

Our Ref ABE/1184/00008/EFB/TGGH/KS  
Your Ref AC0602

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**BY EMAIL AND HARD COPY**  
23 December 2016

Dear Sirs

**LICENSING (SCOTLAND) ACT 2015  
PREMISES AT 5 UNION STREET, ABERDEEN – UNDERDOG  
APPLICATION FOR MAJOR VARIATION TO PREMISES LICENCE NO. AC0602**

We act on behalf of Royal Athenaeum Suites (“the Suites”) which are operated by Aberdeen Douglas Hotel. Our clients were notified of a major variation in respect of Premises Licence reference AC0602 UnderDog, 5 Union Street, Aberdeen, by letter dated 5 December 2016. The notification letter stated that the deadline to object to the application is Tuesday 27 December 2016. This letter is therefore timeous.

Our clients have operated the Suites since 2014, following refurbishment of the top 4 floors from first to fourth floor level at 15 Union Street, Aberdeen. The Suites comprise 46 serviced studio, one and two bedroomed apartments which can be rented out for short or long term stays. The Suites are served through a 24 hour reception desk accessed from Union Street. The central location overlooking the City’s Town House, historic Castlegate square and the city centre views make the Suites attractive to tourists, business clientele and short stay vacationers alike. The major variation application relates to the licensed premises which sit in the basement, beneath our clients’ Suites, but also affects the licensed premises at ground floor level immediately beneath our clients’ Suites.

We note that the major variation application has been submitted in order that two separate licences can be amalgamated into a single licence. We understand that the premises licence to be altered is reference AC0602 relating to the premises called UnderDog at 5 Union Street, which is a licensed nightclub in the basement of the property which also houses our clients’ Suites. Premises licence reference AC0603 in respect of the premises referred to in that licence as The Granite City Fix at 9 Union Street, a bar/restaurant at ground floor/street level, is to be surrendered in due course should

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the major variation application for the proposed merger of the licences be granted by the Board. We note that the variation application does not seek to amend the hours of either of the separately licensed premises at this stage and should the variation application be granted the terminal hours will remain unchanged for each of the two different parts of the premises.

Section 22 of the Licensing (Scotland) Act 2005 sets out the grounds on which any person can object or make representations on an application. Detailed grounds of refusal are set out in Section 23(5) and these include where, inter alia, the Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives. Representations can also be made as to modifications which a person considers should be made to the operating plan accompanying the application, or as to conditions which the person considers should be imposed.

Our clients have concerns about the way in which the licensed premises will operate under the proposed amalgamated single licence and accordingly believe that the major variation application is contrary to the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance.

Our clients therefore object to the major variation application on the following grounds:

1. As the covering letter for the major variation application notes, this is a “novel variation”, the result of which will be that the operating plan for the single licensed premises will contain different provisions and separate requirements for both the ground floor and basement levels. Our clients are concerned that this will lead to difficulties in managing the combined premises and indeed for the Police and LSOs in terms of monitoring compliance with the terms of the operating plan and the licensing objectives. Whilst combining the licences will enable a single Designed Premises Manager (DPM) to be appointed for the combined premises, given the layout, the very different nature of the premises and the potential clientele on each floor, it is not clear that the DPM will have the requisite control to ensure that no offences are committed on the licensed premises and hence that the premises are managed in accordance with the licensing principles.
2. As the Board’s Licensing Policy states, factors which impact on crime and disorder include, but are not exclusively limited to, underage drinking, drunkenness on premises, illegal possession and/or use of drugs, violent behaviour, anti-social behaviour and noise nuisance as a result of those smoking outside premises. The applicant has not demonstrated how the variation will meet the licensing objectives of preventing crime and disorder in light of the factors noted above. It is particularly important that they are able to do that if patrons will be able to pass freely between the different licensed areas.
3. The Board’s Policy also looks for an applicant to consider those factors which impact on public safety. No such statement is included with the application and the mere inclusion of an internal stair for patrons to use is not sufficient to demonstrate public safety will be maintained.
4. The covering letter for the application indicates that the merger of the two Licences is sought in order for “*inter-connectivity internally to allow customers to move from one*

*premises to another*". Our clients believe that such movement will potentially circumvent the local condition imposed on Premises Licence AC0602 and the ability of trained door supervisors to make a judgement about whether or not to deny the entry of customers who are drunk or disorderly, as they would normally do in order to uphold the prevention of public nuisance objective in accordance with the Board's Policy which expects door supervisors to be particularly vigilant about numbers entering the premises.

There is no suggestion that the hours of either separate premise licences are to be altered at this stage, but it is of concern that the public may be able to go between the premises freely. There is a significant overlap between the opening hours of the premises as UnderDog opens at 5pm and the ground floor premises do not shut until midnight or 1am. The overlap of hours does not increase the number of hours people may be able to purchase alcohol, but the internal access arrangements will enable free passage between the premises such that the bar staff may not be able to assess the suitability or otherwise of the patrons being served, or monitor the alcohol intake of those patrons, since they will not always be served at the same bar. There is no mention of whether the stair well will be staffed and if drinks will be able to be purchased in one area, but consumed in the other licensed area.

It is not clear whether the combination of the licensed areas ~~will require amendments~~ to toilet provision and/or fire escape routes. We trust that Building Standards will review the plans and consider these issues in more detail than our clients are able to. We note that a building warrant application was made on 22 October 2016, which works included the installation of an acoustic corridor, but we have not been able to ascertain if a completion certificate has been issued and therefore whether or not the acoustic corridor has been implemented in accordance with the building warrant. An explanation as to how the safe passage of people may be managed appropriately, having regard to the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance is required. The fact that people are not exiting the building does not automatically mean that the objectives will be met.

5. Our clients currently experience noise disturbance in their Suites as a result of the premises being operated by the applicant. Noise is being transferred from the basement level through the works which the applicant has carried out to strip the property back to bear walls and steel beams, which offer no protection or mitigation to sound escaping. The fit out of the premises in fact appears to amplify the noise throughout the building. Our clients have received complaints from those staying in the Suites, as well as staff members working in the reception area, who are all affected by the noise generated from the licensed premises due to the loud music. Our clients wish to work with the applicant to resolve these issues and have written directly to them to discuss matters further, but the Board's policy states that there is a wish to maintain and protect the amenity of occupiers of other businesses and residents from the potential consequence of the operation of licensed premises. Paragraph 26.3 of the Board's Policy indicates that the Board may apply stricter conditions, including restrictions on licensed hours, where the activities may impact on residents or other business premises and where relevant representations have been received.

It should also be noted that our clients are concerned that combining the licences blurs the distinct obligations under each licensed area and will therefore lead to further noise issues, as it will be more difficult to monitor and observe the terms of the separate obligations in a single licensed area. In considering the application for the major variation we would request that, should the Board be minded to approve the application, noise conditions be imposed to ensure that the different parts of the premises, which have different hours of operation, are run appropriately and incognisance of the quasi residential uses above the premises. Our clients have, and will continue to liaise with the applicant in terms of perceived public nuisance from the noise which is currently being generated from the premises. Our clients do not believe that the noise generated is arising from patrons going between the two separate licensed areas.

We trust that the issues raised in this letter of representation will be considered at the Board when the application is determined, which we understand to be scheduled for Tuesday 17 January 2017. We would wish the opportunity to appear with our clients in order to speak to this representation and look forward to receiving confirmation of when the variation application will be determined.

Yours faithfully

A blacked-out signature, likely of Theresa Hunt, representing Burness Paull LLP.

for and on behalf of Burness Paull LLP

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