

## The Highland Licensing Board

Meeting – 22 February 2022

Agenda Item	8.1
Report No	HLB/012/22

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

The Viewmount, East Terrace, Kingussie, PH21 1JS

#### Report by the Clerk to the Licensing Board

##### Summary

This report relates to an application for a major variation of premises licence by Esther Botha, The Viewmount, East Terrace, Kingussie, PH21 1JS.

#### 1.0 Description of premises

1.1 The Viewmount is a newly refurbished boutique Bed & Breakfast premises comprising of four letting bedrooms and two reception rooms, including a restaurant. The premises stands in its own grounds and is located within the small village of Kingussie in the Cairngorm National Park and offers views over the Spey Valley.

The premises also offers outdoor drinking facilities which the major variation application is seeking to extend.

#### 2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

##### On sales:

Monday to Sunday: 1900 hours to 0100 hours

#### 3.0 Summary of variation application

##### 3.1 Variation sought

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

1. Q2. Change operating hours to 1500 hrs to 0000 hrs (previously 1900 hrs to 0100 hrs)

2. Q5 : Add the following activities:
  - Club or other group meetings to be provided within core licensed hours;
  - Films and televised sports to be provided within and outwith core licensed hours;
  - Outdoor drinking to be provided outwith core licensed hours (currently permitted within core licensed hours).
  - provide details of Column 4 activities taking place outwith core hours.
3. Q5(f) : Add the following additional activities : Afternoon teas and wine tasting events may take place within the premises and be open to both residents and non-residents.
4. Q6 : Children and Young persons : Amend children and young persons policy to : No children or young persons will be allowed entry to the premises. (Previously children and young persons were allowed entry to the premises).
5. Q7: Reduce capacity of premises from 50 persons to 26 persons : 8 residents (reduced to 6 residents following advice received from Building Standards during consultation) and 20 non-residents.
6. Update description of premises to:

“The Viewmount operates predominately as boutique Bed and Breakfast accommodation and comprises of 4 letting bedrooms and 2 reception rooms where alcohol is served to guests who are residents. The restaurant on the premises caters for guests and also non-residents wishing to book a table.

The garden is licensed for the use of guests and also non-residents booking afternoon teas.”
7. Layout Plan : Increase footprint of licensed premises to include extended outside drinking area for the use of guests and the provision of afternoon teas and general use.

## **4.0 Background**

- 4.1 On 29 November 2021 the Licensing Board received an application for a major variation of a premises licence from Esther Botha, The Viewmount, East Terrace, Kingussie, PH21 1JS.
- 4.2 The application was publicised during the period 10 January until 31 January 2022 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 notices of objection/representation have been received and are appended where appropriate:
- The Building Standards Authority have advised that the premises can only accommodate a maximum of six residents in line with the building warrant currently associated with the premises. The applicant has therefore agreed to reduce her capacity from eight residents to six residents.
  - Letter of objection dated 24 January 2022 received from Mr & Mrs Folan, Craigview, East Terrace, Kingussie, PH21 1JS
- 4.6 As a hearing cannot be held in person due to coronavirus, the Licensing Board, before reaching a decision, must give any person who would have been given the opportunity to be heard at the hearing the opportunity to be heard instead by alternative methods. Consequently, both the applicant and the objector 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:-

- Viewmount, Kingussie is a substantial Victorian dwelling, standing in its own grounds within the village of Kingussie. The premises transferred to the ownership of the applicant Esther Botha in 2021.
- Previously the premises operated as a French restaurant where both residential guests and other customers could book meals.
- The applicant wishes to adopt a different style of operation and has submitted a major variation application to have these changes authorised by HLB in a revised operating plan.
- The applicant wishes the core hours of the premises amended to 1500 to 2400 hrs daily, such a change in hours is within the policy hours operated by HLB. In addition, changes are made to the children and young persons policy, whereby such persons under 18 years are not allowed on the premises. The internal capacity of the premises is reduced from 50 persons to 26 persons (6 resident and 20 non resident.)
- Section 5 of the operating plan has been amended to accurately reflect the range of activities offered by the premises and the timespan in which they may be enjoyed by guests.
- An outdoor drinking area is requested and this is to be available both to residents and non residents. Afternoon teas are to be a feature of the portfolio of services to be offered by the premises, and these maybe enjoyed in the outdoor drinking area weather permitting.
- In addition, the applicant also wishes to stage wine tasting events on the premises; however, this will purely be for wine merchants to showcase their products. Any sales will be via the wine merchants own premises and the customer so no off sales permission is required by the premises.

- The LSO is content that the proposed changes do not threaten the licensing objectives. Due to the proximity of neighbouring residential property, a limit of 10.00pm is proposed for the outside drinking area, with the playing of live and recorded music in the outdoor area prevented by a local licensing condition(s). These conditions are especially relevant as an objection has been received from the occupiers of neighbouring property concerned about the prospect of noise. The conditions in the view of the LSO are a proportionate and fair compromise.

## **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**

There are no existing local conditions but the following local condition(s) are now recommended:

- M: After 2200 hours, alcoholic or non-alcoholic drinks shall not be consumed in any outdoor drinking area
- N(1) No live or recorded music shall be played in any outdoor drinking area.

### **8.3 Special conditions**

No special conditions are considered necessary.

## **Recommendation**

The Board is invited to determine the above application and if minded to grant the application, to agree the proposed local/special condition(s) detailed at para. 8.2 above.

Reference: HC/INBS/172

Date: 1 February 2022

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Appendix : (1) Letter of objection dated 24 January 2022 received from Mr & Mrs Folan, Craigview, East Terrace, Kingussie, PH21 1JS