

## The Highland Licensing Board

Meeting – 7 September 2021

Agenda Item	9.1
Report No	HLB/079/21

### Premises licence review hearing

Review application under section 36(1) of the Licensing (Scotland) Act 2005

Havelock House Hotel, Crescent Road, Nairn, IV12 4NB

### Report by the Clerk to the Licensing Board

#### Summary

This report relates to a premises licence review hearing under section 38 of the Licensing (Scotland) Act 2005 following submission to the Board of a premises licence review application under section 36(1) of the Act.

#### 1. Background

- 1.1 An application has been received under section 36 of the Licensing (Scotland) Act 2005 from Mr John Haggarty for a review of the existing premises licence for the premises known as the Havelock House Hotel, Crescent Road, Nairn, IV12 4NB. The premises licence (Ref. HC/INBS/121) is held by Gordon Holding.
- 1.2 The review application, dated 29 July 2021, is appended to this report (Appendix 1). The alleged grounds for review and the information considered by the review applicant to support these grounds are as set out in the review application. In terms of section 36(6) of the Act, the Clerk to the Board is satisfied that the review application is neither frivolous nor vexatious and that it discloses matters relevant to one or more of the alleged grounds for review, which is one of the statutory grounds for review. A premises licence review hearing is accordingly necessary.
- 1.3 The Licensing Standards Officer for the area in which the premises are situated has been sent a copy of the review application in accordance with section 38(3) of the Act and has submitted a report on it which is also appended (Appendix 2). The Board must take this report into account at the hearing.
- 1.4 The premises licence holder has also been sent a copy of the review application. The premises licence holder, the review applicant, Police Scotland and the Licensing Standards Officer have been invited to attend the hearing. They have been advised of the hearing procedure which will be followed at the meeting and which may also be viewed via the following link:

[https://www.highland.gov.uk/hlb\\_hearings](https://www.highland.gov.uk/hlb_hearings)

## **2. Legal position**

### **2.1 Grounds for review**

2.1.1 The statutory grounds for review of a premises licence are set out in subsections 36(3)(za) to (b) of the Act. They are-

- 36(3)(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,
- 36(3)(a) that one or more of the conditions to which the premises licence is subject has been breached, or
- 36(3)(b) any other ground relevant to one or more of the licensing objectives.

2.1.2 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.

2.1.3 Where the ground alleged in the review application is that specified in subsection 36(3)(za), the application must include a summary of the information on which the applicant's view that the alleged ground applies is based.

Where the ground alleged is that specified in subsection 36(3)(a), the application must include notice of the condition or conditions alleged to have been breached.

Where the ground alleged is that specified in subsection 36(3)(b), the application must include notice of the licensing objective or objectives to which the alleged ground of review relates.

These requirements have been met in the review application.

### **2.2 The Board's powers in respect of the premises licence**

2.2.1 In terms of section 39(1) of the Act, at a premises licence review hearing the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the hearing), decide

- to take no action, or
- to take such of the steps mentioned in section 39(2) of the Act as the Board consider necessary or appropriate for the purposes of any of the licensing objectives.

### 2.2.2 Those steps are-

- (a) to issue a written warning to the licence holder
- (b) to make a variation of the licence for such period as the Board may determine,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence

2.2.3 However, this is subject to the requirement in section 39(2A) that where the Board are satisfied that the ground for review specified in subsection 36(3)(za) is established (i.e. the ground that the licence holder is not a fit and proper person to hold the licence), the Board must revoke the licence.

2.2.4 A revocation under section 39(2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision, unless the revocation is recalled by the Board. It must be recalled if the Board either grants an application under s33 for the transfer of the premises licence, or grants a premises licence variation application seeking a variation which the Board considers would remove the ground on which the licence was revoked under section 39(2A). The transfer or variation application must be received within the 28-day period, but the Board may then extend the 28-day period pending determination of the application.

2.2.5 Should the Board make a variation under section 39(2)(b) or suspend the licence under section 39(2)(c), the Board may subsequently revoke the variation or suspension, on the application of the licence holder, if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary.

### **2.3 Additional action in relation to personal licence holder working in the premises**

2.3.1 In the course of a premises licence review hearing the Board may also make a finding in respect of any personal licence holder who is or was working in the premises that the personal licence holder concerned, while working in the premises, acted in a manner which was inconsistent with any of the licensing objectives.

2.3.2 Should the Board make such a finding, this will trigger a separate and subsequent hearing under section 84 of the Act in respect of the personal licence holder.

## **Recommendation**

The Board is invited to hear from Mr John Haggarty (review applicant), Mr Ian Cox (Licensing Standards Officer), Police Scotland and Mr Gordon Holding (premises licence holder) and then:-

- (a) to decide whether they are satisfied that any of the grounds for review set out in section 36(3) of the Act, and listed at **paragraph 2.1.1** above, are established and, if so
- (b) to decide whether they consider it necessary or appropriate for the purposes of any of the licensing objectives to take any of the steps set out in section 39(2) of the Act and listed at **paragraph 2.2.2** above. In this regard, the Board must specify the licensing objective(s) in question.

If the Board is satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the premises licence, as explained at **paragraph 2.2.3** above.

The Board is also invited to decide, as explained at **paragraph 2.3.1** above, whether to make a finding in respect of any personal licence holder who is or was working on the premises that the personal licence holder, while working in the premises, acted in a manner which was inconsistent with any of the licensing objectives and, if so, to fix a further hearing under section 84 of the Act in respect of that personal licence holder.

Reference: HC/INBS/121

Date: 18 August 2021

Author: IM/JT

Appendices: Appendix 1 – Premises licence review application dated 29 July 2021

Appendix 2 – Licensing Standards Officer's report dated 19 August 2021

**REVIEW APPLICATION IN RELATION TO A PREMISES LICENCE UNDER THE  
LICENSING (SCOTLAND) ACT 2005**

Please read the Board's Guidance Notes on How to make a Premises Licence Review Application before completing this form. This form when completed should be returned to the nearest office of the Licensing Board using the contact details in the guidance notes or emailed to [licensing@highland.gov.uk](mailto:licensing@highland.gov.uk). Remember, if a review is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the applicant.

**1. Full Name and Address of person making the Review Application:**

Name and Address:	JOHN HAGGARTY [REDACTED]
Telephone Number:	[REDACTED]
Email Address:	[REDACTED]

**2. Address of Premises in respect of which the Review Application is made:**

HAVELOCK HOTEL CRESCENT RD, NAIRN IV12 4NB.
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**3. Details of any breach of a licensing condition(s) to which the Premises Licence is subject:**

<b>Details of breaches of condition(s)</b>
3. Preventing PUBLIC NUISANCE. NOISE LEVELS.

4. Details of any ground relevant to one or more of the Licensing Objectives:

State details of any representation (refer to representation by number, see guidance notes, and give details): (Continue on separate sheet if necessary)		
Licensing Objectives:	Please tick relevant objections ✓	Brief details of complaint (Please use separate sheet if necessary)
1. Preventing crime and disorder		
2. Securing public safety		
3. Preventing public nuisance	✓	WE ARE COMPLAINING ABOUT NOISE LEVELS AFTER 11.PM. ON THE OUTSIDE TERRACE.
4. Protecting and improving public health		
5. Protecting children from harm		


Signature:..



Date..... 29 / 07 / 2021 .....

### 3. PREVENTING PUBLIC NUISANCE

We feel the noise levels at the HAYLOCK HOUSE HOTELS OUTSIDE AREA, gets unbearable at the weekends in particular. They have started to open outside area until midnight last orders. So its around 12.15. before ~~the~~ noise levels are acceptable, our house is next to the outside area and suffers worse from the noise levels. it is in the fact been unbearable when licensee closed outside area at 11pm now its after midnight. it is disturbing our sleep my wife is an early starter at 6.30 am, to work in LOCAL HOSPITAL

Thank you 

**Review Hearing in terms of the Licensing (Scotland) Act 2005, Section 36(1)**

**Premises: Havelock House Hotel, Crescent Road, Nairn, IV12 4NB**

**1.0 Licensing History:**

- 1.1 Gordon Holding is the holder of the premises licence HC/INBS/121 for the premises known as Havelock House Hotel. The premises are described as a detached Hotel located close to the centre of Nairn and adjacent to the Links offering a full range of hotel services including accommodation, restaurant and bar facilities.
- 1.2 The premises licence is subject to Mandatory Conditions in accordance with Schedule 3 of the Licensing (Scotland) Act, 2005.
- 1.3 A request for a premises licence review dated 29 July 2021 has been received from Mr John Haggarty, [REDACTED]

**2.0 Legislation:**

- 2.1 On 3 August 2021, I received notice in terms of section 38(3)(b)(ii) of the Licensing (Scotland) Act 2005 of the Highland Licensing Board's intention to hold a review hearing in respect of the above premises following a request for a premises licence review being received relating to the third Licensing Objective concerning the Prevention of Public Nuisance.
- 2.2 This Report is submitted in terms of section 38(4)(a) of the Licensing (Scotland) Act 2005.

**3.0 Background Information:**

- 3.1 I can confirm that the Licensing Board's correspondence dated 19 August 2021 informing the Premises Licence Holder of the proposed review hearing was sent by E-mail.

**4.0 Report by Licensing Standards Officer**

- On 2 August, 2021 Mr John Haggarty, [REDACTED], [REDACTED] submitted a licensed premises review application in respect of the Havelock House Hotel, Nairn which is directly next to his dwelling.
- The application outlined grounds relating to the third Licensing Objective concerning the Prevention of Public Nuisance.



- The geography of the area in question is a small street just off the town centre of Nairn. Mr Haggerty's property is separated from the Havelock House Hotel by the Hotel's car park and a substantial outside drinking terrace which is at the western end of the Hotel.
- The complaint concerns the operation of the outside terrace which generates customer noise which troubles Mr Haggerty and his family. Having achieved the grant of a Premises Licence in 2009 when the licensing system underwent wholesale change, the Havelock Hotel was under different ownership; no conditions were attached to its Licence to govern the outside area. For many years the Hotel has traded without issue, ownership has now transferred to that of Gordon and Morag Holding whose operation of the premises uses the outside area at its fullest extent, closing it around midnight. In times of Covid restrictions the outside terrace has become very popular with patrons aided by a particularly hot summer.
- Mr and Mrs Holding are well known to the LSO, and are excellent operators, being careful to run quality premises which they have invested heavily in. Their observance of the licensing requirements is first class and Police Scotland vouch for the premises to be a well run establishment. Mr and Mrs Holding state they are vigilant in respect of customer behaviour in all areas of their premises particularly at closing time when they actively steward patrons away from the Hotel.
- The LSO has spoken to neighbours at [REDACTED], both of whom are very supportive of the Hotel. Mr O'Neill at [REDACTED] stated he was not disturbed at all, whilst Mrs Wilson at [REDACTED] stated there was a fair degree of noise just from running a busy premises, and she thought perhaps a closure time of 2300hrs for the outside area was perhaps a fair compromise.
- The outside area of the Hotel faces directly towards the gable end of Mr Haggerty's property so of all the nearby dwellings, he is likely to be affected the most by the travel of sound.
- In conclusion on this matter it is obvious the Holdings run a quality establishment and are diligent. If this was a new application coming before the Board it is likely that as the area is patently a residential one, a closure time would be imposed on the outside area as a safeguard for other residents.

#### **4.1 Licensing Standards Officer's Recommendation**

The following local licensing conditions are recommended by the LSO:-

##### **Outdoor drinking areas**

- M. After 2300 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.
  - The Board may also wish to grant a dispensation on the occasion of the annual Nairn Games Day to allow the outside area to open until midnight.

Designation: Licensing Standards Officer

Reference: HC/INBS/121

Date: 19 August 2021

Author: Ian Cox

Background Papers: The Licensing (Scotland) Act 2005