

ANGUS LICENSING BOARD

MINUTE of the Special MEETING of the **ANGUS LICENSING BOARD** hosted at Angus House, Orchardbank Business Park, Forfar and held remotely on Thursday 29 October 2020 at 10.15am.

Present: Councillors CRAIG FOTHERINGHAM, RICHARD MOORE, BRIAN BOYD, BRENDA DURNO, ALEX KING, DAVID LUMGAIR and BETH WHITESIDE

Councillor FOTHERINGHAM, Convener, in the Chair.

1. APOLOGY

An apology for absence was intimated on behalf of Councillor David Fairweather.

2. DECLARATIONS OF INTEREST

The Board agreed to note that no declarations of interest were made.

3. NEW PERSONAL LICENCE APPLICATION – NOTICE OF CONVICTION – JAMES MORRISON

With reference to Article 6 of the minute of meeting of this Board of 17 September 2020, there was submitted Report No LB 63/20 by the Clerk informing members of correspondence received from the Chief Superintendent, Tayside Division, Police Scotland giving notice of a conviction in terms of section 73 (3) (b) of the Licensing (Scotland) Act 2005 in respect of a new application for a personal licence received on 13 July 2020 from James Morrison.

The members noted the contents of the correspondence received from the Chief Superintendent dated 22 July 2020 and Constable Jamieson, Police Scotland addressed the Board and gave further details of the conviction detailed in the letter.

Mr Morrison was present and addressed the Board after which he answered some questions from members.

The Board then heard from Inspector Allen who clarified a number of points raised.

Mr Morrison then summed up.

The Board agreed that the application be granted but that Mr Morrison be given a verbal warning of the possible consequences of any future adverse reports.

4. PREMISES LICENCE REVIEW APPLICATION – LOCHSIDE BAR, 84 – 88 NORTHESK ROAD, MONTROSE

With reference to Article 7 of the minute of meeting of this Board of 17 September 2020, there was submitted Report No LB 64/20 by the Clerk advising members of an application for a review of a premises licence under Section 36 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) which required to be considered by the Board.

The Board noted that a Premises Licence Review Application had been received from the Chief Superintendent, Tayside Division, Police Scotland, dated 30 July 2020 in respect of the Lochside Bar, Montrose, as detailed in Appendix 1 to the Report. A further supplementary letter dated 16 September 2020 had been received by the Board on 22 September 2020.

The Convener advised the Board that they required to consider, in the first instance, in terms of section 36(6) of the Act, whether to proceed with the hearing with regard to the statutory tests which were set out in the Report. The Convener also advised the Board that before moving to hold a hearing, the Board had to determine whether the application before them was vexatious or frivolous or that it disclosed any matter relevant to any ground for review.

The Board determined that the application was not vexatious or frivolous, that a matter relevant to one of the grounds of review had been disclosed and determined to hold a Premises Licence Review Hearing in respect of the Lochside Bar, Montrose.

Constable Jamieson addressed the Board and answered questions from members. The submissions were in line with letters dated 30 July and 16 September 2020 submitted to the Board by Police Scotland.

Constable Jamieson then referred to an additional incident on 2 October 2020 when asked by the Board if there had been any further incidents. Police Scotland advised that this related to a breach of Covid-19 measures within the premises and highlighted that the breaches on the premises in respect of Covid-19 guidance issued by the Scottish Government were the most serious breaches that they had come across in the Tayside area. Police Scotland highlighted their concerns about the repeated nature of breaches on the premises particularly given the level of advice and support Mr Cumming had received prior to the main incident on 25 July 2020.

Miss McKeown, the licence holder's agent addressed the Board and explained the circumstances of the events detailed in the letters from Police Scotland dated 30 July and 16 September 2020. She advised that the licence holder's actions were based on a genuine misunderstanding and that he was willing to work with all parties to improve matters. She advised that the incident referring to the licence holder allegedly being drunk on the premises had not been judicially determined and that the Board should bear this in mind. A number of productions submitted by the agent had previously been submitted to members.

Miss McKeown also indicated that the incident on 2 October 2020 was not highlighted in advance of the hearing and limited information was available.

Members then asked Miss McKeown a number of questions and Mr Cumming, premises licence holder also addressed the Board.

The Board then heard from the Licensing Standards Officer on a number of matters.

Constable Jamieson and Inspector Allen then summed up for Police Scotland. Miss McKeown was also given the opportunity to sum up.

The Board determined that a ground for review had been established and were satisfied that there was a material link to the sale of alcohol.

The Board determined that the breaches in relation to Covid-19 guidance in respect of social distancing matters amounted to a ground relevant to the licensing objectives being established, namely the licensing objectives of Protecting and Improving Public Health and Securing Public Safety.

The Board did not determine that any ground for review was established in relation to other behaviour highlighted during proceedings.

The Board determined to impose a suspension order which would allow the licence holder to address the areas of concern and improve his practice before reopening.

The Board then heard from Miss McKeown and Mr Cummings, premises licence holder in relation to the length of the suspension order.

Discussion took place and the Board members considered a two month suspension order. The Board members felt that two months was a proportionate and necessary response to the serious breaches that they had determined to have taken place and after taking into account the submissions by the parties in respect of the length of the suspension order.

Councillor Moore indicated that he considered a 6 week suspension would be sufficient.

The Board agreed to suspend the Premises Licence with immediate effect for a period of two months from 29 October 2020 until 29 December 2020.

Councillor Moore requested that his dissent be recorded in relation to the length of the suspension.

At this point in the meeting, (the time being 12.45pm) the Board resolved, in accordance with the provisions of Standing Order 21(8), that the meeting continue for one hour.

In addition, the Board resolved to have a 10 minute "comfort break".

The meeting resumed at 12.55pm.

5. PERSONAL LICENCE HOLDER – REPORT OF CONDUCT INCONSISTENT WITH A LICENSING OBJECTIVE – WILLIAM CUMMING

With reference to Article 8 of the minute of meeting of this Board of 17 September 2020, there was submitted Report No LB 65/20 by the Clerk informing members of correspondence received from the Chief Superintendent, Tayside Division, Police Scotland, dated 31 July 2020 advising that a Personal Licence Holder, William Cumming had acted in a manner which was inconsistent with three of the licensing objectives, namely Preventing Crime and Disorder, Securing Public Safety and Protecting and Improving Public Health.

The Board having previously considered the Premises Licence Review application noted that the circumstances were identical. Constable Jamieson adopted her earlier submissions from the premises licence review hearing and referred to the letter submitted and dated 31 July 2020.

Miss McKeown also acknowledged that the circumstances were identical and adopted her submissions from the premises licence review hearing and submitted that the Board should act proportionately.

Mr Cumming, the licence holder addressed the Board and adopted his submissions made at the premises licence review hearing.

The Board determined that there had been conduct inconsistent with the licensing objectives and they were satisfied that there was a material link to the sale of alcohol.

The Board determined that the licence holder's conduct in respect of the breaches of Covid-19 guidance was inconsistent with the licensing objectives, namely the licensing objectives of Protecting and Improving Public Health and Securing Public Safety.

The Board did not determine that any other reported conduct was inconsistent with the licensing objectives.

The Board determined to impose a suspension order which would allow the licence holder to address the areas of concern and improve his practice before reopening.

The Board heard from Miss McKeown and Mr Cumming in relation to the length of the suspension order.

The Board agreed to suspend Mr Cumming's Personal licence with immediate effect for a period of two months from 29 October 2020 until 29 December 2020.

6. PERSONAL LICENCE HOLDER – REPORT OF CONDUCT INCONSISTENT WITH A LICENSING OBJECTIVE – IRINA WEST

There was submitted Report No LB 66/20 by the Clerk informing members of correspondence received from the Chief Superintendent, Tayside Division, Police Scotland, dated 17 September 2020 advising that a Personal Licence Holder, Irina West had acted in a manner which was inconsistent with three of the licensing objectives, namely preventing Crime and Disorder, Securing Public Safety and Protecting and Improving Public Health.

Constable Jamieson addressed the Board on the contents of the letter dated 17 September 2020 and advised that the case was still pending.

Mrs West then addressed the Board and explained the circumstances of events in relation to the complaint.

The Board agreed to defer consideration of the matter until the Court had disposed of the case.

7. PREMISES LICENCE – REQUEST TO VARY PREMISES LICENCE UNDER THE LICENSING (SCOTLAND) ACT 2005

There was submitted Report No LB 67/20 by the Clerk on an application to vary a premises licence under the Licensing (Scotland) Act 2005, which required to be determined by the Board, as detailed in the Appendix to the Report.

(a) Lochside Bar, 84 – 86 Northesk Road, Montrose

With reference to Article 5 (d) of the minute of meeting of this Board of 17 September 2020, the Board considered a letter of objection from Police Scotland dated 10 August 2020 in relation to an application from William Cumming to vary a premises licence (on/off sales) in respect of premises at 84 – 86 Northesk Road, Montrose to allow them to vary their operating plan to: -

- (i) amend the layout of the premises, which included the relocation of main bar, snug area changing to kitchen, original kitchen removed, disabled and ladies' toilets relocated, function/dining room removed, and darts area relocated; and
- (ii) provide outdoor drinking facilities: -
 - (a) within core hours;
 - (b) within a beer garden/covered area
 - (i) Paved area to the front of the premises
 - (ii) rear beer garden area
 - (c) to which children and young person would have access.

Miss McKeown, the applicant's agent addressed the Board.

Constable Jamieson then addressed the Board on the contents of the letter dated 10 August 2020.

The Board then heard from Mr Coleman, Licensing Standards Officer who advised that the applicant was happy to accept additional conditions in connection with the outdoor area.

The Board agreed that the application be approved, subject to the following additional conditions for the external drinking area: -

- (i) patrons shall not be permitted to use the external drinking areas beyond 21.00;
- (ii) no music shall be provided in the external drinking area; and
- (iii) no music or amplified sound be provided anywhere within the licensed premises with the intention of it being heard within the external drinking area.