

## **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 26 October 2021 at 2.00pm.

### **Present:**

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

### **In Attendance:**

Mr I Meredith, Clerk to the Board  
Ms R Banfro, Solicitor  
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 7.2: Mike and Jennie Chapman, applicants

Item 7.3: Kyle Innes, applicant

Item 9.1: Lindsay Robson, applicant's agent

Item 9.2: Lindsay Robson, applicant's agent

Item 9.6: Anika Schultz, applicant; Margaret Smith, Richard Paxton, Susan Sinclair, Patrick and Sheila Maher, Mr and Mrs D Cameron, objectors

Item 9.7: Rob Steadman, applicant

Item 10.1: Robert Sutherland, premises manager, Peter Lawson solicitor

## **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**

There were no apologies for absence.

### **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 7 September 2021.

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

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

There had been circulated **Report No HLB/080/21** detailing licences which had been granted under delegated powers by the Clerk to the Board during the period 26 August 2021 to 13 October 2021.

The Board **NOTED** the report.

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

There had been circulated **Report No HLB/081/21** detailing occasional licences and extended hours applications which had been granted under delegated powers by the Clerk to the Board during the period 26 August 2021 to 13 October 2021.

The Board **NOTED** the report.

**6. Chief Constable's Report 2020 to 2021  
Aithisg an Àrd-Chonstabail 2020 gu 2021**

There had been circulated the Chief Constable's Annual Licensing Report to the Highland Licensing Board for 2020/2021.

Sergeant K Duncan advised that Police Scotland was focused on working in partnership to reduce the harm caused by alcohol crime and disorder, and on prevention and intervention strategies in relation to community safety and resilience. The vast majority of licensed premises in Highland operated in accordance with the licensing objectives. Police Scotland appreciated it had been an extremely difficult period for the licence trade due to Covid-19 and had worked closely with Environmental Health and licensing staff to provide support, reassurance and advice to the licensed trade. The vast majority of licensed premises in the Highlands had fully complied with the Covid-19 regulations which was testament to the licensed trade. She thanked the Board for their support over the period.

The Convener thanked Police Scotland for the positive report and on the partnership working undertaken with licensing staff and others in response to the pandemic.

The Board **NOTED** the Chief Constable's Report for 2020-21.

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

**7.1 Ref: HC/RSL/1984**

**Applicant:** Skye Lodges Ltd

**Premises:** The Auld Bridge Inn @ Skye Lodges, Peinmore, Portree, Isle of Skye, IV51 9QG

**Type:** On sales and off sales

There had been circulated **Report No HLB/082/21** by the Clerk which invited the Board to determine the application.

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

**7.2 Ref: HC/RSL/1986**

**Applicant:** Atholl House (Skye) Ltd

**Premises:** Atholl House, Dunvegan, Isle of Skye, IV55 8WA

**Type:** On sales

There had been circulated **Report No HLB/083/21** by the Clerk which invited the Board to determine the application.

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

**7.3 Ref: HC/CSR/1812**

**Applicant:** Bottle Exchange Ltd

**Premises:** Bottle Exchange Ltd, 38 Murkle View, Thurso

**Type:** Off sales

There had been circulated **Report No HLB/084/21** by the Clerk which invited the Board to determine the application.

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

**8. Licensing (Scotland) Act 2005  
Applications for provisional premises licences  
Achd Ceadachd (Alba) 2005  
Iarrtas airson ceadachdan thogalaichean le cumha**

**8.1 Ref: HC/INBS/664**

**Applicant:** Emerald Inns Ltd, 135 Culduthel Road, Inverness, IV2 4EF

**Premises:** Jimmy Badgers, 25-27 Church Street, Inverness, IV1 1DY

**Type:** On & off sales

There had been circulated **Report No HLB/085/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application for a provisional premises licence subject to the mandatory conditions, local conditions (a), (b), (c), and (k), and the following special conditions:

- On any occasion that the premises are permitted to remain open after 0100 hrs, a person who holds a Scottish Personal Licence shall be on the premises until the premises are closed;
- On any occasion that the premises are permitted to remain open after 0100 hrs, a person who holds a current first aid qualification shall be on the premises until the premises are closed

**9. Licensing (Scotland) Act 2005  
Applications for variation (major) to premises licences  
Achd Ceadachd (Alba) 2005  
Iarrtasan airson Caochladh (Mòr) a thaobh ceadachdan thogalaichean**

**9.1 Ref: HC/INBS/252**

**Applicant:** Scottish Midland Co-operative Society Limited, 2 Harvest Drive, Newbridge, Edinburgh, EH28 8QJ per Anderson Strathern LLP, 1 Rutland Court, Edinburgh, EH3 8EY

**Premises:** Scotmid/Morning, Noon and Night, Balloch Stores, Culloden Road, Inverness, IV2 7HQ

**Type:** Off sales

There had been circulated **Report No HLB/086/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application to vary the licence subject to the mandatory conditions only.

### **9.2 Ref: HC/INBS/109**

**Applicant:** Scotmid/Morning, Noon and Night, Balloch Stores, Culloden Road, Inverness, IV2 7HQ per Anderson Strathern LLP, 1 Rutland Court, Edinburgh, EH3 8EY

**Premises:** Scotmid, Unit 1, Glenurquhart Road, Inverness, IV3 5NZ

**Type:** Off sales

There had been circulated **Report No HLB/087/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application to vary the licence subject to the mandatory conditions only.

### **9.3 Ref: HC/INBS/615**

**Applicant:** Kinrara Distillery Limited, Lochindorb Lodge, Lochindorb, Grantown-on-Spey, PH26 3PY

**Premises:** Kinrara Distillery, Lynwilg Farm Steading, Lynwilg, Aviemore, PH22 1PZ

**Type:** On & off sales

There had been circulated **Report No HLB/088/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application to vary the licence subject to the mandatory conditions and existing local conditions.

### **9.4 Ref: HC/INBS/321**

**Applicant:** Squirreled Away Ltd, 20-22 Wenlock Road, London, N1 7GU

**Premises:** Glenmore Shop & Café & Pine Marten Bar, Glenmore, Aviemore, Ph22 1QU

**Type:** On & off sales

There had been circulated **Report No HLB/089/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application to vary the licence subject to the mandatory conditions, existing local conditions and additional local conditions (m), (n)(i), and (p).

### **9.5 Ref: HC/INBS/500**

**Applicant:** Sainsbury's SL Limited, 33 Holborn, London, EC1N 2HT per TLT LLP, 140 West George Street, Glasgow, G2 2HG

**Premises:** Sainsbury's Supermarket, Balmakeith, Forres Road, Nairn, IV12 5QF

**Type:** Off sales

There had been circulated **Report No HLB/090/21** by the Clerk which invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application subject to the mandatory conditions.

**9.6 Ref: HC/INBS/645**

**Applicant:** Partnership of Anika & Andreas Schulz, 7 Cawdor Street, Nairn, IV12 4QD

**Premises:** Cawdor House, 7 Cawdor Street, Nairn, IV12 4QD

**Type:** On sales

There had been circulated **Report No HLB/091/21** by the Clerk which advised that timeous notices of objection had been received from Royal British Legion Scotland, South Forrest Solicitors on behalf of Jocelyn Ward, Mr and Mrs Sinclair, Richard and Fiona Paxton, Mr and Mrs A D Cameron, Sheila and Edmond Maher, Darren and Margaret Smith. Timeous letters of support had been received from Mrs Norma McIntyre, Vicky and Peter Walker, and Astrid Blank. The Board was invited to determine the application.

Further written submissions had been provided by the objectors in response to the application and circulated to Members prior to the meeting.

Ms A Schulz, applicant, stated that the application responded to demand from her café customers to have the additional option of having an alcoholic drink with their meal. The application restricted on-sales at the café to its opening times i.e. 11am to 6pm. The premises was known for providing a peaceful and quiet environment. These were unprecedented times and businesses had to be agile in responding to demand. There would be no increase in the maximum numbers the café could accommodate or number of covers, and the premises had been operating in full compliance with the licensing objectives.

Following questions, the Board heard from Margaret Smith, Richard Paxton, Susan Sinclair, Patrick and Sheila Maher, and Mr and Mrs D Cameron, objectors, during which they raised a number of issues, including the following main points:-

- there was existing noise pollution from the café and it was well established that alcohol consumption increased noise levels and the potential for nuisance and disturbance;
- a main concern was the outdoor drinking area with café customers being able to consume alcohol in this area up until 6pm and hotel residents up until 9pm;
- concern at the potential for drinking parties to use the premises over the nice hour period during which alcohol could be sold at the premises;
- the premises was situated in a primarily residential area and in proximity to primary schools and nurseries was not a suitable location for the sale of alcohol;
- the premises was also located in proximity to four other licensed premises and it was not understood why overprovision could not be taken into account in the consideration of the application;
- concern at the potential future extension of business activities at the premises;

- no account had been taken of the impact on local residents in granting previous licences for the premises. Neighbours were already subjected to unbearable levels noise in their gardens and within their homes, and approving the application would result in even more negative effects in terms of their amenity;
- neighbours had already compromised in relation to previous planning and liquor licence applications and concern that the Board was now being asked to approve this application with no mitigation measures in place to minimise the impact on neighbours in what was a considerable enhancement of the applicant's business; and
- a point in regard to the anti-social behaviour already experienced by local residents from patrons returning from other licensed premises.

The Clerk provided an explanation on the Board's overprovision policy and clarified that it applied only to off sales, and therefore overprovision was not a grounds for refusal in respect of this application. He confirmed that Police Scotland and NHS Highland had no objections to the application.

The Licensing Standards Officer advised the premises were located in a predominantly residential area. The café was a food led well run premises and the applicant sought only to offer an additional on-sales facility. In addition to the objections, it was also important to acknowledge letters of support received. The operating history of the premises suggested there was nothing to mitigate against granting the licence in terms of the licensing objectives, subject to the recommended conditions.

During debate, Members raised the following main points:-

- the premises was located on a busy main road, close to the town centre, with other licensed and non-residential premises in the vicinity and it was not considered the café was the source of an unacceptable level of noise for local residents;
- the outdoor garden area was already included in the existing premises licence and its use was restricted to 9pm;
- many of the issues raised in the objections were outwith the remit of the Board and not relevant to the licensing objectives;
- while appreciating the objectors concerns, they had provided no evidence that noise nuisance and disturbance would increase as a direct result of the variation being granted. Rather, they appeared to be revisiting issues that were relevant to the original premises licence application and planning matters that had already been determined;
- the Licensing Standards Officer had found the premises to be well run and fully compliant with the licensing objectives and Police Scotland had no objections to the application;
- the application should be refused on the basis it would be inconsistent with the licensing objectives of preventing public nuisance due to the noise nuisance and loss of amenity to the neighbours and also protecting children and young people from harm given its location in a residential area and in proximity to primary schools and nurseries; and

- while the premises had operated for a period of two years, this had been largely during the lock-down period when the activities of the licensed trade and been curtailed.

Thereafter, Mr D Macpherson moved that the application be refused but on the grounds it was inconsistent with the licensing objectives of preventing public nuisance and protecting children and young people from harm but on failing to find a seconder the amendment fell.

Thereafter, the Board **AGREED** to **GRANT** the application to vary the licence subject to the mandatory conditions, existing local conditions, and the following specific condition:

- Between 1100 hrs and 1800 hrs alcohol may be sold to the general public on the premises
- After 1800 hrs alcohol may only be sold to persons who are residents on the premises

Mr D Macpherson asked that his dissent in relation to this decision to be recorded.

#### **9.7 Ref: HC/INBS/657**

**Applicant:** Caledonian Events Ltd

**Premises:** The Walrus & Corkscrew, 105-107 Church Street, Inverness

**Type:** On and Off-Sales

There had been circulated **Report No HLB/092/21** by the Clerk which advised that timeous notices of objection had been received from Brian Mackenzie, Crown and City Centre Community Council, Dunbar's Hospital/Church Street Residents Association and Kirsteen Murray. The Board was invited the Board to determine the application.

The Board **AGREED** to **GRANT** the application to vary the licence subject to the mandatory conditions, existing local conditions, and the following specific condition:

- 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 2300 hrs in any outdoor drinking area.

Mr D Macpherson asked that his dissent in relation to this decision to be recorded.



## 10. Licensing (Scotland) Act 2005 Section 38

### Application for review of premises licence

#### 10.1 Licence holder: Robert Sutherland

**Premises: The Waterfront Nightclub and Restaurant, 4 The Shore, Wick, KW1 4JX**

There had been circulated **Report No HLB/093/21** by the Clerk together with an application by the Licensing Standards Officer for a premises licence review application.

The Solicitor advised that a non-timeous representation dated 21 October 2021 had been received from Police Scotland and that the Board was required to consider whether there was good reason to accept the late submission.

Mr P Lawson for the applicant, advised that he had not had the opportunity to investigate the matters contained in the late submission and it would be prejudicial to his client for this to be considered by the Board until he had time to properly prepare his case.

Sergeant K Duncan explained that the circumstances outlined in the letter had only been brought to her attention on 21 October 2021, officers having not been made aware of these circumstances until that date. This related to an alleged incident which took place on 9 October 2021 and a secondary incident on 16 October 2021.

Following discussion, the Board **AGREED** to consider the late submission from Police Scotland on the basis of the short timescales between the alleged incidents and the Board meeting was good reason for the information being late.

Sergeant K Duncan, Police Scotland, outlined the full terms of the application for review of the premises licence as stated in Police Scotland's letters dated 8 and 21 October 2021, copies of which had been circulated to all parties. The Chief Constable considered that the premises were being run in a manner which was inconsistent with the preventing crime and disorder and securing public safety licensing objectives, and that should the premises continue operating in this manner there was the potential for further serious incidents to occur, which would pose a significant risk to public safety.

The Board then heard from Mr P Lawson for the licence holder, during which he advised his client disputed the account given of the incidents on 15 August 2021 in Police Scotland's letter dated 8 October 2021. He proceeded to give an alternative version of events which cast sufficient doubt as to whether [REDACTED] had taken place at the premises, and outlined the active and positive steps his client had taken in respect of these incidents which demonstrated good management. His client had not been aware of the incident on 2 October 2021 until he had viewed CCTV footage the following morning. His client had no knowledge of the incident referred to in Police Scotland's supplementary submission and he had not had the opportunity to prepare his case on this matter. There had been exceptional circumstances on the night the venue had reopened on 15 August 2021, following the lifting lockdown restrictions and the premises had been extremely busy. It had not been reasonable for the Police to ask his

client to view CCTV footage at the premises on 2 October 2021 when the premises were at their busiest and at a time his client and staff had to undertake important checks on customers. Police Scotland had confirmed his client had been entirely cooperative when they had returned the following morning.

Following questions, Sergeant K Duncan summed up during which she advised there was no evidence to support the version of events provided by Mr Lawson and his client. She was unable to show the Board CCTV footage of the incident on 2 October 2021 as evidence so as not to prejudice the case. She and the Licensing Standards Officer had gone to considerable lengths to meet with the licensee to discuss the issues and such were their concerns they had decided to bypass the action plan stage and submit the application for review directly to the Board.

Thereafter, Mr R Sutherland, licence holder, advised that he had intervened as soon as he had been made aware there was an issue on 2 October 2021 and that the actual incident had taken place away from his premises. Sergeant Duncan and the Licensing Standards Officer had visited the premises and been satisfied with its operation, cleanliness and record-keeping. The premises had been closed for nearly two years due to the pandemic and there had been a loss of knowledge in terms of potential customers, and more time was required to build up that knowledge base.

Sergeant Duncan advised that the incident on 2 October 2021 was attributed to the premises and if proper interventions had been put in place by the licence holder the incident would not have escalated outside the premises.

Mr P Lawson for the applicant, then summed up during which he advised that generally speaking the premises had been well run over a number of years. The circumstances of the opening night following lockdown restrictions being lifted were highly unusual and the evidence provided by his client directly contradicted that of Police Scotland and demonstrated that a duty of care had been exercised. He referred to the LIDL v Glasgow Licensing Board case and the Court of Session judgement in terms of the principles of review. His client had agreed to consider attending a managing conflict courses to identify additional actions that he and his staff could take to identify potential issues. The Licensing Standard Officer's report on the premises was generally good and the incidents involved an extremely small percentage of customers that had frequented the premises since reopening.

During debate and on hearing from the Clerk, Members raised the following main points:-

- there had been a catalogue of incidents at the premises and Police Scotland were concerned about the potential for further serious incidents and the safety of patrons.
- the request by the Police to view CCTV footage had not been an onerous requirement given the serious nature of their investigations;

- the grounds for review had been established and the premises licence be varied so that the premises closed at 1am for an agreed period to give licensee the opportunity to make improvements to allow the late opening hours to resume;
- it had been widely anticipated that night clubs would be unusually busy on re-opening after lockdown restrictions had been lifted. It was the responsibility of the licensee to ensure the premises were properly staffed for the anticipated capacity and for measures to be in place to control capacity;
- the Board had a duty to protect the public and having heard from the Police it was considered the grounds for review had been established and that the premises licence be suspended until such time as attendance at the managing conflict courses was confirmed and an action/improvement plan had been agreed with Police Scotland;
- the need to take into account that the licence holder had operated the premises for a period of twenty years with few issues arising;
- the premises was a large nightclub and suspending or revoking the premises licence would impact on the public, its employees and local area.

Following further discussion, the Board **AGREED** that the grounds for review were **ESTABLISHED** in terms of section 36(3)(b) of the Licensing (Scotland) Act 2005 on the grounds of behaviour inconsistent with two of the licensing objectives, namely;

- Preventing crime and disorder, and;
- Securing public safety;

On the basis of information provided by Police Scotland in their letters dated 8 October 2021 and 21 October 2021.

Thereafter, finding the grounds for review established, Mrs L Macdonald seconded by Mr J Bruce **moved** that the premises licence be suspended for a period of 2 weeks with immediate effect from 26 October 2021.

As a **first amendment**, Mr A Jarvie seconded by Mr D Macpherson moved that the premises licence be varied so that the premises closed at 1am for a period of 3 months.

As a **second amendment**, Ms E Knox seconded by Mr K Rosie moved that the premises licence be suspended for a period of 4 weeks with immediate effect from 26 October 2021.

On a vote being taken between the **first amendment** and the **second amendment**, the **first amendment** received 2 votes and the **second amendment** received 4 votes, with 1 abstention, the votes having been cast as follows:-

**For the First Amendment:**

Mr A Jarvie, Mr D Macpherson

**For the Second Amendment:**

Ms E Knox, Mrs L Macdonald, Mr K Rosie, Mr C Smith

**Abstentions:**

Mr J Bruce

On a subsequent vote being taken between the **motion** and the **second amendment**, the **motion** received 2 votes and the **second amendment** received 4 votes, with 1 abstention. The **motion** was therefore **carried**, the votes having been cast as follows:-

**For the Motion:**

Mr J Bruce, Mrs L Macdonald

**For the Second Amendment:**

Ms E Knox, Mr D Macpherson, Mr K Rosie, Mr C Smith

**Abstentions:**

Mr A Jarvie

**Decision**

Finding the grounds for review established, the Board **AGREED** that the premises licence be suspended for a period of 4 weeks with immediate effect from 26 October 2021.

**11. Surrender of premises licence**

**Gèilleadh ceadachd togalaich**

**11.1 Premises:** The Steading, 4 Balnapolaig, Dornoch, IV25 3HA

**Licence Holder:** Balnapolaig Management Limited

**11.2 Premises:** Cobbs at Nevisport, Airds Crossing, Fort William, PH33 6EU

**Licence Holder:** Loch Ness Coffee Company Limited

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

The meeting ended at 7.35pm.

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