

The Highland Licensing Board

Meeting – 26 October 2021

Agenda Item	10.1
Report No	HLB/093/21

Premises licence review hearing

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

The Waterfront Nightclub and Restaurant, 4 The Shore, Wick KW1 4JX

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 Police Scotland for a review of the existing premises licence for the premises known as The Waterfront Nightclub and Restaurant, 4 The Shore, Wick. The premises licence HC/CSR/1115 is held by Robert Sutherland.
- 1.2 The review application, dated 8 October 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, Robert Sutherland, a representative from 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:

http://highland.gov.uk/hlb_hearings

- 1.5 The premises licence was also subject of a review request from Police Scotland in 2013 on the basis of breach of the licensing conditions preventing crime and disorder, and securing public safety. The review request was subsequently withdrawn by Police Scotland after being deferred by Board.

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 the representative of Police Scotland, the Licensing Standards Officer and the 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/CSR/1115

Date: 12 October 2021

Author: L Gunn

Appendices:

Appendix 1 – Premises licence review application dated 8 October 2021

Appendix 2 – Licensing Standards Officer's report dated 12 October 2021

08/10/2021

Your Ref: HC/CSER/115

Our Ref: 22850

Clerk to the Highland Board
Town House
High Street
Inverness
IV1 1JJ



Divisional Co-ordination Unit
Highland and Islands Division
Police HQ
Old Perth Road
INVERNESS
IV2 3SY

Dear Sir,

**LICENSING (SCOTLAND) ACT 2005 - SECTION 36
PREMISES LICENCE REVIEW APPLICATION
LICENCE NO: HC/CSER/115
PREMISES: THE WATERFRONT NIGHTCLUB AND RESTAURANT
THE WATERFRONT, 4 THE SHORE, WICK, HIGHLAND, KW1 4JX
PREMISES LICENCE HOLDER: ROBERT JOHN SUTHERLAND**

In terms of section 36(1) of the Licensing (Scotland) Act 2005, I hereby make application to the Highland Council Licensing Board for a review of the premises licence in respect of the premises known as The Waterfront Nightclub & Restaurant, The Waterfront, 4 The Shore, Wick, KW1 4JX.

This application for review is made in terms of the grounds set out at Section 36(3)(b), relevant to two of the licensing objectives as articulated at Section 4(1) of the Licensing (Scotland) Act 2005, namely;

- Preventing Crime and Disorder
- Securing Public Safety

In support of this application, and in terms of section 36(5A) the following information is provided for your consideration:

The Premises Licence in respect of the above premises is held by Robert John Sutherland bn. 12/04/1983. Mr. Sutherland is also the Designated Premises Manager. He holds a personal licence, issued by Highland Council on 22/03/2019, which is due to expire on 31/08/2029. His licence number is HC/CSR/0530.

There have been two serious assaults attributed to the Waterfront nightclub since 15th August 2021. The circumstances of these incidents, as well as the

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intervention which has taken place by police and the local authority is also detailed below.

About 0200 hours on 15th August 2021, a serious assault took place within the Waterfront nightclub. This incident was not reported to the police.

The circumstances are that the victim of the assault had been consuming alcohol within other licensed premises prior to attending the Waterfront about 0100 hours, same date. Whilst within Silver Darlings, which is part of the main club, the victim was punched to his head by the suspect. He was knocked to the ground and did not recall anything until he was being helped to his feet by the duty manager. First aid was provided to this male and staff then conveyed him to hospital as he had a laceration above his right eye. At no time were the police contacted despite this assault taking place within the bar.

The victim of this assault sustained a 3cm laceration above his eye and was required to take time off work due to his injury. The suspect for this incident has not been traced.

It is pertinent to note that police became aware of this incident when they were contacted by the hospital. Officers attended at Caithness General Hospital in response to the call and made contact with the victim. He was described as being highly intoxicated, to the point that he was unable to provide officers with a statement. He did disclose that he had consumed approximately 12-14 vodkas throughout the night.

On that same night, a further incident took place within the club, which was initially crimed as a serious assault.

About 0045 hours, same date, a female contacted police in a hysterical state whereby she reported that she had been assaulted. Officers attended and traced the female who was so intoxicated and hysterical that she was unable to provide a statement to the police. She stated that she had been assaulted within the club and that she had sustained a laceration to her back.

Officers conveyed her to Caithness General Hospital where she received three stitches for a 1cm laceration to her lower back. She informed police that she had been stamped on with a heel. Officers carried out enquiries and established that there had been a fight on the dancefloor between two females, however, were unable to prove that a heel had been used to cause the injury, and surmised that the injury could have been caused by debris on the dancefloor.

However, it is pertinent to note that although a door steward did intervene, again the police were not contacted.

Local police officers reported both these incidents to the police licensing department and stated that between midnight and 0300 hours on the 15th August 2021, a large amount of patrons were within the premises, however, there appeared to be a lack of control from staff, who were seen to be struggling to cope

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with the volume of people. They also stated that large groups of patrons were congregating immediately outside the club causing issues on the road with large amounts of debris observed, including smashed glass. Their observations were that a large number of the patrons were heavily intoxicated, and indeed one was so drunk that a passing ambulance was flagged down by officers due to the intoxication levels. Officers stated that they rarely left the area during these three hours and remained nearby to the nightclub to provide a presence as it appeared violence and disorder was inevitable. Officers also believed that some patrons appeared to be under the influence of substances other than alcohol.

As a result of these two incidents, in conjunction with the concerns raised by local officers, Police Sergeant Katy Duncan from the police licensing department and Garry Cameron, Licensing Standards Officer (LSO) from the Highland Council, arranged a joint visit to the premises with Mr. Sutherland.

On 24th August 2021, Sergeant Duncan and Garry Cameron LSO, attended at the premises whereby they were met by Robert Sutherland. Sergeant Duncan informed Mr. Sutherland that the police and council both had concerns in relation to poor management of the premises, including intoxicated patrons, disorder, violence, lack of control, and failure to contact the police.

Mr. Sutherland was informed that the recent incidents which took place on the previous weekend were unacceptable and that he needed to address all concerns immediately. However, he was also informed that part of the reason for this intervention meeting was to offer him support and advice to assist him in turning the premises around, which he accepted, although it was stressed upon him that his full cooperation would be required.

The two assaults were discussed individually and Mr. Sutherland was asked why he had not contacted police or ambulance for either incident. He stated he had not been aware of the severity of the incidents and that staff had offered medical assistance to the injured male, and that the injured female had left in a hysterical state. He was advised that it was not acceptable that the police had not been contacted and he was advised that he would never face criticism for contacting the police, however, he would be heavily criticised when police are not contacted, and that questions would be asked as to why he does not want police on his premises.

Mr. Sutherland was also advised that he has a duty of care for patrons. He accepted this and stated that going forward he would contact the police should a serious incident take place.

The levels of intoxication were addressed and initially Mr. Sutherland stated that he did not believe his patrons were overly intoxicated, despite several police officers observations. He was advised that it was imperative that his door stewards were being strict at the door and not allowing intoxicated persons within. He was also advised that he has a duty of care for intoxicated persons, which he agreed with.

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Mr Sutherland was informed that the premises would thereafter be closely monitored by police, and that full cooperation from himself and his staff was expected at all times. He was also informed that it was absolutely essential that police were contacted when a serious incident took place on his premises, which he agreed to.

The premises were thereafter placed on the first stage of the police intervention process and classified as 'monitored' on the police licensing database, Innkeeper. Monitored premises require tasked inspections for local police officers, which have been carried out, with the premises deemed to be operating in a satisfactory manner following the intervention.

However, about 0145 hours on Saturday 2nd October 2021, a further serious assault took place at the premises. The incident, involving three persons took place within the male toilets of Silver Darlings, which is within the main club. Shortly after the initial assault within the toilets, all persons involved left the club and the incident continued a short distance away from the front door.

This incident is still currently under investigation and as such, I am unable to furnish Board members with specific details due to the risk of prejudicing any subsequent court proceedings. However, I can disclose that Mr Sutherland was aware of the initial fight within the toilets in which one male sustained obvious injuries. At no time were the police called, and at no time was a duty of care provided to any persons involved. Police only became aware of the incident the following day when the hospital reported the severity of the injuries, which are significant and may require surgery.

Had Mr Sutherland, or other staff members intervened when the incident occurred, and contacted the police, this may well have prevented the very serious incident and subsequent injuries from taking place. Although the second part of the assault took place outside the premises, it was very much attributed to the club and would have been clearly visible to any staff who had gone outside to ensure everything was in order.

In addition, this incident, as with the aforementioned assaults in August, can be linked to the sale of alcohol as all persons have been intoxicated whilst on the premises. Witness statements for the most recent serious assault, which cannot be disclosed at this time, allude to all persons being heavily intoxicated.

Following this most recent serious assault, police attended at the Waterfront on the night of the 2nd October 2021 to view CCTV within the premises in relation to this incident. Officers spoke with Mr Sutherland, however, he was unwilling to cooperate with them.

The police informed Mr Sutherland that they required to review the CCTV as a matter of priority in order for them to secure vital evidence. Mr. Sutherland responded that 'he had a nightclub to run' and that this was a 'ridiculous' request. Officers explained the importance of their request, informing him that a male was seriously injured, and asked Mr. Sutherland if he was refusing to co-operate. He

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told police that he needed ten minutes to attend to some matters but would thereafter allow them to view the footage. Officers afforded him this time, however, when officers were taken into the club office, he appeared nervous and uncomfortable to be in this situation. As officers were about to review the footage, Mr. Sutherland stated that he found it ridiculous that he was being asked for the CCTV and that he needed to get ready for opening his club. Officers reiterated that the victim of this incident was in hospital with serious injuries and it was imperative that they were provided with access to potential evidence. The response from Mr. Sutherland was that seizure of the CCTV would make no difference to the person in hospital. Mr. Sutherland then informed officers that he was unable to view playback on his CCTV system as it would cease to record live time.

As Board members will be aware, it is a requirement of a late night opening premises that CCTV is in good working order.

Mr. Sutherland made it clear that he did not want to let officers download the CCTV footage. As a result the officers offered to download it themselves so that he could attend to his business, however, this offer was refused. Subsequently, the CCTV footage was not provided to the police at this time and an arrangement was made for officers to return the following morning, which was facilitated by Mr. Sutherland.

Mr. Sutherland was far more cooperative upon officer's return and the CCTV was provided to them. However, Mr. Sutherland's actions on the previous night were obstructive and certainly not becoming of a licensee. Full cooperation with the police and other authorities is expected at all times, which was reiterated to Mr. Sutherland by Sergeant Duncan and Garry Cameron LSO during their intervention visit in August, which he had fully accepted.

This incident in itself is deeply concerning and I would respectfully ask the Board to consider why the premises repeatedly fail to contact the police when serious incidents of violence and disorder occur on the premises. Considering the intervention that has taken place between the police and local authority with Mr. Sutherland, and the significant efforts that have been taken to work with him, it is extremely disappointing that he has failed to heed the advice provided.

In my opinion, the premises are being run in a manner which is inconsistent with two of the licensing objectives, namely Preventing Crime and Disorder, and Preventing Public Safety.

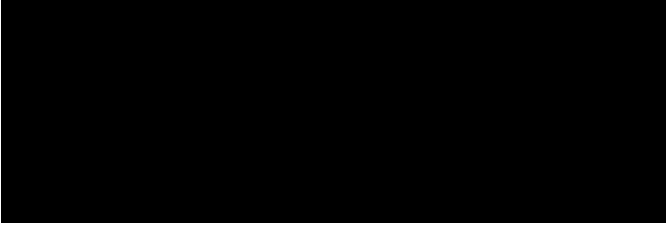
I have concerns that should the premises continue to operate in this manner, with the foregoing information clearly evidencing poor management and a failure to engage with the authorities, then there is the potential for further serious incidents to occur, which will pose a significant risk to public safety.

I request that the Licensing Board considers the aforementioned grounds for review and takes such steps as it considers necessary or appropriate for the

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purposes of the licensing objectives under the terms of Section 39(2) or 39(2A) of the Licensing (Scotland) Act 2005.

Yours faithfully,



Chief Superintendent Conrad Ticket
Divisional Commander

For enquiries please contact the Licensing Department on 01397 709320

Agenda Item	
Report No	

Report by Licensing Standards Officer

Summary: Licensing Standards Officer's report in terms of section 38 (4) of the Licensing (Scotland) Act 2005 in response to an application for a premises licence review submitted by Police Scotland in respect of Robert Sutherland HC/CSER/1115 for The Waterfront Nightclub and Restaurant, 4 The Shore, Wick.

1. Licensing History

- 1.1 Premises licence HC/CSER/1115 for the premises of The Waterfront Nightclub and Restaurant, 4 the Shore Wick was issued to Robert John Sutherland, Wick with effect from 1st September 2009 by the former Caithness, Sutherland and Easter Ross Licensing Divisional Licensing Board in accordance with the licensed hours and other policies of the Board at that time.
- 1.2 The premises manager since that date is the licence holder, Robert John Sutherland the holder of personal licence HC0530.
- 1.3 The premises operate principally as a nightclub and comprise of a main dance area with bar counter known as The Waterfront and a separate bar room, known as Silver Darlings. There is separate access to each of those areas from the street, but it is also possible to move between the bars from inside the premises if permitted.

The premises although licensed until 0100hrs do not operate on any Monday, Tuesday Wednesday, or Sunday.

On a Thursday, Friday and Saturday permitted hours are 1300 hrs to 0300 hrs the following day,

- 1.4 The premises are subject to Mandatory, Local and the under-noted Late Opening conditions.
- 1.5 The premises have no recent adverse history from a Licensing Standards perspective.

Late Opening Conditions

- 1. A person trained to the satisfaction of the Licensing Board in administering First Aid must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-

(a) the time at which the premises next close; and

(b) 5.00am

2. A designated person who is the holder of a personal licence must be present on the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-

(a) the time at which the premises next close; and

(b) 5.00am or such other time as the Licensing Board may specify

3. There must be written policies in existence concerning:-

(a) the evacuation of the premises; and

(b) the prevention of the misuse of drugs on the premises

4. A CCTV system must be installed on the premises to the satisfaction of the appropriate Chief Constable and must be kept in good working order.

5. There must be persons responsible for checking on the safety and wellbeing of persons using any toilet facilities on the premises.

6. A person who holds a licence granted under Section 8 of the Private Security Industry Act 2001(a) must be positioned at every entrance to the premises from 1.00am (on any day when the premises are open at that time) until whichever is the earlier of:-

(a) the time at which the premises next close; and

(b) 5.00am or such other time as the Licensing Board may specify.

2. Process

2.1 On 12th October 2021, in terms of section 38(2) of the Licensing (Scotland) Act 2005, I received notice of a premises licence review application submitted by Police Scotland in respect of Robert John Sutherland HC/CSER/1115 for The Waterfront Nightclub and Restaurant, 4 The Shore, Wick.

2.2 This report is submitted in accordance with the terms of section 38(4) (a) of the Act.

3. Circumstances

3.1 Since 15th August 2021 two serious assaults have been reported to Police Scotland as having occurred within or directly outside the Waterfront or Silver Darlings premises.

3.2 I would refer to the full circumstances as described within the Police Scotland Premises Review Letter dated 8 October 2021.

The police review application relates to the failure of the licence holder to engage, positively, with the licensing objectives specifically those of the prevention of crime and disorder and securing public safety arising from a lack of intervention by the Premises Manager and door stewards at the time of incidents and the subsequent lack of reporting of incidents to Police Scotland which has in all probability allowed incidents to escalate.

There would also appear to have been an unhelpful response by the Premises Manager to most recent incidents.

4 Licensing Standards Officer's comments.

4.1 The Waterfront Nightclub is the only nightclub in Wick, and it operates mainly on a Friday and Saturday night. The layout of the premises allows for either the Waterfront or the bar known as Silver Darlings to operate independently depending on demand for the facilities.

As a result of incidents reported to Police Scotland on the 15th August 2021 a pre-arranged meeting with Robert Sutherland, the Premises Manager was organised with Sgt Katy Duncan Police Scotland Licensing Dept and Garry Cameron LSO, responsible for the area of Caithness on 24th August 2021.

The meeting was held within the Waterfront Nightclub Premises Wick and the reasons for the meeting and all surrounding circumstances were explained to Mr Sutherland. Both Sgt Duncan and LSO Garry Cameron emphasised the need for Mr Sutherland to work along with Police Scotland and the LSO, he fully accepted the offers made of advice and support.

During the period of this meeting which included full compliance checks Mr Sutherland appeared amenable to advice offered. Sgt Duncan very much identified "working with local Police" and the reporting of serious incidents to Police Scotland, timeously, as being absolutely necessary to "prevent crime and disorder".

It was explained to him that he, and his staff, and in particular his door stewards had a duty of care for patrons affected by alcohol and that door stewards should not be allowing intoxicated persons into the premises even though they may have consumed alcohol elsewhere.

It was also explained to, and fully accepted by, Mr Sutherland that a failure to report incidents could result in escalation of incidents and thus a very real weakness as regards “securing public safety”.

On Monday 4th October 2021 I was informed by Sgt Duncan, Police Scotland that a further serious incident had occurred at the Waterfront Nightclub.

I was made aware that the incident was under investigation but was serious in nature and the Premises Manager, who had been present on the premises at the time of the incidents had subsequently been uncooperative in relation to assisting enquiries by Police Scotland Officers.

Recommendation

That the Board take this report into account at the hearing.

Signature: Garry Cameron

Designation: Licensing Standards Officer

Date: 12th October 2021