

The Highland Licensing Board

Meeting – 8 September 2020

Agenda Item	8.1
Report No	HLB/060/20

Application for the provisional grant of a premises licence under the Licensing (Scotland) Act 2005

105-107 Church Street, Inverness, IV1 1EY

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for the provisional grant of a premises licence in respect of 105-107 Church Street, Inverness, IV1 1EY (name to be confirmed).

1.0 Description of premises

1.1 The premises (name has yet to be confirmed) is situated to the corner of Church Street and Church Lane in Inverness City Centre and consists of a main bar area, secure storage room, sampling rooms and a small snug with seating.

2.0 Operating hours

2.1 The applicant seeks the following **on-sale** hours:

On sales:

Monday to Saturday: 1000 hours to 0100 hours
Sunday: 1200 hours to 2400 hours

The applicant seeks the following **off-sale** hours:

Off sales:

Monday to Saturday: 1000 hours to 2200 hours
Sunday: 1200 hours to 2200 hours

3.0 Background

3.1 On 21 July 2020 the Licensing Board received an application for the provisional grant of a premises licence from Caledonian Events Ltd, c/o CMM Accountancy, The Green House, Beechwood Business Park North, Inverness, IV2 3BL.

The application was accompanied by the necessary section 50 certification in terms of Planning, together with a Disabled Access Statement.

- 3.2 The application was publicised during the period 27 July until 17 August 2020 and confirmation that the site notice was displayed has been received.
- 3.3 In accordance with standard procedure, Police Scotland, the Scottish Fire & Rescue Service and the Council's Community Services (Environmental Health) and Planning and Building Standards were consulted on the application.
- 3.4 Notification of the application was also sent to NHS Highland and the local Community Council.
- 3.5 Further to this publication and consultation process, the following timeous notices of objection has been received and is appended:

Letter of objection from Mr Robin Clark dated 12 August 2020

- 3.6 As a hearing cannot be held in person due to coronavirus, the Licensing Board, before reaching a decision, must give any person who would have been given the opportunity to be heard at the hearing the opportunity to be heard instead by alternative methods. Consequently, both the applicant and the objector have been invited to submit a written representation to state their case.

4.0 Legislation

- 4.1 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 are: -

1. that the premises are excluded premises;
2. that the Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
3. that the grant of the application would be inconsistent with one or more of the licensing objectives;
4. that having regard to;
 - (i) the nature of the activities 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, or
5. 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.

4.2 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.

4.3 If the Board would refuse the application as made, but a modification is proposed by them and accepted by the applicant, the application can be granted as so modified.

5.0 Licensing Standards Officer

5.1 The LSO has provided the following comments:-

- (i) An application has been made for the premises which are a 2 storey semi-detached building on Church Street, Inverness occupying a corner site at the junction of Church Street and Church Lane, Inverness. The premises have been visited by the LSO and they are suitable for the sale of alcohol as described within the application.
- (ii) The necessary section 50 certificate relating to Planning has been submitted as has a Disability Access Statement. Layout plans of acceptable quality have also been lodged with the Board.
- (iii) The hours requested are out with the recommended breadth of policy hours currently operated by the Board, namely 15 hours spanning a period from 1000 hours in the morning until 0100 hours the following morning. Allowance is made within the Policy for such hours to be approved where an applicant has demonstrated a sound case for requiring them. In this instance, the LSO is supportive of the application as the applicants wish to operate from opening for the provision of breakfasts, particularly appealing to the tourist market and foreign visitors. A full breakfast menu will be offered and the applicants are accepting of the condition that alcohol will only be sold prior to 1100 hours as an accompaniment to food. Such sales are likely to be miniscule appealing mostly to the foreign visitor. As the day progresses into the evening, the premises will develop more into a wine bar environment.
- (iv) Ostensibly the premises will operate as a wine bar/bistro with a small customer capacity. Their range of alcohol will be high end malt whisky, gin and wine appealing to an older customer range who they feel are not adequately catered for in the normal licensing environment. Wine tastings may occur on the premises on a pre-booked basis; a tasting room is available on the second floor for such purposes.
- (v) A small outside area at the front of the premises has been requested. The necessary planning permission has been applied for and if granted, a pavement permit will be secured via the Council's Road's Department. In

these circumstances, the LSO has recommended a closure time of 2200 hours as this is a residential area as well as a commercial district. In addition, the outside drinking area, will only be commissioned once the necessary pavement permit has been secured.

- (vi) Following the public consultation phase of the application, a timeous objection has been received from Mr Robin Clark, residing opposite the proposed premises. In summary of the objection, it concerns the potential of adverse noise nuisance which may arise from the operation of the premises which would affect his enjoyment of his home. The LSO, having interviewed the applicants and viewed the premises, is of the opinion that the operation will be such that the issues alluded to in Mr Clark's objection will not arise, specifically in respect of the proposed outside pavement area for which the LSO has made specific recommendation of local licensing conditions.
- (vii) Having interviewed the applicants and studied the operating plan, the LSO is confident, that this application meets the criteria of the 5 licensing objectives.

6.0 HLB local policies

6.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2018-23
- (2) Highland Licensing Board Equality Strategy

7.0 Conditions

7.1 Mandatory conditions

If the application is approved the mandatory conditions set out in Schedule 3 of the Act will apply.

7.2 Local conditions

Should the Board grant the application as applied for, the Board may wish to consider attaching the following conditions from the schedule of local conditions:

- (f) Alcohol may be sold on the premises prior to 1100 hours only to persons taking table meals.
- (g) Alcohol may be sold prior to 1100 hours for consumption on the premises only during a formal or tutored tasting session and only to customers taking part in such a tasting session.
- (l) The boundaries of any outside area will be effectively demarcated to the satisfaction of the Licensing Standards Officer.

- (m) After 2200 hours, alcoholic or non-alcoholic drinks shall not be consumed in any outdoor drinking area.
- (ni) No live music or recorded music shall be played in any outdoor drinking 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 the public footpath, all tables, chairs, parasols and other moveable furniture will be removed.

7.3 Special conditions

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

1. No glass disposal shall take place after 2200 hours and prior to 0800 hours.
2. No deliveries to the premises will take place after 2200 hours and prior to 0800 hours.

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. 7.2 and 7.3 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/657
Date: 19 August 2020
Author: Marjory Bain
Appendix: Mr Robin Clark, Flat 1, Dunbar's Hospital, 86 Church Street, Inverness, IV1 1EP

Robin Clark

BUSINESS SUPPORT

14 AUG 2020

12-Aug-20

RECEIVED

Clare McArthur
Highland Licensing Board
Town House
Inverness
IV1 1JJ

[REDACTED]

Highland Council Licencing Board – Application for Provisional Grant of Premises Licence 105 – 107 Church Street, Inverness, IV1 1EY

I am writing to object to the providing of a licence to the proposed wine bar at 105 107 Church Street, Inverness, IV1 1EY on the grounds that it will cause considerable noise and nuisance (antisocial behaviour) to the residence of Dunbar's Hospital, 86 Church Street, Inverness, IV1 1EP, and cause them hurt, harm, and affect their wellbeing.

Dunbar's Hospital, an 'A' listed building with four flats is directly across the road from the newly proposed wine bar and could be seriously affected by the wine bar activities. We do not have double glazing due to the building being 'A' listed, or any other form of sound insulation. From a health and wellbeing perspective we know from experience that other licensed premises in Church Street do not fully establish, implemented, or maintained noise and nuisance control measure as they should.

Church Street is a lived-in street with many people having their homes along its length. These people have rights which include the right to a private life and the peaceful enjoyment of their properties. These rights should not be discounted because they appear inconvenient or due to the location we live in.

Furthermore, the number of flats in Church Street is about to increase by another thirty plus in the next twelve to eighteen months. There are also a number of hotels along the length of Church Street with two more about to become operational shortly.

Whether Church Street residence or hotel visitors, we are dependent on the Highland Council Licensing Board to fully understand its roles and responsibilities in protecting us, i.e. the general public and local residence.

While the businesses along the length of Church Street also have rights, they also have responsibilities which include complying with local and national laws that are designed to protect others. This includes environmental laws, antisocial laws, and of course nuisance which is defined as 'a person or thing causing inconvenience or annoyance'. In the drive for

business and profit many businesses along Church Street, and other town centre streets, find complying with many of the laws and regulations inconvenient, or out of ignorance are just simply unaware of these laws and regulations exist and their responsibilities.

The Highland Council Licensing Board play a vital role in ensuring that any control measures are put in place and maintained that eliminate the risk of certain well recognised activities breaching current legislation and causing hurt and harm to the local residence. The types of activities that are likely to cause hurt and harm to the local residence from the proposed wine bar development include the following,

- The use of tables and chairs out in the street to allow people to drink outside regardless of time of day or night
- The playing of music (if this is done often what is heard in private properties is just the lower base frequencies such as drums). Control measures for this nuisance problem can double or triple glazing and the careful positioning of musicians or music equipment such as speaker.
- Late night opening is one of the biggest problems and it needs to be remembered that even if a business says it closes at 10 pm, the business still operates for another hour or more as they clean and tidy up.

Noise Nuisance

Noise nuisance is one of the biggest problems in the town centre and in Church Street in particular, with three pubs being the main noise generators, another would just make life even more uncomfortable and could be both physically and mentally harmful to residences.

Antisocial Behaviour's

There are three main factors that increase the level of noise, nuisance, and antisocial behaviour, they are the duration and quantity of alcohol consumed, the number of people congregated in the immediate area, and the time of day and night.

Outdoor seating

When people sit outside drinking alcohol, they become loud and thus can create a noise and cause nuisance. Often, they can also demonstrate antisocial behaviour, i.e. bad language, argumentative, and offensive and reckless towards others.

World Health Organization (WHO)

In 1972 the World Health Organisation declared that urban noise can be considered one of the main sources of pollution.

Kind regards

Robin Clark

