

SPECIAL ANGUS LICENSING BOARD – 17 JUNE 2016

APPEAL TO THE SHERIFF COURT

REPORT BY THE CLERK

ABSTRACT

The purpose of this Report is to advise the Board of an Appeal against a decision of the Board at the meeting on 31 March 2016 and the outcome of that Appeal.

1. RECOMMENDATION

It is recommended that the Board notes:-

- (i) that an appeal was lodged at Forfar Sheriff Court against the decision of the Board, at its meeting on 31 March 2016, to refuse to grant a variation of the premises licence in terms of the external area, which was to be used as a Beer Garden, in respect of the Buick Social Club, Lochlands Street, Arbroath; and
- (ii) the decision of the Sheriff, having regard to the Joint Minute lodged in process, in respect of this matter.

2. BACKGROUND

2.1 A report was presented to the Board at its meeting on 31 March 2016 in respect of an application by Brian Toner, 11 Monkbarns Drive, Arbroath to vary the premises licence in respect of the Buick Social Club, Lochlands Street, Arbroath. The application proposed to amend the premises licence description, amend activities, amend permissions for Children and Young Persons and to incorporate an external area, which was to be used as a Beer Garden, within 1.89m fenced area for a capacity of 40 patrons. (Report No. LB 18/16 refers).

The Board granted the variation of premises licence in respect of the description, activities and permissions for Children and Young Persons.

The Board however refused to grant the external area to be used as a Beer Garden and confirmed the area was to be used for smoking purposes only.

Upon refusal of the aforesaid grant the Appellant lodged an Appeal in terms of Section 131 of the Licensing (Scotland) Act 2005 at Forfar Sheriff Court.

2.2 The basis of the appeal was that the Board had:-

- (i) exercised their discretion in an unreasonable manner in that they failed to provide proper and adequate reasons for their decision in refusing to grant the outdoor drinking facility and confirming that the outdoor area was to be used for smoking purposes;
- (ii) in reaching their decision acted in breach of natural justice; and
- (iii) erred in law in that they reached a decision for which there was no proper basis.

2.3 Upon receipt of the Appeal, and after careful consideration of the basis of the appeal, the office of the Clerk gave legal advice to the Convener and Vice Convener of the Board on the prospects of successfully defending the Board's decision and obtained agreement to discuss terms of settling the case with the Appellant.

- 2.4 Having regard to the desire to minimise expense, approaches were made to the Appellants and agreement was reached by way of Joint Minute that the Board would not oppose the appeal against the decision of the Board on 31 March 2016. This was on the basis that the case would be remitted back to the Board for reconsideration of its decision and an award of expenses being made against the Board. The extent of these expenses is still being finalised.
- 2.5 Given the above, a further report has been submitted to this meeting of the Board to permit the Board to reconsider its decision in respect of incorporating an external area, which was to be used as a Beer Garden, within 1.89m fenced area for a capacity of 40 patrons.

3. **LEGAL IMPLICATIONS**

The legal implications are contained in the body of this report.

4. **FINANCIAL IMPLICATIONS**

The Sheriff has made an award of expenses against the Licensing Board. The extent of these expenses is still being finalised and will be met from the Licensing Budget.

5. **HUMAN RIGHTS IMPLICATIONS**

In dealing with the applications as set out in this Report, the Board will have regard to any human rights issues in relation to the applicants.

SHEONA C HUNTER
CLERK TO THE LICENSING BOARD