

The Highland Licensing Board

Meeting – 4 December 2018

Agenda Item	9.1
Report No	HLB/134/18

Premises licence review hearing
Review application by Licensing Standards Officer

Loch Ness Country House Hotel, Dunain, Inverness

Report by the Clerk to the Licensing Board

Summary

This report relates to a premises licence review hearing under section 38 of the Licensing (Scotland) Act 2005 (the Act) following submission to the Board of a premises licence review application by the Licensing Standards Officer under section 36 of the Act.

1. Background

- 1.1 An application has been received under section 36 of the Licensing (Scotland) Act 2005 from the Licensing Standards Officer (LSO) for a review of the existing premises licence for the premises known as Loch Ness Country House Hotel, Dunain, Inverness. The premises licence (Ref. HC/INBS/432) is held by Loch Ness Country House Hotel Limited.
- 1.2 An LSO may make a premises licence review application on any of the statutory grounds listed at paragraph 2.1.1 below. If, however, the alleged ground of review is that one or more of the conditions to which the premises licence is subject has been breached (the ground set out at subsection 36(3)(a) of the Act), the LSO must first have issued to the licence holder (and the licence holder must have failed to comply with) a notice under section 14(2)(a)(i) requiring such action to be taken to remedy the breach as may be specified in the notice.
- 1.3 The LSO's review application, received 1 November 2018, is appended to this report together with two witness statements from complainers in support of his application (**Appendix 1**). In this instance, the alleged ground of review is the ground set out at subsection 36(3)(b) of the Act: "any ground relevant to one or more of the licensing objectives". No prior notice by the LSO requires therefore to have been served on the licence holder.
- 1.4 The alleged grounds for review and the information considered by the LSO to support these grounds are as set out in the review application. In terms of section 36(6) of the Act, the Clerk to the Board is satisfied that the review

application is neither frivolous nor vexatious and that it discloses matters relevant to one or more of the statutory grounds for review. A premises licence review hearing is accordingly necessary.

- 1.5 The premises licence holder has been sent a copy of the LSO's review application. The licence holder, the two complainers, the Environmental Health service and the LSO have all been invited to attend the hearing. They have been advised of the hearing procedure which will be followed at the meeting and which may also be viewed via the following link:

http://highland.gov.uk/hlb_hearings

2. Legal position

2.1 Grounds for review

- 2.1.1 The statutory grounds for review of a premises licence are set out in subsections 36(3)(za) to (b) of the Act. They are-

36(3)(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,
36(3)(a) that one or more of the conditions to which the premises licence is subject has been breached, or
36(3)(b) any other ground relevant to one or more of the licensing objectives.

- 2.1.2 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.

- 2.1.3 Where the ground alleged in the review application is that specified in subsection 36(3)(za), the application must include a summary of the information on which the applicant's view that the alleged ground applies is based.

Where the ground alleged is that specified in subsection 36(3)(a), the application must include notice of the condition or conditions alleged to have been breached.

Where the ground alleged is that specified in subsection 36(3)(b), the application must include notice of the licensing objective or objectives to which the alleged ground of review relates.

These requirements have been met in the review application.

2.2 The Board's powers in respect of the premises licence

2.2.1 In terms of section 39(1) of the Act, at a premises licence review hearing the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the hearing), decide

- to take no action, or
- to take such of the steps mentioned in section 39(2) of the Act as the Board consider necessary or appropriate for the purposes of any of the licensing objectives.

2.2.2 Those steps are-

- (a) to issue a written warning to the licence holder
- (b) to make a variation of the licence for such period as the Board may determine,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence

2.2.3 However, this is subject to the requirement in section 39(2A) that where the Board are satisfied that the ground for review specified in subsection 36(3)(za) is established (i.e. the ground that the licence holder is not a fit and proper person to hold the licence), the Board must revoke the licence.

2.2.4 A revocation under section 39(2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision, unless the revocation is recalled by the Board. It must be recalled if the Board either grants an application under s33 for the transfer of the premises licence, or grants a premises licence variation application seeking a variation which the Board considers would remove the ground on which the licence was revoked under section 39(2A). The transfer or variation application must be received within the 28-day period, but the Board may then extend the-28 day period pending determination of the application.

2.2.5 Should the Board make a variation under section 39(2)(b) or suspend the licence under section 39(2)(c), the Board may subsequently revoke the variation or suspension, on the application of the licence holder, if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary.

2.3 Additional action in relation to personal licence holder working in the premises

2.3.1 In the course of a premises licence review hearing the Board may also make a finding in respect of any personal licence holder who is or was working in the premises that the personal licence holder concerned, while working in the premises, acted in a manner which was inconsistent with any of the licensing objectives.

2.3.2 Should the Board make such a finding, this will trigger a separate and subsequent hearing under section 84 of the Act in respect of the personal licence holder.

Recommendation

The Board is invited to hear from the Licensing Standards Officer and the premises licence holder and then-

- (a) to decide whether they are satisfied that any of the grounds for review set out in section 36(3) of the Act, and listed at **paragraph 2.1.1** above, are established and, if so
- (b) to decide whether they consider it necessary or appropriate for the purposes of any of the licensing objectives to take any of the steps set out in section 39(2) of the Act and listed at **paragraph 2.2.2** above. In this regard, the Board must specify the licensing objective(s) in question.

If the Board is satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the premises licence, as explained at **paragraph 2.2.3** above.

The Board is also invited to decide, as explained at **paragraph 2.3.1** above, whether to make a finding in respect of any personal licence holder who is or was working on the premises that the personal licence holder, while working in the premises, acted in a manner which was inconsistent with any of the licensing objectives and, if so, to fix a further hearing under section 84 of the Act in respect of that personal licence holder.

Reference: HC/INBS/432

Date: 1 November 2018

Author: Susan Blease

Appendices:

Appendix 1 – Premises licence review application by LSO and witness statements received 1 November 2018

Application for review of premises licence

This is an application for review of the premises licence for Loch Ness Country House Hotel, Dunain, Inverness. The holder of the premises licence is Loch Ness Country House Hotel Limited. The review application is made by Licensing Standards Officer, Ian Cox. The grounds for review alleged in the application are noise nuisance and a failure to prevent noise nuisance. These grounds are relevant to the third licensing objective, "preventing public nuisance", and therefore, fall within the grounds for review referred to in subsection 36(3)(b) of the Licensing (Scotland) Act 2005.

Circumstances leading to review application

On Friday, 19th October, 2018 a wedding function was held at the Loch Ness Country House Hotel, Dunain, Inverness. This is a well-established hotel set in substantial grounds just outside Inverness, adjacent to the A82 trunk road.

The hotel holds and has held an Alcohol Premises Licence since transition to the new Licensing (Scotland) Act 2005. Within the operating plan it is stated that on occasion, marquees maybe erected within the grounds "occasionally" to accommodate weddings and such like.

On this date, a wedding function was accommodated within a marquee on a flat area of lawn directly outside the hotel's bespoke function suite. As part of the celebrations a well-known local band "Torridon" were hired to provide live musical entertainment during the course of the evening until 0100 hrs on the morning of Saturday, 20th October, 2018.

The hotel has the activity of "Live Performances" included within section 5 of the Operating Plan. The terminal hour of 0100 hrs for the sale of alcohol is authorised within the approved core hours for the venue.

The complainers in this case, Pauline McEwan and Mina Black, live in neighbouring properties at Dunain.

Mrs McEwan's property is directly next door to the hotel's grounds and is separated by a mature tree line. By rough estimation it is about 50 to 60 yards from where the marquee for this wedding was situated.

Mrs Black's property is a farm cottage situated on Balnagaig Farm, Dunain. This is across the A82 trunk road and is some 400 yards from the hotel's grounds where the function was held.

Both complainers state that from shortly after 2000 hrs on the evening of the wedding, they were severely disturbed within their dwellings by the noise from the live band. Complaints were lodged by both parties on the morning of Monday, 22nd October, 2018 to the Licensing Standards Officer. Subsequently, full statements were noted from both parties detailing the circumstances, level of noise, degree of disturbance and previous noise history with the premises. These statements accompany this report.

Licensing Standards Officer's comments.

On Monday, 22nd October, 2018, I received separate complaints from Pauline McEwan and Mina Black concerning excessive music volume from a function at the Loch Ness Country Hotel, held the preceding Friday evening into the morning of Saturday, 20th, October, 2018.

I had been previously aware of noise issues at this venue, having accompanied Zoe Skinner EHO to the Premises on 16th February, 2016, concerning noise from wedding functions. Advice and guidance on noise suppression was given to the hotel's DPM, Aaron McMaster at that time.

I was aware that the function on Friday 19th October 2018 had occurred in a marquee with a well-known live band. As the construction of the marquee is such that it provides minimal sound suppression, I arranged to call at the Hotel on Friday, 26th October along with Zoe Skinner with a view to seeking a voluntary undertaking to stop holding functions in marquees that involve live or recorded music. We met with the DPM Aaron McMaster, discussed the issue and invited the DPM to accept stopping the functions as a voluntary measure. Mr McMaster was unwilling to accept this, as he wished to continue to offer a full portfolio of functions to future customers. He did say, however, that he was willing to consider being restricted to a certain number of external functions in a year.

Subsequently, I suggested the option of limiting the number of external functions involving music to both complainers. They were unwilling to compromise as they would still suffer an unreasonable level of disturbance during these events. I would agree with their concerns in this regard. I duly informed Mr McMaster that his suggested compromise was not acceptable and therefore the matter would be reported to the Highland Licensing Board in the form of a Review Application.

On Monday 29th October, 2018 I noted full statements from the complainers Pauline McEwan and Mina Black. Both recounted within their testimony a long history of disturbance which they have suffered, and also the unhelpful response from the hotel when complaining. In my view, both complainers are extremely credible and are fair minded, as both recount that on occasions, when some functions are held they experience no problems. Their complaint in my view, confirmed a direct contravention of the third licensing objective, which is the prevention of public nuisance.

Should the Board, following the review hearing, be satisfied that the ground of review specified in this review application is established, I would submit that the Board should also consider it necessary and appropriate, for the purposes of the licensing objective of preventing public nuisance, to make a variation of the licence to add the following specific condition to the premises licence:

“The playing of live or recorded music within any outdoor drinking area of the premises shall be prohibited after 19.00hrs”.

This will still allow functions such as christenings and funeral tea's to be catered for with a choir or piper.

In addition, as the function suite area within the hotel building itself has also been referred to on occasion, as allowing undue levels of noise to escape, a further condition should be considered for adding to the premises licence temporarily until matters are rectified:

“All playing of live and recorded music within the function suite shall be permitted until 23.00hrs only, until such time as a noise management plan approved by the Highland Licensing Board and the Environmental Health Department of Highland Council has been compiled and tested to ensure that nearby residential properties are not disturbed by the playing of such live or recorded music.”

This latter condition could be relaxed once the premises licence holder is able to demonstrate appropriate sound control measures to the LSO and officers of the Environmental Health Department.

Compliance history

The Environmental Health Department of Highland Council have had the following contact with the hotel operators;

Complaint received from Mina Black on 8th February, 2016 in respect of noise issues. As a result, a joint visit was made to the hotel with the LSO and the Premises Manager, Aaron McMaster appraised of the issue. Sound monitoring equipment was installed at the home of Pauline McEwan on weekend of 4th March, 2016, no disturbance was recorded. Subsequently deployed at the address of Mina Black on 24th March, 2016 and left for two weekends, no disturbance was recorded on either weekend.

Further complaint received from Mina Black on 03/07/17 in respect of noise from functions. Advice given to Mina Black on how to pursue a licence review. Hotel was visited on 04/07/17 and again, Manager, Aaron McMaster was appraised of the complaint.

Further complaint received from Pauline McEwan on 17/07/17 in respect of noise from functions; advice provided on how to seek a premises licence review.

Mina Heather Black. Hospital Worker. Balnagaig Farm, Dunain, Inverness.

I have lived at this address for 25 years with my family. Dunain Park Hotel has been a neighbour throughout our tenure, there has never been an issue with noise until the Hotel changed hands and has started to do a lot of functions. I believe it is the Cobbs Company that now own it.

I have complained on several occasions in the past to the Hotel, on occasion, to the Police and also to Environmental Health. Zoe Skinner has spoken to me and I know she has spoken to the Hotel. Nothing so far has provided a lasting resolution to the noise issue. Sound monitoring equipment has been deployed, however, there was no function on, on the night it was given to us.

On Friday, 19th October, I was in the living room of my home which faces towards the Hotel, it was about 21.00 hrs and it was apparent there was a function on, as there was a very loud base beat which was far in excess of the volume of our television. My husband was at home and he remarked how loud it was. We had to turn our television up to a very loud volume to try and drown out the base beat.

I went to my bed at about midnight and it was still going on; Graham my husband, stayed up and told me later that it went onto after 01.00 hrs

There are occasions when functions are held at the Hotel and to be fair, there is no noise disturbance, so its either a different band or they control it better.

My daughter Donna, has in the past phoned the Hotel at night when a noisy function has been on and she has been bluntly told by staff, that they were not going to reduce the noise level.

My home is about 400 yards away from the Hotel grounds which are on the opposite side of the A82 road.

Signed.

Mina Black.

Pauline Sandra McEwan. Retired. Dunain Park Cottage, Dunain Park by Inverness. IV63 6JN.

I have resided at my address since 1986, I now live here on my own. Dunain Park Hotel as it was formerly known borders my property. Initially I was not disturbed by the Hotel. The Hotel has been extended over the years and passed through different owners; weddings have now become very much part of its operation.

Under the present ownership, I believe it to be the Cobbs Company, the noise from weddings has grown steadily worse. I have complained on a few occasions to the Hotel management directly. I have complained back in the day to the Police on occasion; a few times I have spoken to Zoe Skinner from Environmental Health who has been to my house and she has been over to the Hotel and spoken to them about my issues.

Despite making these reports I continue to be disturbed, my impression is that I am not being given any consideration as a neighbour by the Hotel.

The last real noisy occasion was on Friday, 19th October this year. The noise disturbance started to annoy me at about 8.00pm, it may be was a little after that. It was caused by a live band. I was sitting in my conservatory which faces towards the Hotel, this conservatory is double glazed, the Hotel grounds are some 50 or 60 yards away. The noise was very incessant, a base beat, on occasion I could easily make out the words in some songs. To put it in a nutshell; if I had been entertaining guests, we could not have had a conversation or stayed in the conservatory, and they would have had to go home as there was no peace in which to enjoy a conversation.

I tried to listen to my television for about half an hour but gave up as I could not even hear the sound of the television even on high volume, above the sound of the throb of the base beat from the band. So I left my conservatory and went through to a back living room in my home. There is the length of my substantial detached home between these rooms and 3 doorways, I closed all these doors to try and blot out the sound but this did not work. I was getting more and more agitated so I just retired to my bed.

I could not get to sleep. It would have been sometime after 0200 hrs that I got off into a shallow sleep.

I did not phone the Hotel directly, as I have phoned in the past, and have been ignored by the staff who received my calls.

I have been led to understand that on this particular instance, it was a live band playing in a marquee in the grounds. However, on other occasions weddings held within the function suite can be noisy and disturbing as well, it seems to just depend on the band and if doors and windows are open.

It is also fair to say that on other occasions that there have been weddings where although I can hear the music, it is at an entirely acceptable level and does not spoil the enjoyment of my home.

Signed.

Pauline S. McEwan