

The Highland Licensing Board

Meeting – 6 December 2016

Agenda Item	8.4
Report No	HLB/113/16

Application for the provisional grant of a premises licence under the Licensing (Scotland) Act 2005

141B High Street, Fort William, PH33 6EA (formerly the Everest Restaurant)

Report by the Clerk to the Licensing Board

Summary

This Report relates to an application for the provisional grant of a premises licence in respect of premises at 141B High Street, Fort William, PH33 6EA formerly known as the Everest Restaurant.

1.0 Description of premises

1.1 The premises at 141B High Street, Fort William is situated to the rear of a terraced building at the west end of Fort William High Street. The premises may be accessed by a lane leading from the main High Street thoroughfare. The premises will comprise two raised floor areas which will accommodate a bar area and a dance floor with a dedicated DJ Booth. Toilets and a store are located to the rear of the premises.

2.0 Operating hours

2.1 The applicant seeks the following **on-sale** hours:

On sales:

Monday to Wednesday: 1100 hours to 0100 hours
Thursday to Saturday: 1100 hours to 0300 hours
Sunday: 1100 hours to 0100 hours

The applicant is not seeking provision for off-sales.

3.0 Background

3.1 On 13 October 2016 the Licensing Board received an application for the provisional grant of a premises licence from David Smillie.

The application was accompanied by the necessary Section 50 certification in terms of Planning. Section 50 certification in terms of Building Standards and Food Hygiene will require to be produced when application is made for confirmation of the provisional licence.

- 3.2 The application was publicised during the period 28 October 2016 until 18 November 2016 and confirmation that the site notice was displayed has been received.
- 3.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 3.4 Notification of the application was also sent to NHS Highland.

The local Community Council was not constituted at the time of application therefore no consultation took place.

- 3.5 Further to this publication and consultation process, no timeous objections or representations have been received. However, at the time of writing this report, the applicant was in discussion with Building Standards with regard to agreeing a capacity figure for incorporating within the operating plan. This is likely to be resolved prior to the meeting of the Licensing Board and a verbal update will be provided by the Licensing Standards Officer or the Clerk.
- 3.6 Whilst no objections or representations have been received, the applicant must nevertheless be given the opportunity to be heard before the Board determines the application and has accordingly been invited to the meeting. The applicant has been advised of the hearings procedure which may also be viewed via the following link: http://highland.gov.uk/hlb_hearings

4.0 Legislation

- 4.1 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 are: -

1. that the premises are excluded premises;
2. that the grant of the application would be inconsistent with one or more of the licensing objectives;
3. that having regard to;
 - (i) the nature of the activities 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, or
4. that having regard to the number and capacity of licensed premises of the same or similar description in the locality, the Board considers that if the application were to be granted, there would, as a result, be overprovision of licensed premises of that description in the locality.

4.2 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

5.0 Licensing Standards Officer

5.1 The LSO has provided the following comments:-

- The premises at 141B High Street, Fort William was formerly licensed as the Everest Indian Restaurant with the former alcohol premises licence being surrendered.
- Application has been made by the applicant, David Smillie, for a provisional premises licence which will incorporate late hours on Thursday, Friday and Saturday evenings. On Sunday to Wednesday policy hours of 1100 hours to 0100 hours are requested. Mr Smillie is an experienced licence holder who has run premises in Blackpool and more latterly the Volunteer Arms in Fort William which has late hours entitlement. Mr Smillie has shown he is a responsible licence holder and runs well-managed premises.
- The application is accompanied by the necessary Section 50 certification in respect of Planning. The hours requested are within the policy hours of the Highland Licensing Board, in terms of both conventional and late opening hours. The applicant has demonstrated that he is able to comply with the requirements of late opening by way of providing substantial entertainment either by way of live performances or DJ hosted dances. A dedicated dance floor of substantial dimensions has been incorporated within the layout plan, as has a dedicated DJ booth.
- The applicant has submitted Drug and Evacuation Policies to the Board. CCTV is an understood requirement and at the time of application a contractor had been appointed in order to install this system.
- The premises have applied under seasonal variations within the operating plan to have an automatic right to operate periods of extended hours as offered by the Board.
- The operating plan as written is in the view of the Licensing Standards Officer compliant with the five licensing objectives.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2013-18
- (2) Highland Licensing Board Equality Strategy

7.0 Conditions

7.1 Mandatory conditions

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

7.2 Local conditions

Should the Board grant the application as applied for, the Board may wish to consider attaching the following conditions from the Schedule of Local Conditions:

- 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.
- 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.
- I. Any music or live performance will cease 0245 hours.
- J. After 2200 hours, when the premises is operating beyond 0100 hours, the premises licence holder shall ensure that there is adequate stewarding at all relevant entrances and egresses to the premises and within the premises.
- N. The licence holder shall ensure the provision of an effective means of recording the capacity during the premises hours of operation.
- O. On any day for which the terminal hour specified in this licence is later than 0100 hours the following day, alcohol may be sold on the premises after 0100 hours only while entertainment as detailed in the operating plan is being provided and has been provided continuously from no later than 2200 hours.

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

7.3 Late opening conditions

If the application is approved it is recommended that the mandatory late opening conditions set out in Schedule 3 of the Act should apply as follows:-

1. A person trained to the satisfaction of the Licensing Board in administering First Aid must be present on the premises from 1.00 am (on any day when the premises are open at that time) until whichever is the earlier of:-
 - (a) the time at which the premises next close; and
 - (b) 5.00am
2. A designated person who is the holder of a personal licence must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-
 - (a) the time at which the premises next close; and
 - (b) 5.00am or such other time as the Licensing Board may specify.
3. There must be written policies in existence concerning:-
 - (a) the evacuation of the premises; and
 - (b) the prevention of the misuse of drugs on the premises.
4. A CCTV system must be installed on the premises to the satisfaction of the appropriate Chief Constable and must be kept in good working order.
5. There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.
6. A person who holds a licence granted under Section 8 of the Private Security Industry Act 2001(1) must be positioned at every entrance to the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-
 - (a) the time at which the premises next close; and
 - (b) 5.00am or such other time as the Licensing Board may specify.

7.4 Special conditions

Should the Board grant the application as applied for, the Board may wish to consider attaching the following special condition(s):

- During the playing of all live or recorded music all windows and doors shall be kept closed. (licensing objective 3)
- No glass disposal shall take place between the hours of 2300 hours and 0700 hours. (licensing objective 3).
- The premises shall not operate after 0100 hours until it has been confirmed to the Licensing Board that a CCTV system approved by the Chief Constable has been installed within the Premises. (licensing objective 1 and 2).
- 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).

Recommendation

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local, late opening and special condition(s) detailed at para(s). 7.2, 7.3 and 7.4 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/RSL/1796

Date: 23 November

Author: SB:IC/JT

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