

ANGUS LICENSING BOARD – 14 JANUARY 2021

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 three 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 three 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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**APPENDIX 1 TO REPORT LB1/21
ANGUS LICENSING BOARD – 14 JANUARY 2021**

(a) LICENCE NO. 196, ARBROATH BOWLING CLUB, DISHLANDTOWN STREET, ARBROATH, DD11 1QU

Name of Applicant – Paul Gersok on behalf of Arbroath Bowling Club

Type of Licence: On and Off Sales

Description of Variation

1. **Core times** - amend the commencement hour on Sunday 12:30pm to 11am when alcohol will be sold for consumption **on** the premises.
2. **Addition of Off-Sales:** Off-sales to be added from 11am-9pm daily.
3. **Operating Plan** – Addition of activities:
during core hours only:
 - Bar Meals and Gamingwithin and outwith core hours:
 - Televised Sport and Outdoor Drinking Facilities
4. **Seasonal Variations** – addition of Christmas Eve, Christmas Day, Boxing Day and New Year's Day

The Board are asked to note the hours requested are within Board Policy.

The applicant has advised that:

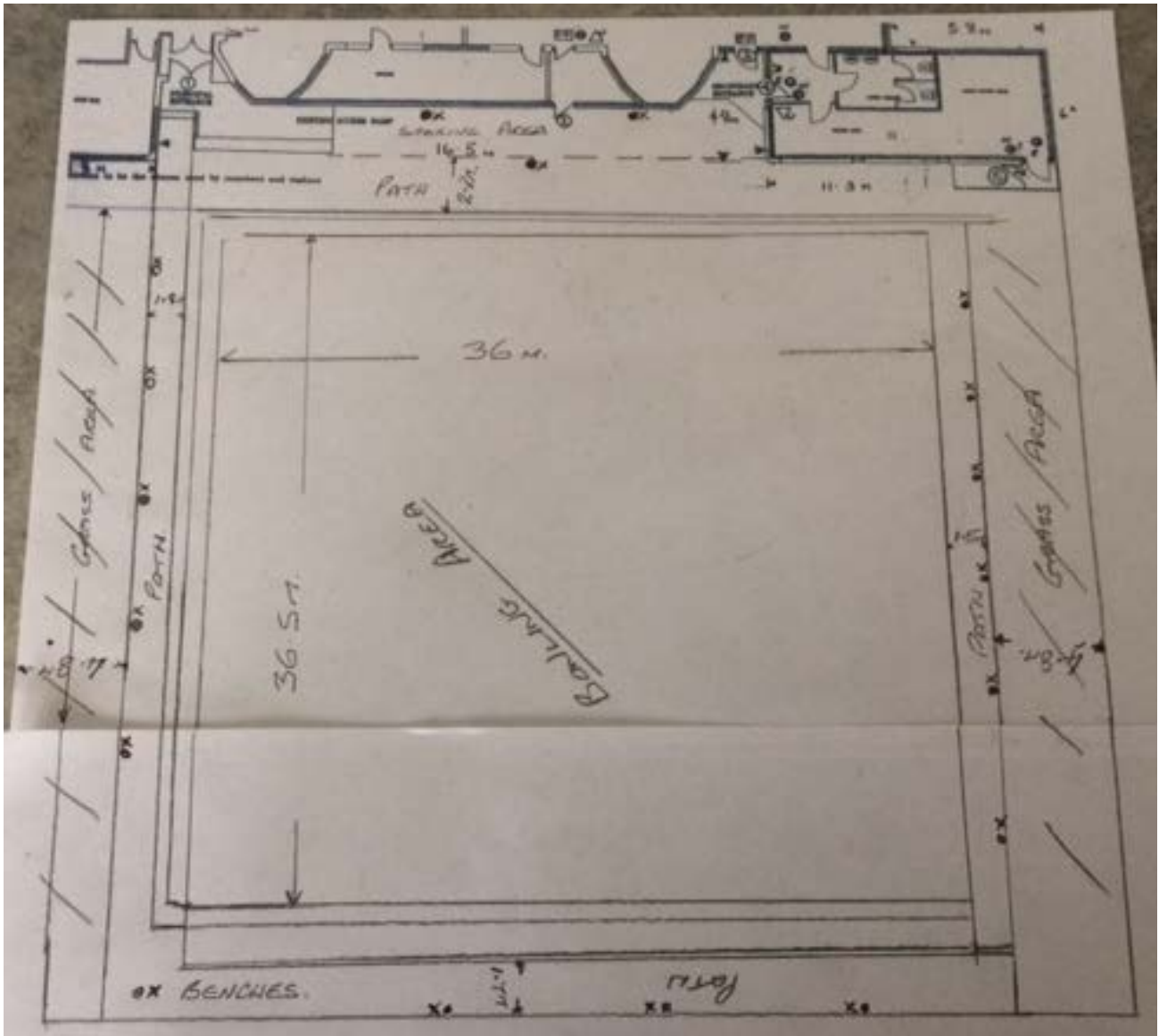
Bowls Competitions, Charity Events and League Competitions on a Saturday and Sunday often commence at 10am. For that reason, they have requested outdoor drinking facilities and televised sport outwith core hours. For the avoidance of doubt, the applicant is aware that liquor on-sales cannot commence until 11am.

Environmental Consumer Protection: provided an observation on 21 December 2020.

This service would have no objections to the proposals subject to the following conditions being applied to any licence granted:-

- Patrons shall not be permitted to use the external drinking area beyond 21.00hrs
- No music shall be provided in the external drinking area.
- No music of amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.

Layout Plan for outdoor area – Arbroath Bowling Club



LICENSING STANDARDS OFFICER VISIT REPORT

An application for a major variation of a premises licence has been received from Paul Gersok in respect of:

ARBROATH BOWLING CLUB, DISHLANDTOWN STREET, ARBROATH, DD11 1QU

Background:

The application to vary the premises licence was received on 13th October 2020. The Licensing Board at their meeting on the 14th January 2021 will consider this application.

Licensing Standards Officer's Report:

I attended these premises on 16th December 2020 and met with Club President, Club Secretary, Graham Haxton and Club Member Paul Gersok, who has been allocated responsibility for licensing matters at the club. The Premises Licence in question is a Club Premises Licence and not a full Premises Licence.

The application sought to amend the Operating Plan in various ways, namely:

- 1) Amend Sunday opening time to 11am
- 2) To include standard seasonal variations
- 3) To permit bar meals as an activity (core hours only)
- 4) To permit gaming on the operating plan (core hours only)
- 5) To permit live televised sport on the operating plan (with and outwith core hours)
- 6) To permit outdoor drinking facilities on the operating plan (with and outwith core hours)

I discussed why any televised sport or outdoor drinking facilities would be provided outwith core hours. I was advised that sometimes competition starts at 10am and soft drinks, teas and coffees would be provided for players to consume outdoors or whilst watching the TV before their game. I have no concerns in respect of this proposal.

There will be several benches provided on the walkways and gravelled area surrounding the bowling green. This is to facilitate the outdoor drinking. There will be no drinking permitted on the bowling green itself and as such this does not form part of the licenced area. The club house is fairly secluded with the bowling green being exposed to only the north sea and no residential properties.

Whilst at the premises, I also took the opportunity to undertake my statutory checks and I identified the following issues:

- 1) Toilet check record was not kept. I left a copy with the premises and they advised they would start doing this immediately.
- 2) No refusals book was kept. I left a copy and they advised they would start keeping one immediately.

All other matters were complied with to my satisfaction. However, in relation to training records, whilst kept, they were quite dated, and it was agreed that Paul Gersok (who is an Angus Personal Licence Holder) would re-refresh the training in the new year. For the benefit of Board Members, the mandatory two-hour training that non-Personal Licence Holders undertake in order to sell alcohol does not expire or require to be refreshed in the same manner as a Personal Licence. However, it is a matter of good practice to refresh it.

I concluded the meeting by confirming that we had the most recent copy of the Club's constitution on record, as required under Licensing Regulations.

I informed the Licence Holder that what was discussed would form part of a report to be placed before Board Members. I duly submit this report for consideration by Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council

(b) LICENCE NO. 12, LOCHLANDS BAR, 14/16 LOCHLANDS STREET, ARBROATH, DD11 3AB

Name of Applicant – William Baxter on behalf of Baxter Crowe Developments Ltd.

Type of Licence: On Sales and Off Sales

Description of Variation

1. **Operating Plan** – Addition of Bar Meals within core hours

The site notice was displayed by the applicant from 28 November 2020 to 22 December 2020. The Confirmation of Site Notice was Received on 22 December 2020.

The applicant has advised that:

Plan has been discussed with Angus Environmental Health for advice on set up and operation and legal requirements. Food would be bought in, stored, prepared and served from existing layout and facilities. Appropriate hygiene and food certification to be applied for and staff training would be completed.

(c) LICENCE NO.67, ROODS BAR, 10/12 ROODS, KIRRIEMUIR, DD8 4EZ

Name of Applicant – Sylvia Glendinning

Type of Licence: On Sales

Description of Variation

1. Core times - amend the terminal hour on Friday and Saturday from 1am to 2am when alcohol will be sold for consumption **on** the premises.

2. Operating Plan – Remove receptions and club or other group meetings from the Operating Plan.

3. Seasonal Variations – addition of Boxing Day

The Board are asked to note the hours requested are outwith Board Policy.

The applicant has advised that:

- (a) no admission after 1.30am;
- (b) no admission charge after 1am;
- (c) where live or recorded music is provided, the decibel level will not exceed 85db; and
- (d) when fully occupied, there are more people seated than standing.

LICENSING STANDARDS OFFICER VISIT REPORT

An application for a major variation of a premises licence has been received from Sylvia Glendinning in respect of:

THE ROODS BAR, 10/12 ROODS, KIRRIEMUIR DD8 4EZ

Background:

The application to vary the premises licence was received on 26th August 2020. The Licensing Board at their meeting on the 14th January 2021 will consider this application.

Licensing Standards Officer's Report:

I attended these premises on 16th December 2020 and met both Premises Licence Holder Sylvia Glendinning and Premises Manager James Glendinning. I was there to discuss their application for Major Variation. The application sought to amend the Operating Plan in various ways, namely:

- 1) Remove receptions from the Operating Plan
- 2) Remove club or other group meetings from the Operating Plan
- 3) Add Boxing Day as a festive variation
- 4) Amend Friday and Saturday terminal hour to 2am

I was there chiefly to discuss point four. As Members will be aware, the Local Statement of Licensing Policy has licenced hours of:

General licensed premises the licensed hours which will generally be permitted by the Board will be:

- *from 11.00am to midnight on Sundays;*
- *from 11.00am to midnight, Monday to Thursdays inclusive; and*
- *from 11.00am on Fridays and Saturdays to 1.00am on Saturdays and Sundays respectively.*

For licensed premises where the activities permitted to be carried on as specified in the operating plan comprise public entertainment (such as dance halls, discotheques and nightclubs), and provided that alcohol is sold as an ancillary to the entertainment, the licensed hours which will generally be permitted by the Board will be:

- *from 11.00am to midnight on Sundays;*
- *from 11.00am to midnight, Monday to Thursdays inclusive; and*
- *from 11.00am on Fridays and Saturdays until 2.00am on Saturdays and Sundays, respectively.*

I would ask Members to consider if this premises sufficiently meets the definition of being a licensed premises where the activities permitted to be carried on as specified in the operating plan comprise public entertainment to justify a departure from policy hours.

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.

To help the Board in its decision, I would advise that the Licensing Department have received no complaints in respect of noise nuisance, customer unrest or issues with dispersal after closing hour. The Environmental Health department have also advised they have received no complaints in relation to noise in the last five years. The premises are not located in a heavily residential area, with most adjacent premises being commercial in nature and the residents there being the licence holder and premises manager themselves. In addition, Police Scotland have no objection to this application.

If minded to grant this application, I would ask that the Board impose the following condition on the licence, which is mandatory in terms of the *Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2008* for premises that open after 1am:

A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1am (on any day when the premises are open at that time) until whichever is the earlier of:

- 1) *the time at which the premises next close*
- 2) *5am*

Having spoken with the Licence Holder about this, I understand their son is first aid qualified and would be "on shift" both Friday and Saturday nights as required. I would ask the Board if they are satisfied this arrangement complies with the condition above.

The applicant has also agreed to a condition that last entry to the premises will be 1:30am.

Whilst at the premises, I took the opportunity to undertake the statutory checks and I identified no infringements, with all matters being complied with to my satisfaction.

I informed the Licence Holder that what was discussed would form part of a report to be placed before Board Members. I duly submit this report for consideration by Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council