

## The Highland Licensing Board

Meeting – 2 April 2019

Agenda Item	8.4
Report No	HLB/034/19

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

Ice Factor, Leven Road, Kinlochleven, PH50 4SF

### Report by the Clerk to the Licensing Board

#### Summary

This report relates to an application for a major variation of premises licence by The Ice Factor Limited, per Ritsons, 27 Huntly Street, Inverness, IV3 5PR.

#### 1.0 Description of premises

1.1 The Ice Factor is a family adventure centre set back from the main village of Kinlochleven within a rural setting.

Activities within the centre include instructed and non instructed indoor ice and rock climbing. An outdoor high level adventure course operated by the Ice Factor is situated immediately outside the café area.

The premises comprise of a cafeteria on the ground floor and the Chillers Bar and Grill is located on the first floor. The ice wall climbing area, climbing bays, a shop and toilet facilities are located on the ground floor.

#### 2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

##### On sales:

Monday to Wednesday: 1100 hours to 0000 hours  
Thursday: 1100 hours to 0030 hours  
Friday and Saturday: 1100 hours to 0100 hours  
Sunday: 1230 hours to 2345 hours

##### Off sales:

Monday to Sunday: 1000 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. Increase on-sale hours on Sundays to 1100 hours to 0100 hours (currently 1230hours to 2345 hours)
2. Amend activities within operating plan: restaurant facilities to be offered outwith licensed hours.
3. Additional activities to be included within operating plan: theatre and films to be offered within licensed hours; outdoor drinking facilities to be offered within and outwith licensed hours.
4. Within section 5(f), remove last sentence restricting alcohol being served in the café on the ground floor only during private functions, live entertainment and special events.
5. Amend occupational capacity at section 7 of premises licence to now include additional capacity in respect of mezzanine floor area.
6. Update children and young person's policy.
7. Change seasonal variation at section 4 to "Yes", to afford ability to operate extended festive hours in line with board policy.
8. Amend layout plan to include revised ground floor layout, new mezzanine floor and identify an outdoor drinking area.
9. Revise description of premises to reflect changes to premises licence namely:

The café on the ground floor will generally operate as a servery but on occasion may be used as a general bar counter when hosting large scale functions. The café will also offer a range of alcohol for sale by way of off-sales.

Poker, charity fund-raising, bingo and race nights. Large scale functions in association with outdoor sporting events will also be held on the premises.

The Chillers Bar and Grill on the mezzanine floor will operate as a traditional bar counter.

A full range of indoor climbing facilities are offered within the venue.

The premises will also offer two outside drinking areas.

#### **4.0 Background**

- 4.1 On 19 October 2019 the Licensing Board received an application for a major variation of a premises licence from The Ice Factor Limited.
- 4.2 The application was publicised during the period 31 October 2018 until 21 November 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(s) of objection/representation have been received:
1. Building Standards identified a number of issues in relation to Building Warrant 06/00062 which the applicant has been working to resolve. In addition, the scheme, which includes an extension to the mezzanine floor, has been amended from the drawings approved by Building Standards. An amendment to the building warrant therefore requires to be applied for which the applicant's architect is currently addressing.
  2. Letter of objection dated 14 November 2019 from Kinlochleven Community Council. Copy enclosed.
- 4.6 The applicant and the objector 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](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:-

- The Ice Factor is a licensed venue situated within the centre of Kinlochleven. As its main stream of business the building houses climbing walls, both of ice and dry construction which are heavily used by climbers who attend this area of Lochaber rightly famed for its mountain climbing opportunities. The building also houses a cafeteria area and a further wet sales bar area from which alcohol sales are made.
- The Licensing history of the premises is very satisfactory and the local Police have no issue in respect of the running of the premises. Several visits in respect of licensing compliance have been made to the venue by LSO's and the licence holders have demonstrated sound standards of compliance with the terms and conditions of their Licence.
- Application has now been made to vary the alcohol premises licence in a number of areas.
- Sunday trading hours for on sales are requested to be amended to 1100 hours until 0100 hours, which is in line with Highland Licensing Board policy hours.
- Previously alcohol sales from the cafeteria area were restricted by wording within the operating plan which allowed sales to be made solely during private functions, live entertainment or special events. This wording has hampered the operation of the premises as they were unable to make casual sales from this venue. In effect, on a daily basis, the cafeteria is open all the time whilst the main bar area situated on the first floor is open more sporadically to support evening drinking hours. The premises have admirably demonstrated they run a proper business and, in the view of the LSO, allowing the cafeteria to offer general alcohol sales without pre-conditions is entirely in keeping with the licensing objectives.

- Alteration to the range of approved activities has been proposed at section 5 of the operating plan, allowing restaurant facilities to be offered outwith licensed hours to provide breakfast meals and teas and coffees; films and theatre productions may be offered. This has particular relevancy to climbing and mountaineering presentations and the licensed footprint of the premises is requested to be extended to allow outside drinking and taking of meals and other beverages.
- In terms of the outside drinking area, there is the proximity of residential property and as such this area should in the view of the LSO be subject to a condition requiring it to close by 2200 hours. In addition it should accommodate solely seated customers, so as to prevent it becoming solely a vertical drinking area.
- The children and young person's policy has been amended and in my view still fully meets the fifth licensing objective of protecting children and young persons from harm.
- Seasonal variations are requested to allow the premises to operate extended licensed hours over the festive period as allowed for in HLB Festive Hours Policy.
- Amended layout plans have been submitted to reflect interior improvements. The description of the premises has been revised to reflect the changes requested within this application.
- Following the public consultation phase of this application concerns had been raised by the Council's Building Standards officer in relation to uncompleted building warrant works, the majority of which have now been addressed. These works however do not affect the majority of the application and it is recommended that the outstanding works be addressed by way of a special condition outlined below.
- An objection to the application has been received from Kinlochleven Community Council, citing it is contrary to the fourth Licensing Objective concerning Public Health.
- The LSO has reviewed all changes requested to be made within the operating plan and in his view the operating plan is still compliant 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 2018-23
- (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 HLB local conditions

The existing local conditions will continue to apply and it is recommended that the following additional local condition(s) be attached:-

- **Children**
  - d. Children aged 12 or over who are permitted to enter the premises unaccompanied by an adult must be seated in a designated area of the premises distanced away from, and/or separated from, any bar counter and any “vertical” drinking area where customers stand while consuming alcohol.
  
- **Late Opening**
  - k. 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.
  
- **Outdoor drinking areas**
  - m. After 2200 hours, alcoholic or non-alcoholic drinks shall not be consumed in any outdoor drinking area
  - n(i). No live or recorded music shall be played in any outdoor drinking area.
  - o. The licence holder shall ensure that consumption of drinks (alcoholic or non-alcoholic) in any outside drinking area is permitted only by customers seated at the tables and chairs provided in the outside drinking area and not by customers standing in that area.

- p. The licence holder shall ensure that all outdoor tables are regularly cleared of all used glassware, crockery, cutlery and refuse.
- q. Within 15 minutes of the conclusion of permitted hours for any outside drinking area situated on a public footpath, all tables, chairs, parasols and other moveable furniture will be removed.

### **8.3 Mandatory condition – late opening premises**

When the premises are operating as late opening premises ie. the festive policy, then the following mandatory condition will 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 (on any day when the premises are open at 0100 hours) until whichever is the earlier of:-
  - (a) the time at which the premises next close; and
  - (b) 0500 hours

### **8.4 HLB special condition**

1. When the premises are operating as late opening premises ie. the festive policy, then the following condition will apply:-
  - A designated person who is the holder of a personal licence must be present on the premises from 0100 hours.
2. Given the concerns raised by Building Standards, it is recommended that the following condition will apply:
  - Until officers of the Highland Council Building Standards have confirmed that (1) all outstanding building warrants have been applied for (2) the outstanding works have been completed satisfactorily and (3) the extension to the mezzanine area on the first floor area of the premises is suitable to be occupied by the public, this said area shall not form part of the authorised licensed area and the premises capacity will be reduced from 481 to 448 persons. For the avoidance of any doubt, this excluded area does not include the Chillers Bar and Grill.

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/special condition(s) detailed at para(s). 8.2 and 8.4 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/RSL/0452

Date: 19 March 2019

Author: Ian Cox/Julie Traynor

Appendices: (i) Letter dated 14 November 2018 from Kinlochleven Community Council



Yvonne Rosie  
Kinlochleven Community Council



14<sup>th</sup> November 2018

Dear Sirs,

YOUR REF: HC/RSL/0452: SB/JT

**LICENSING (SCOTLAND) ACT 2005  
APPLICATION FOR MAJOR VARIATIONS OF PREMISES LICENCE  
THE ICE FACTOR, LEVEN ROAD, KINLOCHLEVEN PH50 4SF**

We recently received details on the above proposal and discussed this at our Kinlochleven Community Council meeting on the 7<sup>th</sup> November.

Our rural community battles with social and economic issues which we believe will not be helped by providing this establishment an increase in its licence to serve alcohol right through their opening hours. The licencing objective of protecting and improving public health and protecting children and young persons from harm will surely be compromised should this go ahead.

The Scottish Government's alcohol strategy's aim is to break Scotland's unhealthy relationship with alcohol, to reduce alcohol consumption and to limit the amount of harm caused by alcohol, focusing on supporting families and communities attain these goals, therein supporting all of the licensing objectives. We therefore don't understand why a company that offers exemplary climbing and hiking training facilities across the age spectrum, a destination tourist attraction for families as well as those focused on their craft, would want to promote an unnecessary extension to their drinking hours. The Ice Factor has an opportunity to buck the trend for the supply and demand of alcohol on its premises and perhaps find an alternative to extending alcohol sales.

We would like to see the Ice Factor grow as a business and to promote tourism in Kinlochleven in a positive manner, we are not so sure extending licencing hours would achieve this balance.

Yours faithfully,



Yvonne Rosie  
Kinlochleven Community Council

Handwritten initials in blue ink, possibly 'JR' or 'YR', located above the 'RECEIVED' stamp.

**RECEIVED**

**21 NOV 2018**

**CHIEF EXECUTIVE'S SERVICE  
LOCHABER**