

**SPECIAL ANGUS LICENSING BOARD – 17 JUNE 2016**

**PREMISES LICENCES - REQUEST TO VARY PREMISES LICENCES  
UNDER THE LICENSING (S) ACT 2005**

**REPORT BY SHEONA C HUNTER CLERK TO THE BOARD**

**ABSTRACT**

The purpose of this Report is to present applications to vary a premises licence(s) under the Licensing (Scotland) Act 2005 which require to be determined by the Board.

**1. RECOMMENDATION**

It is recommended that the Board consider and determine the application to vary a premises licence or premises licences as detailed in the attached **Appendix**, in terms of one of the following options:-

- (i) to grant the application, subject to Statutory Conditions and any other variation to the conditions to which the licence is subject that the Board may wish to impose;
- (ii) to defer the application to the next Licensing Board; or
- (iii) to refuse the application on one or more of the grounds referred to in Paragraph 4.

**2. BACKGROUND**

The Board has received applications to vary a premises licence or premises licences under the Licensing (Scotland) Act 2005 which require to be determined by the Board because the matters are not subject to delegation and shall only be discharged by the Licensing Board.

**3. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this Report.

**4. OTHER IMPLICATIONS**

**Legal**

A variation to a Premises Licence means any variation of:-

- (i) any of the conditions to which the licence is subject (other than the Mandatory Conditions),
- (ii) any of the information contained in the operating plan contained in the licence,
- (iii) the layout plan contained in the licence, or
- (iv) any other information contained or referred to in the licence,

If the variation sought is a minor variation, then the variation must be granted and powers have been delegated to the Clerk to approve these minor variation applications. Minor variations are:-

- (i) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan,

- (ii) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises; and
- (iii) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager).

The Board must hold a hearing and determine applications to vary which are not minor variations.

The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and:-

- (a) if none of them applies, the Board must grant the application; or
- (b) if any of them applies, the Board must refuse the application.

The grounds for refusal are:-

- (a) that the application must be refused as the Board had previously refused the same variation to the premises licence in respect of the same premises within the preceding one year, alcohol would be sold for a continuous period of 24 hours from the premises (unless there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period); or, if alcohol is to be sold for off sales purposes before 10am or after 10pm (or both);
- (b) that the Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives; and
- (c) that having regard to:
  - (i) the nature of the activities proposed to be carried on in the subject premises;
  - (ii) the location, character and condition of the premises; and
  - (iii) the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation.

- (d) that, having regard to the number and capacity of—
  - (i) licensed premises, or
  - (ii) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation),

in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.

Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Where the Licensing Board refuses the application the Board must specify the ground for refusal. If the ground for refusal is that the Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, the Board must specify the licensing objective or objectives in question.

SPECIAL ANGUS LICENSING BOARD – 17 JUNE 2016

**(a) LICENCE NO. 194 – BUICK SOCIAL CLUB, LOCHLANDS STREET, ARBROATH**

**Name and Address of Applicant**

Brian Toner, 11 Monkbarns Drive, Arbroath, DD11 2DS

**Type of Licence:** On/Off Sales

**Description of Variation Sought**

**1. Outdoor Drinking** - new facilities to be provided within 1.89m fenced area for a capacity of 40. No increase in total capacity of premises of 140.

**2. Children and Young Persons** to be permitted within the beer garden area.

**It is requested that the Board applies the Children's Model Local Conditions.**

**Comments Received**

**COMMUNITIES, ENVIRONMENTAL & CONSUMER PROTECTION** submitted a Memorandum of Observation dated 7 March 2016.

The application includes the provision of outdoor drinking facilities to be used during core licensed hours, and it is noted from a site visit that there are residential properties close to the proposed site; in order to minimise any noise nuisance being caused by this facility I would respectfully ask that consideration be given to attaching the following conditions:--

- Prior to the external drinking area being utilised the applicant shall submit a noise management plan, designed to minimise any nuisance to neighbouring residents, for the written approval of the licensing authority.
- Patrons shall not be permitted to use the external drinking area beyond 21.00.
- No music or amplified sound shall be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.
- The use of the beer garden during any live or amplified events should be prohibited to prevent noise spilling out and causing nuisance to nearby residential properties.

**PLANNING & PLACE** submitted a Memorandum of Observation dated 7 March 2016.

A site visit was carried out to the premises and it was noted that the beer garden area would benefit from exit signage and signage relating to the means of operation of the ironmongery to the fire exit gate.

**4 OBJECTIONS** have been received dated 10 and 11 March 2016, copies of which have been circulated to members prior to the meeting.

The Board is asked to note that further correspondence has been received dated 14 and 16 May 2016 which is outwith the consultation period and has therefore been received late. In accordance with Regulation 10(3) of the the Licensing (Procedure) (Scotland) Regulations 2007, where a Board considers that there are good reasons not to treat an objection or representation as not made despite its being entitled to do so, the Board is to consider whether it is in the interests of justice to postpone or adjourn the hearing at which the application in question is to be determined. The authors of this correspondence have been written to and invited to attend the meeting of the Board to satisfy the Board of the good reasons not to treat their correspondence as not made.