

SPECIAL ANGUS LICENSING BOARD – 3 JULY 2019

PREMISES LICENCE REVIEW APPLICATION

IMPERIAL, 44 – 46 DUNDEE STREET, CARNOUSTIE

REPORT BY THE CLERK

ABSTRACT:

The purpose of this report is to present to the Board a Premises Licence Review Application under the Licensing (Scotland) Act 2005, (“the 2005 Act”) which, which requires to be considered and determined by the Board. The Board will recall this Report was deferred from the Special Angus Licensing Board of Monday 10 June 2019 at the request of Police Scotland

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, and
- 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.
- 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 under the 2005 Act from the Chief Constable, Iain Livingstone, QPM, Tayside Division Headquarters, West Bell Street, Dundee, DD1 9JU on 2 May 2019 in respect of the Imperial, 44 - 46 Dundee Street, Carnoustie, Angus, DD7 7PH, which are premises licensed by Angus Licensing Board. The premises is a Chinese Restaurant and Takeaway. **A copy of said 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 that the application is not frivolous or vexatious, and also that a matter has been disclosed which is relevant to a ground for review. If this is determined, then the Board must go on to hold a review hearing.
- 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 On making a variation noted at 2.8 b. above, the Board may provide for the variation to apply only for such period as they may determine.
- 2.10 Where the Board has made a variation or suspended the licence, under 2.8 b. or 2.8 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 Board may therefore wish to ask appropriate questions of the premises licence holder, Ms Xue He, 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. An additional personal licence holder who may have further information pertinent to this report has been invited to attend the Board also.

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

PREMISES LICENCE REVIEW APPLICATION

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

The Imperial, 44-46 Dundee Street, Carnoustie, DD7 7PH

Premises Licence Holder: Xue He, 37 Glebe Road, Arbroath, DD11 4HJ

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 1st May 2019 has been received from Police Scotland. The application is requesting the Board considers carrying out a review of the premises licence for The Imperial, 44-46 Dundee Street, Carnoustie, DD7 7PH.

It is for the Special Licensing Board to determine if the application is either frivolous or vexatious and if it does disclose any matter relevant to any ground for review.

Should the Board find that the application is neither frivolous nor vexatious and does disclose a ground for review, then the Board are asked to determine the application in accordance with section 39 of the Licensing (Scotland) Act 2005.

Licensing Standards Officer's Report:

I attended The Imperial on Friday 31st May 2019 at 1:30pm. I met with the Designated Premises Manager and named Licence Holder Ms Xue He. I was there to carry out a routine premises licence check. The following issues were identified:

- 1) The mandatory sign in terms of Paragraph 11 of Schedule 3 of the Licensing (Scotland) Act 2005 (the Mandatory Licensed Premises Conditions) was not displayed. I left a copy to be displayed. Ms He advised she would display this.
- 2) The premises permit entry of persons aged under 5. The premises does not provide baby changing facilities as required by Paragraph 12 of Schedule 3 of the Licensing (Scotland) Act 2005. This is also a requirement in terms of section 3.5.4 of the Statement of Licensing Policy.
- 3) A refusals book was not being kept as required under the Statement of Licensing Policy at section 3.1.2. I left an example with the premises and they advised they will start doing this.
- 4) I asked for a copy of the staff training records. I was advised by Ms He, that she did not keep them, but insisted staff had been trained appropriately. I asked who was responsible for serving alcohol and I was advised only Ms He and her step-daughter, who both hold Dundee City Council personal licences that were produced on request, do so. Training in respect of Ms He and her step-daughter is therefore not required.

However, the Police Scotland Review Application clearly states a member of staff was employed with no training. I have received re-assurances from Ms He that it is only her and her step-daughter as personal licence holders who sell and serve alcohol. The other three members of staff do not deal with the sale of alcohol. Having spoken with Police Scotland, they say that there was a female member of staff who had no training selling alcohol, but when they made a return visit three weeks later, it appeared she was no longer employed.

I informed Ms He that training in respect of her step-daughter is not required (as she is a personal licence holder). I also advised if she decides to employ staff who do not have a personal licence and will sell or serve alcohol, then she must start keeping training records and deliver the two hour mandatory training before that person commences selling or serving alcohol. She accepted this responsibility.

Ms He advised me that she would commence keeping staff training records and showed me the prescribed form of training record, complete with the list of topics required to be covered.

- 5) Although not a requirement under the 2005 Act, the premises did not display the statement of measures used for wine by glass notice. I advised them as a matter of good practice this should be remedied.

I advised Ms He that I would write to her laying out what actions needed to be remedied. I did so on Tuesday 4th June 2019. Allowing time for arrival of the letter, I would expect these matters to be resolved by Friday 21st June 2019. I further stressed that my comments to them were for guidance only and that she ought to seek independent legal advice and that I will perform a spot check after the 21st June 2019.

Both Ms He and her step-daughter were both extremely co-operative with my investigations and were willing to take action to remedy the points I have outlined, although I have concern about how they can facilitate a baby changing area.

Daniel J. Coleman
Licensing Standards Officer
Angus Council