

## **HIGHLAND LICENSING BOARD**

During the coronavirus period, the Licensing (Scotland) Act 2005 has been temporarily amended to allow Board meetings to take place remotely.

Minute of the meeting of the Highland Licensing Board held remotely on Tuesday 16 February 2021 at 1.00 pm.

### **Present:**

Mr J Bruce, Mr A Jarvie, Mrs L Macdonald (Convenor), Mr D Macpherson, Mr K Rosie, Mr A Sinclair and Mr C Smith.

### **In Attendance:**

Mr I Meredith, Depute Clerk to the Board  
Mr G Cameron, Licensing Standards Officer  
Mr I Cox, Licensing Standards Officer  
Mrs A MacArthur, Administrative Assistant  
Ms A Macrae, Committee Administrator

### **Also In Attendance:**

Sergeant K Duncan, Police Scotland  
Mr M MacDonald, Police Scotland

Item 6.1: Murdo Morrison, representative, and Martin Smith, solicitor

Item 7.1: Robert Hicks, applicant

Item 8.1: Robert Hicks, applicant

Item 9.1: Connor Andrew Fraser, applicant

Item 10.1: Iain Rodger, licence holder and Janet Hood, agent for licence holder

## **Briefing on Protocol for Webcasting of Meetings**

The Convener advised the Board that the meeting would be filmed and broadcast over the internet on the Highland Council website and would be archived and available for viewing for 12 months.

### **1. Apologies for Absence Leisgeulan**

An apology for absence were intimated on behalf of Ms E Knox.

### **2. Declarations of Interest Foillseachaidhean Com-pàirt.**

There were no declarations of interest.

### **3. Confirmation of minutes Dearbhadh a' gheàrr-chunntais**

There was submitted for confirmation as a correct record the minute of the meeting of the Highland Licensing Board held on 12 January 2021.

The Minutes were held as read and **APPROVED**.

**4. Licensing (Scotland) Act 2005  
Licences granted under delegated powers  
Ahd Ceadachd (Alba) 2005  
Ceadachdan a bhuilicheadh fo ùghdarras air a Thiomnadh**

There had been circulated **Report No HLB/011/21** detailing licences which had been granted under delegated powers by the Clerk to the Board during the period 17 December 2020 to 3 February 2021.

The Board **NOTED** the report.

**5. Licensing (Scotland) Act 2005  
Occasional licences and extended hours  
granted under Delegated Powers  
Ahd Ceadachd (Alba) 2005  
Ceadachdan Corra-uair agus uairean sìnte a bhuilicheadh fo ùghdarras air a thiomnadh**

There had been circulated **Report No HLB/012/21** detailing occasional licences and extended hours applications which had been granted under delegated powers by the Clerk to the Board during the period 17 December 2020 to 3 February 2021.

The Board **NOTED** the report.

**6. Licensing (Scotland) Act 2005  
Applications for new premises licences  
Ahd na Ceadachd (Alba) 2005  
Larrtas airson cheadachdan thogalaichean ura**

**6.1 Ref: HC/RSL/1955**

**Applicant:** Alison Morrison per South Forrest, 8 Ardross Terrace, Inverness

**Premises:** Taransay House, Viewfield Road, Portree, Isle of Skye, IV51 9ES

**Type:** On sales

There had been circulated **Report No HLB/013/21** by the Clerk which advised that a timeous notice of representation had been received from Police Scotland. The Board was invited to determine the application.

In response to Police Scotland's representation, Mr M Smith, solicitor for the applicant, confirmed his clients were content with the recommended local condition (m) restricting the use of the outdoor areas for the consumption of alcohol to 2200 hours.

The Board **AGREED to GRANT** the application for a premises licence subject to the mandatory conditions and local condition (m).

## **6.2 Ref: HC/RSL/1958**

**Applicant:** Harrapool Limited

**Premises:** Buth na h-Abhainn, Ford Road, Broadford, Isle of Skye, IV49 9AB

**Type:** Off sales

There had been circulated **Report No HLB/014/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application for a premises licence subject to the mandatory conditions only.

## **7. Licensing (Scotland) Act 2005**

**Applications for provisional premises licences**

**Achd Ceadachd (Alba) 2005**

**Iarrtas airson ceadachdan thogalaichean le cumha**

### **7.1 Ref: HC/CSR/1945**

**Applicant:** Robert Hicks and Helen Chalmers

**Premises:** The Dipping Luggier, 4 West Shore Street, Ullapool

**Type:** On and Off Sales

There had been circulated **Report No HLB/015/21** by the Clerk which advised that a timeous notice of representation had been received from Police Scotland. The Board was invited to determine the application.

In response to Police Scotland's representation, Mr R Hicks, applicant, confirmed he was content with the recommended local condition (f) that alcohol may be sold on the premises prior to 1100 hrs only to persons taking table meals.

The Board **AGREED** to **GRANT** the application for a provisional licence subject to the mandatory conditions and local conditions (f) and (m).

## **8. Licensing (Scotland) Act 2005**

**Applications for variation (major) to premises licences**

**Achd Ceadachd (Alba) 2005**

**Iarrtasan airson Caochladh (Mòr) a thaobh ceadachdan thogalaichean**

### **8.1 Ref: HC/CSR/0715**

**Applicant:** Robert Hicks and Michael Beasley

**Premises:** The Arch Inn, 10-11 West Shore Street, Ullapool

**Type:** On and Off Sales

There had been circulated **Report No HLB/016/21** by the Clerk which advised that a timeous notice of representation had been received from Police Scotland. The Board was invited to determine the application.

In response to Police Scotland's representation, Mr R Hicks, applicant, confirmed he was content with the recommended local condition (f) that alcohol may be sold on the premises prior to 1100 hrs only to persons taking table meals.

The Board **AGREED** to **GRANT** the application for major variation of the premises licence subject to the mandatory conditions and local conditions (a), (b), (c), (f), (m), and (x).

**9. Application for personal licence  
larrtas airson ceadachd phearsanta**

**9.1 Applicant:** Connor Andrew Fraser

There had been circulated **Report No HLB/017/21** by the Clerk.

Mr C A Fraser, applicant, was present for this item.

Sergeant K Duncan, [text removed from web version in compliance with Data Protection Act 1998]. The Chief Constable considered the licence holder had acted in a manner inconsistent with the licensing objectives, namely preventing crime and disorder and had demonstrated that he was no longer a fit and proper person to hold a personal licence.

[text removed from web version in compliance with Data Protection Act 1998]

Following discussion, the Board **AGREED** to **REFUSE** the application for a personal licence on the grounds the applicant was not a fit and proper person, having regards to the licensing objectives, names the prevention of crime and disorder.

[text removed from web version in compliance with Data Protection Act 1998]

**10. Licensing (Scotland) Act 2005 Section 38  
Application for review of premises licence**

**10.1 Licence holder: Iain Rodger t/a Sunny's Bar Limited  
Premises: Sunny's Sports Bar, 19 Middle Street, Fort William, PH33 6DP**

There had been circulated **Report No HLB/018/21** by the Clerk together with an application by Police Scotland for a premises licence review.

The Clerk advised that written representations received from the licence holder's agent had been circulated to all parties.

Sergeant K Duncan read out the terms of Police Scotland's letter dated 21 January 2021, which set out the grounds for the premises licence review, a copy of which was appended to the Clerk's report.

Mrs J Hood, agent for the licence holder, spoke in support of her client during which she advised that:-

- the premises had been operated by her client for a number of years with no issues arising. He was a member of the local pub watch scheme and had received a Gold Award through the Best Bar None licensing awards;

- the matter related to a contravention of The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations and therefore fell within the remit of the courts;
- the Licensing Board existed to deal with the administration of the Licensing (Scotland) Act 2005 in relation to the sale of alcohol in licensed premises and not matters under other legislation and this had been well settled by case law, details of which she provided.
- alcohol had not been sold on her client's premises and this was not alleged by Police Scotland;
- it was accepted therefore the coronavirus regulations had been breached but not that there had been a breach of the premises licence conditions or the licensing objectives; and
- the Board should therefore dismiss the application for review on the basis of it being incompetent in terms of the Licensing (Scotland) Act 2005.

In discussion, Members considered that it was competent for the Board to proceed to consider the grounds for review on the basis this matter related to the conduct of a premises licence holder involved in the supply of alcohol on a licensed premises.

Thereafter, Mrs Hood advised that her client accepted he had made a genuine mistake by allowing friends into the premises while maintaining social distance, an in offering hospitality in the form of an alcoholic drink at no cost. She also outlined the circumstances by which her client had been behind the bar and had consumed a non-alcoholic drink. Her client operated a well-run premises and was deeply remorseful for his actions. Police Scotland had advised there was no likelihood of this breach happening again.

In summing up, Sergeant K Duncan asked the Board to review the premises on the grounds relevant to the licensing objective of preventing crime and disorder. Police Scotland accepted that no alcohol had been sold on the premises and this had been a breach of the coronavirus legislation. However, the conduct of the licence holder on licensed premises was deemed to be errant and therefore that the matter be brought to the attention of the Board.

Mrs Hood advised that 'errant conduct' was not an offence in terms of the Licensing (Scotland) Act 2005. She asked that should the Board find the grounds for review established, to consider this matter with leniency on the basis of her client's excellent record, taking into account of the impact on his business and the staff he employed in relation to any sanction, and that there would be no further risk to the licensing objective of preventing crime and disorder. The Board should also consider that the disposal of a breach of the coronavirus legislation was generally by way of fixed penalty.

The Clerk advised that Members should in the first instance consider whether the grounds of review had been established, and if so consider the options available to the Board, and he provided further clarification in this regard. He also clarified there was no allegation by any parties of an irresponsible drinks promotion in terms of paragraph 8, schedule 3 of the Licensing (Scotland) Act 2005.

During debate, Members raised the following issues:-

- the grounds for review had not been established and no action be taken in relation to the licence holder as it had been clearly demonstrated this was a breach of the coronavirus regulations and not the liquor licensing legislation;
- alcohol had been supplied and consumed on a licence premises by the premises licence holder and therefore this matter was within the Board's remit. The more appropriate action should be in relation to a review of the personal licence holder on the basis his actions was inconsistent with the licensing objectives;
- [text removed from web version in compliance with Data Protection Act 1998]
- this had been a lapse of judgement on the part of the licence holder and an appropriate sanction in this case would be to suspend the premises licence for a short period.

Thereafter, Mr J Bruce seconded by Mrs L Macdonald moved that the Board agree to find the grounds for review **not established** and take no further action.

As an amendment, Mr A Jarvie, seconded by Mr D Macpherson moved that the Board agree to find the grounds for review established [text removed from web version in compliance with Data Protection Act 1998], but in recognition of previous good behaviour, that a short suspension of the premises licence of two months was necessary for the prevention of crime and disorder. The Board further finds that the personal licence holder acted in a manner inconsistent with the licensing objectives by manner of preventing crime and disorder, and therefore agrees to hold a subsequent hearing of the personal licence, as set out in 2.3 of the report.

Mr C Smith moved as a second amendment moved the terms of the first amendment subject to the premises licence being suspended for a period of one month, but on failing to find a seconder the amendment fell.

There being no further amendments, the matter was put to the vote with votes being cast as follows:

**Motion (3):** Mr J Bruce, Mrs L Macdonald, Mr A Sinclair

**Amendment (3):** Mr A Jarvie, Mr D Macpherson, Mr C Smith

On an equality of votes having been cast, the Convener cast her second and casting vote in favour of the motion which became the finding of the meeting.

### **Decision**

The Board **AGREED** to find the grounds for review **NOT ESTABLISHED** and take no further action.

## **11. Surrender of premises licence Gèilleadh ceadachd togalaich**

**11.1 Premises:** Scots Kitchen, Main Street, Fort Augustus, PH32 4DD  
**Licence Holder:** Highland Inns Ltd

**11.2 Premises:** The Highlander, 6-8 Bridge Street, Inverness, IV1 1HD  
**Licence Holder:** Avenis Hospitality

**11.3 Premises:** Speyside Woollen Company, Units 14-15, The Station,  
Aviemore, PH22 1RH

**Licence Holder:** Avenis Hospitality

The Board **NOTED** the above Premises Licences had been surrendered in terms of Section 28(5)(f).

The meeting ended at 3.45pm.