

SPECIAL ANGUS LICENSING BOARD – 3 DECEMBER 2019

PREMISES LICENCE REVIEW APPLICATION

RUPALI PALACE, 198 EAST HIGH STREET, FORFAR, ANGUS, DD8 2HG

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.

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;
- 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;
 - e. take no further action
- 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 23 October 2019 in respect of the Rupali Palace, 198 East High Street, Forfar, Angus, DD8 2HG, which are premises licensed by Angus Licensing Board. **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 whether the application is frivolous or vexatious, or does not disclose any matter relevant to any ground for review. If the Board determine that the application is not vexatious or frivolous or does disclose any ground for review then the Board must go on to hold a review hearing. If this is not so determined, the Board would not require to hold a hearing and no further action ought to be taken.
- 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 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.
- 2.10 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.

- 2.11 The Board may therefore wish to ask appropriate questions of the premises licence holder 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.

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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

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REPORT BY THE LICENSING STANDARDS OFFICER

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

Rupali Palace, 198 East High Street, Forfar, DD8 2HG

Premises Licence Holder: LT Management Services, 31 Haverscroft Industrial Estate, New Road, Attleborough, Norfolk, NR17 1YE

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 7th October 2019 has been received from Police Scotland. The application is requesting the Board considers carrying out a review of the premises licence for the Rupali Palace, 198 East High Street, Forfar, DD8 2HG.

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 Rupali Palace on Wednesday 13th November at 4pm. I met with the Designated Premises Manager Dalroy Zaman. Although in normal circumstances I would seek to meet the Premises Licence Holder (who is legally responsible for the lawful running of the Premises), geographical difficulties dictated otherwise. In any event, the involvement of LT Management in the running of these premises is nil. I was there to carry out a routine premises licence check. The following issue was identified:

- 1) 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 Mr Zaman advised they will start doing this.

All other statutory matters, such as display of the summary licence, being able to produce the premises licence on demand, and display of the s110 notice, were complied with to my satisfaction.

Although part of every visit I undertake, when considering the information in the letter from Police Scotland, I asked for a copy of the staff training records. Mr Zaman produced training records for four members of staff. Mr Zaman agreed to provide copies of the training records for the purposes of this report.

The Police Scotland Review Application reports that members of staff were employed at the Premises with no training in relation to the sale of alcohol. Mr Zaman has reported to me that it is only himself and those named on the appended training records that sell alcohol at these premises. He told me the other members of staff referred to in the Police Scotland report did not deal with the sale or service of alcohol. Having spoken with Police Scotland, there was no indication of alcohol being sold at the time of their visit.

Mr Zaman was extremely co-operative with my investigations and was willing to take action to remedy the issue in respect of the refusals book.

I duly submit this report for consideration by the Board.

Daniel J. Coleman
Licensing Standards Officer
Angus Council