

**SPECIAL ANGUS LICENSING BOARD – 24 APRIL 2017**

**REVIEW OF PREMISES LICENCE – THE PLOUGH INN, 48 MARKET STREET, FORFAR**

**REPORT BY THE CLERK**

**ABSTRACT:**

The purpose of this report is to present an application for a Premises Licence Review under the Licensing (Scotland) Act 2005 which requires to be considered and determined by the Board.

**1. RECOMMENDATION**

It is recommended that the Board:

- (i) consider and determine the application for a Premises Licence Review;
- (ii) determine, if the Board is satisfied that a ground of review is established whether to:-
  - (a) issue a written warning to the Licence Holder;
  - (b) make a variation of the licence;
  - (c) suspend the licence for such period as the Board may determine; or
  - (d) revoke the licence; and
- (iii) 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 under the Licensing (Scotland) Act 2005 (“the Act”) from the Chief Constable, Philip Gormley, QPM, Dundee Division Headquarters, West Bell Street, Dundee, DD1 9JU, on 30 March 2017 in respect of The Plough Inn, 48 Market Street, Forfar, DD8 3EW, which are premises licensed by Angus Licensing Board. The Application is attached as **APPENDIX 1** and specifies the grounds of review.

2.2 The Board determined, at its meeting on 6 April 2017, that the application was not vexatious or frivolous and, therefore required to hold a hearing.

2.3 The grounds for review in terms of Section 36(3) of the Act are:-

- (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:-
  - (a) preventing crime and disorder
  - (b) securing public safety
  - (c) preventing public nuisance

- (d) protecting and improving public health; and
  - (e) protecting children from harm.
- 2.4 Members will 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.
- 2.5 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 the applicant, and give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder, and any Licensing Standards Officer for the area in which the premises concerned are situated.
- 2.6 Where a Licensing Standards Officer receives a copy of a premises licence review proposal or application the Officer must, before the review hearing, prepare and submit to the Board a report on the proposal or application, and the Board must take the report into account at the hearing. The Licensing Standards Officer has provided a report which is attached as **APPENDIX 2**.
- 2.7 The Licensing 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 Licensing 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 proposal or 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.
- 2.9 On making a variation under (b) above, the Board may provide for the variation to apply only for such period as they may determine.
- 2.10 Where a Licensing Board has made a variation or suspended the licence, under (b) or (c) above respectively, the Board may, on the application of the licence holder, and, if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary, revoke the variation or suspension.
- 2.11 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.
- 2.12 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.

- 2.13 The Premises Licence holder is EENSK Ltd, 48 Market Street, Forfar, DD8 3EW. The Board may therefore wish to ask appropriate questions of Mr Ian Whyte, the Director and only officer of, EENSK Ltd, about which personal licence holders were on duty when the incidents which have led to the application for a premises licence review are alleged to have occurred. Correspondence has been received from Mr Whyte and will be circulated to Board Members prior to the meeting.

### **3. FINANCIAL IMPLICATIONS**

There are no financial implications arising out of this report.

### **4. HUMAN RIGHTS IMPLICATIONS**

- 4.1 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 holders.
- 4.2 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 premises 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.
- 4.3 The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.
- 4.4 Any actions considered by the Licensing Board must be proportionate, in that 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 premises licence holder.

### **5. CONCLUSION**

The Board is requested to consider and determine the application for a Premises Licence Review.

### **6. NOTIFICATION**

The Licence Holder and Police Scotland have been notified of the terms of this report. They have also been advised of their entitlement to attend the Board should they wish.

**SHEONA C HUNTER  
CLERK TO THE LICENSING BOARD**

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

The Licensing (Scotland) Act 2005