

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 20 MARCH 2019**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Donald MacMillan
Councillor Robin Currie	Councillor Roderick McCuish
Councillor Mary-Jean Devon	Councillor Jean Moffat
Councillor Audrey Forrest	Councillor Alastair Redman
Councillor Graham Archibald	Councillor Richard Trail
Hardie	

**Attending:** Charles Reppke, Head of Governance and Law  
Graeme McMillan, Solicitor  
Allegra, Evans-Jones, Trainee Solicitor  
Andrew Russell, Applicant  
Iain MacKinnon, Environmental Health Manager

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Lorna Douglas, George Freeman and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

Councillor Mary-Jean Devon declared a non-financial interest in this Application as she was known to the Applicant. She left the meeting and took no part in the hearing.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A LATE HOURS CATERING LICENCE (A J RUSSELL, TOBERMORY)**

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and invited the Applicant to speak in support of his application.

**APPLICANT**

Mr Russell referred to the concerns raised by Environmental Health about noise in the community after the local pub closed. He said that he had a trailer in the 1980s and there were no issues then. He commented on the concerns about noise and said that there was a lot of noise when bands were playing in pubs especially in the summer when the doors were left open which caused the noise to echo around the area. He said this problem was solved by closing the doors. He also referred to camper vans visiting the area at certain times of year. He said that the occupants were unsupervised and played music at all times. He advised that his trailer would be run and supervised by him. He said that when he had his previous trailer if he thought things were not going well he would close up the trailer. He said that if customers did not co-operate he would close and after a few months people realised that if they were noisy they would not get served. He said that he was not interested

in creating problems and that he was looking to run a nice business in his retirement. He pointed out that at the end of the night there was nowhere for people to go for something to eat and that this created problems in its own right. He said that he has noted that Environmental Health were asking that he should close when the pub closed. He said that when he closed up he needed to open the back doors of his trailer to let the heat out. He said that this would release the smell of food and he suggested that when people left the pub at closing time they would be attracted by the smell of the food and be upset if they could not be served. He referred to previously working as a door man at licence premises and said you could not throw people out the pubs at closing time anymore. He said that people could still be coming out at 2 or 2.30 am, certainly in the summer. He said that they would be waiting for taxis. He advised that the door men for the local pub were employed till 3 am to make sure everyone had left. He commented that people were hanging about the street until 3 am. He said that he could be feeding them at that time. He said that he would be supervising and feeding those hanging about. He suggested that they would come out of the pub quicker if they had something to come out for. He said that at the moment they were standing around waiting for taxis, causing mischief. He said that hopefully this would settle down as they will have had food. He said that he lived on the Main Street and has not come across the noise he has been told about. He said that he was not looking to cause noise on the Main Street. He advised that if he thought the van was going to create a problem he would close it.

## **ENVIRONMENTAL HEALTH**

Mr MacKinnon referred to Environmental Health's objection to the proposed hours of operation and the possible effect this could have on the local community due to patrons from the public house Macgochans congregating in the car park. He referred to the rock face and said that noise filtered up into the upper streets of Tobermory and that people could potentially be affected by the noise generated by people coming out of the pub and staying in the car park. He recommended that the operating hours be tied to when the pub closes, ie 1.00 am and possibly later on some occasions.

## **MEMBERS' QUESTIONS**

Councillor Moffat sought and received confirmation from Mr McMillan that neither the Police nor members of the public have objected to this Application.

Councillor Trail asked Mr Russell if he was operating his van at the moment. Mr Russell confirmed that he was not. He said that he had operated a van in the 1980s. He confirmed that he had a trailer and that he had laid out money buying equipment and he was just waiting to get set up and opened.

Councillor Trail asked Mr Russell what hours he proposed opening. Mr Russell advised that he wished to be open a maximum of 11 pm – 3 am. He said that it was his intention to be only open for 1 hour after the local pub closed. He said that on Friday and Saturday nights the pub was open until 2 am.

Councillor Redman asked Mr Russell how many people he would employ. Mr Russell advised that he would be working by himself. He said that he would probably employ one other person to cover holidays but generally he would be the main worker.

Councillor Redman asked Mr Russell if his business would bring economy to the island. Mr Russell replied that apart from making a living for himself he would be giving the tourists and locals somewhere to spend their money.

Councillor Colville sought clarification on the opening hours of Macgochans pub and asked if they were the same all year round or if there were seasonal variations. Mr McMillan advised that they did not have seasonal variations. He said that the hours of the full premises licence was from 11 am till 2.00 am with the exception of Sunday which had a later opening time of 12.30 pm.

Councillor Colville questioned what happened in the winter months. He asked if a premises could choose to close early or not open at all. He asked Mr Russell if he would mirror the hours of the local licenced premises or if he proposed opening until 3 am all year round. Mr Russell said his idea was to be open for 1 hour after the pub closed. He said he was not interested in hanging around all night.

Councillor McCuish referred to hearing that the pub opened until 2 am. He asked Mr Russell why he would need a licence until 3 am if the pub shut earlier on Sunday to Thursday. He also asked where the van would be sited. Mr Russell advised that the van would be located next to the gates at the side of the pub on the pub's land. He advised that the reason he was asking for opening hours of 11 pm – 3 am was because he was told that he had to apply for a blanket licence and that he could not request 2 am for some days and 3 am for others. He said that he wanted to stay open for 1 hour after the pub closed. He said that the pub regularly closed at 1 am. He advised that he was not looking to stay there all night and create a problem.

Councillor Kinniburgh sought and received confirmation from Mr Russell that a pub only needed to employ a door man if they were open after 1 am.

Councillor Hardie commented that a lot of people left pubs before they closed. He asked Mr Russell did he not think he would make enough money at that time. Mr Russell replied that from past experience he would get some passing trade. He said that at the moment there was nothing to do when the pub closed and that young people were going home wanting something to eat and that he could help with that.

Councillor Currie commented that it was his understanding that if your opening hours were up to 11 pm you then had 15 minutes drinking up time so would leave the pub at 11.15 pm but you don't have that drinking up time at 1 or 2 in the morning so it would not be the case of people wandering out at all times as the premises have to be vacant at that time. He said that some pubs closed at 1.45 am to ensure they were empty by 2 am. He sought clarification on this. Mr Reppke said that he thought Councillor Currie was correct.

Councillor Trail asked Mr MacKinnon if there was a history of noise complaints in the area when the pubs were emptying. Mr MacKinnon said that they had very little history of complaints and that this generally only happened when there were events in the town such as the Rally.

Councillor Trail asked Mr MacKinnon if there was any reason to believe that having an eating establishment or trailer in the car park would increase noise complaints. Mr MacKinnon said that he thought this would as it would lead to a congregation of people who have consumed alcohol. He said that he thought the residents of the

Main Street and the upper levels would have a reasonable case to complain and that was why he was worried about the van being open until 3 am.

Councillor Colville referred to the basis of the objection being about noise and disturbance. He asked what public conveniences were still open between 2 and 3 am. Mr MacKinnon advised that he was not aware of any toilets being opened after the pubs shut. Mr Russell said that as far as he was aware there were toilets at Taigh Solais but he thought that they shut at 11 pm. He said that unless people went before they left the pub they would have to wait until they got home.

Councillor McCuish sought and received an explanation from Mr MacKinnon about why the rock face caused noise to travel. Mr MacKinnon said that Macgochans was tucked under the cliff face which acted as a sounding board reverberating noise far wider than normal. He said that a boat coming in late at night could be heard right across Tobermory including the Western Isle Hotel. He said that Tobermory was a bowl and that any kind of noise, especially at that end travelled around the town.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that as Mr Russell was only seeking to work from 11 pm he would not require a separate street trader licence.

Councillor Kinniburgh sought and received confirmation from Mr Russell that he had no intention of opening before 11 pm.

## **SUMMING UP**

### **Environmental Health**

Mr MacKinnon confirmed that he had concerns about Mr Russell's van being open until 3 am due to the possible effect this would have on the local community of Tobermory. He said that from experience elsewhere in Argyll food premises open beyond licenced premises led to issues. He asked that Mr Russell's operating hours be restricted to the closing time of Macgochans public house.

### **Applicant**

Mr Russell said that he understood the concerns raised about noise. He said that people talking would not be as loud as the noise from a boat. He said that he was not opening his trailer to cause a problem and that he would be supervising the situation. He said that from his past experience of working as a door man he could anticipate a problem and that he would shut his trailer if he anticipated any trouble. He said that he was looking for a nice retirement business which Tobermory currently did not have as there was nowhere to eat after the pubs closed.

When asked, both parties confirmed that they had received a fair hearing.

## **DEBATE**

Councillor Colville advised that he was very impressed with the application before the Committee. He said that he could only relate to the problems experienced in his own area in Campbeltown when for several years he had to deal with a great deal of angst regarding an establishment with a late hours catering licence. He said that trouble regularly broke out and that he did have real concerns. He said that he

would hope that the people of Mull would very quickly learn that if they left the pub before closing then they would be served food. He said that he agreed with Environmental Health that the hours should be restricted to the hours of surrounding licenced premises.

Councillor Trail said that he was sympathetic to the problems of noise later at night in town centres. He said that he took the view that this was a matter of trust. He pointed out that Mr Russell had confirmed quite forcefully that if there were any signs of noise or trouble that he would take action to mitigate it or close up his trailer for the night. He advised that considering there has not been a lot of history of noise complaints when the pubs empty he thought it would be worth giving Mr Russell a shot at opening until 3 am.

Councillor Moffat advised that she was impressed by the Applicant's presentation and that it was worth giving Mr Russell a shot and that should there be any cases of noise or whatever it could be addressed at a later stage.

Councillor Redman thanked Mr Russell for putting his case forward. He advised that he thought his business would be an economic benefit to the community and that he was minded to approve the application.

Councillor Hardie advised that he was of the same opinion as Councillor Colville. He said that the Committee were in danger of setting a dangerous precedent and that people congregating after pubs closed was a recipe for disaster.

Councillor Currie questioned the need for opening until 3 am. He said that he could not recall anywhere else you could eat at 3 am after pubs shut. He said that he could accept 3 am at the weekends when the Mull Rally was on or the Music Festival or for exceptional cases but 3 am every weekend he was not so sure.

Councillor Kinniburgh said that personally he could see no reason to be open outwith the hours of any licenced premises nearby. He pointed out that people would have the opportunity of leaving the premises early if they wanted to eat. He said that he had difficulty with a 3 am closure.

## **Motion**

To agree to grant a Late Hours Catering Licence to Mr Russell with hours of operation from 11.00 pm until the closing time of Macgeochans public house as specified in the operating plan to ensure that the facility closes at the same time as the public house.

Moved by Councillor David Kinniburgh, seconded by Councillor Rory Colville.

## **Amendment**

To grant a Late Hours Catering Licence to Mr Russell as applied for.

Moved by Councillor Alastair Redman, seconded by Councillor Jean Moffat

A vote was taken by a show of hands and on there being an equality of votes the Chair gave his casting vote in favour of the Motion and the Committee ruled accordingly.

## **DECISION**

The Committee agreed to grant a Late Hours Catering Licence to Mr Russell with hours of operation from 11.00 pm until the closing time of Macgeochans public house as specified in the operating plan to ensure that the facility closes at the same time as the public house.

(Reference: Report by Head of Governance and Law, submitted)