

ANGUS LICENSING BOARD – 9 JANUARY 2020

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

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this Report is to present two applications to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 which require to be determined by the Board.

1. RECOMMENDATION

It is recommended that the Board consider and determine each application to vary premises licences as detailed in **Appendix 1**, 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 4.4.

2. BACKGROUND

The Board has received two applications to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 (“the Act”) 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. LEGAL

4.1 The Act provides that a variation, in relation to a Premises Licence, means any variation of:-

- (a) any of the conditions to which the licence is subject (other than the Statutory Conditions);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence,

and includes an addition, deletion or other modification

4.2. 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:-

- (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan;
- (b) 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;
- (c) 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), and

(d) any other variation of such description as may be prescribed.

4.3. Section 30 of the Act provides that if the variation(s) being sought are not minor, the Board must hold a hearing to determine the application.

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

(a) if none of them apply, the Board must grant the application; or

(b) if any of them apply, the Board must refuse the application.

4.4. The grounds for refusal are:-

(a) that the application must be refused under Section 32(2) of the Act (the Board had previously refused an application to vary a premises licence within the preceding one year), Section 64(2) of the Act (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 Section 65(3) of the Act (if alcohol is to be sold for off sales purposes before 10am or after 10pm, or both);

(b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,

(c) that, having regard to:

(i) the nature of the activities carried on or 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, 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 the same or similar description as the subject premises (taking into account of the variation), in the locality.

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

4.6. Where the Licensing Board refuses the application, the Board must specify the ground for refusal and if the ground relates to a licensing objective, the Board must specify the objective or objectives in question.

(a) The licensing objectives 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

REPORT AUTHOR: Dawn Smeaton, Business Support Officer

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(a) LICENCE NO. 109, CALEDONIAN BAR, 26 FERRY STREET, MONTROSE, DD10 8DA

Name and Address of Applicant

Angela Guthrie, 2 Commerce Street, Montrose, DD10 8DA

Type of Licence: On and Off Sales

Description of Variation

1. Activities – bar meals to be provided within core hours

(b) LICENCE NO.36, CORNER BAR, 2 HOWARD STREET, ARBROATH, DD11 4DH

Name and Address of Applicant

William Coates, 4 Howard Street, Arbroath, DD11 4DH

Type of Licence: On and Off Sales

Confirmation Notice

If the confirmation notice is received before the Board date then this application will be dealt with. If the confirmation notice is not received the application may be deferred.

Description of Variation

1. Core times - amend the opening time on a Sunday from 12.30noon to 11.00am when alcohol will be sold for consumption on/off the premises

The Board are asked to note that these hours are within Board Policy.

2. Activities -

(a) Bar meals to be provided within core hours.

(b) Outdoor Drinking Facilities to be provided within core hours.

Additional local conditions in respect of external drinking areas.

Patrons shall not be permitted to use the external drinking area beyond 21.00.

No music shall be provided in the external drinking area.

No music or amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.

3. Children and Young Persons to be permitted access to the lounge area, aged 5 to 17 years and in accordance with the model local children's conditions.

A report from the Licensing Standards Officer is attached to this Report.

COMMENTS RECEIVED from Environmental and Consumer Protection Division.

With reference to the above application, this division has no objections to make. This division has asked the applicant to provide a noise management plan for the outdoor drinking area in line with the approach taken with similar applications.

LICENSING STANDARDS OFFICER VISIT REPORT

Background:

An application for a non-minor variation of a premises licence was received on 18 October 2019 in respect of:

Corner Bar, 2 Howard Street, Arbroath, DD11 4DH

The premises is located on the junction of Howard Street and Cairnie Street Arbroath, opposite the Tesco Superstore. The current Premises Licence Holder is Anne Coates.

Licensing Standards Officer's Report:

I visited these premises on 22 November 2019 during which I addressed questions raised by Building Standards regarding the application by taking a photograph of the proposed outdoor drinking area. Building Standards have since submitted they have no objections to this application. I also carried out my statutory checks for the premises and I identified no issues or statutory infringements.

I visited the premises again on 18 December 2019. I was unable to speak directly to the Premises Licence Holder however, I spoke with a member of bar staff, and asked that she pass along a letter to the licence holder with information explaining why I was there that day and asking her to phone me. With that in mind, and at the time of writing this report, I have not had the opportunity to discuss the proposals below with the licence holder. I will provide a verbal update for Members at the meeting.

Notwithstanding the absence of the Premises Licence Holder, I used the opportunity to make observations in relation to the proximity of the proposed drinking area to residential properties, its size and its proximity to a public pavement and busy road (Cairnie Street). I will address each point in turn below. I would also ask Members to view the video provided to them as this provides a full picture of the geographical area.

Proximity to Residential Properties

As photo 1 of APPENDIX 1 to this report displays, the premises are adjoined to residential properties. Photo 2 of APPENDIX 1 displays the residential properties that are in close proximity to the premises. I would also direct members to the video provided for a more complete understanding of the area.

Whilst it is not uncommon for premises to have external drinking areas when they have near-by residential properties, it is unusual for premises to be **adjoined** to residential properties, and even more unusual for the external drinking area itself to be adjoined to residential properties.

I would ask the Board to consider, as part of their deliberations, the impact this application may have on occupants of neighbouring properties, in particular those in the adjoining properties. This consideration is of particular relevance to the Licensing Objective of **Preventing Public Nuisance**.

I would advise that whilst this property has not had an external drinking area to date, it has been used as an external smoking area and there have been complaints in terms of noise nuisance made to this department.

If the Board are minded to grant the application, I would ask the Board to give consideration to imposing a condition of the external drinking area only being available for use by patrons until 8pm given the close proximity to residential properties.

Size of Proposed Area

The layout plans state that the area will be 9 foot wide and 47 foot long. Having visited the premises, I am content that these measurements are accurate. The area is largely encompassed by a fence. That said, however, the area is narrow. I would ask the Board to consider, as part of their deliberations, that alcohol will be consumed in this narrow area. This consideration is of particular relevance to the Licensing Objective of **Securing Public Safety**.

If the Board is minded to grant the application, Members may wish to consider imposing a condition limiting the number of patrons permitted entry to the external drinking area. Having visited the premises, and understanding that table benches and plant pots are planned to be placed therein, I would recommend to Members that a **maximum of 12 patrons** at any given time be permitted entry to this area should it be granted. I would also ask members to consider imposing a condition that patrons must be **seated** whilst using this area.

Proximity to Public Pavement and Road

The proposed external drinking area is in close proximity to both a public road and pavement.

Pavement

Given the pavement runs directly beside the fence of the proposed drinking area, it is not unreasonable to conclude that problems may arise, such as spillages, breakages or litter impacting on the public walkway. For example a broken glass would cause significant cause for concern for dog walkers or parents with young children walking past. I would therefore ask the Board to give consideration to these points in their deliberations as these are relevant to the Licensing Objectives of **Securing Public Safety and Preventing Public Nuisance**.

If minded to grant the application, and in order to meet the Licensing Objectives, I would ask Members to give consideration to imposing a condition **prohibiting the use of glass** in the proposed external drinking area and that all drinks for patrons using the external area must be **decanted into a plastic container**.

Road

Cairnie Street is an extremely busy road. I have significant concerns that patrons exiting the drinking area via the exit leading onto Cairnie Street may inadvertently fall or walk onto the main road. The exit that members can see on photographs is not a gate, it is a fixed part of the fence. Equally, there is an exit from the proposed external drinking area onto Howard Street. In addition to this, having patrons standing in this area may prove to be a distraction to drivers on the main road. I would ask the Board to have regard to these points in their deliberations as these are relevant to the Licensing Objective of **Securing Public Safety**.

To relieve concerns, Members may wish to defer the application to a later date to give the applicant time to close off these gaps in the fence so that the external drinking area is only accessible via the door in and out of the premises as can be seen in photo 1 of APPENDIX 1. I would ask Members to consider my proposal above that patrons must be **seated** when using the external drinking area in order to prevent distraction of road users.

Summary

In summary, I have concerns that this application in its current form does not meet the Licensing Objectives of:

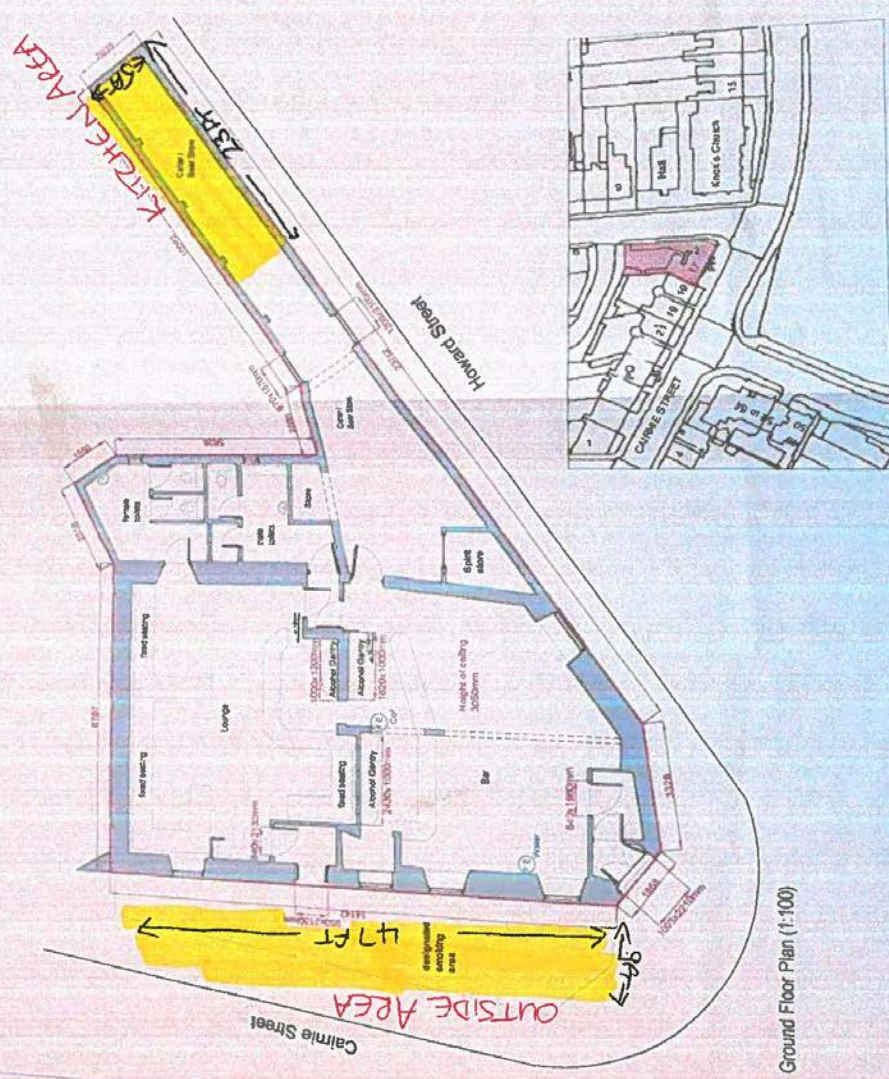
- 1) Preventing Public Nuisance
- 2) Securing Public Safety

In order to alleviate these concerns, and if so minded to grant the application, I have proposed that the Board give consideration to the following additional conditions:

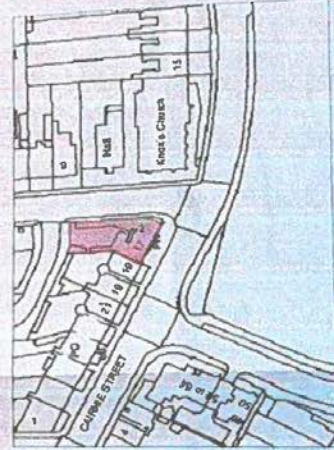
- 1) Patrons may only use the external drinking area until 8pm.
- 2) The maximum number of patrons using the external drinking area at any given time is 12.
- 3) That patrons using the external drinking area must be seated.
- 4) that the use of glass in the external drinking area is prohibited and drinks are decanted into plastic containers.
- 5) That the gaps in the fence on Cairnie Street and Howard Street be closed and the only method of entry to the external drinking area be through the door located the Cairnie Street side of the premises.

I duly submit this report for consideration by the Board Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council



Ground Floor Plan (1:100)



Location Plan (1:1250)

This plan was granted on 18 March 2009 by Angus Licensing Board in respect of a premises known as The Corner Bar, 2 Howard Street, Abroath.

John D Crawford
Clerk

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|---|---|----------|----------|----------|
| 1 | Fire Escape | 11/14/15 | 11/14/15 | 11/14/15 |
| 2 | Fire Bar | 11/14/15 | 11/14/15 | 11/14/15 |
| 3 | Mr & Mrs Cousins | 11/14/15 | 11/14/15 | 11/14/15 |
| 4 | License Application | 11/14/15 | 11/14/15 | 11/14/15 |
| 5 | The Corner bar, 2 Howard Street, Abroath DD11 4DH | 11/14/15 | 11/14/15 | 11/14/15 |

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