

**The Highland Licensing Board**

**Meeting – 6 September 2022**

Agenda Item	<b>8.1</b>
Report No	<b>HLB/085/22</b>

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

**The Highland Fling, Station Road, Kyle of Lochalsh, IV40 8AE**

**Report by the Clerk to the Licensing Board**

**Summary**

This report relates to an application for a major variation of premises licence by The Highland Fling Ltd.

**1.0 Description of premises**

1.1 The property known as The Highland Fling (previously known as Caol Restaurant) is an established café shop and restaurant. The property is two storeys with a separate entrance to the downstairs café/shop and another entrance to the upstairs restaurant.

**2.0 Current operating hours**

2.1 The premises currently enjoys the following operating hours:

**On sales:**

Monday to Sunday: 1000 hours to 2400 hours

**Off sales:**

Monday to Sunday: 1000 hrs to 2200 hours

**3.0 Summary of variation application**

**3.1 Variation sought**

When the application was submitted, the applicant sought to vary the premises licence as follows:-

- (1) Amend premises description;
- (2) Amend core on sales hours – Friday and Saturday - 1100 hours to 0100 hours (now withdrawn);

- (3) Addition of bar meals during and outwith core hours (provision of breakfast before core hours);
- (4) Addition of gaming during core hours;
- (5) Addition of televised sport during and outwith core hours;
- (6) Changes to children and young persons policy;
- (7) Reduce on sales capacity to 85 (currently 220);
- (8) Layout plans –
  - (a) addition of a hard wood dance floor (7x4m);
  - (b) Lengthening of the existing bar and addition of bar stools and vertical drinking areas;
  - (c) Addition of pool table;
  - (d) Addition of gaming machine (now withdrawn);
  - (e) Addition of double glazed safety glass and boarding to reduce the existing window area on the sides of the building.

#### **4.0 Background**

- 4.1 On 16 June 2022 the Licensing Board received an application for a major variation of a premises licence from The Highland Fling Ltd.
- 4.2 The application was publicised during the period 22 June 2022 until 13 July 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:-
  - 1. Representation from Planning dated 4 July 2022 (Appendix 1)
  - 2. Representation from Building Standards dated 4 July 2022 (Appendix 2)
  - 3. Objection from Gareth Cotton, dated 6 July 2022 (Appendix 3)
- 4.6 A further timeous and late objection have been formally withdrawn.

4.7 On 17 August 2022, the applicant advised that they wished to withdraw the following two variations from their application:-

- Amend core on sales hours – Friday and Saturday - 1100 hours to 0100 hours;
- Addition of gaming;

4.8 The applicant and the objectors have been invited to attend the hearing. Both have been advised of the hearings procedure which will be followed at the meeting and which may also be viewed via the following link:

[https://www.highland.gov.uk/downloads/file/6399/licensing\\_hearings\\_procedure/licensing\\_board](https://www.highland.gov.uk/downloads/file/6399/licensing_hearings_procedure/licensing_board)

## **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:-

- (i) The property known as The Highland Fling was previously known as Caol Restaurant and is an established café shop and restaurant.
- (ii) The property is two storeys with a separate entrance to the downstairs café/shop and another entrance to the upstairs restaurant.
- (iii) The premises are situated on Main Street, Kyle of Lochalsh, which is adjacent to the main road running through the village and thereafter onto the Skye Bridge and the Isle of Skye.
- (iv) The premises have operated for a number of years as a separate licensed café downstairs and the upstairs restaurant offering meals, alcohol as well as dancing facilities. This application is to increase and change the range of activities in the upstairs of the premises to include a bar with bar stools and vertical drinking. The specifics of what is applied for are detailed elsewhere in this report. The application also seeks to reduce the capacity of the premises.
- (v) The activities sought would appear to be reasonable and appropriate for the proposed operation of the premises.
- (vi) The children and young persons policy is appropriate.
- (vii) The layout plan submitted complies with the required specifications.
- (viii) There would not appear to be any matter contained within the application that is inconsistent with the licensing objectives.
- (ix) During the period of public consultation, two representations and one objection were received.
- (x) Following receipt of these, the applicants reviewed their application and have now withdrawn two points in the variation, those being the increase in the terminal hour on Friday and Saturday nights and gaming on the premises.
- (xi) Thus, the major variation no longer includes any change to the licensing hours.
- (xii) The objector, Gareth Cotten, has been spoken to by the LSO and once he was informed that change to licensing hours was being withdrawn. He indicated that had been his main concern and he was happier with the application, although to date this has not been withdrawn.

- (xiii) There are representations from Planning and Building Standards which relate to matters separate to the licensing legislation.
- (xiv) I have no objection to this application.

## **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**

The existing local condition will continue to apply and no additional local conditions are considered necessary.

## **Recommendation**

The Board is invited to determine the above application.

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/RSL/1862

Date: 23 August 2022

Author: Carol Nicolson

Appendices: Appendix 1 – Representation from Planning dated 4 July 2022  
Appendix 2 – Representation from Building Standards dated 4 July 2022  
Appendix 3 – Objection from Gareth Cotton dated 6 July 2022

**From:** [Erica McArthur \(Planning and Environment\)](#)  
**To:** [Garry Cameron \(Corporate Governance\)](#)  
**Cc:** [Graham Sharp \(Planning and Environment\)](#); [Chris Hallas \(Planning and Environment\)](#); [Mark Harvey \(Planning and Environment\)](#); [Roddy MacKinnon \(Planning and Environment\)](#); [Carol Nicolson \(Corporate Governance\)](#)  
**Subject:** RE: Alcohol Licensing Major Variation- Highlander Kyle of Lochalsh  
**Date:** 04 July 2022 12:57:20  
**Attachments:** [RE The Highland Fling.msg](#)

---

Good Afternoon Garry,

I am responding on behalf of the Planning Service to your email of 30 June regarding the above.

Based on the information provided in the application and information that is available through social media the Planning Service is of the opinion that a change of the use of the upper floor to a public house has taken place. As there is no 'permitted development rights' to operate a public house we have contacted your applicant directly and requested that they submit a planning application. Material to the determination of a future planning application will be the impact that the use of the building as a public house will have on the amenity of the neighbouring noise sensitive premises ( the flats) and therefore we have requested that a noise impact assessment is prepared by a suitably qualified person to support the application.

To inform the position that we have reached, there is a fairly recent appeal decision about a similar situation in Glasgow , which can be accessed using the following link

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?!D=120022>

I also attach the email which has been sent to your applicant

Regards

Erica McArthur  
Principal Planner ( Development Management)  
Infrastructure, Environment and Economy  
The Highland Council.

---

**From:** [Roddy MacKinnon \(Planning and Environment\)](#)  
**To:** [Carol Nicolson \(Corporate Governance\)](#)  
**Subject:** RE: Application for major variation of premises licence - The Highland Fling (formerly Caol Restaurant), Kyle of Lochalsh  
**Date:** 04 July 2022 13:07:04

---

I will require a building warrant application for the proposed alterations to the external wall and windows as there is a serious lack of ventilation provisions there Carol. And the proposed dance floor will require to be certified by a structural engineering as there is considerable bounce in that first floor, while although suitable for the existing restaurant use, it will certainly require some additional strengthen before it should be used for any disco dancing! Once I get the details of a building warrant application submitted I should then be in a better position to support the licence application, ok.

Roddy



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

Please read the Board's Guidance Notes on How to Object or make Representations in relation to a Premises Licence 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 an objection is rejected by the Board as frivolous or vexatious, the Board may seek to recover expenses from the objector or person making representations

**1. Full Name and Address of person making objection/representation:**

Gareth Cotten The Skye Bridge Hotel/Islander Bar, 1 Station Rd, Kyle of Lochalsh, IV40 8AE	
Telephone Number:	[REDACTED]
Email Address:	[REDACTED]

**2. Address of Premises in respect of which objection / representation is made:**

The Highland Fling (formerly Caol Restaurant) Station Rd, Kyle of Lochalsh, IV40 8AE
---

**3. Details of any OBJECTION:** (complete only if you consider one of the ground for refusal apply)

<b>State ground of objection (refer to ground of objection by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)		
1.	Excluded Premises	The operators having already operated the property in its suggested format of a bar/nightclub, even before applying for a major variation, there have been numerous incidents of disorder and public nuisance, with the police having been called out on multiple occasions already. Underage drinking; young people shouting and screaming in the street after leaving the premises; patrons banging on neighbours windows in the small hours; noise diffusion from music being played loud; and general noise for neighbouring accommodation businesses and residents. Continued on separate page...
2.	Off-Sales Hours/24 hour drinking	
3.	Licensing Objectives X	
4.	Activities/Premises/Customers X	
5.	Over Provision	

**4. Details of any REPRESENTATION:** (complete only if you wish to make a representation in respect of the application)

<b>State details of any representation (refer to representation by number, see guidance notes, and give details):</b> (Continue on separate sheet if necessary)		
1.	in support of application	
2.	seeking an amendment to the operating plan, or	
3.	seeking to add additional conditions to the licence	

**Signature:**..... [REDACTED] **Date:**..... 6 July 2022



Objections to Major Licence Variation Application of The Highland Fling, Kyle of Lochalsh, continued...

We would thus strenuously object to any variation of the premises licence which would lead what was formerly a restaurant to effectively become a bar and nightclub. In particular:

1. We object to amending core sales hours any later than they are currently. Having patrons spilling out into the street at 0100 hours is an even bigger public nuisance than the current licensed hours terminating at 2400 hours. In fact, we would suggest a restriction of on-trade hours to 2200 hours or 2300 hours, in light of the residential and accommodation nature of the immediately neighbouring buildings.
2. We object to the addition of televised sport during and especially outwith core hours, due to the noise and nuisance generated by patrons during such events.
3. We object to the change of layout plans as follows:
  - a. Any hardwood dance floor is a sign of dancing becoming a core part of the business model – meaning loud music and loud patrons at all hours. We do not believe a dance floor is appropriate in a licensed venue in such a residential area.
  - b. Any lengthening or amendment to existing bar and bar access. We believe trading as a restaurant (as per their existing licence) is a sufficiently strong business model given the shortage of food/dining venues in the area, and this would not necessitate increasing the size or capacity of the bar area.

As to any amendments to the building's fabric, there is a significant amount of music, sound and noise leakage which emanates from the building in question. If this variation were to be considered, we would strongly suggest improved soundproofing of load-bearing walls, cavity walls, ceilings and/or the roof of the building. Upgrading any existing windows to at minimum double-glazed units, and having a restriction that said windows cannot be opened during operating hours (otherwise it negates their glazing and sound-proofing efforts) would be another suggestion.

To be clear, we engaged with the current operators when they advised us they were going to be taking on a lease of their building. We supported them, as their indication to us was that they were going to re-open as a restaurant, and we are well aware of the shortage of food and dining options in town, both for local residents and the tourist trade. This business model on its own could and would be highly successful and profitable, and is a sufficiently strong operating basis for the premises. The sudden change to becoming a bar and nightclub – which has been done before any variation submission to the Council, and which has continued even after various police complaints and visits – was an unpleasant change of tack, and has impacted the residential nature of the street and immediate area.

An example of their approach has been marketing and hosting a 'disco night' on Friday 1 July, even before their variation application had been heard. This particular evening resulted in a number of noise and public nuisance issues. Their marketing poster below, taken from their social media presence:



**Friday 1<sup>st</sup> July**  
**@ The Highland Fling**

**5pm-12am (disco starts at 8pm)**

**Limited space**

**Table seating only**

**(except for dancing 😊).**

**Book asap to make sure  
you have a seat!**

FOOD  
COCKTAILS  
DANCING

**FB Messenger: @thehighlandflingbar**

**Email: [thehighlandflingbar@gmail.com](mailto:thehighlandflingbar@gmail.com)**

**Phone: 01599 530 138**

We hope that our objections, and those of any neighbouring residents, are taken under serious consideration.

Signature:



Date: 6 July 2022