

**The Highland Licensing Board**

**Meeting – 18 January 2019**

Agenda Item	<b>10.1</b>
Report No	<b>HLB/009/19</b>

**Premises licence review hearing**

**Review application under section 36(1) of the Licensing (Scotland) Act 2005**

**Sobar, 55-57 Castle Street, Inverness, IV2 3DU**

**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 following submission to the Board of a premises licence review application under section 36(1) of the Act.

**1. Background**

- 1.1 An application has been received under section 36 of the Licensing (Scotland) Act 2005 from Police Scotland for a review of the existing premises licence for the premises known as Sobar, 55-67 Castle Street, Inverness, IV2 3DU. The premises licence (Ref. HC/INBS/554) is held by Ali Raza Mohammed, 18 Wimberley Way, Inverness, IV2 3XL.
- 1.2 The review application, dated 20 December 2018, is appended to this report (Appendix 1). The alleged grounds for review and the information considered by the review applicant 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 alleged grounds for review, which is one of the statutory grounds for review. A premises licence review hearing is accordingly necessary.
- 1.3 The Licensing Standards Officer for the area in which the premises are situated has been sent a copy of the review application in accordance with section 38(3) of the Act and has submitted a report on it which is also appended (Appendix 2). The Board must take this report into account at the hearing.
- 1.4 The premises licence holder has also been sent a copy of the review application. The premises licence holder, Ali Raza Mohammed, a representative from Police Scotland and the Licensing Standards Officer have

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](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 would normally trigger a separate and subsequent hearing under section 84 of the Act in respect of the personal licence holder. However, in this instance, a separate application for review of the personal licence held by the designated premises manager of Sobar has already been submitted by Police Scotland under section 84A of the Act, alleging conduct inconsistent with licensing objectives. This section 84A application is the subject of a separate report on the agenda for this meeting and a hearing on this will take place at this meeting.

## **Recommendation**

The Board is invited to hear from the representative of Police Scotland, 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.

Reference: HC/INBS/554

Date: 21 December 2018

Author: Marjory Bain

Appendices: Appendix 1 – Premises licence review application dated 16 November 2018

Appendix 2 – Licensing Standards Officer's report dated 21 December 2018

16/11/2018

Your Ref:

Our Ref: Premise 22606

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



**POLICE  
SCOTLAND**

Keeping people safe

Iain Livingstone QPM  
Chief Constable

Divisional Co-ordination Unit  
Highland and Islands Division  
Police HQ  
Old Perth Road  
INVERNESS  
IV2 3SY

Dear Sir/Madam,

**LICENSING (SCOTLAND) ACT 2005 - SECTION 36  
PREMISES LICENCE REVIEW APPLICATION  
LICENCE NO: HC/INBS/554  
PREMISES: SOBAR  
55 - 67 CASTLE STREET, INVERNESS, HIGHLAND, IV2 3DU.  
PREMISES LICENCE HOLDER: ALI RAZA MOHAMED**

In terms of section 36(1) of the Licensing (Scotland) Act 2005 I hereby make application to the Highland Licensing Board for a review of the premises licence in respect of the premises known as SOBAR 55 - 67 CASTLE STREET, INVERNESS, HIGHLAND, IV2 3DU.

This application for review is made in terms of the grounds set out at Section 36(3)(a): that one or more of the conditions to which the premises licence is subject has been breached.

Mandatory condition 5 whereby, on Wednesday 17 October 2018, a member of the public who had performed no training and had not been authorised to sell alcohol, made sales of alcohol.

Mandatory condition 6 (1) was breached whereby a person (other than a person who holds a personal licence) was working in the premises in the capacity mentioned in sub-paragraph (2) having not complied with such requirements as to the training of staff as may be prescribed for the purpose of this paragraph.

This breach of licensing condition occurred on two occasions. Firstly on Wednesday 17 October 2018 when the rostered barman had asked an untrained

friend to cover part of his shift for him and again on Friday 7 December 2018 when Police carried out an inspection of the premise during which time the barman was serving yet there was no training record for him.

and

This application for review is made in terms of Section 36(3) (b) on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely:

- Preventing crime and disorder
- Securing Public Safety
- Protecting Children and Young Persons from Harm

In support of this application, and in terms of section 36(5A) the following information is provided for your consideration:-

NN/1099518

About 2015hrs on Wednesday 17 October 2018, the Police Service of Scotland received a report of an assault at Sobar, 55-67 Castle Street, Inverness. Police officers N0503 Alan Heap and N0628 Matthew Cameron attended at the given location where they found a male person outside the premises with what appeared to be a fresh injury to his nose. In addition to the injuries the male was in such a state of intoxication that he was staggering about and barely able to stand, his speech was severely slurred and he appeared oblivious of the injury to his nose. The injured party was subsequently examined by medical professionals and his injuries treated.

On entering Sobar, the attending officers found approximately 10 persons within in varying states of intoxication. A person was found within the staff area who was also found to be extremely intoxicated but refused to provide any details of what had taken place, other persons within the premise were also spoken to but refused to provide Police with details of what had taken place.

Due to the level of intoxication of many of the patrons, and their initial refusal to provide Police with information, further enquiries were carried out the following day.

It was established the male who had been acting as a barman was covering for a friend who had been the official barman and who had left the premises for a period of time. The stand in barman had not partaken any mandatory training and was simply 'helping a mate out'. A copy of the statement noted from the stand in barman has been attached at Appendix 1.

It was established during Police enquiry that an assault had taken place within the Sobar which resulted in the call to Police and that the stand in bar man had been serving alcohol both before and after the incident had taken place. Information also came to light that a patron within the premise had gone behind the bar and took hold of a claw hammer which he held up before returning it behind the bar.

Given the assault is sub-judice no further details can be provided in relation to the incident.

NN/11070/18

About 2315hrs on Sunday 21 October 2018, Police officer T1133 Christopher Donaldson attended a report of a road traffic collision in Inverness. On attendance it was established the collision involved a single vehicle which had been driven by a 17 year old youth who was found to be under the influence of alcohol and subsequently failed a breath test. During the course of Police enquiry the 17 year old youth made admissions to having consumed alcohol within Sobar, Inverness.

Given this matter is sub-judice no further details can be provided in relation to the incident.

About 1149hrs on Friday 7 December 2018 Police Sergeant N0183 Bruce Gray and James Williamson of the Police Service of Scotland Highland Division Licensing Department attended at Sobar, 55-67 Castle Street, Inverness, to carry out a licensed premises inspection.

At that time Lewis Hall was working behind the bar and there were no patrons within the premise. Lewis was asked if a manager was available to which he responded the manager was en-route and would arrive shortly. The Police licensing officers advised they would await his arrival during which time 3 patrons entered the premise and ordered alcohol drinks which Lewis served.

Matthew Culley arrived at the Sobar and identified himself as the Designated Premises Manager. It was explained to Matthew that the Police licensing officers intended to perform a licensed premise inspection. Matthew was asked to provide his staff training records to which he explained there were none. Matthew went on to say he had only taken over as premises manager in October 2018 and that there had been no training records. It was explained to Matthew that his staff could not serve alcohol, as Lewis has been observed doing, unless there were staff training record in place if they did not hold a Personal Liquor Licence. Copies of blank training records were later sent to Matthew so he could progress staff training and keep appropriate records.

During the inspection it was observed the Summary Premises Licence was not on display, however the document was located and put in place.

Toilets were checked with drug wipes which displayed a light indication that drug misuse was taking place within the toilets. A copy of a drug policy was later sent to Matthew to provide training to staff.

No refusals/incident book was in place, Matthew was given suitable advice in this regard that it was not a requirement however it was good practice to have one in place.

Following information regarding a claw hammer being located behind the bar, the Police licensing officers looked beside the hatch entrance to the bar area where they located a claw hammer which was within very easy reach of the hatch. Matthew Culley explained the hammer was used for removing and replacing guards on the darts boards. Matthew was advised to place the hammer within the secure staff area which was complied with.

Police licensing officers thereafter went upstairs to the first floor area with Matthew Culley. Within the upstairs area there was a second bar. Matthew was questioned about the running of the bar and answered that if there was a single bar person working downstairs then no one would operate the upstairs bar. Of particular note was the fact that the bar had a door which could be secure however there was no shutter system and as such the bar area was left completely open to be entered. There were optics behind the bar which could easily be accessed by climbing over the bar and there were beer taps which could be accessed by leaning over the bar.

When questioned regarding security of the upstairs bar Matthew stated that the door could be locked and there was a CCTV camera. It was pointed out to Matthew that the monitors for the CCTV system were located within the back staff office and as such any bar person downstairs would actually require to leave the downstairs bar unattended if they were to view the CCTV. In addition the lockable door would not prevent anyone leaning over the bar to access the beer taps or jumping over the bar to access optics. Further to this it was established that children and young persons were regularly left unattended with no staff or adult supervision.

As the inspection came to an end Matthew Culley was asked what support he received from the licensee to which he stated he received no support what so ever, had never met the licensee since he had taken over as premises manager in October, the licensee never answered any of his calls and the only time he had received any communication from the licensee was if Matthew's rent for the premise was late going into the licensee's bank account.

Prior to leaving the premise Matthew pointed out to Police a large plate glass window to the front of the premise which had been broken, he went on to explain that the licensee had a temporary repair carried out where an adhesive tape had been placed over the crack yet the licensee refused to have the window replaced. The crack had spread which Matthew feared would eventually cause the window to break completely and was a serious risk to patrons within the premise and/or persons standing outside the premise.

## **BACKGROUND OF PREMISES**

Sobar is a large premises in the centre of Inverness which is classed as a Sports Bar. The premises occupies the ground and first floor of a semi-detached building in a mainly retail/commercial area of the city.

As a Sports Bar, Sobar offers darts, pool and snooker by way of indoor sports and also offers televised sports. The said sports facilities are spread over both floors



with two separate bars, one situated on the ground floor and one situated on the first floor. When using the snooker and pool tables, patrons will pay for an allotted time, such as a one hour or two hour slot during which timed flood lights above the desired table will be lit for the time period selected.

Given there are bars upstairs and downstairs, yet regularly only one bar person on duty, predominately the downstairs bar will be the only serving area in operation. As such those patrons who elect to utilise the sports facilities or seating in the upstairs area will be left unsupervised for extended periods of time. The upstairs bar has a lockable door however has no shuttering to prevent unauthorised access, as such those patrons who utilise the sports facilities, or seating, in the upstairs section of the premises would have free and unrestricted access to the beer taps by simply leaning over the bar counter and/or free access to the optics should they simply and easily vault the bar top.

Sobar operates the following on sales licensed hours with no off sales.

Monday	1100 hours to 0100 hours
Tuesday	1100 hours to 0100 hours
Wednesday	1100 hours to 0100 hours
Thursday	1100 hours to 0100 hours
Friday	1100 hours to 0100 hours
Saturday	1100 hours to 0100 hours
Sunday	1100 hours to 0100 hours

The operating plan attached to the Sobar premises licence details the following condition in relation to access to the premises by children and young persons.

6 (b) Young persons will be allowed entry to the premises, unaccompanied by an adult. Unaccompanied 12-15 year old children will be allowed entry to the premises until 2100 hours daily, at the discretion of the management. After 2100 hours 12-15 year old children will require to be accompanied by an adult and will be permitted until 2300 hours. Children under the age of 12 will be permitted until 2300 hours and will always require to be accompanied by an adult.

6 (c) Children of all ages and young persons will be allowed entry to the premises.

6 (d) Children and young persons will be allowed entry to the premises at all times when the premises are open for trade, subject to the restrictions outlined at 6 (b) above.

6 (e) Children and young persons will be allowed entry to all parts of the premises which are open to the public.

## **INFORMATION IN SUPPORT OF APPLICATION**

### **Preventing crime and disorder objective**

On Wednesday 17 October 2018 a member of the public was allowed to take full control of Sobar and serve patrons alcohol, all whilst having received no training,

there being no training record held on the premise and without the sale of alcohol being authorised, in contravention of mandatory conditions 5 and 6 of the premises licence.

During the time this member of the public was in charge of Sobar an assault took place which resulted in a patron of the premises being injured. This is a blatant contravention of the 'preventing crime and disorder objective'.

### **Securing public safety objective**

In similar circumstances, as detailed above in the 'preventing crime and disorder objective', having a member of the public taking full control of Sobar, during which time a patron was assaulted, is clearly putting public safety at risk.

Added to this the fact a claw hammer was behind the bar which an intoxicated patron took from its location and held up, and a large plate glass window is broken with a mere temporary repair holding it together raises concerns regarding public safety.

Of further concern is the fact the upstairs bar within Sobar is regularly left unattended which is in no way secured against anyone feloniously appropriating alcohol. Staff within Sobar have detailed that the first floor bar is rarely staffed yet the darts, pool, snooker tables and seating area on the first floor are regularly used by patrons who are left unsupervised thereby allowing them easy access to appropriate and consume unknown quantities of alcohol.

### **Protecting children and young persons from harm objective**

In addition to adults being left for extended periods of time unsupervised within the first floor of Sobar, and having free access to the upstairs bar, children and youths are also allowed free reign of the first floor and the bar situated therein whilst unsupervised.

Previous information has been provided which details that a 17 year old young person consumed alcohol within Sobar following which they drove and crashed a car whilst over the prescribed drink drive limit. There is no specific information as to whether they were served the alcohol or if they consumed alcohol which they appropriated by taking it from the insecure first floor bar. Irrespective of which method they came into possession of alcohol it remains the alcohol was consumed within Sobar and could have had disastrous consequences.

Should the Board, following the review hearing, be satisfied that the grounds for review specified in this review application be established, I would submit that the Board should also consider it necessary and appropriate, for the purposes of the licensing objectives of preventing crime and disorder, securing public safety and protecting children and young persons from harm, to make the following variations to the licence and add the specific conditions to the premises licence:-

**“Until such time as the security of the Upstairs Bar area is enhanced to the satisfaction of the Chief Constable, so as to provide adequate security for**

**all alcohol displayed or stored, no member of the public will be permitted unsupervised access to this area of the Premises.”**

**“The premises shall not open for the sale of alcohol at any time unless a designated person who is the holder of a personal licence is present on the premises”**

**“No children or young person’s shall be within the premises unless in the company of and supervised by an appropriate responsible adult”**

I request that the Licensing Board considers the aforementioned grounds for review and takes such steps as it considers necessary or appropriate for the purposes of the Licensing Objectives under the terms of Section 39(2) or 39(2A) of the Act.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Iain Livingstone', written in a cursive style.

Iain Livingstone QPM  
Chief Constable

For enquiries please contact the Licensing Department on 01463 720817.



## **APPLICATION FOR REVIEW OF PREMISES LICENCE**

This is an application for review of the premises licence for Sobar, 55-67 Castle Street, Inverness. The holder of the premises licence is Ali Raza Mohammed, 18 Wimberley Way, Inverness. The review application is made by Police Scotland under Licensing (Scotland) Act 2005 – Section 36.

### **Background**

Sobar is a large licensed Premises situated in Castle Street, Inverness. It comprises of two floors connected by an internal stairway. The venue is very much modelled on a sports bar theme, with pool and snooker tables available for hire, dart boards and large screens showing a variety of sports. Bar counters are on both floors, the main one being on the ground floor which is permanently staffed, the one on the second floor utilised for private functions and bookings in the main.

The premises licence holder is Ali Mohammed. He is in effect the landlord who thereafter rents/leases the premises to tenants who run the day to day business and pay Mr Mohammed rent.

### **Licensing Standards Officer's comments**

I have in the past conducted licensing compliance visits which have shown the past tenants to be observant of their licensing requirements.

I was made aware in late September, that Matthew Culley would be taking over the tenancy. I have given Matthew specific advice in substituting himself onto the premises licence as manager, I also gave him advice in ensuring staff members were adequately trained to sell or serve alcohol, advising the purchase of training booklets from Alcohol Focus(Scotland) and providing details of how to obtain these.

I reviewed the statutory signage of the premises in October, providing a fully updated licence and summary to Mr Culley. A Schedule 3 sign in respect of under 18 entry was also provided to the premises.

Apart from his role at Sobar, I have encountered Mr Culley in his previous post as premises manager of the Spar Shop in Ardersier in 2016; at these premises his record keeping and observance of all diligence was satisfactory.

Ian Cox  
Licensing Standards Officer  
21 December 2018