

ANGUS LICENSING BOARD – 16 JULY 2020

PREMISES LICENCE REVIEW APPLICATION

PARTY TIME, 1 CULLODEN ROAD, ARBROATH, ANGUS, DD11 1LH

REPORT BY CLERK TO THE BOARD

ABSTRACT:

The purpose of this report is to present to the Board a Premises Licence Review Application under Section 36 of the Licensing (Scotland) Act 2005, ("the 2005 Act") which requires to be considered and determined by the Board.

1. RECOMMENDATION

It is recommended that the Board

- i) determine, in the first instance, whether the application :-
 - a. is vexatious or frivolous, or
 - b. does not disclose any matter relevant to any ground for reviewand **if not so determined**, go on to :-
- ii) conduct a hearing to review the Premises Licence;
- iii) determine, if satisfied that a ground for review is established, whether to:-
 - a. issue a written warning to the licenceholder;
 - b. make a variation of the licence;
 - c. suspend the licence for such period as the Board may determine; or
 - d. revoke the licence;
 - e. take no further action
- iv) determine, whether to make a finding that any personal licence holder who is, or who was, working in the licensed premises may have acted in a manner which was inconsistent with any of the licensing objectives and thereafter hold a hearing in order to consider further action against the Personal Licence Holder.

2. BACKGROUND

2.1 The Clerk received a Premises Licence Review Application on 8 May 2020 under Section 36 of the 2005 Act from Andrew Todd, Chief Superintendent, Tayside Division, Headquarters, West Bell Street, Dundee, DD1 9JU on behalf of the Chief Constable, Iain Livingstone, QPM, in respect of Party Time, 1 Culloden Road, Arbroath, Angus, DD11 1LH which are premises licensed by Angus Licensing Board. **A copy of the Review Application shall be circulated to Board members prior to the meeting.**

2.2 The grounds for review in terms of s36(3) of the 2005 Act are:-

- (za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence, or
- (a) that one or more of the conditions to which the premises licence is subject has been breached, or
- (b) any other ground relevant to one or more of the licensing objectives which are:-
 - i. preventing crime and disorder
 - ii. securing public safety

- iii. preventing public nuisance
 - iv. protecting and improving public health; and
 - v. protecting children and young persons from harm
- 2.3 The Board should be aware that any grounds relevant to the Licensing objectives mean that there has to be a direct and material link thereto brought about through the sale of alcohol.
- 2.4 The Board must firstly determine whether the application is frivolous or vexatious, or does not disclose any matter relevant to any ground for review. If the Board determine that the application is not vexatious or frivolous or does disclose any ground for review then the Board must go on to hold a review hearing. If this is not so determined, the Board would not require to hold a hearing and no further action ought to be taken.
- 2.5 Where a review hearing is to be held, the Board, must, in the case of a premises licence review application, give notice of the hearing to:
- a. the applicant
 - b. the licence holder, who must also receive a copy of the premises licence review application, and
 - c. any Licensing Standards Officer for the area in which the premises concerned are situated.
- 2.6 Where the Licensing Standards Officer receives a copy of the premises review application the Officer must, before the review hearing, prepare and submit to the Board a report on the application, and the Board must take the report into account at the hearing. **The Licensing Standards Officer has provided a report which is attached at APPENDIX 1.**
- 2.7 The Board may, for the purposes of the review hearing, obtain further information from such persons, and in such manner, as the Board thinks fit, and take the information into account. In particular, the Board may request, the attendance at the review hearing of any person for the purpose of providing information, and the production at the review hearing by any person of any documents in that person's possession or under that person's control. The Board may take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.
- 2.8 At a review hearing in relation to any premises licence, the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the hearing) take certain steps as the Board considers necessary or appropriate for the purposes of any of the licensing objectives. Those steps are:-
- a. issue a written warning to the licence holder;
 - b. make a variation of the licence for such period as the Board may determine;
 - c. suspend the licence for such period as the Board may determine;
 - d. revoke the licence.
- If the Board are satisfied that the ground noted at Section 2.2 (za) is established (i.e the fit and proper person test), the Board must revoke the Licence.
- 2.9 If, in the course of a review hearing in respect of any premises licence, the Board makes a finding that a person holding a personal licence, while working in the licensed premises to which the review hearing related may have acted in a manner which was inconsistent with any of the licensing objectives, then it must hold a hearing in relation to that finding in respect of that person's personal licence. The requirement to hold a hearing only applies if the personal licence holder concerned is still working in licensed premises in this Board's area at the time of the finding, or if the personal licence was issued by this Board and the person is not working at licensed premises situated in the area of another Board.
- 2.10 If the Board believe that the person is no longer working in licensed premises in this Board's area, is working at licensed premises situated in the area of another Licensing Board, or is not known to be working in licensed premises, then the Board is required to give notice of their finding to the Licensing Board where the person is working or to the Licensing Board which issued the personal licence (as appropriate) together with a recommendation as to whether

the personal licence held by the licence holder concerned should be revoked, suspended or endorsed.

- 2.11 The Board may therefore wish to ask appropriate questions of the premises licence holder about which personal licence holders were on duty when the incident which has led to the application for a premises licence review was alleged to have occurred.

3. **FINANCIAL IMPLICATIONS**

There are no financial implications arising out of this Report.

4. **HUMAN RIGHTS IMPLICATIONS**

In dealing with the matters as set out in this report, the Board will have regard to any human rights issues in relation to the premises licence holder.

Members are advised that Article 1 of the First Protocol of the European Convention of Human Rights (i.e. protection of property) applies in relation to this Report. The licence holder is considered to be the owner of the licence and as such is entitled to the peaceful enjoyment of his/her possession. However, Angus Licensing Board may take such action as it deems necessary to control the use of the property in accordance with the general interest and subject to the conditions provided for by law. Article 14 requires non-discriminatory treatment of individuals in the enjoyment of their rights.

The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.

Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

5. **EQUALITIES IMPLICATIONS**

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

6. **CONCLUSION**

The Board is requested to review the premises licence and determine what steps, if any, they consider to be necessary for the purposes of the licensing objectives.

7. **NOTIFICATION**

The premises licence holder has been given a copy of the Premises Licence Review Application and copy of this report. Police Scotland have been given a copy of this report. The Licensing Standards Officer has been given a copy of the Premises Licence Review Application and copy of this report. All have been invited to attend the Board. Additional people who may have further information pertinent to this report has been invited to attend the Board also.

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NOTE: The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- The Licensing (Scotland) Act 2005
- The Licensing Procedure (Scotland) Regulations 2007

REPORT BY THE LICENSING STANDARDS OFFICER

A premises licence review application has been received from Police Scotland in respect of:

Party Time Arbroath, 1 Culloden Road, Arbroath, Angus, DD11 1LH

Premises Licence Holder: Mohammed Naseem

The Board are asked to note where a Licensing Standards Officer receives a copy of a premises licence review application, the Licensing Standards Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the application. The Board must take this report into account at the hearing.

Background:

A premises licence review application dated 8th May 2020 has been received from Police Scotland. The application is requesting the Board considers carrying out a review of the premises licence for the Party Time Arbroath, 1 Culloden Road, Arbroath, Angus, DD11 1LH

Licensing Standards Officer's Report:

I attended Party Time on Thursday 3rd July at 1:30pm and I met with the Premises Licence Holder Mohammed Naseem. Upon receipt of a premises licence review application, I am required to complete a report for the Board and as part of my visit, I carried out a premises licence check. I identified no statutory infringements at the premises. All statutory matters, such as display of the summary licence, being able to produce the premises licence and training records on demand, and display of the s110 notice, were complied with to my satisfaction.

The Police Scotland Review Application reports that on the afternoon of Wednesday 6th May 2020 a male customer bought two bottles of "XL-Gold" from the premises. He took them home and gave one to a female, who drunk the whole bottle and subsequently fell ill and passed away that same day. A Police enquiry concluded that "XL gold" is not for human consumption. The product is chiefly either a room odouriser or cleaning product. As it contains Isopropyl Nitrite, which is commonly referred to as "poppers", some people use it to inhale to get a "quick high".

I discussed the review application with Mr Naseem in private. I asked him when and why he started to stock this product. He said that he had been stocking it for the last 12-18 months because a customer (not the male who bought it on the 6th May) had asked him to stock it as he now lived in the local area, and this would relieve him of the need to travel some distance to buy it. Mr Naseem said he had therefore been stocking it and selling it for £3.99. He understood that the point of the product was for the smell. He asked the supplier if it was legal to sell this product and was told it was. He told me on the day in question, the product was in a separate box on the counter in amongst miniatures of alcohol. He said he or the staff had not gotten round to putting these products onto the shelves and also said that normally this product is kept behind the counter. He told me that he had ran out of stock in the weeks leading up to that event but happened to see a box when out at the wholesaler when accompanying a friend and bought it about two weeks prior to the incident.

Mr Naseem invited Javed Alam into the meeting. Mr Alam was the shop assistant who sold the bottle to the male customer on 6th May. Mr Alam does not hold a Personal Licence but has undertaken the mandatory two-hour training. Mr Alam told me that he knew this product did not contain alcohol as he asked another customer before what the purpose of it was. He told me that the discussion he had at the counter on 6th May was an argument over price, as the price had recently been increased from £3.99 to £4.99. I asked Mr Alam if the male who bought these products was a regular customer and

he said he was. I asked if he could tell me if he had bought XL Gold before from the premises, and Mr Alam told me he could not be certain of this. Mr Alam then left the meeting.

Awais Aftab then joined the meeting. Mr Aftab is an Angus Council Personal Licence Holder and has held a licence since June 2019. He told me that he was also on duty on 6th May. He told me that this customer had bought the product before from the shop and that whilst it was out of stock, he was asking when it would be back in stock so he could buy it. Mr Atab then left the meeting.

I then resumed conversation with Mr Naseem. I asked him if it is possible that this product has ever been sold as or advertised as alcohol. He said that it is not the case, and it has always been clear that it is not alcohol. He told me; however, he does accept that the box being on the counter instead of being packed away as it normally was, may have caused confusion on the day in question. He also told me that the bottle has clear indications on it that it should not be consumed, with prominent skull and crossbones on the bottle, as well as a clear danger message and the actions that should be carried out if the product is consumed.

I duly submit this report for consideration by the Board.

Daniel J. Coleman
Licensing Standards Officer
Angus Council