

The Highland Licensing Board

Meeting – 28 March 2017

Agenda Item	7.8
Report No	HLB/029/17

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

Caledonian House, Rooms and Bistro by the Sea, Main Street, Portmahomack

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 Caledonian House, Rooms and Bistro by the Sea, Portmahomack.

1.0 Description of premises

1.1 Detached two storey premises with bed and breakfast and bistro. The bistro, resident's lounge and associated utilities are located on the ground floor, and the letting bedrooms and owner's flat on the first floor.

2.0 Operating hours

2.1 The applicant seeks the following hours:

On sales:

Monday to Sunday: 1000 hrs to 2330 hrs

Off sales:

Monday to Sunday: 1000 hrs to 2200 hrs

3.0 Background

3.1 On 10 February 2017 the Licensing Board received an application for the provisional grant of a premises licence from Carol Sleith.

3.2 The application was accompanied by the necessary section 50 certification in terms of Planning.

3.3 The application was publicised during the period 17 February to 10 March 2017 and confirmation that the site notice was displayed during this time is awaited.

- 3.4 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.
- 3.5 Notification of the application was also sent to NHS Highland and the local Community Council.
- 3.6 Further to this publication and consultation process, a representation was received from Tarbat Community Council (copy attached)
- 3.7 The applicant and the Community Council have been invited to attend the hearing. All 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://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.
- 4.2 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.
- 4.3 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:-
- 5.2 The applicant operates a two storey, detached BandB with 3 letting rooms and Bistro. The premises are situated on Main Street, Portmahomack and the licensed area is to include a garden area belonging to the premises situated on the opposite side of the road.
- 5.3 The premises have a residential capacity for 7 adults and can cater for up to 80 persons within the Bistro. The outdoor drinking area has a capacity for up to 30 persons
- 5.4 The application is for both on and off-sales. At the time of application the commencement time for both on and off-sales was stated as 1000 on each day of the week however a planning constraint requires that the Bistro cannot open before 1030 hrs and must close by 2330 hrs on any day. The applicant asks that the opening times now be changed to 1030 hrs. The terminal hour of 2330 hrs is unchanged.
- 5.5 The applicant seeks a seasonal variation for the festive period which could allow opening until 0200 hrs. I understand that she has consulted with Planning Department and has decided not to seek any amendment to the permitted hours at this time but she wishes to retain the seasonal variation element of the application pending further discussion regarding planning requirements.
- 5.6 There is no bar counter on the premises and the anticipated limited off-sales of alcohol will be dispensed from an area inaccessible to the public. There is no conflict with the Board's policy on over-provision in respect of off-sales premises.
- 5.7 While the operation is to be predominantly food-led, sales of alcohol will not be restricted to persons taking a meal on the premises. There is no bar counter on the premises.
- 5.8 Board policy for food-led premises permits the sale of on-sales prior to 1100 hrs subject to a condition that alcohol will only be supplied as an accompaniment to a meal prior to 1100 hrs.
- 5.9 A wide range of activities and services may be provided and the operating plan is appropriate for this type of business. It is unlikely that many of the services or activities will take place regularly but subject to particular customer demand.
- 5.10 At the discretion of the management unaccompanied children aged 12 years and over may be permitted on the premises until 1800 hrs failing which they will require to be accompanied by a suitable responsible adult. Children

under the age of 12 years must be accompanied by a suitable responsible adult at all times. At the discretion of the management there will be no restrictions on young persons being on the premises at any time.

5.11

It would be appropriate to impose a condition restricting use of the outdoor drinking area. I have spoken with the applicant who has proposed that 2200 hrs would be an appropriate time to cease consumption of alcohol or non-alcoholic drinks.

5.12

I have received a copy of the representation from Tarbat Community Council and have considered their suggestions for conditions. While it is unlikely that the applicant would allow use of the outdoor drinking area for anything other than the consumption of food and refreshments the Board may wish to consider imposing a condition to ensure that the possibility of excessive noise or nuisance is minimised.

5.13

I note that the Community Council appear to suggest that they would be content for the area to be used at all times between 1030 and 2330 hrs daily however I understand that a terminal hour of 2200 hrs would be more preferable.

5.14

I am satisfied that the applicant has given due consideration to the licensing objectives and I have no cause to object to the grant of this provisional premises licence application.

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

- e. After 2200 hrs alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area.
- f(2). Alcohol may be sold for consumption on the premises prior to 1100 hrs only to persons taking table meals.
- 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 Special conditions

1. A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 0100 hrs (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) 0500 hrs;

2. A designated person who is the holder of a personal licence must be present on the premises from 0100 hours (on any day on which the premises are open at that time) until whichever is the earlier of-
 - (a) the time at which the premises next close; and
 - (b) 0500 hrs

3. No recorded music or live performance shall be permitted within the outdoor drinking at any time.

Recommendation

The Board is invited to determine the above application and if minded to grant the application subject to the amendment detailed in paragraph 5.4, and to agree the proposed local and special conditions detailed at paragraphs 7.2 and 7.3.

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/CSR/1810
Date: 14 March 2017
Author: G Sutherland
Background Papers: The Licensing (Scotland) Act 2005/Application Form.

Appendix: Letter dated 6 March 2017 from Tarbat Community Council



TARBAT COMMUNITY COUNCIL

Jackie Thornhill (Secretary)
3 Gordon Brae, Portmahomack

Ms Susan Blease
Clerk to the Highland Licensing Board
Caithness House
Market Place
Wick
KW1 4AB

Ref:SB/GS

6 March, 2017

Dear Madam

Application for Provisional Premises Licence, Caledonian House, Portmahomack

Tarbat Community Council supports the application under the Licensing (Scotland) Act 2005 but asks the licensing board to modify it in certain important particulars in order to make it consistent with the objectives of the Act. We also wish to comment on details of the notification process.

We support the application because having a bistro, with a well-respected owner, in Portmahomack for the last two years or so has added to the attractiveness of Portmahomack both as a place to live and as a venue for tourists in an area dependent to a large degree on tourism.

We are concerned, however, that certain of the proposals in the application could facilitate a reversion to the position a few years back when Portmahomack was regularly plagued in the summer with noisy, drink-fuelled sessions outside the then Caledonian Hotel, with loud music and drug-taking, which attracted people, some of them pretty unsavoury, from all over Easter Ross.

We note that it is proposed in the application that:

1. the grounds at the front adjacent to the sea wall (i.e. over the road from the building) and also the grounds at the rear should be included as part of the licensed premises,
2. recorded music, live performances, dance facilities, theatre, films, gaming and televised sport may be provided in the licensed premises (i.e. both inside and outside)
3. these musical, dancing, gaming, etc. activities may be provided out with core licensing hours (i.e. into the wee small hours)
4. outdoor drinking facilities may be provided, and these too may be provided out with core licensing hours (5(d) of the questionnaire)
5. off-sales of drinks, which we understand were previously only allowed with take-away meals, may now be allowed without a take-away meal.

We note that the licensing board is obliged to promote the objectives of preventing public nuisance and preventing crime and disorder. We believe that in view of past problems the above proposals are inconsistent with these objectives.

We therefore request that in order to ensure that the past problems do not recur the licensing board should attach the following conditions to the licence now sought: -

- A. recorded music, live performances, dance facilities, theatre, films, and gaming should only be allowed inside the building,
- B. recorded music, live performances, dance facilities, etc. should only be permitted during licensing hours,
- C. outdoor drinking should be restricted to licensing hours, and
- D. off-sales of drinks should be restricted to people who have already purchased, or can reasonably be presumed to have purchased, a meal or a take-away meal.

In conclusion, we are not happy about certain aspects of the notification of the application. We consider it unreasonable that anyone who wants to see the full details of this application, such as those listed in 1 to 5 above, has to go to the Service Point in Tain, a round trip of 18 miles, during business hours. We respectfully suggest that in future cases full details should be available online, (as with planning applications), or alternatively that they should be provided at Portmahomack Post Office (as planning applications were before they went online). We also think that greater attention should be paid to publicity, since people cannot make representations if they are unaware of any application. There should at least be, throughout the consultation period, a prominent display outside the premises and/or on the community council's noticeboard: in the present case, there has been, for part of the time, a notice inside a window at knee height which may or may not relate to the application, and no notice has been provided for the community council noticeboard.

Yours faithfully
Jackie Thornhill