

## The Highland Licensing Board

Meeting – 26 October 2021

Agenda Item	9.7
Report No	HLB/092/21

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

The Walrus & Corkscrew, 105-107 Church Street, Inverness, IV1 1EY

### Report by the Clerk to the Licensing Board

#### Summary

This report relates to an application for a major variation of premises licence by Caledonian Events Limited, c/o CMM Accountancy, The Green House, Beechwood Business Park North, Inverness, IV2 3BL.

#### 1.0 Description of premises

1.1 The premises is situated on the corner of Church Street and Church Lane in Inverness city centre and consists of a main bar area, secure storage room, mezzanine area which can be used for tastings/tutorials and general customer use. The premises also offers outdoor seating areas on Church Street.

#### 2.0 Current Operating hours

2.1 The premises currently enjoys the following operating hours:

**On-Sales:**

Monday to Saturday: 1000 hours to 0100 hours  
Sunday: 1200 hours to 0000 hours

**Off-Sales:**

Monday to Saturday: 1000 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:-

1. Extend licensed footprint of premises to include outdoor drinking area on Church Lane.
2. Add seasonal variation to permit alcoholic and non-alcoholic drinks to be consumed in outdoor drinking area up until 2300 hours, 15 May to 31 August each year. (Currently licensed until 2200 hours).

3. Increase capacity of premises by 30 persons to reflect additional outdoor seating areas.
4. Update description of premises to reflect outdoor seating areas.

#### **4.0 Background**

- 4.1 On 12 August 2021 the Licensing Board received an application for a major variation of a premises licence from Caledonian Events Limited.
- 4.2 The application was publicised during the period 20 September 2021 until 11 October 2021 and confirmation that the site notice was displayed has been received.
- 4.3 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.
- 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, the following timeous notice(s) of objection/representation have been received and are appended:
  1. Email objection dated 24 September 2021 from Brian MacKenzie, Inverness Living Streets.
  2. Email representation dated 27 September 2021 received from Crown and City Centre Community Council.
  3. Letter of objection dated 9 October 2021 from Dunbar's Hospital/Church Street Resident's Association.
  4. Email objection dated 10 October 2021 received from Kirsteen Murray.
- 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 anyone who has lodged an objection/representation 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 in question opened in the spring of this year and have established themselves as a popular wine bar/bistro catering for a mature clientele.
- The premises have been visited by the LSO and they are operated to a high standard.
- The outside area which is the subject of this variation has been operated successfully under occasional licences throughout the summer months without any complaint or issue. A site visit with an officer from Roads and Transport was carried out and the outside seating causes no adverse issue for pedestrian traffic on Church Street and Church lane and in many ways increases the ambience of this area of the Town Centre.
- In addition, the application has requested a variation to the local licensing condition imposing a closure time on the outside area; allowing an extension to 2300hrs during the prime summer months, 15<sup>th</sup> May to 31<sup>st</sup> August annually. In view of the responsible track record of licensing the LSO finds no issue with the application contrary to the spirit of the Licensing Objectives.

## **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 and no additional local conditions are considered necessary.

### **8.3 Special conditions**

The Board may wish to consider attaching the following special condition(s):

- During the period 15<sup>th</sup> May until 31<sup>st</sup> August annually alcoholic and non alcoholic drinks shall be allowed to be consumed until 2300hrs in any outdoor drinking area.

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed special condition(s) detailed at para(s).8.3 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: 14 October 2021  
Author: Ian Cox/Julie Traynor  
Appendices:

1. Email objection dated 24 September 2021 from Brian MacKenzie, Inverness Living Streets
2. Email representation dated 27 September 2021 received from Crown and City Centre Community Council
3. Letter of objection dated 9 October 2021 from Dunbar's Hospital/Church Street Resident's Association.
4. Email objection dated 10 October 2021 received from Kirsteen Murray

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**From:** Inverness Living Streets Group <invernessgroup@livingstreets.org.uk>  
**Sent:** 24 September 2021 12:28  
**To:** Julie Traynor (Corporate Governance) <Julie.Traynor@highland.gov.uk>  
**Cc:** [REDACTED]  
**Subject:** Walrus & Corkscrew, Church Street, Inverness

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Julie Traynor  
Chief Executive's Office - Licensing  
The Highland Council

Notification of Major Variation Application :  
Walrus & Corkscrew, 105-107 Church Street, Inverness

I received notice of this application as a member of the Crown and City Centre Community Council in Inverness. I'm also the organiser for the Inverness Group of Living Streets and it's in that capacity that I'm writing here.

I am puzzled about the parts of the application that relate to outdoor seating in Church Lane. My understanding is that this was explicitly denied for good reasons on 24 June 2020.

Decision Notice on 24 June 2020

"1. Notwithstanding the plans hereby approved, no outdoor seating shall be permissible onto Church Lane, which is identified as a 'key active travel route'."

I've been aware of outdoor furniture being placed in Church Lane but have held back from making any complaint. The current application seems to me to be a deliberate attempt to push the boundary in the hope of eventually getting planning permission.

Current Variation Application

Section 3 c)

"Occasional Licences, and a Street Cafe Permit, have been granted for the areas coloured red since 26 April 2021."

I recognise that Occasional Licences may have been granted in the unusual circumstances of COVID-19 measures. But this should have no bearing on the original Decision Notice which should stand and now be enforced.

Church Lane is listed as a Core Path and, and as such, permits walking and cycling. It is a popular route and the width is adequate for this active travel use. But any clutter such as outdoor furniture would introduce obstruction on the route and raise safety concerns.

I'm frankly puzzled why I should need to object as I consider that the original decision was well made and should not be changed.

Regards

Brian

Brian MacKenzie

Inverness Living Streets



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----- Forwarded message -----

From: **Bill Hepburn** <[REDACTED]>

Date: Mon, 27 Sep 2021 at 16:08

Subject: Major variation Walrus and Corkscrew 105-107 Church Street/ Crown and City Centre CC.

To: [licensing@highland.gov.uk](mailto:licensing@highland.gov.uk) <[licensing@highland.gov.uk](mailto:licensing@highland.gov.uk)>

Your Ref: HC/INSB/657:IM/JT

I refer to your consultation of 17 September 2021 concerning the licensing variation to allow the above premises to include an outdoor drinking area on Church Lane, to operate outdoor areas seasonally to 2300 hours, and to increase the capacity limit of the premises accordingly.

The Community Council previously had no objection to an outdoor seating area on Church Lane when consulted on the Planning application although that seems to have been rejected by a planning condition on the consent eventually granted.

We are not clear whether and to what extent an outdoor seating area was created on Church Lane perhaps as a relaxation during the lockdown periods of the pandemic. One member of the CC has objected in principle to any potential obstruction on Church Lane which is a key linkage from the river. But the clear majority view is not to object. Whatever the formal position now between planning and licensing, the Community Council continue to support seating in Church Lane provided this does not impede the passage of pedestrians/ cyclists etc. If this de facto has been in use under relaxation without difficulty then there does not appear to be a substantive issue. Support for town centre establishments, where possible, is particularly necessary in the current circumstances and the variation now sought is considered acceptable.

Yours faithfully,

Bill Hepburn

For Crown and City Centre Community Council

27/09/21

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**From:** Kirsteen Murray [REDACTED]  
**Sent:** 10 October 2021 12:45  
**To:** Licensing <licensing@highland.gov.uk>  
**Subject:** Walrus and Corkscrew

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10 October 2021

**HC/INBS/657:IM/JT**

**WALRUS AND CORKSCREW, APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE**

I consider myself a neighbour of the above premises, [REDACTED]

[REDACTED] I was not informed of this application by Highland Council, but found out about it at a Church Street Residents meeting. I understand that you only contact residents living within 4 metres of the property applying for licence, which necessarily omits the vast majority of the residents.

I chose to live in Church Street, and for the first 5 years have thoroughly enjoyed the 'buzz' and activity, however, this last year has seen a distinct change of tempo in the City Centre, exacerbated by successive lockdowns. The welcome relief from Covid restrictions has led to a subsequent increase in anti-social behaviour which I have never experienced before. This has also been commented on by Street Pastors, who though well used to the city centre have also noticed an 'edge' to the merriment that was not there before.

School Lane and Church Lane occur at a natural crossroads in the City, with revellers from all parts of the City centre congregating there at the end of the evening, before departures across the Greig Street Bridge etc. Partying can, and frequently does, continue in the grounds of the Old High Church, with subsequent evidence of alcohol bottles and cans along with more worrying evidence of hypodermic needles and the recent attempted break in to the Church.

I would like to object to the major variation of premises licence on the grounds of setting a precedent which would then be continued along the Street, with associated noise and nuisance levels. 10pm is a fair and reasonable time to stop serving alcohol outside, 11pm is not reasonable.

40% of the ground level buildings on Church Street supply alcohol – this is not including R and B (Union Street) and MacGreggors (Academy Street – though beer garden is fronting on Church Street). Above the majority of the wide and varied business's on Church Street, live residents. Residents who provide the City Centre with a continuity and community which is precious. Turning the city centre into a drinking den by over providing alcohol, will force permanent residents out, giving way to air b'n'b, and diminishing the community that already exists. I would



suggest that this would have a long-term negative impact on the tourism trade.

At a time when new homes are being occupied in the city centre, the nature and peace of the community of residents needs to be considered. As for the 4m rule, I overlook the old New Start building, which is shortly going to be occupied by 10 new flat owners, I am more than 4m away, please can you give me an assurance that should an alcohol licence be applied for the ground level unit that I would be considered a neighbour and consulted.

Many thanks

Kirsteen M Murray

Objection to Highland Council Licencing Board Application from Walrus & Corkscrew 105 to 107 Church Street, Inverness, IV1 1EY – Highland Council Ref No. HC/INBS/657:IM/JT

## 1. Introduction

This introduction contains important background information relating to the context of our objection to the extending of the opening hours for the sale of alcohol outside the Walrus & Corkscrew premises on the public footpath.

Please note that this Licencing Board objection contains the collective views of not only a number of the residents of Dunbar's Hospital but also those of the Church Street Residents Association.

Church Street is a busy and vibrant street and we the residents understand the consequences that the COVID-19 crisis has had on the income of many of the businesses along the length of the street - we wish this was not the case. However, over the past 5 years there has been a continual increase in lawlessness and antisocial behaviour in the street and we the residents continue to experience high levels of noise nuisance and increasingly feel at risk in the street and particularly at night.

The noise nuisance and lawlessness has escalated exponentially and is mainly driven mainly by alcohol but also drugs. Antisocial behaviour has also increased exponentially with boy racers speeding through the street from early evening and frequently going on until 01.30 or 02.00 the following morning. Other lawless and antisocial behaviours in the street and within the open spaces surrounding the public, commercial, and private residence (Dunbar's Hospital, Bow Court, Deacon Court, Old High Church etc.) include fighting, harassment, intimidation, verbal abuse, threatening behaviour, begging, urinating, defecating, vomiting, sexual acts, break-ins, drunkenness, drug dealing (County Lines and Cuckooing), and prostitution.

The residents of Church Street feel the street is less safe than ever before and they feel at risk! This was emphasised this week by a comment on social media from the town pastors where they stated that the level of aggression and violence in the town was the worst they had ever experienced and asked for people to pray for their safety while they carry out their ever increasingly important work. It is worth noting that 40% of the addresses in Church Street sell alcohol.

To challenge this ever-increasing noise nuisance, lawlessness, and antisocial behaviour, we have formed a Church Street local residents' group and we are currently working with David Hass, the HC Town Centre Manager, and with Police Scotland at both a local and national level. Many of the street residents feel that when it comes to planning and licencing decisions we fall into the category of ***"the hard to see people (residents) are the easy to ignore people"***.

The residents of Church Street, be that the long-term residents, the short-term resident, the holidaymakers, or the yet to arrive, rely on the Highland Council Licencing Board to keep them safe now and in the future, by ensuring the absence of risk. The absence of risk is the legal requirement for not only all organisations but also for all business, and we all have a Duty of Care not hurt and harm others. Clearly, a fully effective licenced premises governance process is critical to maintaining the health, safety, and wellbeing of those that live and work in Church Street.

The only way to successfully control the risks of further hurt and harm from noise nuisance, lawlessness, and antisocial behaviour affecting all those that live (long and short-term) in Church Street is to set and maintain clear boundaries such as limiting opening hours and following the UK and Scottish Government legislation and guidance on noise nuisance and antisocial behaviour, which are well supported by years of evidence and academic research. To do anything else will just go on to causing more hurt and harm.

**2. Our objection to this licencing application is that extending outdoor drinking from 22.00 to 23.00 will create further noise nuisance and increase the risk of further antisocial behaviour and lawlessness.**

**The effects on the individual residents within Dunbar's Hospital and other residents of Church Street.**

**Noise Nuisance**

Dunbar's Hospital is an 'A' listed building, and we are not allowed double glazing, this means that we experience every sound and disturbance coming from the alcohol selling premises in the street and which during the evening and night creates a significant noise nuisance.

10 p.m. is an important cut off time as it is the time many people start to retire for the night and therefore a time when noise creates the greatest nuisance and physical and mental stress. The physical and mental stress caused by noise is well researched, evidenced, and incorporated in many UK and Scottish Law's, i.e., The Antisocial Act (Scotland) 2004 where noise limits are set at 37dB's after 19.00. The effects of nuisance noise is exacerbated when having windows open on the warmer nights of the summer months.

Furthermore, how noise travels and is amplified between buildings and along streets, and how noise becomes a nuisance for everyone living in the street and not just those within a few meters of the licenced premises needs to be fully recognised and understood before an informed decision can be made on this licencing application. Noise is an environmental issue and is becoming a bigger and bigger problem everywhere in the town centre. Some noise factors that are little or poorly understood are as follows,

- Temperature affects how sound travels and the cooler it gets the greater the noise levels experiences. This means that as the evening and night progresses the greater levels of sound energy (volume) we will experience from neighbouring of licenced premises.
- The effects of nuisance noise can be exacerbated when having windows open for fresh air or on summer evenings and nights.
- Noise reverberates and reflects off buildings at 60 times a second, this means that for any noise source we the residents are hearing it over an extended period of time not just once.
- The distance sound ways travel depends on its frequencies with the lower frequencies travelling the furthest. This is why noise becomes a nuisance, we don't always hear the words used in the conversations, we just get the unintelligible lower frequencies, the same happens in the case of music, we often mainly just get the thumping bass notes.
- Due to the way sound energy travels in waves and is refracted from buildings, it is quite possible for me to hear a greater level of volume in my home than the person 10 or 20 meters away who is actually making the noise. This is hard to believe but it is exactly what happens.
- The HSE (Health and Safety Executive) action values for noise are 80 and 85 decibels which means at and above these levels hearing damage can occur and hearing protection should be used - we in Church Street often experiences these levels of noise.
- As people drink for longer they become louder and thus noisier, which in turn creates a greater noise nuisance and chance of antisocial behaviour for those living in the street.
- Research shows that our ears and emotions have a strong bond, our eyes can look away or closed, but our ears are always open and working – we are therefore unable to escape the noise. Most hearing protection such as ear plugs only work at certain frequencies that are created in industry and do not reduce or stop many of the noise frequencies we are continuously exposed to.

## **Antisocial Behaviour and Lawlessness**

Most of the antisocial behaviour and lawlessness in the town starts at around 21.00 and as a direct result of the amount of alcohol drunk; this frequently shows up in the outside seating areas of licenced premises and is why all outside seating should be restricted to 21.00 as an absolute maximum.

Another important factor with regard to antisocial behaviour is that while Church Street has CCTV it may or may not be working and or monitored, Church Lane does not. One of the first things PS will look for after any incident is CCTV footage.

## **Overcapacity in Church Street**

As mentioned before, 40% of the addresses in Church Street sell alcohol. This is more than any other street in the town and this overcapacity is the root cause of the noise nuisance, lawlessness, and antisocial behaviour experienced by the residents of Dunbar's Hospital and many other residents in the immediate area. The Licencing Board needs to ensure that through its governance that this overcapacity is carefully restricted, managed, and controlled. Limiting the times of sale of alcohol in outdoor seating areas is a critical and effective way of doing exactly that.

Furthermore, extending outdoor drinking of alcohol for the Walrus & Corkscrew to 11pm would set a worrying and damaging new precedent for other bars and outdoor cafes in the area and from the clear evidence available create more noise nuisance, lawlessness, and antisocial behaviour in this area of Church Street and which is already causing hurt, harm, stress, and ill health to those that live or visit the street and making it an even higher-risk area for all that live and use it.

## **Summary**

Permitting the Walrus & Corkscrew to extend its outdoor operating hours beyond 10 P.M. will only increase the levels of hurt and harm to residents caused by noise nuisance and antisocial behaviour and put the local residents at an even greater risk of lawlessness.

As one of the residents of the street said when she became aware via us that there was an application into extend the Walrus & Corkscrew outdoor operating hours ***"this is dangerous!"***.

We need to be mindful that one person's success must not be achieved at the expense and exclusion of others.

And for people to enjoy themselves others don't have to hurt and harmed!



**10<sup>th</sup> Oct 2021**