

The Highland Licensing Board

Meeting – 26 June 2018

Agenda Item	9.7
Report No	HLB/069/18

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

The Royal British Legion, Canal Side, Fort Augustus, PH32 4AU

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by The Royal British Legion, Canal Side, Fort Augustus, PH32 4AU.

1.0 Description of premises

1.1 The club is a detached building with a private dwelling above, and is situated on the canal side of Fort Augustus in the centre of the village. The club is well supported by the local community and is a focal point of community activity. On occasion, the premises will admit customers who are member of the public and not club members.

2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

On sales:

Monday to Wednesday: 1700 hours to 2300 hours
Thursday to Friday: 1700 hours to 0100 hours
Saturday: 1130 hours to 0030 hours
Sunday: 1230 hours to 2300 hours

Off sales:

Monday to Friday: 1700 hours to 2200 hours
Saturday: 1130 hours to 2200 hours
Sunday: 1230 hours to 2200 hours

3.0 Summary of variation application

3.1 Variation sought

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

- (1) On sales to commence at 1100 hrs and terminate at 0100 hrs Monday-Sunday.
- (2) Off sales to commence at 1100 hrs Monday-Sunday.
- (3) Seasonal variation to be changed to 'yes' to take advantage of Festive licensed hours operated by the Board.
- (4) Add conferences to the list of approved activities.
- (5) Change children's policy to allow under 18's to remain for the duration of private functions at management discretion.
- (6) Update description to include: "On occasions, the premises will admit customers who are members of the public and are not club members."

4.0 Background

- 4.1 On 28 March 2018 the Licensing Board received an application for a major variation of a premises licence from The Royal British Legion Club, Fort Augustus.
- 4.2 The application was publicised during the period 2 April until 23 April 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, the following timeous notice of representation has been received and is appended:

Michael and Frances Salter, Callanish, Station Road, Fort Augustus, PH32 1AY
Patricia Nolan, Laurasville (and That Cute Little Highland Shop), Canalside, Fort Augustus, PH32 4AU
Grant Holloway and Ester Brueggert, Laurasville, Canalside, Fort Augustus, PH32 4AU

- 4.6 The applicant and the objector(s) 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://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) LSO Report. Update from Report submitted for HLB meeting of 15 May 2018.

(ii) In respect of this major variation application, a report on the circumstances surrounding the application was submitted by the LSO for the Licensing Board meeting of 15 May 2018. Several objections were received detailing the potential for noise nuisance which may be caused by the playing of live or recorded music on the premises.

(iii) The LSO reported to the Board that he was unable to give an accurate report and recommendations to the Board at that time, as noise monitoring tests had not been carried out with the assistance of Environmental Health Officers. Accordingly, a decision on the application was deferred until the next Licensing Board on 26 June 2018 to follow appropriate enquiries to be made.

(iv) As a consequence, on Tuesday, 29 May 2018, the LSO and Zoe Skinner EHO, attended at the British Legion Club and met with club committee members and the objectors Patricia Nolan and Grant Holloway. Extensive noise monitoring tests were carried out, with music being played on the jukebox within the club, and monitored inside the upstairs flat occupied by Mr Holloway. Despite lengthy tests, no acceptable noise level could be achieved, due to the base beat still being audibly present in the flat. In short, in order for this to be resolved, a sound engineering solution would require to be contracted in from a specialist provider.

(v) In the meantime, a compromise suggested and subsequently accepted by all parties is that any live performance would be required to terminate by 2200 hours. Any operation of the jukebox playing pre-recorded music would be required to cease by 2300 hours. Both the objectors and club officials agreed to continue to liaise and work with each other. It would be open for the applicants to come back at a future date, to apply to remove conditions once solutions had been put in place and adequately tested for workability with EHO officers.

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 the following additional local conditions be attached:

(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.

(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.

8.3 Special conditions

The Board may wish to consider attaching the following special conditions:

- (1) The premises licence holder shall ensure adequate supervision of patrons using the curtilage of the premises for smoking, so that no noise nuisance is caused to nearby residents.
- (2) All glass disposal to external bins shall stop by 2200 hours.
- (3) The premises shall be restricted to holding a maximum of two live musical performances per calendar month.
- (4) During any live performance or the playing of recorded music all windows and doors shall be kept closed.
- (5) A written noise management plan acceptable to the Highland licensing board, must be in place and all operations with the operating plan are to be conducted in accordance with the noise management plan.
- (6) Any live performance will be required to cease by 2200 hours.
- (7) The playing of any pre-recorded music by way of jukebox or any other machine will require to cease by 2300 hours.

On any occasion where the premises are 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 (mandatory condition).
- (2) A designated person who is the holder of a personal licence must be present on the premises from 0100 hours (local condition) (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/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/466

Date: 12 June 2018

Author: Marjory Bain

Appendices: Michael and Frances Salter, Callanish, Station Road, Fort Augustus,
PH32 4AY

Patricia Nolan, Laurasville (and That Cute Little Highland Shop),
Canalside, Fort Augustus, PH32 4AU

Grant Holloway and Ester Brueggert, Laurasville, Canalside, Fort
Augustus, PH32 4AU

Grant Holloway & Ester Brueggert - Laurasville, Canalside, Fort Augustus PH32 4AU

07867056807

21st April 2018

Licensing Board, Inverness

Town House

High Street

Inverness, IV1 1JJ

RECEIVED
23 APR 2018

RE: Royal British Legion, Fort Augustus, Major Variation To License

To Whom it may concern,

Both Ester and myself do not support the variation of the present license of the above address as we both feel this will result in increased noise and nuisance issues we already encounter living above the address mentioned.

The extension to serve alcohol until 1am will only add the noise and increases the chance to have strangers both urinate and smoke illegal drugs in the alley next to my front garden.

The live music and DJs that perform downstairs while only once or twice a month so loud that our floor vibrates, I have voiced my concerns about this twice before and the problem has still not been addressed.

We are however willing to accept the possibility of the British legion being allowed to serve alcohol throughout the day if the concerns are met and an arrangement can be reached.

Yours Faithfully

Grant Holloway

Licensing

From: Mike Salter ·
Sent: 18 April 201
To: Licensing
Subject: Fwd: Royal E or variation to licence.

Sent from my iPad
M.J.Salter
Kingdom
Glassel
Banchory
Aberdeen
AB31 4BY
+44(0)7802 694 812

Begin forwarded message:

From: Mike Salter ·
Date: 18 April 2018 at 16:51:49 BST
To: licencing@highland.gov.uk
Subject: **Royal British Legion Fort Augustus, major variation to licence.**

1. Address of persons making representation
Michael & Frances Salter
Callanish
Station Road
Fort Augustus
PH32 4AY

2. Address of premises in respect of representation:
Royal British Legion
Canalside
Fort Augustus

4.

We do not support this application in its entirety as we have significant reservations with regard to the extension to the licence permitting opening from 1100 to 0100 the next morning seven days per week.

Currently the licence permits opening from 1700 to 2300, with extensions to 0100 on Thursdays and Fridays and 1230 on Saturdays.

The Legion does have late nights a couple of nights a month, which are often characterised by noise and nuisance at closing time. This includes urinating in the lane adjacent to our house and rubbish being thrown over the fence.

There are no facilities for smokers and so they tend to gather in depth on the pavement at the front door of the legion, there being only the one pavement on Canalside, there is also a tendency for smokers to take drink with them often leaving glasses at the side of the road and on windowsills of adjacent premises.

It is not unknown for these glasses to be broken and the debris left in the road.

The police have on a few occasions been called to attend mayhem after closing, and I would like to point out that the Police presence in the village has been reduced along with their area of responsibility significantly increased.

We do not believe that opening late 7 days per week is in the interests of the village or the immediate neighbours of the legion.

However properly managed on occasional nights this would be acceptable and tolerable provided adequate provision is made to reduce noise.

With respect to afternoon opening, we do not have a real objection to this other than to question how this will be managed given the status of the Legion as a club.

The amendment as described would it would appear, licence the premises as a pub rather than a club, an issue which we feel should be addressed.

These concerns can we believe be addressed by amendment to the operating plan reinforced by additional conditions to the licence.

Signed

Michael J Salter

Frances T Salter

18 April 2018

Sent from my iPad

M.J.Salter

- **Submission of Objections/Representations:**

- **By e-mail:**

Objections/Representations should be addressed to the Clerk to the Licensing Board and may be e-mailed to licensing@highland.gov.uk before the end of the period for objections or representations in relation to the particular application.

- **By Post or Hand Delivery:**

Objections/Representations should be addressed to the Clerk to the Licensing Board and may be posted or hand-delivered to the nearest area office listed below before the end of the period for objections or representations in relation to the particular application:-

Inverness, Nairn, Badenoch & Strathspey Area at	
Town House High Street Inverness, IV1 1JJ Tel: (01463) 724265	
Caithness, Sutherland & Easter Ross Area at	
Council Offices Caithness House Market Place Wick KW1 4AB Tel: (01955) 609508	Council Offices Main Street Golspie, KW10 6RB Tel: (01408) 635205
Ross, Skye & Lochaber Area at	
Council Offices Tigh na Sgìre Park Lane Portree, IV51 9GP Tel: (01478) 613826	Council Offices Lochaber House High Street Fort William, PH33 6EL Tel: (01397) 707233

PATRICIA NOLAN

Laurasville, Canalside, Fort Augustus PH32 4AU | 075 8412 0768 |

That Cute Little Highland Shop, Canalside, Fort Augustus PH32 4AU | 075 8412 0768 |

patricia@littlehighlandshop.com

20 April 2018

Clerk to the Licensing Board Inverness,
Town House
High Street
Inverness IV1 1JJ

The Royal British Legion Scotland (Fort Augustus)

Dear Sir/Madam,

I'm writing to make a representation in relation to the premises license application of the Royal British Legion Scotland Club (Fort Augustus).

My initial concerns about the application were leading me to make an objection on the grounds of (3) inconsistency with Licensing Objectives. However, after sitting down with staff members of the club, I believe we have come to an agreement on how to proceed that suits both of us.

I own the flat above the club, as well as the shop next door. Although club management over the past couple years has helped reduce the number of issues occurring on late night closings, in the past we have been plagued by anti-social behavior. This includes cigarettes in my mailbox, bottles and glasses (both whole and broken) in my garden and in front of the shop, urination on both my shop doorway and my flat stairwell, vandalism of my shop, noise continuing on the streets after closing and patrons of the club continuing to drink and smoke on our flat stairwell. We have also had issues with the volume of the music coming from the club, especially on nights with live music or a dj.

We have tenants in our flat and over the past few years, I have done what I can to reduce the disturbance to our tenants. We have renovated part of the flat and included soundproofing, not only the floors and walls, but the windows as well. We have installed

security lights on the stairwell and we just finished installing a high gate to the garden. The manager of the club has also done everything possible to reduce the anti-social behavior and we have not had that many issues recently.

My concerns were with (1) the possibility of the club closing every night at 1am and (6) the club allowing anyone to come in and not being able to control their behavior upon departure, especially if tourists were allowed in to watch sporting events (i.e. the World Cup). My concerns were magnified by the fact that the current manager would be leaving before the end of the month, because I worry that the anti-social behavior will escalate again.

However, after speaking with staff members of the Royal British Legion Scotland Club (Fort Augustus) on 17 April 2018, I am making a representation instead of an objection.

With regard to the noise, it was agreed that a noise management plan would be submitted and adhered to. It was agreed that a visible decibel reader would be installed in the club and levels would be monitored diligently. It was also agreed that once enough money could be put aside to re-do the ceiling, insulation would also be put in place to reduce the noise and vibrations going into the flat. Live acts would be limited to twice a month. During these events, windows and doors would be kept shut.

With regard to anti-social behavior, I was assured that closing times would not change to 1am every night, but would remain as they are currently. And should the club ever decide to make any changes, they would inform me. I was also assured that management would continue to monitor bad behavior in the club and issue bans if necessary. On late nights (i.e. live music nights), entry after 11pm would continue not to be permitted. A club member would continue to monitor this. I was informed that the club would continue to take names and contact details for any non-members on the premises. I was also informed that the club has no intention of showing live coverage of the World Cup.

If the conditions outlined in the above two paragraphs are complied with, I have no objection to the major variation of the license.

Sincerely,



Patricia Nolan