

ANGUS LICENSING BOARD – 20 FEBRUARY 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

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(a) LICENCE NO. 242 KIRRIEMUIR GOLF CLUB, SHIELHILL ROAD, NORTHMUIR, KIRRIEMUIR

Name and Address of Applicant

Kirriemuir Golf Club Limited, Shielhill Road, Northmuir, Kirriemuir, DD8 4LN

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 terminal hour on a Thursday from 23.00 to 24.00 when alcohol will be sold for consumption on the premises. The additional hour is for a pool league.

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

2. Vary the access for Children and Young Persons

- (a) Junior members to be allowed access to premises at all times unaccompanied.
- (b) Junior golfers who are visiting for golf events to be allowed access unaccompanied.
- (c) If not golfing or a junior member, then persons under 18 should be accompanied by an adult.

3. Premises Manager to be Jennifer Brown, Personal Licence Number AN/1613.

COMMENTS RECEIVED. Alan Tucker, Applicant (Director) provided additional comments.

As a Golf Club we are trying to encourage Junior members to make use of the clubhouse facilities, so we would like Junior Members to be allowed access to premises at all times unaccompanied. We obviously have a record of all junior members so know who is allowed access.

Similarly we would like junior golfers who are visiting for golf events to be allowed access to Clubhouse unaccompanied as there may be occasions where weather (for instance) affects the timing of their golf and parents may not be collecting them for some time so access would be unaccompanied.

If not golfing or members then persons under 18 should not usually need to access the Clubhouse unless accompanied by an adult.

We are trying to balance the use of a facility which has facilities that are suitable for under 18s to utilise and are in areas away from the bar where alcohol is served, as well as serving alcohol. We obviously wish to observe the licensing regulations relating to children while at the same time not making our Junior Members feel like members who are not provided for adequately.

Background:

An application for a non-minor variation of a premises licence was received on 6 January 2020 in respect of:

Kirriemuir Golf Club, Shiellhill Road, Northmuir, Kirriemuir, DD8 4LN

The premises is located on the junction of Shiellhill Road and Gold Road. The Premises Licence Holder is Kirriemuir Golf Club Ltd, of whom one of the named connected persons is Alan Tucker. The Designated Premises Manager is Jennifer Brown.

The applicant is seeking the following:

- 1) Amend the opening hours on a Thursday to a 24:00 conclusion
- 2) Amend the terms on which children and young persons are permitted entry to the club

Both proposals are within Board policy.

Licensing Standards Officer's Report:

I visited these premises on 27 January 2020 in order to undertake my statutory checks and discuss the application for variation with the applicant. I met with Designated Premises Manager Jennifer Brown after consultation with Alan Tucker.

When undertaking my statutory checks, I identified the following issues:

- 1) Section 110 of the Licensing (Scotland) Act 2005 prescribes that a notice must be displayed at all times where the sale of alcohol is made in a position that is visible to anyone purchasing alcohol. The notice must contain the following statements:

"It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises. It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18. When there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over."

This notice must be displayed at each point of sale. It was only displayed at one area. I left a copy for the premises to display at the second area of sale and it was done so immediately.

- 2) Section 93 of the Licensing (Scotland) Act 2005 requires personal licence holders to produce their personal licence for inspection when working on any licensed premises. Jennifer Brown was unable to do this. I advised her this must be available in future. She told me this is because it is in Mr Tucker's house for when he completed the application and he has since been out of the country.

I discussed the proposal to allow children and young people entry into the club. I was advised that the proposal is **Junior Members** are to be allowed access to premises at all times unaccompanied. I was assured that they maintain a full record of junior members so will know who is allowed access. In similar vein, they also propose junior golfers who are visiting for golf events to be allowed access to Clubhouse unaccompanied. If not golfing or not members then persons under 18 must be accompanied by an adult. This proposal can be summarised as: if attending for golf related activities they may be unaccompanied; if not attending for golf related activities they must be accompanied by an adult.

I would remind Board Members' that their Statement of Licensing Policy permits Children and Young People entry to licenced premises until 9pm if they are they are **members of the club** and there for the purposes of their participation in a sporting event.

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

Daniel J. Coleman
Licensing Standards Officer
Angus Council

APPENDIX 1 TO REPORT LB 13/20

ANGUS LICENSING BOARD – 20 FEBRUARY 2020

(b) LICENCE NO. 318 DEVITOS, 11 MILLGATE, ARBROATH, DD11 1NN

Name and Address of Applicant

KWS Property Limited, 11 Millgate, Arbroath, DD11 1NN

Type of Licence: On Sales

Description of Variation

1. Core times – amend the terminal hour when alcohol will be sold for consumption on the premises

(a) Monday and Tuesday from 24.00 to 02.00

(b) Friday and Saturday from 02.00 to 02.30

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

The Board are asked to note the current terminal hours.

Monday	24.00
Tuesday	24.00
Wednesday	02.00
Thursday	02.00
Friday	02.00
Saturday	02.00
Sunday	02.00

COMMENTS RECEIVED. The Service Leader – Environmental & Consumer Protection provided an observation dated 16/01/2020.

This division received one complaint earlier this year regarding noise arising from these premises and are concerned that any issues could be exacerbated by a later opening time. That said these premises are bound by Angus Council's licensing policy which should control the potential for noise nuisance. Furthermore the operator should have a noise management plan in place which details how noise from the operation of the premises is to be controlled.

Therefore in light of the above, I would not object to the licence variation however I would request that a revised noise management plan, which reflects the extended hours of operation, is submitted for the written approval of the licensing board.

LICENSING STANDARDS OFFICER VISIT REPORT

Background:

An application for a non-minor variation of a premises licence was received on 13 December 2019 in respect of:

Devitos, 11 Millgate, Arbroath, DD11 1NN

The premises is located on the south side of the Millgate, towards the junction of Burnside Drive. There are residential flats directly across the road from the premises. The current Premises Licence Holder is KWS Property of 11 Millgate Arbroath, DD11 1NN of whom the named connected person is Kevin Sivewright.

The applicant is seeking an extension of their core hours as laid out below:

Day	Existing licensed hours	Requested extended hours
Monday	12:00 – 24:00	24:00-02:00
Tuesday	12:00 – 24:00	24:00-02:00
Wednesday	12:00 – 02:00	N/A
Thursday	12:00 – 02:00	N/A
Friday	12:00 – 02:00	02:00-02:30
Saturday	12:00 – 02:00	02:00-02:30
Sunday	12:00 – 02:00	N/A

This premises already has hours out with Board Policy, namely a 2am conclusion on Wednesday, Thursday and Sunday.

Licensing Standards Officer's Report:

I visited these premises on 27 January 2020 in order to undertake my statutory checks and discuss the application for variation with the applicant. I met with both Premises Licence Holder Kevin Sivewright and Designated Premises Manager Maureen Milne.

When undertaking my statutory checks, I identified one issue:

- 1) The mandatory conditions attached to a premises licence prescribe that there is to be displayed, so it is reasonably visible to customers entering the premises, a sign of at least A4 size which states the premises under 18s admission policy. This notice was not displayed. I have since sent a copy for the premises to display.

All other statutory checks, including those relating to the opening of premises after 1am, were complied with to my satisfaction. The venue also has extensive policies in relation to vulnerable people, dispersal and first aid which are in addition to the statutory requirements. The method of recording refusals of sale is to a particularly high standard, with it being kept in good detail.

Prior to my visit, I carried out my due diligence check of Maureen Milne's Personal Licence as she is the Designated Premises Manager. I can confirm to the Board that her licence is currently valid and is due to undergo refresher training no later than September 2024.

I also used the opportunity to discuss the proposed variation with the applicant, as the hours requested are out with the Board's Statement of Policy. In particular, the requested extension hours for Monday and Tuesday are some two hours over policy, while the requested extension on Friday and Saturday are half an hour over policy. The applicant explained to me the purpose of doing this was to alleviate the need to apply for Extended Hours each festive period (on days when festive variation does not apply), which they have done so every year since 2012 (with the exception of 2015). This would also, in turn, reduce the work load for the Board as often these applications were out with policy and are referred to Board Members to be determined.

To help the Board in its decision, I would advise that the Licensing Department have received no complaints in respect of noise nuisance for this premises in the time it has been operating. That said, however, Environmental and Consumer Protection (ECP) advised that they received once complaint earlier this year. This complaint was in respect to the double external doors being wedged open which led to noise when patrons were leaving. The DPM was spoken to and agreed that external doors remain closed when not being used. ECP are concerned that noise issues could be exacerbated by the proposed extension of hours, but do not object to the application and request a revised noise

management plan be submitted for approval by the Board. I discussed this with the applicant who advised me that they would do this.

I would remind members that the Board's policy hours have been established to promote the licensing objectives with particular reference to prevention of crime and disorder, prevention of public nuisance and promotion of public health. This said, however, I would also remind members that in terms of the Licensing Policy each application is to be determined on its own merits.

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

Daniel J. Coleman
Licensing Standards Officer
Angus Council