

The Highland Licensing Board

Meeting – 30 March 2021

Agenda Item	6.2
Report No	HLB/022/21

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

Ardthu House, Onich, Fort William, PH33 6SD

Report by the Depute Clerk to the Licensing Board

Summary

This report relates to an application for the grant of a premises licence in respect of Ardrhu House, Onich, Fort William, PH33 6SD.

1.0 Description of premises

1.1 The premises is a substantial detached two storey victorian house set in its own grounds overlooking Loch Linnhe and situated north west of Onich village. The premises comprise of six guest bedrooms, four public rooms and owner's accommodation. The premises operates as a private guest house with an adjoining spa and wellness suite, offering beauty treatments and facilities.

In addition, the full range of hotel facilities will be available to guests having spa treatments or for passing trade calling in for a meal and refreshments.

The entirety of the grounds of the premises are included within the licensed footprint for suitable functions and general use by guests.

2.0 Operating hours

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

On sales:

Monday to Sunday: 1130 hours to 2200 hours

3.0 Background

3.1 On 18 February 2021 the Licensing Board received an application for the grant of a premises licence from Ardrhu House Limited.

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

3.2 The application was publicised during the period 22 February 2021 until 15 March 2021 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.

No objections were received from these authorities however Building Standards have noted that the building warrant application for conversion from a private residence to a shared residential building stipulates that the total number of resident guests should not exceed 10 persons.

The applicant has provided a capacity breakdown as follows:

- 10 resident guests
- 5 spa guests
- 5 non other guests

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/representation have been received and are appended:

1. Objection received on 8 March 2021 from Planning Objections Scotland on behalf of Joanne Tweedale.
2. Representation dated 11 March 2021 from Tony & Freda Walters
3. Email objection dated 15 March 2021 received from Dr William Ford-Young JP FRCGP

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 objectors 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) The Premises are a substantial Victorian Lodge, standing in extensive landscaped grounds by the shore in north Onich.
- (ii) The model of operating is largely to service the requirements of residential guests, but also to offer refreshments to customers of the hotel's spa facilities and also to passing trade looking for dining and refreshment facilities. Aside from the use of the hotel's public rooms, permission to sell alcohol is also requested within the hotel's substantial grounds where seating will be provided in suitable locations to allow the guests to enjoy the rightly famous sea views and landscapes of south Lochaber.

- (iii) The application has been reviewed by the LSO who finds it meets the current board policy and also the standards of the 5 licensing objectives. The hotel has operated under periods of time in the preceding year by way of occasional licences without issue.
- (iv) The necessary section 50 certificates relating to Planning, Building Control and Food Hygiene have accompanied the application.
- (v) No bar counter is located within the premises and drinks are ordered from a menu and then delivered to the customer from a servery by staff. The hotel is substantially removed from nearby property due to the extent of its own grounds and therefore the LSO at this time is not minded to propose a cut off time for use of the outside area.
- (vi) Following the public consultation phase of this application three objections have been received by the licensing board.
- (vii) The objections specify matters such as traffic flow and the awkward geography of the access road to the Premises; the LSO does not consider these matters that can be associated with the sale of alcohol. In addition, concern for noise nuisance has also been expressed in respect of the potential operation of three glazed “pods” to be used to shelter guests and serve them food and beverages in comfort. Whilst these are close in proximity to neighbouring property proper use and supervision should mitigate against anti-social issues. A local licensing condition has been recommended to assist.

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

It is recommended that the following additional local condition be attached:

- (e) The provision of alcoholic and non-alcoholic beverages in all outside areas of the premises shall cease at 2200hrs.

7.3 Special conditions

No special conditions are considered necessary.

Recommendation

The Board is invited to determine the above application and if minded, to grant the application, to agree the proposed local condition detailed at para. 7.2 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.

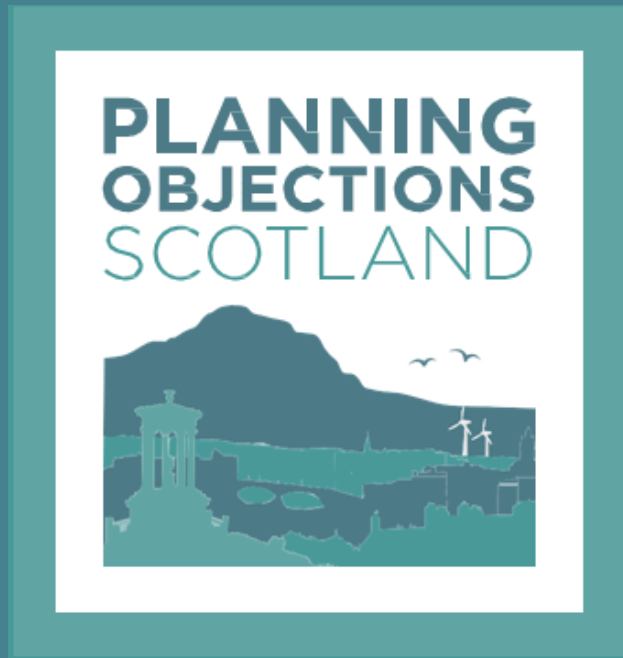
Reference: HC/RSL/1963

Date: 16 March 2021

Author: Ian Cox/Julie Traynor

Appendices:

1. Objection received on 8 March 2021 from Planning Objections Scotland on behalf of Joanne Tweedale.
2. Letter of objection dated 11 March 2021 from Tony & Freda Walters
3. Email objection dated 15 March 2021 received from Dr William Ford-Young JP FRCGP



**POS REFERENCE: -
POS0056**

**OBJECTION TO LICENCE APPLICATION ON
BEHALF OF JOANNE TWEEDALE**

**REFERENCE: - Onich, New Premises Licence,
Ardrhu House**

**ADDRESS: - Ardrhu House Onich Fort William
PH33 6SD**

**APPLICATION DESCRIPTION: - New Premises
Licence, Ardrhu House, Onich**



Document Preparation

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Document Control

Issue	Date	Version
1	07-03-2021	Draft
2	08-03-2021	Final

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INTRODUCTION

- 1.1 Planning Objections Scotland has been instructed by Joanne Tweedale to review the New Premises Licence application at Ardrhu House, Onich and make comment on its relationship to the temporary relaxation of planning restrictions due to the COVID-19 Pandemic.
- 1.2 Our client understands the need for flexibility in the Planning System to enable the hospitality industry to re-open with physical distancing measures in place to allow a safe and pleasant environment for customers. However, this should not be at the cost of residential amenity. In its current form the proposed external seating areas at Ardrhu House, Onich, with the benefit of an alcohol license and once operational will likely result in a statutory noise nuisance to neighbouring residential property.
- 1.3 Due to the size of the curtilage at Ardrhu House the raised decks and pod structures should be relocated away from neighbouring properties to reduce impacts on neighbouring residential amenity. This would be inline with the supportive, pragmatic and flexible approach advocated by the Scottish Government's Chief Planner Letter July 2020.

SCOTTISH GOVERNMENT'S COVID-19 CHIEF PLANNER LETTERS

- 2.1 The Chief Planner Letters have introduced a number of temporary legislative changes and provided supporting guidance.
- 2.2 The letters confirm that:-

Planning can play an important part in enabling business operations to get back up and running within the terms of the ongoing restrictions, and also support them to regain some lost ground and revenue as a direct result of the lockdown. It is important that we recognise these impacts of recent months, and the need to get people back to work, which might mean those businesses diversifying or needing to adjust the ways they

operate to suit current circumstances. In planning, we can support well-measured temporary solutions.

- 2.3 Planning Objections Scotland consider the last sentence is of particular importance. *The support of well-measured temporary solutions.* The Chief Planner Letters do not provide a carte blanche for operators of hospitality venues to do whatever they like.
- 2.4 In this case the siting of raised decking areas and outdoor pods in close proximity to residential receptors outwith the control of Ardrhu House, Onich is not a well-measured temporary solution.

LICENSING (SCOTLAND) ACT 2005

- 3.1 The Licensing (Scotland) Act 2005 now allows any person to object or make representation on licensing applications under section 22.
- 3.2 Where a Licensing Board receives a notice of objection or representation the Board must have regard to the objection of representation unless they consider it to be frivolous or vexatious.
- 3.3 The grounds for refusal are set out under section 23(5) of Licensing (Scotland) Act 2005.

(5) The grounds for refusal are—

(a) that the subject premises are excluded premises,

(b) that the application must be refused under section 25(2), 64(2) or 65(3),

[F1(ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence,]

(c) that the Licensing Board considers that the granting of the application would [F2otherwise] be inconsistent with one or more of the licensing objectives,

(d)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 that the premises are unsuitable for use for the sale of alcohol,

(e) [F3that] 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 [F4the same or similar description as the subject premises,] in the locality.

- 3.4 In this case our client is concerned that the granting of a licence in its current form would result in a public nuisance due to the location/siting of the external raised decking areas and pod structures within the curtilage of Ardrhu House. Especially due to the proximity and construction of the pod structures. In light of this it is considered appropriate that the Licensing Board utilise their powers in tandem with planning to ensure that the external decks and pod structures are repositioned to another area of the curtilage where the impact on residential amenity from noise and light can be mitigated by layout and distance.

ENVIRONMENTAL PROTECTION ACT 1990

- 5.1 Section 79 of the Environmental Protection Act 1990 (EPA) arms local authorities with the power to abate a variety of adverse circumstances which constitute a nuisance.

- 5.2 Section 79 (1)(g) provides that 'noise emitted from a premises so far as prejudicial to health or a nuisance' is a statutory nuisance which falls to be dealt with under the provisions of the Environmental Protection Act.
- 5.3 While our client is aware that there is recourse to noise nuisance via this legislation it is hoped that a pragmatic approach via licensing/planning will ensue.

HUMAN RIGHT IMPLICATIONS

- 6.1 This proposal has potential Human Right implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1).
- 6.2 Planning Objections Scotland is of the view that refusal of the licence or the modification to the operating plan/layout associated with the external sitting out areas is the only way to protect privacy of neighbours to ensure compliance with the Human Right Act. Proceeding on this bases would constitute a justified and proportionate control of the use of property and is necessary in the public interest to ensure there is no interference with Article 8 and First Protocol, Article 1

CONCLUSION

- 7.1 It is considered appropriate that the Licensing Board utilise their powers in tandem with planning to ensure that the external decks and pod structures are repositioned to another area of the curtilage where the impact on residential amenity from noise and light can be mitigated by layout and distance. This should be undertaken prior to the issue of the Premises Licence.

TONY & FRED A WALTERS

11th March 2021

Ms Clare McArthur
Clerk to the Licensing Board
Charles Kennedy Building
Achitore Road
Fort William
PH33 6RQ

Dear Ms McArthur

**Re: Application for Grant of Premises Licence at
Ardhu House, Onich, Fort William, PH33 6SD.**

Further to the above application we would request the Licensing Board take into account the following observations before granting a License.

We would also draw to your attention that we didn't receive formal notification of this application as entitled. Our property is with 4 metres of the access road to Ardhru house which is owned by the applicant. We have heard through the grapevine and managed to get a copy from an Ardhru resident.

Access Issues

Ardhu House is situated at the end of a single-track road which connects to the A82 at a dangerous junction. This access road is currently in poor condition with no indication that the owner (Ardhu House) is intending to upgrade the road for additional traffic generated by non-resident guests. The company's marketing activity shows their intent is to grow the business through non-resident trade. In season numerous car and caravan units, journey down this road to access existing facilities and is already showing deterioration due to increased traffic.

Ardhu Access Road

Photo taken between
'Brachot' and 'Larch House',
emphasizing road condition
and width.
(Width 2.6m) - (Verges .7m)



Pedestrians

There is no public footpath alongside the access road. The verges in places are only .7m wide and are on a gradient or are uneven. This already presents a road safety risk. There is no escape/ refuge facility for pedestrians to avoid oncoming traffic. Although there is a 20mph on the local authority section, there is no limit on the private road. There is evidence that not everyone using the road travels at an appropriate speed relating to the conditions. The increased traffic visiting Ardrhu House, the recent development of the 'Health Spa', together with an increase in tourism has increased motor vehicle and pedestrian volumes significantly. The risk of accident has increased, and approval of this proposal will make things worse.

If a License is granted for Non- Residential, there will be increased traffic and pedestrians. CUILCHEANNA is an area developed over the years, as a residential area. A non -residential Licence would affect our house which is within ten metres of the access road. Increased traffic and noisy pedestrians late at night would be unacceptable to us.

It is for the above reasons we ask that a License be considered for residents only.

Thank you for your consideration.

Yours sincerely

Tony & Freda Walters

Sent by email. A signed hardcopy is available upon request.

[REDACTED]

From: [REDACTED]
Sent: 15 March 2021 14:41
To: Licensing
Subject: objection to application for liquor licence at Ardhu House, Onich, Fort William, PH33 6SD

Dear Licensing Office

Please accept this email as my objection in part to the application for a permanent liquor licence at the above premises.

I do not raise objection to licence for sale and serving of alcohol to residents within the property but I have objection to the licence covering consumption of alcohol in the grounds of the property and to non-residents. There is discrepancy between planning and licensing departments regarding the use of the grounds and coverage of the licence as I have previously discussed with both departments. The applicant has erected pods very close to neighbours' boundaries and noise from guests in the grounds and in the pods will be intrusive and cause noise nuisance. The applicant is exploiting the reduced planning restrictions during the Covid-19 pandemic to erect these structures, which in normal circumstances would not be accepted for business use. Access to the property is via a narrow single track poorly maintained road and extra traffic will cause nuisance to other property owners who have right of access and use of the lane. The pods are entirely out of keeping with the Victorian Arts & Crafts period property as is the use of them for consumption of food and alcohol. Neighbouring residents will be disturbed by noise which carries well in the area because of the lack of noise from traffic or habitation.

If the licence were to be granted I would object if the 10pm cut off is just to stop selling & serving alcohol, but should mean that by 10pm all consumption and noise from guests should cease. With the best will in the world the staff of Ardhu House will not be able to keep noise to a minimum and it is well know that alcohol increases the likelihood of noise disturbance, singing & swearing etc. Many of the adjacent properties are let to families with young children who should be protected from such profanities. With regard to public safety, there is no wall or barrier to prevent people falling off the garden over the sea wall. I myself have witnessed such an accident that occurred during a private party at the house about 20 years ago when an inebriated guest fell and significantly injured himself. The applicant has been reported on several occasions to Police Scotland and The Highland Council for suspected or actual breach of Covid regulations and does this imply the applicant is not, therefore, a fit and proper person to be a licensee?

Yours faithfully

Dr William Ford-Young JP FRCGP

[REDACTED]