

The Highland Licensing Board

Meeting – 13 February 2024

Agenda Item	8.1
Report No	HLB/18/24

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

Cawdor House, 7 Cawdor Street, Nairn, IV12 4QD

Report by the Clerk to the Licensing Board

Summary

This report relates to an application for a major variation of premises licence by Cawdor by the Sea Ltd, 7 Cawdor Street, Nairn, IV12 4QD.

1.0 Description of premises

1.1 Cawdor House is a boutique hotel and is situated a short distance from Nairn Town Centre. It consists of six letting bedrooms, breakfast room, lounge, café and private garden.

2.0 Current operating hours

2.1 The premises currently enjoys the following operating hours:

On sales:

Monday to Sunday: 1100 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) Request to offer off sales Monday to Sunday: 11.00 to 20.00 hrs.
- (2) Request to offer 'Conference Facilities'.
- (3) Change wording of description to remove "Cafe Lavender" and insert "Cafe in Cawdor House".
- (4) Remove "B&B" from description and replace with "Boutique Hotel".

4.0 Background

- 4.1 On 21 November 2023 the Licensing Board received an application for a major variation of a premises licence from Cawdor by the Sea Ltd.
- 4.2 The application was publicised during the period 1 December until 22 December 2023 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 representation have been received and is/are appended:

Nairn River Community Council
Mr & Mrs Sinclair, 3 Cawdor Place, Cawdor Street, Nairn, IV12 4QE

- 4.6 The applicant and the objector(s) 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:

http://highland.gov.uk/hlb_hearings

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 LSO has provided the following comments:-

(i) Cawdor House is a small boutique hotel, situated on the edge of Nairn Town Centre.

(ii) It operates as a hotel for residential guests and offers café facilities for general customer trade.

(iii) The operating history is trouble free, the hotel was transferred to the current owners in 2023.

(iv) Application has been made by the new owners for a major variation. The principle change is to allow the premises to do off sales between the hours of 1100 to 2000 hrs; the applicants have explained it is their intention to offer tasting events to residential guests, featuring local craft spirits such as gin and malt whisky, and allow the residents to purchase bottles of the products. Whilst this does not preclude the ability to sell to other customers, it is principally a service in the main to residents. The LSO see's no threat to the Licensing Objectives should the Board see fit to grant. The hours requested are conservative and are permitted by the Licensing (Scotland) Act 2005.

(v) The activity of "Conferences" is requested as an approved activity on the operating plan; the hotel can be available for corporate bookings and accordingly, the applicants wish to offer the ability to book the entirety of the venue for conferences and team building days.

(vi) Lastly, textual alteration has been made to the premises description in order to reflect more accurately, its method of operation.

(vii) The LSO is satisfied the application is compliant with the licensing objectives.

(viii) During the public consultation period a letter asking the Board to ensure neighbours property rights were taken into account was submitted by a neighbour.

7.0 HLB local policies

7.1 The following policies are relevant to the application:-

- (1) Highland Licensing Board Policy Statement 2023-28
- (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

Existing special conditions will continue to apply and no additional 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 conditions0 detailed at paras. 8.2 and 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/645

Date: 15 January 2024

Author: Marjory Bain

Appendices: Nairn River Community Council

Mr & Mrs Sinclair, 3 Cawdor Place, Cawdor Street, Nairn, IV12 4QE

Marjory Bain (Legal Team (Licensing))

From: NairnRiver CommunCouncil [REDACTED]
Sent: 11 December 2023 20:49
To: Marjory Bain (Legal Team (Licensing))
Subject: Re: FW: Scanned from a Xerox Multifunction Printer - major variation for Cawdor House, Nairn

CAUTION: This email was sent from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hello

NRCC are of the opinion that Cawdor House need to provide assurance that there is sufficient parking in the area to provide for 'Conference' events. There are already parking restrictions in the immediate area and we suspect that for distant parking, at the railway station or the Town car parks should be used rather than on-street parking.

If the current licence is still on-sale i.e. served alcohol with food this should remain without recourse to off-licence. NRCC has concerns that provision of off-licence facilities as this is not in keeping with the area.

Thank You

Kind Regards
Hamish Bain
Chair Nairn River Community Council

Dear Sir/Madam

**HIGHLAND LICENSING BOARD
APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE
CAWDOR HOUSE, 7 CAWDOR STREET, NAIRN, IV12 4QD**

We are writing to register our observations and concerns regarding the application for a major variation of premises licence applied for by our direct neighbour, Cawdor House, 7 Cawdor Street, Nairn, IV12 4QD.

Background

We have lived in this home for more than 20 years. Our garden is joined to the right of Cawdor House, with our bedroom and bathroom windows just 1.5m from the property and facing directly onto their garden area.

Cawdor House initially submitted an application in 2019 for an alcohol license. We voiced our concerns at this point stating that we had no objection whatsoever to their 15 B&B guests purchasing and consuming alcohol within the building; however, we did have concerns that the consumption of the purchased alcohol would extend beyond the confinement of the building out into the surrounding gardens, causing us disturbance and this was in fact the case as tables for residents were then placed just meters from our windows, causing us disturbance in the evening. The owners stated at the time of this application they did not intend on hosting functions etc, and restrictions were put in place by yourselves to protect us, allowing only B&B residents to be served alcohol between 4pm and 10pm (9pm in the garden area).

Within 6 months they proceeded to run an unauthorised cafe seating over 60 people within the property and the garden grounds. After numerous complaints to the council from all the surrounding properties, several applications were submitted/withdrawn for a retrospective part change of use from a Class 7 business to a Class 3 business. The cafe application was then granted with restrictions put in place in order to try and protect the surrounding neighbours somewhat from the disruption caused by the cafe and their guests.

Cawdor House assured the planning department at the above planning meeting that they had no intentions of serving alcohol in their new cafe, however only 5 months later, applied for a variation to increase their core licensing hours from 11am (previously 4pm) but more importantly, to increase the licensed numbers from 15 residential guests to include the maximum authorised number of 30 patrons of their new cafe, turning this business into a licensed cafe/restaurant and outdoor drinking area.

Within the space of 3 years, this property went from a quiet 6 bedroom B&B establishment into a licensed cafe/restaurant and outdoor drinking area.

The impact this cafe and alcohol licence had on myself and other residents is as follows:

Loss of Privacy:

Since the opening of the café we lost the privacy of our garden, our bathroom and bedroom, which are directly overlooked. There is a chest height wall dividing our properties and tables were placed within meters of this wall, directly outside our bedroom and bathroom windows, enabling guests direct views into our home and into our garden grounds. Tables for the cafe guests were required to be moved to the centre of the property as stipulated by the planning department but this made little difference to our privacy. The alcohol licence increased the footfall of customers and the type of clientele attracted to the property, with several extremely noisy/disruptive hen parties. This is a residential area with families living in all the surrounding properties

Noise:

As well as cafe customers inside Cawdor House they also catered to a large number in the garden area. This created a significant noise pollution due to the general loud crowd talking and cafeteria noises, which is clearly audible in our bedroom, bathroom and throughout our whole garden area, along with the gardens of the other neighbouring properties, disturbing everyone's peace and quiet. We believe this to be a clear breach of the Human Rights Act in particular Protocol 1, Article 1, as we lost the right to quiet and private enjoyment of our garden. There were many complaints submitted to the Environmental Health by surrounding residents regarding the noise disturbance; this noise level and disturbance was intensified by the introduction of alcohol.

Suitability/Location of property:

This is primarily a residential area as highlighted on the Highland Council Nairnshire Local Plan (as Continued in Force April 2012) Drawing Inset 1: Nairn. This plan clearly states this area is classed as Settlement S2 – Housing – which states: (The council will safeguard the function and character of established residential areas, and encourage appropriate services, amenities and environmental enhancement) Allowing this major variation did not in any way support the above statement as this neither improved nor enhanced the amenities for the surrounding residential properties and was in fact, extremely detrimental to all residents. Allowing alcohol to be served to the general public in an S2 residential settlement in a property surrounded on all 4 sides by family homes made a complete mockery of the above Council statement, set out to protect residents.

Detrimental impact upon residential amenities:

The proposal was not in keeping with the surrounding residential area and demonstrably harmed the amenities enjoyed by local residents, in particular the right to enjoy a quiet and safe residential environment, with safe and available on-road parking and privacy. This was a clear breach of the Town and Country Planning (Development and Management Procedure) (Scotland) Regulations 2013 No 155 Schedule 3 note 8 and also the Highland Council Nairnshire Local Plan. This café neither improved nor enhanced the amenities for the surrounding residential properties and in fact was detrimental to all residents. There were continuous complaints surrounding this cafe to the Environmental Health Department, Buildings, Planning and the Roads and Transport Department.

Over Provisioning:

I am sure you are aware that the location of Cawdor House is directly across from the British Legion and only 3 properties away from another licensed premises (The Classroom), both of which have alcohol licenses and small outdoor seating areas. There are also a further 2 licensed premises just 2-3 minutes walk away; Uncle Bobs and the Waverley Hotel. This equates to 4 licensed properties within a very short distance of Cawdor House. I believe the police have been called on a number of occasions in the past years to deal with public disorder, noise and nuisance relating to alcohol consumption by patrons of these establishments and to the damage of cars in the street areas around our residence. Having a further public licensed premises in this small residential area is most definitely classed as over provision and has increased the noise and disruption and had a negative impact on all residents living in this area.

Current Application

1. Request to offer off sales Monday to Sunday: 11.00 to 20.00 hrs.
2. Request to offer 'Conference Facilities'.
3. Change wording of description to remove "Cafe Lavender" and insert "Cafe in Cawdor House".
4. Remove "B&B" from description and replace with "Boutique Hotel".

Cawdor House now has lovely new owners, who, unlike the previous owners, seem to be very considerate and also very approachable. However since receiving this new major variation application, we have been unable to speak with them to discuss their plans/intentions as they are currently out of the country for the festive season. I therefore contacted Ian Cox at the Licensing Department, to try and find out what the proposed changes would mean to us as neighbours.

Mr Cox was extremely helpful and explained that the applicants wish to sell off-sales to their guests only (eg bottles of local gin), as at the moment they are only permitted to sell alcohol onsite and he reassured me that no members of the public will be purchasing and using the premises as an off-licence.

He has reassured me that the conference facilities request was for example, hosting possible gin tastings with local producers and that it would definitely not impact us as neighbours by having large numbers of patrons attending and marquees being erected and that all the restrictions on the garden area permitted to be used would remain the same as the current operating plan.

The proposed change of names for the property does not impact us at all.

Whilst the new application does not appear to have any major alterations which will affect us as neighbours we would greatly appreciate that the Licensing Board continue to keep in place restrictions to protect us and our neighbours.

Conclusion

We are obviously unable to change the fact that we now have a significantly different business operating next door to us than we had 3 years ago, but I would like to reiterate that there was never any objection to the property serving alcohol to their guests within the building and that our concern from the start has always been alcohol consumption in the garden area.

We greatly appreciate the new owners ambition to improve and enhance their business, and wish them every success, however, our primary concern is that our homes are not affected by any more changes and we would request that the licensing board continue to support us and keep restrictions to protect us.

As a close neighbourhood, we believe in collaboration and good communication and we value the positive relationship we have with our new neighbours and sincerely hope that we can work together to ensure the well-being and harmony of our neighbourhood.

