

## The Highland Licensing Board

Meeting – 26 June 2018

Agenda Item	9.5
Report No	HLB/067/18

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

Winking Owl, 123 Grampian Road, Aviemore, PH22 1RH

### Report by the Clerk to the Licensing Board

#### Summary

This report relates to an application for a major variation of premises licence by Cairngorm Brewery Company Limited, 12 Dalfaber Industrial Estate, Dalfaber Drive, Aviemore, PH22 1ST.

#### 1.0 Description of premises

1.1 The Winking Owl is situated a short distance from Aviemore town centre and the Railway Station within its own grounds. It is a late night venue and caters for tourists and the local community, offering extensive entertainment.

#### 2.0

2.1 The premises currently enjoys the following operating hours:

##### On sales:

Monday to Wednesday: 1100 hours to 2400 hours  
Thursday to Saturday: 1100 hours to 0300 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) We would like to allow customers the opportunity to consume alcoholic and non-alcoholic drinks on our outdoor decked area until 2200 hrs (Summer months).

(2) The local conditions refer to a "nightclub". After refurbishment this will be a bar, with live entertainment, mostly at weekends and peak periods. (layout plan enclosed).

(3) Change to children and young persons policy to read:

6(b) When on the premises children and young persons must be accompanied by a supervising adult. Access will always be at management discretion.

6(c) 0-17.

6(d) During operating hours of the premises.

6(e) Upstairs Bar and Restaurant, Beer Gardens and Decked area: Children and young persons shall be permitted entry during operating hours at management discretion. This reflects the family emphasis that we seek to promote and also supports the area as a tourist destination which is frequented by both British and foreign visitors.

Downstairs - Bothy Bar: As upstairs but at the discretion of the management at all times. Children and young persons will not be allowed access after 2200 hrs unless for a pre-booked event.

(4) Any reference to a "nightclub" should be changed to a "bar."

(5) Sunday on sales to commence at 11.00 hrs.

(6) Position of downstairs bar changing from previous layout plan.

(7) An additional outside drinking area is being added at the side of the building - in front of the new bar (new layout plan enclosed).

(8) Description of premises amended to read: "The premises currently operate as a public house. The premises occupy a free standing building sitting back from Grampian Road. There is a large car park for approx. 30 cars to the front of the premises. The upstairs of the premises houses a public bar, offices, kitchen and store rooms. The ground floor contains cellarage, male/female and disabled toilets. The ground floor also contains a separate bar area with a stage for live entertainment and private parties. We comply with licensing board policy in terms of the provision of food and the use of plastic glasses. Door security is provided by qualified stewards and the premises operate a 24-hour recorded CCTV system. There are external beer gardens to the front of the premises and to the side of the premises, in front of the new bar."

#### **4.0 Background**

4.1 On 10 May 2018 the Licensing Board received an application for a major variation of a premises licence from Cairngorm Brewery Company Limited.

4.2 The application was publicised during the period 18 May until 8 June 2018 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, no timeous objections or representations have been received.
- 4.6 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](http://highland.gov.uk/hlb_hearings)

## **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. that 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 the same or similar description as the subject premises, in the locality.

- 5.2 For the purposes of the Act, the licensing objectives are-

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.

- 5.3 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.

- 5.4 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 Winking Owl is a detached building standing in its own grounds in the centre of Aviemore. It comprises of two levels, on the upper level is a lounge bar/restaurant, on the lower level is a further bar area conforming to the definition of a late opening premises as laid down in the Board's current policy statement; this part of the premises operates late hours on occasion, the bar and restaurant operate normal licensing hours until a maximum of 0100 hours. The premises have a sound operating history under the licence holder Cairngorm Brewing Company Ltd., LSO visits have revealed satisfactory levels of licensing compliance.

(ii) Application has been made to vary the current premises licence. An additional outside drinking area is requested, to be added to the licensing footprint at the front of the premises outside the downstairs bar; the current local licensing condition relating to use of outside drinking areas at these premises are requested to be extended to a 2200 hours termination for the consumption of drinks. It is the view of the LSO that this is reasonable, and unlikely to cause any public nuisance, if appropriately managed.

(iii) The lay out of the downstairs bar is requested to be altered, it still qualifies in its infrastructure as a "late hours" venue. Amended layout plans have been submitted with the application.

(iv) Sunday opening is requested to commence as from 1100 hours which is in line with current Board policy.

(v) The children and young persons' policy at section 6 of the operating plan has been amended; as the premises are 'family friendly' in an area popular with tourists from home and abroad, the applicants have requested a broad based policy i.e. "when on the premises children and young persons' must be accompanied by a supervising adult. Access will always be at management discretion"; this allows management leeway, to gauge when it is appropriate for such persons to be on the premises and when it is not. This access is for the lounge bar/restaurant area. In the bar downstairs, with late hours entitlement, access is allowed until 2200 hours as a general rule, for a pre-booked event access maybe permitted for the duration of the function at management discretion. The LSO is comfortable with the standards of the premises that such a policy, still meets the Licensing Objectives.

(vi) Lastly, the applicants have requested the removal of the term "night club" from the premises description and be replaced with "Bar".

(vii) Following the public consultation no objections or representations have been received in respect of the application.

(viii) The LSO is of the opinion, that the application is in keeping with the licensing objectives.

## **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 conditions will continue to apply and it is recommended that condition (g) should be amended to read:

(g) After 2200 hours alcoholic or non-alcoholic drinks shall not be consumed in an outdoor drinking area.

### **8.3 Special conditions**

No special conditions are considered necessary.

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local conditions detailed at paras. 8.2 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/100  
Date: 12 June 2018  
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