

ANGUS LICENSING BOARD – 9 JANUARY 2020

REVIEW OF PREMISES LICENCES

REPORT BY THE DIRECTOR OF DEMOCRATIC AND LEGAL SERVICES

ABSTRACT

The purpose of this Report is to present a premises licence to the Board for review following the decision of the Special Licensing Board on 3 December 2019 to make a Premises Licence Review Proposal.

1. RECOMMENDATION

It is recommended that the Board conducts a Hearing to review the premises licence detailed in **Appendix 1** to this Report and, if satisfied that a ground for review is established, take such of the following steps, as it considers necessary and appropriate, for the purposes of any of the licensing objectives:-

- (a) to issue a written warning to the licence holder,
- (b) to make a variation of the licence,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence.

2. BACKGROUND

2.1 At the special meeting of the Board on 3 December 2019, Board Members agreed to note the position stated in Report 67/19 regarding the alleged breach of one or more of the premises licence conditions and agreed to hold a review hearing in respect of the premises detailed in **Appendix 1** to this Report.

2.2 In terms of section 36(3) of the 2005 Act, the grounds for review 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;
- (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.

The licensing objectives are:-

- (a) preventing crime and disorder;
- (b) securing public safety;
- (c) preventing public nuisance;
- (d) protecting and improving public health; and
- (e) protecting children and young persons from harm.

2.3 It is alleged that one or more of the conditions to which the premises licence is subject has been breached, namely that the licence holders have failed to ensure that their Designated Premises Manager held a valid Personal Licence and that during that time the Designated

Premises Manager did not hold a Personal Licence, alcohol was sold, breaching the Mandatory Conditions of a Premises Licence.

- 2.4 Where a review hearing is to be held, the Board must, in the case of a premises licence review proposal, give notice of the hearing to the applicant and give notice of the hearing and a copy of the premises licence review proposal to the licence holder, and any Licensing Standards Officer for the area in which the premises concerned are situated.
- 2.5 Where a Licensing Standards Officer receives a copy of a premises licence review proposal the Officer must, before the review hearing, prepare and submit to the Board a report on the proposal, and the Board must take the report into account at the hearing. The Licensing Standards Officer has provided a report which is attached as **Appendix 2**.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising directly from this report.

4. HUMAN RIGHTS IMPLICATIONS

- 4.1 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 licence holders.
- 4.2 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.
- 4.3 The legal basis for taking any action in connection with this report is in accordance with the 2005 Act.
- 4.4 Any actions considered by the Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim.

5. CONCLUSION

The Board is requested to review the premises licence as detailed in **Appendix 1** to this Report and determine, what steps, if any, they consider to be necessary and appropriate for the purposes of the licensing objectives.

REPORT AUTHOR: Nannette Page Team, Leader

E-MAIL: LAWlicensing@angus.gov.uk

APPENDIX 1 TO REPORT LB 6/20

Premises Licence Number: 379

SHOTZ POOL AND SNOOKER CLUB

2-4 John Street West, Arbroath

**LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL**

A premises licence review proposal is to be considered by Angus Licensing Board in respect of:

Shotz Pool and Snooker Club, 2-4 John Street West, Arbroath

The Board are asked to note where a Licensing Standards Officer receives a copy of a premises licence review proposal, the Licensing Standards Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal. The Board must take this report into account at the hearing.

Background:

The Licensing Standards Officer prepared and submitted a report for the Board's consideration at their Special meeting on 3rd December 2019. At that meeting, the Board's decision was to hold a review hearing based on the information provided.

Licensing Standards Officer's Report:

I was contacted by a Licensing Standards Officer from Dundee City Council (DCC) by telephone call on 28th October 2019. He was calling to ascertain whether or not Ryan Fleming was a Designated Premises Manager in the Angus area. I confirmed he was. The Licensing Standards Officer then advised me that Ryan's Personal Licence was revoked due to failure to undertake refresher training as required by the 2005 Act on 3rd May 2018.

Ryan should have carried out his training before 4th February 2018, and then had three months to notify the licensing board. The last day for notification would have been 3rd May 2018. Ryan did not notify the board therefore his personal licence was revoked on that day. A letter was sent from Dundee Licensing Board to his home address on or about the 4th May 2018 informing his personal licence had been revoked.

There is no statutory duty for Dundee City Council to inform Angus Council that they have revoked one of their own licences, and DCC have no way of knowing one of their own licence holders is a Designated Premises Manager in Angus.

The premises were therefore operating without a Designated Premises Manager for some 18 months, which is a breach of the mandatory conditions of a premises licence.

I visited the premises unannounced on the 30th October to carry out statutory checks and address the information received. Ryan Fleming was not present. His brother, Marc Fleming, was present. Marc is listed as the connected person of the Premises Licence Holder, Shotz Pool and Snooker Ltd. I advised him that they must cease the sale of alcohol immediately as they do not have a Designated Premises Manager. I advised him a Minor Variation inserting a new Designated Premises Manager would be required, and left the requisite form for them to use.

Marc then phoned Ryan and passed the phone to me. Ryan assured me that he had done his refresher training and informed DCC in time. I told him that this is a matter for DCC and I must act on the information provided to me. He accepted this, as did Marc.

My statutory checks identified the following issues:

1. Staff Training Records: although both Marc and Ryan were adamant they had been done, they could not be produced.
2. 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 sent a copy in the post so they could be display one.

3. Personal Licence: Marc was working on licenced premises and unable to produce his personal licence. It is a requirement under Section 93 of the 2005 Act that a Personal Licence holder produce their licence on request by a Licensing Standards Officer when working on any licensed premises.
4. Premises Licence: Marc was not able to produce this (the summary was displayed). Section 52 of the 2005 Act stipulates that the premises licence is kept safe on the premises and produced on request by a Licensing Standards Officer.
5. 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. Being a snooker and pool venue, I would expect this to need to be used.

Upon my return from visiting the premises, I emailed Police Scotland notifying them of my visit and informing them that the Designated Premises Manager held no Personal Licence. I considered it appropriate to refer the matter to Police Scotland as it is a criminal offence for a Premises Licence Holder to allow the sale of alcohol whilst the Designated Premises Manager does not hold a Personal Licence.

I received a phone call on 1st November 2019 from Ryan advising me that he would be coming in that same day to hand in a minor variation. He attended with training records, premises licence and the minor variation form.

The Minor Variation was lodged and substituted out Ryan in favour of his brother Marc, who holds a valid Personal Licence with Dundee City Council. I emailed Police Scotland to notify them that a Designated Premises Manager was now in place.

I have confirmed with Police Scotland that neither Ryan nor Marc as Premises Licence Holders will be charged in respect of this breach of the conditions.

I am bringing this to the attention of the Board as this Premises had been operating without a Designated Premises Manager for some 18 months. It is the premises licence holder who is responsible for this breach. In this instance, the premises licence holder is Shotz Pool and Snooker Ltd, of whom the named connected persons are brothers, Ryan and Marc Fleming.

A Premises Licence Holder is duty bound by the 2005 Act to inform the Licensing Board if the Personal Licence of their Designated Premises Manager has been revoked. This was not done by either Marc or Ryan. This is a serious breach of the mandatory conditions attached to a premises licence, which reads at Paragraph 4(1):

“Alcohol is not to be sold on the premises at any time when –

- a) there is no premises manager in respect of the premises*
- b) the premises manager does not hold a personal licence*
- c) the personal licence held by the premises manager is suspended, or*
- d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises”.*

In breaching this condition, there is a grounds for review in terms of Section 36(3) (a) of the 2005 Act. That section reads that it is a ground for review when one or more of the conditions which attach a premises licence has been breached.

Following the Board's decision on 3rd December 2019 to proceed to review. I will provide the Board with a verbal update at its meeting on 9th January 2020.

I duly submit this report for the Board's consideration.

Daniel J. Coleman
Licensing Standards Officer, Angus Council