards

2.2 Community Services (Roads) and the Planning Service have both confirmed that they have no objections to the grant of the licence.

2.3 Police Scotland have also confirmed that they have no objections to the grant of the licence.

2.4 Environmental Health responded in August, objecting to the grant of the licence unless various conditions were complied with. These conditions are as stated in the Area Environmental Health Manager’s memo of 5 August 2016 which is attached to this report as **Appendix 1**. The applicant was advised of

this objection and of the conditions he was expected to meet. Environmental Health have subsequently worked with the applicant to advise him further on the measures he was expected to take in order to meet these conditions.

Subsequently, a further inspection of the premises was carried out by Environmental Health and a Government appointed veterinary surgeon on 20 September 2016 to ascertain whether the required conditions were now met.

As at the time of writing this report, the results of this inspection are not available and it is consequently not known whether Environmental Health will be maintaining or withdrawing their objection to the grant of the licence. A verbal update will be provided by Environmental Health at the hearing on 4 October.

**2.5** Building Standards have been unable to respond to the consultation at this time, having had to reschedule an originally scheduled visit. A verbal update on their position, if known, will be provided by the Principal Solicitor at the hearing.

**2.6** Likewise, Scottish Fire and Rescue Service have not responded at this time. Again, an update on their position, if known, will be provided by the Principal Solicitor at the hearing.

### **3.0 Letters of objection and support**

**3.1** Letters of objection to the grant of the licence have been received from three members of the public and these are attached as **Appendix 2**.

**3.2** Letters in support of the application have also been received from five members of the public and these are also attached as **Appendix 3**.

### **4.0 Policies**

**4.1** The following policies are relevant to this application:

Standard public entertainment licence conditions. A copy of these can be accessed at

[http://www.highland.gov.uk/info/1125/licences\\_permits\\_and\\_permissions/298/entertainment\\_licences/2](http://www.highland.gov.uk/info/1125/licences_permits_and_permissions/298/entertainment_licences/2)

or a hard copy can be supplied where requested.

### **5.0 Determination of the application**

**5.1** Section 5(3) of Schedule 1 of the abovementioned Act states that a licensing authority may refuse an application to grant or renew a licence where:

- The applicant or anyone else detailed on the application is not a fit and proper person to be the holder of the licence
- Where the application relates to an activity consisting of or including the use of premises or a vehicle or vessel, that the premises are not, or the vehicle or vessel is not, suitable for the conduct of the activity, having regard to –

- The location, character or condition of the same
- The nature and extent of the proposed activity
- The kind of persons likely to be in the premises, vehicle or vessel
- The possibility of undue public nuisance, and
- Public order or public safety

- Where there is other good reason

If required the Principal Solicitor will offer particular advice on the criteria relating to this particular application.

## **6.0 Other considerations**

- 6.1** The applicant submitted a risk assessment and a health and safety statement to Environmental Health who have confirmed that both are satisfactory but that they had not retained copies. The applicant has accordingly been asked to submit copies of both to the licensing office for retention with the licence application. To date, these have not been received. If Members were minded to grant the application for a licence, delegated authority is sought to delay issue of the licence until this requirement is complied with by the applicant.

## **7.0 Recommendation**

- 7.1** The Committee is invited to determine the application in accordance with the Council's Hearings Procedure.

Officer Reference: Angela Mair

Date: 20 September 2016

Background Papers: Civic Government (Scotland) Act 1982

Appendix 1: Environmental Health Service memo of 5 August 2016

Appendix 2: Letters of objection

Appendix 3: Letters of support

# APPENDIX 1

## MEMORANDUM

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**To:** Mrs Angela Mair  
Licensing Officer

**From:** Area Environmental Health Manager, INBS

**Our Ref:** GM/

**Your Ref:** PE/21/156

**Date:** 05/08/16

**Please ask for:** Gregor MacCormick Tel: 228705

**Subject:** Civic Government (Scotland) Act 1982  
Application for Grant of Public Entertainment Licence  
Mr Ewen Maxwell, Black Isle Country Park, Drumsittal,  
North Kessock, IV1 3XF

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I would confirm that our Service has significant involvement with the Black Isle Wildlife Park recently in terms of its Zoo licence (now revoked), and due to health and safety concerns.

Our Service still has a number of outstanding issues at the park in terms of **(1) the rehoming of animals which are subject to Zoo licensing controls; (2) the welfare of those animals that are intended to remain on the site for display in terms of the public entertainment licence; and (3) the general maintenance for the animal enclosures and public areas.**

In the circumstances, I must therefore advise that our Service would wish to formally object to this licence application on the grounds set out at paragraphs 5(3)(c) and 5(3)(d) of Schedule 1 of the Civic Government (Scotland) Act 1982 until the following conditions can be satisfactorily met by the applicant:-

1. The applicant requires to submit a detailed animal welfare plan for approval by the Licensing Authority. The animal welfare plan should be prepared in conjunction with the applicant's appointed veterinary surgeon, and clearly outline the arrangements that will be implemented for each of the animal species to be kept on the licensed site. The approved plan shall be implemented in its entirety at all times the park remains licensed, unless written agreement is provided by the Licensing Authority to amend the approved welfare plan.
2. The applicant requires to submit a detailed maintenance plan for the animal enclosures and public areas for approval by the Licensing Authority. The maintenance plan should clearly outline the daily, weekly, monthly checks that will be conducted on site to ensure that the animal enclosures and public areas are safe and secure. It is particularly important for the applicant to ensure that no projections are

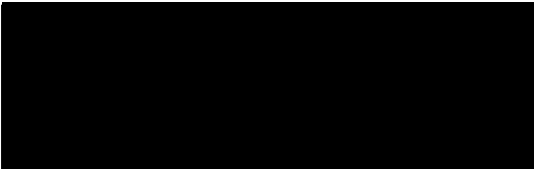
present in the public areas or animal enclosures which would be liable to cause injury. The approved plan shall be implemented in its entirety at all times the park remains licensed, unless written agreement is provided by the Licensing Authority to amend the approved maintenance plan.

3. The applicant requires to submit for approval by the Licensing Authority a detailed layout plan for the proposed licensed site showing location of all public areas and animal enclosures. Details should be included confirming how public access will be controlled to any areas of the existing park that will no longer form part of the site subject to this licence application. The approved plan shall be implemented in its entirety at all times the park remains licensed, unless written agreement is provided by the Licensing Authority to amend the approved layout plan.

I would confirm that our Service would remove our objection to the licence application if the applicant can satisfactorily demonstrate compliance with these conditions.

I would also confirm that our Service will continue to liaise directly with the applicant re these matters and that we will keep you informed should there be any progress in this respect.

Should you require a representative from our Service to attend the Licensing Committee to clarify any of the above matters further, please do not hesitate to contact this office.



Mr Gregor MacCormick  
Senior Environmental Health Officer  
38 Harbour Road, Inverness IV1 1UF

# APPENDIX 2

Dear Councillor McCallum

I understand from Roddy Balfour that you are Convenor of the above Committee. I would like to congratulate the Committee on removing the Zoo Operator licence from the owners. I have rescued animals & birds for many years & after retiring as Head of Bridgend Education Centre in Alness have increased my involvement in animal welfare. On a visit with a friend who was investigating a plethora of complaints from the public last summer, I was appalled at the conditions in which the exotic animals and birds were imprisoned at the above business. She took a gallery of photos which were sent to a national charity.

Allegations of witnesses to abuse suffered by animals & birds made by members of the public are circulating. Some of these have, allegedly, been reported to the SSPCA. I therefore appeal to you as Convenor to consider the animal welfare issues already extant, the local & visitor concerns widely expressed on Trip Advisor & Facebook & also the potentially negative impact of allowing this purely for profit business to continue to operate, with, it would appear no intention of improving the conditions of the animals it owns & with rather arrogant disregard for the visitors who wander around unsupervised and without support, information, guidance or the presence of members of staff with communication skills, experience or species knowledge to enhance, if this is possible, the visitor experience.

For years the owners of the above business seem to have disregarded advice from the SSPCA & World Horse Welfare & I fully understand the logistical problems potentially involved in the rehoming of rare animals by these wonderful charities. However Hilary Andexer of Shandwick House Nr Kildary rescues llamas, alpacas, emus, rheas & parrots. She has over 100 acres of paddocks, ponds, parkland, natural shelter & safe enclosures for the animals & birds fortunate enough to be in her care. The SSPCA have visited her estate & are aware she is ready to help with all of the above and also know that I am willing to help with peacocks, geese ducks & horses.

In conclusion, I hope the Licencing Committee will explore the issues regarding animal & bird welfare & take advice on the current legislation regarding the psychological as well as physical welfare & quality of life & living conditions of animals & birds kept purely for profit allegedly as a visitor attraction. I would contend that 'visitor attraction' is an oxymoron when applied to the Black Isle Wild Life Park & hope that the Committee will make a decision which will protect the animals & birds not the pockets of the owners.

Yours sincerely

Winona A B Wall

Convenor,  
Highland Licensing Board,  
The Highland Council,  
Council Headquarters,  
Glenurquhart Road,  
Inverness IV3 5NX

Dear Convenor,

I would be grateful if you would provide your colleagues on the Licensing Board with copies of this e-mail.

I write concerning the Black Isle Wildlife Park for which your Council has issued a zoo closure direction.

I was first made aware of problems at the Park in October 2014 by members of the public who had visited the Park and had been shocked by the poor conditions they found. One local raised a petition which was subsequently submitted to the Council. Comments on that petition included:

"Last time I visited the park I seen a dead goat, which to me looked like it had been in the enclosure dead a long time.";

"There was a dead snake in its vivarium";

"there was a decomposing budgie lying at the bottom of the first cage you come to on leaving the shop.";

"in the bushes near the pond were decomposing birds which had been predated on";

"enclosures were overgrown and full of rats and many of the animals appeared to have skin conditions"

"There was a dead duck getting eaten by other ducks in the duck pond, I told the keepers meerkats had escaped and they did nothing."

Photographs supported the allegations of dead animals being left to rot.

Further petition comments alleged that a young boy broke his arm in a play area which had not been properly maintained and that visitors were constantly standing in animal excrement

In an e-mail of 7th October 2014 to Councillor Drew Hendry, Leader of Highland Council, I asked that a full inspection of the Park be carried as I was concerned that the animals were not being fed properly or kept under appropriate conditions. I also advised that when I had dealt with other zoos and animal parks with similar problems the difficulties had been caused by the owners suffering from health and/or financial problems. In a front page article in the Inverness Courier of 24/6/2016 someone who is helping to run the Park has said that part of the reason for the problems has indeed been the poor health of the owners.

On 5th November 2014 I received a reply from Alan Yates, Environmental Health Manager at Highland Council. Amongst other things his reply confirmed that the owners of the Park did not know how to feed their donkeys and goats or how to properly heat the accommodation of some of the exotic animals in the Park. I must admit that I was shocked to learn that Highland Council had given a Zoo License to someone who did not know how to feed donkeys or goats or knew that exotic reptiles needed heated accommodation.

In January of this year I received further reports from members of the public who raised similar serious concerns about the Park as I had received in October 2014. I raised these with your Council on 25th January. At that time I found it extremely worrying that there did not appear to have been any major improvements at the Park 15 months after I first raised my concerns with your Council.

From very recent media reports I understand that the owners intend removing the exotic animals from the Park in the hope that they can run it as a commercial petting zoo without the need for a Zoo License. I believe the Park also holds some native wild animals (Scottish Wildcats) which would have to be rehomed. They also have a Zebra which I understand the owner has had from birth, is very attached to and would like to keep as a pet. Much as I can understand the owner having an emotional attachment to this animal I would suggest that it has no place in a petting zoo and, as a herd animal, would be much better rehomed with others of its species.

My main reason for writing is to object to any application from Black Isle Wildlife Park for a Public Entertainments Licence (PEL). Most of the problems at the Park involved domestic animals which would still be there if a PEL is granted. There are also continuing problems with rodent infestation and the run down nature of several enclosures and public areas (see photos from last autumn on the link below).

I also request that Highland Council Licensing Board hold an inquiry into why the Black Isle Wildlife Park, whose owners did not understand very basic animal husbandry, was granted a Zoo License and why, after serious animal welfare and public safety issues were brought to your attention, it was over 18 months before a zoo closure direction was issued.

Yours sincerely,

John F. Robins,  
Animal Concern Advice Line.

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Thank you for your email in response to the above. I have formally requested that I be given permission to appear in front of the Licensing Committee when it meets to consider the Maxwells' application to retain the public entertainment licence. I understand that John Robins has been granted this privilege & further understand that he has tried to persuade HC to withdraw both licences since 2014. I have current evidence & at least 3 witnesses to some of the abuse

Yesterday I was horrified to see that this blot on the reputation of the Highlands has rebranded itself into the Black Isle Country Park, opened a pheasantry centre whatever that entails other than yet more captive birds in inappropriate cages & ironically the unsavoury cafe where, allegedly, Mr Maxwell jun attempted to place rat poison is now renamed Noah's Ark Cafe. Yet another oxymoron! The Country Park declares itself "open for business"! I wonder if there is a breach of the Trade Description Act involved in possible inaccurate or misleading descriptions & will take further advice.

I am very concerned that this rebranding has taken place before the decision of the Licensing Committee has been made & before formal complainants & witnesses have been heard.

I have spoken to Roddy Balfour who did try to speak to Councillor McCallum. However I do understand that HC is in recess for a month. I did not appreciate, however, that normal business appears to be suspended.

Yours sincerely

Winona AB Wall

# APPENDIX 3

Black Isle Country Park  
Drumsmittal  
North Kessock  
IV1 3XF

17<sup>th</sup> July 2016

Your Ref: SM/AM/EK/PE21156

Dear Angela

My name is Alison Gallagher, I have since March this year been helping Maureen, Eric and Ewan sort out issues with the Country Park to enable them to continue operating. There has been significant changes already made.

We have cooperated fully with environmental health officers after the short closure in April of the park and have put in place new measures to ensure that the park is kept up to the standards set out by environmental health and safety officers and they are satisfied with the progress which is on going that the closure notice was lifted.

I am responding to your letter dated 13<sup>th</sup> July 2016 regarding the objection letter submitted against the application for a PEL.

This vendetta started back in 2014 by a woman called Trina Hastings who set up a face book hate campaign and proceeded to orchestrate a petition to close the park, she included lots of other groups in her campaign (most of whom had never visited the park), this woman has initiated a lot of other petitions against businesses in the highlands.

Can I please ask that the email from Mr Robins to which he makes ref to said complaints in 2014 is not used to hold up our application for PEL as the complaints made were mostly out of malice against the family.

I would invite Mr Robins to visit the park and make his own opinion on the complaints that he has made his objection on and he will see for himself how unjustified these are? He will also see the accident book and can show us where the child broke his arm is logged as if this was a genuine accident I am pretty sure our qualified first aid officer would have been asked to attend to the child We are completely unaware of any such accident?

I was hoping that maybe our application could be presented at the meeting on 12<sup>th</sup> August 2016 as opposed to October in your letter.

If we had to wait until October this would cause the park to be closed once again and be detrimental to the animals as the park rely's solely on visitors to cover the large feed bills and maintenance of the park, (there is no funding or help whatsoever) also you will see with the letters I have attached it is not only the animals that would be affected the people who volunteer and visit the park would be devastated! We don't just operate a business we support others like disabled groups, vulnerable adults and you can see we will be hopefully having volunteers from Birchwood Highland as well as other kids like Rachel (letter enclosed)

Please could you give this your utmost consideration.

Kind regards

Alison Gallagher

THE HIGHLAND COUNCIL CHIEF EXECUTIVE'S OFFICE INGWALL
18 JUL 2016
REFERRED TO: <u>LR1815</u>

12.7.16

To whom it may concern.

Since the Black Isle Country Park first opened in 1992, I had been visiting there every year with family members, nursery and school groups.

I understood by meeting with the owners and staff that this was a small, self-sufficient family run business trying to operate without sponsorship.

Over the years, I could see the certain maintenance problems that people have complained about and agreed needed attention so, rather than slam the business on face book, I took the alternative and offered to help by volunteering in 2013.

Since then, I proved myself worthy and was offered employment full-time.

Under the current circumstances, i.e. - the threat of closure due to various complaints, I feel the need to express my sorrow for the family who have worked hard to build this business as a popular attraction for many visitors of all nationalities. These include tourists on holiday, local families, schools, nurseries, support workers with clients and regular special needs groups who benefit from the outdoor experience and the sensory contact with animals which is believed to help the improvement of mental well-being.

The Maxwells, (owners of the park), have over the years, offered work experience and voluntary opportunities to young people and older who require social development and manual skills in order to help them find a job and gain confidence in their future. The work provides sanctuary and therapy for troubled teenagers like Rachel who seeks guidance and a positive direction forward.

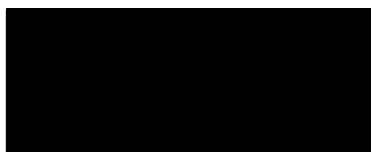
With regards to the animal and public well-fare concerns it appears that the suggested complaints are either

exaggerated or false. For instance, during my time there, a snake has never died in a vivarium. Some visitors have repeatedly mistaken a shedding snake for a dead one. There has never been a report of broken limbs. This is news to all staff and is not on record. We have never known ducks to be cannibals. The enclosures are not rat-infested. Regular visits from Rentakill treat every area of the park.

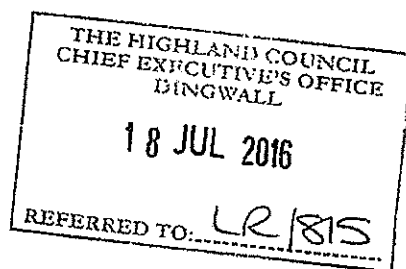
I feel that the objection to the entertainments license is based on old information as many improvements have been made since earlier this year. It also deals a bitter blow to staff livelihood, volunteers, regular visitors and will seriously attribute to the breakdown of the family suffering mental health issues. Our team of staff and helpers would not be working with the Maxwells if they felt the animals were being mistreated.

In the mean time, the maintenance and animal care must continue as normal for their sake, therefore everyone just packing up the business and leaving the animals to it is not an option.

Yours Faithfully



Alison Mackenzie



To whom it may concern

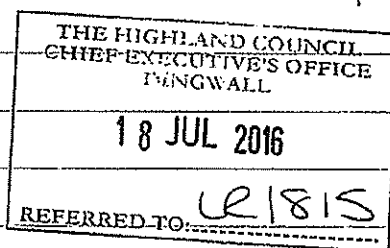
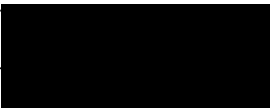
My name is Rachel. I started off at the park as a pupil in school doing a weeks work experience. I have continued to volunteer at the park and it has helped me with my emotions and understanding the needs of the animals, that I help out with.

Before I started at the park I was always angry and I couldnt cope.

The park makes me happy and being with animals has helped me become the person I am today. Understanding that I need to put the animals needs before my own has helped me come to terms with what I have to do in life to be happy. I would always argue with my parents and I was rarely happy, I can talk to my parents and can enjoy being in their company.

If the park closes, I fear that I would go back to the unhappy, argumentative girl I was before. I dont want to go back to that life as I can see what the animals and the staff at the black isle country park have done for me.

Regards



THE HIGHLAND COUNCIL  
CHIEF EXECUTIVE'S OFFICE  
DINGWALL  
18 JUL 2016  
REFERRED TO: LE/815

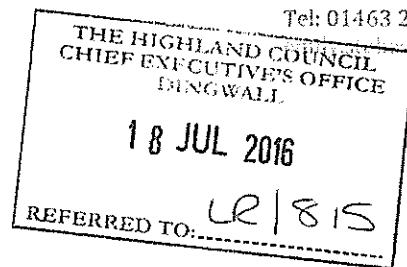
6th July 2016

I volunteered at the Black Isle Wildlife Park for over four yrs since I was seventeen and learned swimming, fencing, gardening, how to catch a goat and looking after the animals.

I loved it. Was my first ever job after leaving school and now I'm training to be a landscape-gardener.  
Thanks to the Black Isle Park staff who gave me a good reference, I have got the sort of job I want.  
Cheers!

8<sup>th</sup> July 2016

Mr and Mrs Maxwell  
Black Isle Wildlife Park  
The Croft  
Drumsmittal  
North Kessock  
IV1 1XF



Dear Mr and Mrs Maxwell

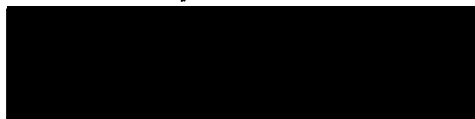
**Re: Possible opportunity for volunteers and joint working**

With reference to the above, we have seen the recent article in the paper that you are actively looking for volunteers to support your work at the Wildlife Park.

We are a Highland based mental health charity who are actively looking to develop a social enterprise to provide opportunities for individuals we support to gain volunteering or employment options. There is a lot of research showing the benefits of outdoor work and working with animals in relation to positive mental well-being and as such, if you might be interested in further discussions with us, we would really welcome that.

Please do not hesitate to contact me on the above number or by e-mail/letter should you wish to discuss anything further.

Yours sincerely



Emily Stokes  
Chief Executive

