

ANGUS LICENSING BOARD – 9 JANUARY 2020
APPLICATION FOR AN OCCASIONAL LICENCE
THE GATHER, 25-27 DUNDEE STREET, CARNOUSTIE
REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to present an application for an occasional licence under the Licensing (Scotland) Act 2005 which requires to be determined by the Board.

1. RECOMMENDATIONS

It is recommended that the Board consider and determine the Application in terms of one of the following options:-

- (i) to grant the application, subject to the Mandatory Conditions and any other discretionary or local conditions which the Board may wish to impose; or
- (ii) to refuse the application on one or more of the grounds referred to in Paragraph 3.2.

2. BACKGROUND

The Board has received an application in respect of an occasional licence under the Licensing (Scotland) Act 2005 which requires to be determined by the Board.

3. LEGAL IMPLICATIONS

3.1 The Board must consider whether any of the grounds for refusal specified in Section 59(6) of the Licensing (Scotland) Act 2005 applies and –

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

3.2 The grounds for refusal are:-

- (a) that the premises to which the application relates are excluded premises;
- (b) that the application must be refused under section 56(6A), (If the granting of an occasional licence application would result in the occasional licence limit being exceeded), 64(2) (If the granting of an occasional licence application would allow alcohol to be sold in the premises for a continuous period of 24 hours or more), or 65(3) (If the granting of an occasional licence application is such that the hours proposed in the application would permit alcohol to be sold for consumption off the premises before 10am, after 10pm, or both);
- (c) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that, having regard to –
 - (i) the nature of the activities proposed to be carried on in the premises to which the application relates;

- (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.

3.3. In determining any application which is to be determined in accordance with Paragraph 3.2, the Board must take into account any report from a Licensing Standards Officer under Section 57(3) of the Licensing (Scotland) Act 2005.

3.4. The Board must also, in determining any application, have regard to a notice made by any person to the Board under section 58 of the Licensing (Scotland) Act 2005 objecting to the occasional application on any ground relevant to one of the grounds for refusal specified at paragraph 3.2 above, and to any representations made to the Board concerning the application, including, in particular, representations –

- (i) in support of the application, or
- (ii) as to conditions which the person considers should be imposed.

The Board may reject a notice of objection or representation under Section 58 of the Licensing (Scotland) Act 2005 if the objection or representation is frivolous or vexatious.

3.5. Where the Board grants an Occasional licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of Schedule 4 of the Licensing (Scotland) Act 2005) as they consider necessary or expedient for the purposes of any of the licensing objectives.

The Board may not impose a condition which -

- (i) is inconsistent with any condition –
 - (a) to which the occasional licence is subject by virtue of Schedule 4,
 - (b) or prescribed
- (ii) would have the effect of making any such condition more onerous or more restrictive; or
- (iii) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

4. INFORMATION

To assist the Board in determining this application the Licensing Standards Officer has raised a Report as detailed in the attached Appendix.

5. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

6. HUMAN RIGHTS IMPLICATIONS

In dealing with the matters set out in this report the Board will have regard to any human rights issues pertaining to the applicant.

7. CONSULTATION

The Chief Constable of Police Scotland and the Licensing Standards Officer have been consulted in the preparation of this Report.

8. NOTIFICATION

The applicant has been notified of the terms of this report and been invited to attend the Board.

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APPENDIX TO REPORT LB3/20
ANGUS LICENSING BOARD – 9 JANUARY 2020

BETHANY BOWLES, THE GATHER, 25-27 DUNDEE STREET CARNOUSTIE

Report on behalf of LSO for Licensing Board Consideration

Ms Bowles submitted an application for an Occasional Licence on 12th November 2019 in respect of her greengrocer and deli business, The Gather. The applicant has requested that the licence run from Friday 17th January – Thursday 30th January 2020 with off-sales from 10am-6pm each day.

The applicant has already been granted a total of 24 Occasional Licences in the last year in respect of her business. This is in excess of Board policy at 4.4.4 which states that:

*“...the Board will generally look to the applicant to demonstrate that the occasional licence is required for a special event. This is to avoid the occasional licence process being used as a means to circumvent the full (premises) licence process. The Board will expect the applicant to submit a full premises licence application following the submission of **no more than 4 occasional licence applications**. Notwithstanding this, **the Board will consider and determine each application on its own merits**”.*

Having regard to the section of Statement of Licensing Policy noted above, the applicant is generally required to demonstrate that the Occasional Licence applied for is for a special event so that the Occasional Licence process is not being seen to circumvent the full Premises Licence process.

At the time of previous Occasional Licence applications submitted in April 2019, I spoke with the applicant informing her that she was expected to make movement towards applying for a full Premises Licence. Two subsequent applications submitted for Occasional Licences were referred to and granted by Board Members by way of delegated authority on 17th June 2019.

The licensing department received an application from the applicant for a Premises Licence on 27th June 2019. The application was incomplete and the following information was requested:

- 1) Three Section 50 certificates
- 2) A statement covering the licensing objectives
- 3) Disabled Access Statement
- 4) Premises Licence Operating Plan

The applicant advised in July 2019 that the majority of the further information requested would be forthcoming within a week and that she was still taking steps to obtain the Section 50 certificates.

I contacted the applicant by email during September 2019 asking again for this information because this had not been received. The applicant again advised that the majority of the information would be forthcoming within a week and again advised that further steps were required before the section 50 Certificates would be available.

I contacted the applicant at the start of October in relation to a query I had about an Occasional Licence application that had been submitted. I used the opportunity to ask if there had been progress in obtaining the section 50 certificates. The applicant advised that she was in the process of having the required works carried out to her premises in relation to the Section 50 Certificates. She advises that the issue she is having is with Building Standards, and is able to have her other Section 50 Certificates, Food Hygiene and Planning, granted.

In light of having not received the relevant paperwork, I referred an application for Occasional Licence to the Convener and Vice Convener on 15th November 2019. This application was granted by delegated authority on 20th November 2019. I referred three further applications to the Convener and Vice Convener for determining on 26th November 2019, which were subsequently granted.

As of 26th November 2019, the section 50 certificates remain outstanding and the other documentation, a statement covering the licencing objectives, disabled access statement and operating plan, have been received. An application for Premises Licence, however, cannot progress without all three section 50 certificates.

The department has received 12 (including this one) applications for an Occasional Licence since the incomplete Premises Licence application was submitted in June.

The Board ought to bear in mind the terms of the Statement of Licensing Policy 6.6, namely that, every application needs to be dealt with on its own merits and you are not restricted in your decision making.

The Board members are also reminded that the grounds for refusal of an Occasional Licence are:

- (a) that the premises to which the application relates are excluded premises,
- (b) that the application must be refused under [section 56(6A)* , 64(2)** or 65(3)***]
- (c) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the premises to which the application relates,
 - (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.

*If the granting of an occasional licence application would result in the occasional licence limit being exceeded, the Board must refuse the application

** The Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period. (Continuous period of 24 hours or more)

*** If the off-sales hours proposed in the application are such that alcohol would be sold for consumption off the premises before 10am, after 10pm, or both.

The Scottish Ministers have power, under the 2005 Act, to enact Regulations regarding the number of Occasional Licences that may have effect within a set period of time but have, to date, made no such Regulations.

Reason for Comments

I would ask the Convener and Local Members to consider this Occasional Licence application for the following reasons:-

1. Having regard to the Board's own Statement of Licensing Policy at section 4.4.4, this is the applicant's 25th Occasional Licence application. The applicant has not submitted a complete application for a full Premises Licence and further information which has been requested in relation to this application has not been forthcoming.

Daniel J. Coleman
Licensing Standards Officer
Angus Council