

**SPECIAL ANGUS LICENSING BOARD – 3 JULY 2019**

**PREMISES LICENCE REVIEW APPLICATION – BUSBY’S NIGHTCLUB, MONTROSE**

**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 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 dated 22 May 2019 received 29 May 2019, under the 2005 Act from Chief Superintendent, Andrew Todd, under the authority of Chief Constable, Iain Livingstone QPM, Tayside Division Headquarters, West Bell Street, Dundee, DD1 9JU in respect of Busby’s Nightclub, 30-36 George Street, Montrose, Angus, DD10 8EW which are premises licensed by Angus Licensing Board. Busby’s is a nightclub. **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 as the Appendix to this Report.**
- 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, Mr Paul Gersok, 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.

**REPORT AUTHOR:** Nannette Page, Team Leader

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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

**APPENDIX TO REPORT LB 43/19**  
**SPECIAL ANGUS LICENSING BOARD – 3 JULY 2019**

**REPORT BY THE LICENSING STANDARDS OFFICER**

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

**Busbys, 30-36 George Street, Montrose, DD11 8EW**

**Premises Licence Holder: Paul John Gersok, Bellfield House, Woodville Feus, by Arbroath, Angus, DD11 2QW**

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 22nd May 2019, received by email on the 29th May 2019, has been received from Police Scotland. The application is requesting the Board to consider carrying out a review of the premises licence for Busbys, 30-36 George Street, Montrose, DD11 8EW

It is for the 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 Busbys on 4<sup>th</sup> June 2019 at 11am. I met with the Designated Premises Manager, Wendy Thomson, and named Licence Holder Paul John Gersok. I informed Mr Gersok prior to my attendance that I would be there to carry out a routine premises licence check. The following issues were identified:

- 1) Toilets – a toilet check record in the bathroom was kept but not in the form required. Ms Thomson advised that a member of staff is designated each shift to ensure that no improper conduct goes on in any bathroom and are frequently checked. She displayed a duty register confirming this to me, and showed me that this has been practice in the premises since she assumed the post of Premises Manager in 2013. The register displayed which member of staff was in charge of observing the toilet area. I advised her that as a matter of best practice she should keep check records in the bathrooms such as would be seen in a supermarket or bingo hall toilet area. Ms Thomson agreed this would be a matter of best practice and will now display these and have staff update them as required. I left proper record keeping sheets for her to use.
- 2) Baby changing facilities – Busbys licence allows 0-17 year olds in to the premises into the lounge bar for private functions only. However, I could not see any baby changing facilities. Ms Thomson recognised this and said she would look at ways to resolve this.

The application to vary the premises licence to allow 0-5 year olds entry was considered by the Board in April 2015. The application from Ms Thomson stated that "Baby changing facilities to be provided." The minute of the Board reads the application to allow children and Young Persons aged 0 to 17 years entry to the premises was granted "subject to baby changing facilities being provided."

- 3) The premises had two category C gaming machines. The premises do not have automatic entitlement in place. I left the requisite form to be filled out at the premises. I understand this was raised by the previous Licensing Standards Officer.

All other statutory requirements, such as mandatory section 110 notices (no sale of alcohol to under 18s) and summary of premises licence being on display, were met.

My inquiries were dealt with primarily by Ms Thomson, the Premises Manager. Both Ms Thomson and Mr Gersok were very co-operative throughout my enquiries and were helpful as required. I asked Ms Thomson if I could have copies of a number of documents from the premises in order to form my report. She willingly agreed to do so. I left a note behind stating I had taken some documents and they have since been returned to her.

The documents I took were:

- 1) A copy of instructions to training providers on the delivery of SIA licence-linked qualifications (appendix 1)
- 2) Busby's Standard Company Procedures – Security Staff (appendix 2)
- 3) Busby's Company Procedures in Dealing with Unacceptable Behaviour (appendix 2)
- 4) Emergency Evacuation Policy (appendix 2)
- 5) Glass Collector Job Description (appendix 3)
- 6) Emergency Fire Action Plan (appendix 4)
- 7) Challenge 25/Vulnerable People notice (appendix 5)
- 8) Busbys Nightclub Bar Staff Job Description (appendix 6)
- 9) Police visit records from 26/4/19-18/5/19 (appendix 7)
- 10) Examples of staff training records (appendix 8)
- 11) Examples of Incident Record sheets (appendix 9)

**Board members will be given copies of the above documents prior to the meeting and are asked to note that items 2-4 were stapled together, hence they are one document.**

Having inspected the documents given to me, it would appear to me that members of staff who work in Busbys are given adequate training that would give them the skills required to identify drunken and vulnerable persons. There are five personal licence holders who work at the premises and all other members of staff who work there are given the requisite training, with records kept and produced on request. I was also provided with a job description for bar staff, which clearly describes the company policy in respect of serving drunken persons. Equally, that document contains the company ID policy in respect to challenges and refusals, clearly describing what is accepted and states the requirement to fill out the refusals book.

As the premises is a Late Opening Premises as defined by The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007, I made additional checks and found the following to be in order to my satisfaction:

- 1) A first aider is present from 1am onwards, with there being three qualified first aiders including Ms Thomson
- 2) A personal licence holder is present 1am onwards when the premises is open at those hours
- 3) There are written policies on evacuation and prevention of drug misuse, both of which were presented upon request
- 4) The CCTV appeared to be in good working order from what I could see
- 5) All door staff employed are SIA badged and full records of names, dates and hours of work are kept in line with Board policy and are at every entrance from 1am.

The only point for improvement in terms of these regulations would be toilet checks as described above.

In terms of the training of Door Staff, the establishment has clear standard company procedures in a paper document that I had sight of. This document included a list of "standard house rules" which security staff were to enforce and contained the penalties for breach of those rules as well. There was also clear guidance as respect to a search policy as well as acceptable ID and challenge 25 protocols. This document also contained clear information for how to find first aid if it was required. There was also a list of specific instructions contained in the document, including the requirement for security staff to sign in with their licence number. Ms Thomson also advised me that her door staff were given the instructions provided to her for the delivery of SIA licence-linked qualifications, and produced a document with the training material.

The company also has a document outlining its procedures in dealing with unacceptable behaviour. The premises operates a one warning rule and outlines very clear procedures for when it is acceptable for security staff to use physical force to deal with an issue.

Daniel J. Coleman  
Licensing Standards Officer Angus Council