

The Highland Licensing Board

Meeting – 11 May 2021

Agenda Item	8.6
Report No	HLB/038/21

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

Ben Nevis Bar, 103 High Street, Fort William, PH33 6DG

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by Ben Nevis Bar Trading Company Limited, 1 Railway Pier, Oban, PA34 4LN.

1.0 Description of premises

1.1 The premises is located on the High Street in the town centre area of Fort William. The premises currently consists of a Lounge Bar and Public Bar on the ground floor with a Restaurant on the upper floor. The premises also provides external eating and drinking facilities on a raised deck to the rear of the premises and external drinking facilities adjacent to the premises on Fort William High Street.

2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

On sales:

Monday to Saturday: 1100 hours to 0100 hours

Sunday: 1200 hours to 0000 hours

Off sales:

Monday to Saturday. 1100 hours to 2200 hours

Sunday: 1200 hours to 2200 hours

3.0 Summary of variation application

3.1 Variation sought

The applicant seeks to vary the premises licence as follows:-

(a) **Variation to Operating Plan:**

- Increase core on-sales opening hour on Sundays to 1100 hrs (previously 1200 hrs) and terminal hour to 0100 hrs (previously 0000 hrs)
- Increase core off-sales opening hour on Sunday to 1100 hrs (previously 1200 hrs)
- At Q5 of Operating Plan add the following activities outwith core hours : live performances, dance facilities and gaming
- At Q5(f) of Operating Plan include option of providing takeaway meals with or without the sale of alcohol
- Increase capacity from 437 persons to 439 persons

(b) **Variation to Layout Plan:**

- Relocation of customer toilets from ground floor to upper floor
- New access created on ground floor to balcony area at rear of premises
- Extension to balcony area and formation of new steps accessed from Middle Street
- Internal refurbishments on ground floor to create two restaurant/bar areas and specialist whisky bar (formerly lounge and public bars).
- Restaurant area removed from upper floor.

(c) **Description of Premises:**

Update description of premises to reflect change of emphasis of the premises to one operating largely as a restaurant, albeit with a small specialist whisky bar as follows:

"The premises is located on the High Street in the town centre area of Fort William.

The ground floor of the premises consist of two restaurant areas and a small specialist whisky bar.

The upper floor of the premises consist of staffing facilities, kitchen, office and customer toilets.

The premises also provides external eating and drinking facilities on a raised deck to the rear of the premises and external drinking facilities adjacent to the premises on the Fort William High Street."

4.0 Background

- 4.1 On 26 March 2021 the Licensing Board received an application for a major variation of a premises licence from Ben Nevis Bar Trading Company Limited.
- 4.2 The application was publicised during the period 6 to 27 April 2021 and confirmation that the site notice was displayed is awaited.
- 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, no timeous objections or representations have been received although the Planning Authority have lodged the following observation:

- The balcony area shown on the licensing plan exceeds the size of the balcony approved under planning permission reference 19/02034/FUL.

The applicant's agent has advised that in order to rectify the position, his client has now lodged an amended planning application for the small extension to the balcony.

- Planning permission for the external seating area on the High Street expires on 1 June 2021. A renewal application has been submitted, but not yet determined (although likely to be supported).

Responses to the application from Environmental and Building Standards are still awaited. The Clerk will provide a verbal update at the Meeting.

- 4.6 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 Planning Authority have been invited to submit a written representation to state their case.

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 premises have a trouble free operating history and compliance visits show strong observance of the conditions and requirements of licensing legislation.

The Ben Nevis Bar is a popular hostelry in the Town Centre of Fort William, it is a two storey building with outdoor drinking facilities to the rear and also to the front of the premises on the High Street, although these latter facilities are seldom utilised.

Application has been made to vary the on and off sales hours to cover; 1100 to 0100 hours weekly for on sales and 1100 to 2200 hours weekly for off sales. Such changes are within current Board policy.

Amendment is also requested to the list of approved activities, allowing Live Performances, Dancing and Gaming outwith core hours. Takeaway meals are also now to be included on the Operating Plan as an activity. None of these activities clash with the licensing objectives.

The interior of the premises has been extensively redesigned in that the first floor has now been dedicated to kitchen and staff facilities whilst the ground floor has been configured into a large restaurant with a small boutique whisky bar. The external balcony to the rear of the premises has been extended and accessed by a new set of external steps.

Overall these changes have increased the overall capacity by two to 439 persons.

The description of the premises has been amended to take account of these changes and new layout plans of good standard have been submitted to the Board.

As these premises are in close proximity to neighbouring property, a local licensing condition in relation to the external drinking areas has been recommended in order to mitigate against any anti social issues.

The LSO is satisfied the application conforms to current Board Policy and is in keeping with the 5 Licensing Objectives.

Whilst no objections or representations have been received by the Board following the statutory consultation period associated with the application, the Planning Authority have highlighted a discrepancy between the size of the balcony approved in relation to planning permission 19/02034/FUL and the layout plans submitted to the Licensing Board. The Planning Officer's comments have been relayed to the Applicant's Agent and a planning application has been lodged by the applicant to rectify the position.

Existing local licensing conditions shall continue to apply, together with additional conditions relating to external drinking areas.

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 Local conditions

Existing local conditions will continue to apply together with the following additional local conditions:-

Outdoor Drinking Areas:

- External balcony area : The provision of alcoholic and non alcoholic beverages in this outside area of the premises shall cease at 2200hrs
- High Street external drinking area: The provision of alcoholic and non alcoholic beverages in this outside area of the premises shall cease at 2000hrs
- No live or recorded music shall be played in any outdoor drinking area.

8.3 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 conditions detailed at para. 8.2 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/432
Date: 28 April 2021
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