

ANGUS LICENSING BOARD – 30 JUNE 2020

PREMISES LICENCE REVIEW APPLICATION

THE COMMERCIAL HOTEL, 26-30 SOUTH STREET, NEWTYLE, ANGUS, PH12 8QU

REPORT BY CLERK TO THE BOARD

ABSTRACT:

The purpose of this report is to present to the Board a Premises Licence Review Application under Section 36 of the Licensing (Scotland) Act 2005, ("the 2005 Act") which requires to be considered and determined by the Board.

1. RECOMMENDATION

It is recommended that the Board

- i) determine, in the first instance, whether the application :-
 - a. is vexatious or frivolous, or
 - b. does not disclose any matter relevant to any ground for review

and **if not so determined**, go on to :-
- ii) conduct a hearing to review the Premises Licence;
- iii) determine, if satisfied that a ground for review is established, whether to:-
 - a. issue a written warning to the licenceholder;
 - b. make a variation of the licence;
 - c. suspend the licence for such period as the Board may determine; or
 - d. revoke the licence;
 - e. take no further action
- iv) determine, whether to make a finding that any personal licence holder who is, or who was, working in the licensed premises may have acted in a manner which was inconsistent with any of the licensing objectives and thereafter hold a hearing in order to consider further action against the Personal Licence Holder.

2. BACKGROUND

2.1 The Clerk received a Premises Licence Review Application dated 6 April 2020 under Section 36 of the 2005 Act from Andrew Todd, Chief Superintendent, Tayside Division, Headquarters, West Bell Street, Dundee, DD1 9JU on behalf of the Chief Constable, Iain Livingstone, QPM, in respect of The Commercial Hotel, 26-30 South Street, Newtyle, Angus, PH12 8QU, which are premises licensed by Angus Licensing Board. **A copy of the Review Application shall be circulated to Board members prior to the meeting.**

2.2 The grounds for review in terms of s36(3) of the 2005 Act 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, or
- (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 which 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
- 2.3 The Board should be aware that any grounds relevant to the Licensing objectives mean that there has to be a direct and material link thereto brought about through the sale of alcohol.
- 2.4 The Board must firstly determine whether the application is frivolous or vexatious, or does not disclose any matter relevant to any ground for review. If the Board determine that the application is not vexatious or frivolous or does disclose any ground for review then the Board must go on to hold a review hearing. If this is not so determined, the Board would not require to hold a hearing and no further action ought to be taken.
- 2.5 Where a review hearing is to be held, the Board, must, in the case of a premises licence review application, give notice of the hearing to:
- a. the applicant
 - b. the licence holder, who must also receive a copy of the premises licence review application, and
 - c. any Licensing Standards Officer for the area in which the premises concerned are situated.
- 2.6 Where the Licensing Standards Officer receives a copy of the premises review application the Officer must, before the review hearing, prepare and submit to the Board a report on the application, and the Board must take the report into account at the hearing. The Licensing Standards Officer has provided a report which is attached at **APPENDIX 1**.
- 2.7 The Board may, for the purposes of the review hearing, obtain further information from such persons, and in such manner, as the Board thinks fit, and take the information into account. In particular, the Board may request, the attendance at the review hearing of any person for the purpose of providing information, and the production at the review hearing by any person of any documents in that person's possession or under that person's control. The Board may take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.
- 2.8 At a review hearing in relation to any premises licence, the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the hearing) take certain steps as the Board considers necessary or appropriate for the purposes of any of the licensing objectives. Those steps are:-
- a. issue a written warning to the licence holder;
 - b. make a variation of the licence for such period as the Board may determine;
 - c. suspend the licence for such period as the Board may determine;
 - d. revoke the licence.
- If the Board are satisfied that the ground noted at Section 2.2 (za) is established (i.e the fit and proper person test), the Board must revoke the Licence.
- 2.9 If, in the course of a review hearing in respect of any premises licence, the Board makes a finding that a person holding a personal licence, while working in the licensed premises to which the review hearing related may have acted in a manner which was inconsistent with any of the licensing objectives, then it must hold a hearing in relation to that finding in respect of that person's personal licence. The requirement to hold a hearing only applies if the personal licence holder concerned is still working in licensed premises in this Board's area at the time of the finding, or if the personal licence was issued by this Board and the person is not working at licensed premises situated in the area of another Board.
- 2.10 If the Board believe that the person is no longer working in licensed premises in this Board's area, is working at licensed premises situated in the area of another Licensing Board, or is not known to be working in licensed premises, then the Board is required to give notice of their finding to the Licensing Board where the person is working or to the Licensing Board which issued the personal licence (as appropriate) together with a recommendation as to whether

the personal licence held by the licence holder concerned should be revoked, suspended or endorsed.

- 2.11 The Board may therefore wish to ask appropriate questions of the premises licence holder about which personal licence holders were on duty when the incident which has led to the application for a premises licence review was alleged to have occurred.

3. **FINANCIAL IMPLICATIONS**

There are no financial implications arising out of this Report.

4. **HUMAN RIGHTS IMPLICATIONS**

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 premises licence holder.

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.

The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.

Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

5. **EQUALITIES IMPLICATIONS**

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

6. **CONCLUSION**

The Board is requested to review the premises licence and determine what steps, if any, they consider to be necessary for the purposes of the licensing objectives.

7. **NOTIFICATION**

The premises licence holder has been given a copy of the Premises Licence Review Application and copy of this report. Police Scotland have been given a copy of this report. The Licensing Standards Officer has been given a copy of the Premises Licence Review Application and copy of this report. All have been invited to attend the Board.

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NOTE: The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- The Licensing (Scotland) Act 2005
- The Licensing Procedure (Scotland) Regulations 2007

LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW APPLICATION

A premises licence review application has been received from Police Scotland in respect of:

Commercial Hotel, 28-30 South Street, Newtyle, PH12 8UQ

Premises Licence Holder: Kevin O'Donoghue, 17 Kinpurnie Gardens, Newtyle, PH12 8UY

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

Background:

A premises licence review application dated 6th April 2020 has been received from Police Scotland. The application is requesting the Board considers carrying out a review of the premises licence for the Commercial Hotel, 28-30 South Street, Newtyle, PH12 8UQ

Licensing Standards Officer's Report:

I attended The Commercial Hotel on Thursday 18th June 2020 and I met with the Designated Premises Manager and Premises Licence Holder Kevin O'Donoghue. Upon receipt of a premises licence review application, I am required to complete a report for the Board and as part of my visit, I carried out a premises licence check. The following issue was identified:

- 1) Automatic Entitlement: Although our records show that The Commercial Hotel has held its Automatic Entitlement (relating to permission to have gaming machines) since 2008, Mr O'Donoghue was unable to produce this. A new copy of the letter has since been sent to the premises.

All other statutory matters, such as display of the summary licence, being able to produce the premises licence and training records on demand, and display of the s110 notice, were complied with to my satisfaction.

The Police Scotland Review Application reports that Mr O'Donoghue had two people in his pub on Saturday 28th March 2020, which was eight days after the Prime Minister issued a statement instructing all pubs to close. The Regulations prescribing this in law, however, did not come into effect until 27th March 2020. Mr O'Donoghue identified these people as his neighbours. He told me he had been closed since the Prime Minister's statement and was using the opportunity to undertake renovations of the premises, of which his neighbour was aiding him.

He admitted to me that he did indeed give his male neighbour a pint of beer and his female neighbour a cup of tea. Mr O'Donoghue was also having a pint of beer himself. He assured me that his male neighbour only had one drink in his premises, but perhaps had some alcohol earlier in the day.

However, Mr O'Donoghue, as is mentioned in the Police report, was clear this was not a payment in kind for undertaking the works and he was not accepting money or charging for the drink. He further admitted he knew he should have been closed, but did not think he was doing anything wrong by having two friends' round in the pub.

Mr O'Donoghue was extremely co-operative with my investigations.

I duly submit this report for consideration by the Board.

Daniel J. Coleman
Licensing Standards Officer
Angus Council