

ANGUS LICENSING BOARD – 4 JUNE 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 an application 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. 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 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 Councils 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.

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