

ANGUS LICENSING BOARD – 18 FEBRUARY 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 five 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 five 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

REPORT AUTHOR: Tracey Candy, Business Support Officer

E-MAIL: LAWlicensing@angus.gov.uk

**APPENDIX 1 TO REPORT LB6/21
ANGUS LICENSING BOARD – 18 FEBRUARY 2021**

(a) LICENCE NO. 10, THE GOLF INN, 15-17 MILL STREET, MONTROSE, DD10 8NP

Name of Applicant – The Golfy Limited

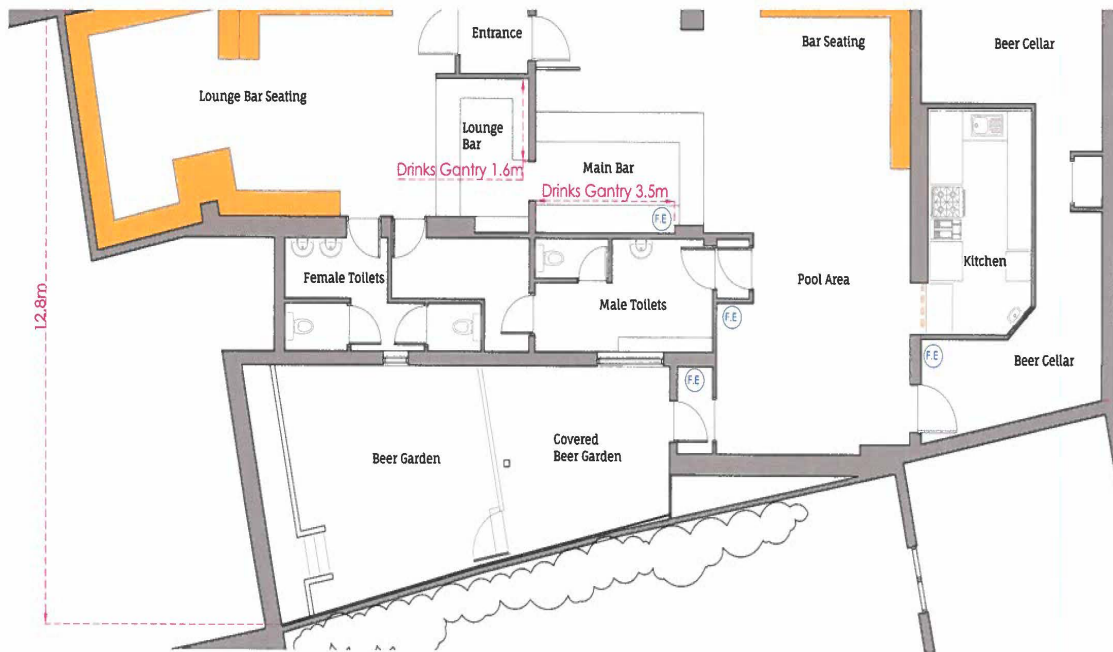
Type of Licence: On and Off Sales

Description of Variation

1. **Terminal Hours** – amend the times when alcohol will be sold to 11.00 on Sunday

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

2. **Activities** – to allow bar meals and snacks to be served within core hours
3. **Layout** – to incorporate a galley kitchen in part of the cellar



Proposed Floor Plan
1:100

Capacity
Lounge Bar - 50 People
Public Bar - 60 People

- Fixed Seating - All Tables Moveable
- Fire Extinguisher

LICENSING STANDARDS OFFICER VISIT REPORT

An application for Major Variation has been received from Kevin Young in respect of:

The Golf Inn, 15-17 Mill Street, Montrose, DD10 8NP

The premises are located close to the junction of Carnegie Street and Mill Street Montrose in a residential area.

Background:

An application from Kevin Young was received 25 November 2020. The Licensing Board at their meeting on the 18 February 2021 will consider this application.

Licensing Standards Officer's Report:

Due to the COVID-19 pandemic, I have been unable to visit these premises as I normally would when an application for Major Variation is received. The applicant is not confident at the operation of video calling and I have been unable to have a visual viewing of the premises. I have, however, had a telephone call with the applicant about their application.

1. Amend Sunday commencement hour for on-sales to 11am (within policy)
2. Amend Bar Meals to "yes" within core hours on operating plan
3. Amend layout plan to include a kitchen

The applicant has applied for these variations to allow them to serve food on the premises. This will assist them in recovery from the COVID-19 pandemic and also permit them to open when the Angus area return to Level 3 to sell food, and alcohol along with food, when we are in Level 2. I discussed with the applicant the requirements of a substantial meal in relation to Level 2, and they understood the requirements of this.

The applicant provided me with assurance that they are up to date in terms of paperwork and appropriate notices. For the assurance of Board Members, however, as I have not visited this premises before, when COVID-19 restrictions permit, I will attend this premises at the first available opportunity to undertake a physical inspection of the premises.

I informed the applicant that the matters we discussed would form part of this Report to be placed before the Board Members.

I duly submit this report for consideration of Board Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council

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(b) LICENCE NO. 4, SOUTH ESK INN, 35 WHARF STREET, MONTROSE, DD10 8BD

Name of Applicant – Graham Douglas

Type of Licence: On and Off Sales

Description of Variation

1. **Terminal Hours** – amend Sunday commencement hour to 11:00 for on and off-sales.

The Board is asked to note that these hours requested are within Board Policy

2. **Activities** – bar meals consisting of light meals such as soup and sandwich, pie and beans, meat and cheese platters and buffet.

3. **Children and Young Persons** –

- (a) add children and young persons
- (b) children and young persons allowed to enter the lounge bar to have a meal accompanied by an adult and seated at all times
- (c) ages of children and young persons to be allowed entry - 5-17 year olds
- (d) times during which children and young persons will be allowed entry - 12.00 to 20.00
- (e) parts of premises access to which children and young persons will be allowed entry - lounge, lobby and toilets.

4. **Seasonal Variation** – to add Christmas Eve, Boxing Day and New Year's Day.

LICENSING STANDARDS OFFICER VISIT REPORT

An application for Major Variation has been received from Graham Douglas in respect of:

South Esk Inn, 35 Wharf Street, Montrose, DD10 8BD

The premises are located close to the Montrose Port and adjacent to some residential premises.

Background:

An application from Graham Douglas was received 18 December 2020. The Licensing Board at their meeting on the 18 February 2021 will consider this application.

Licensing Standards Officer's Report:

Due to the COVID-19 pandemic, I have been unable to visit these premises as I normally would when an application for Major Variation is received. However, I did have a video call meeting with the applicant on 20 January 2021 to discuss several aspects of their application:

4. Amend Sunday commencement hour for On and Off-sales to 11am (within policy)
5. Include all seasonal variations permitted by the Board
6. Permit Children and Young Person Access (proposal within policy)
 - i) 5-17 year old
 - ii) When consuming a meal and accompanied by a responsible adult
 - iii) Until 8pm only
 - iv) The Lounge and toilet facilities only
7. Amend Bar Meals to "yes" within core hours on operating plan

The applicant has applied for these variations to allow them to serve food on the premises. This will assist them in recovery from the COVID-19 pandemic and also permit them to open when the Angus area return to Level 3 to sell food, and alcohol along with food when we are in Level 2. I discussed with the applicant the requirements of a substantial meal in relation to Level 2, and they understood the requirements of this.

In terms of Children and Young Person access to the premises, the applicant provided me with a virtual tour of the premises. From that perspective I was able to see that the lounge and toilet facilities are in distinct areas from the bar area, where access will not be permitted. The lounge area is to the left when entering the premises (through a door), and the bar area is to the right, also through a separate door. There is a corridor from the lounge to the toilet area. Children and Young Persons will not be permitted access to the outdoor drinking area (except for entry to the premises as that is the way in). I am satisfied that the proposals of the applicant and layout of the premises will be in keeping with Board policy.

I also used the opportunity to undertake the statutory checks. I identified one issue:

- a) **Automatic Notification** - The Gambling Act 2005 prescribes that the premises licence holder sends the licensing authority written notification of their intention to make up to 2 Category C or D gaming machines available for use.

This permit was not in place. It appears from our records that the previous licence holder surrendered their permit when they removed their gaming machine. The current licence holder holds one for other premises in Angus and believed in good faith they had one for this premises as well. I supplied the applicant with the appropriate paperwork.

All other matters, such as the display of the s110 notice, keeping of a refusal book and keeping of training records were complied with to my satisfaction. It is worth noting the high standard of the training records being kept by the licence holder. These appeared to be exceptionally good and were kept in relation to both non-personal licence holders and personal licence holders alike, exceeding the minimum statutory requirement and this is to be commended.

For the assurance of Board Members, as I have not visited this premises before, when COVID-19 restrictions permit, I will attend this premises at the first available opportunity to undertake a physical inspection of the premises.

I informed the applicant that the matters we discussed would form part of this report to be placed before Board Members.

I duly submit this report for consideration of Board Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council

(c) LICENCE NO. 34, THE ANCHOR BAR, 70 FERRY STREET, MONTROSE, DD10 8BY

Name of Applicant – David Angus Donald

Type of Licence: On and Off Sales

Description of Variation

Activities – add outdoor drinking facilities within core hours

Layout Plan – to include proposed beer garden and designated smoking shelter

COMMENTS RECIEVED

Environmental and Consumer Protection

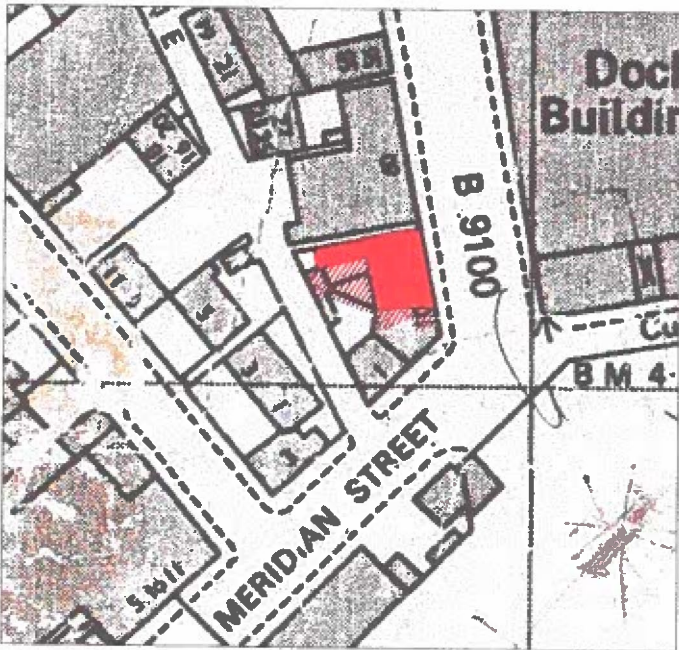
This service would have no objections to the proposals subject to the following conditions being applied to any licence granted: -

- 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 or amplified sound may be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.
- A noise management plan has been submitted and approved by this service.

Building Standards

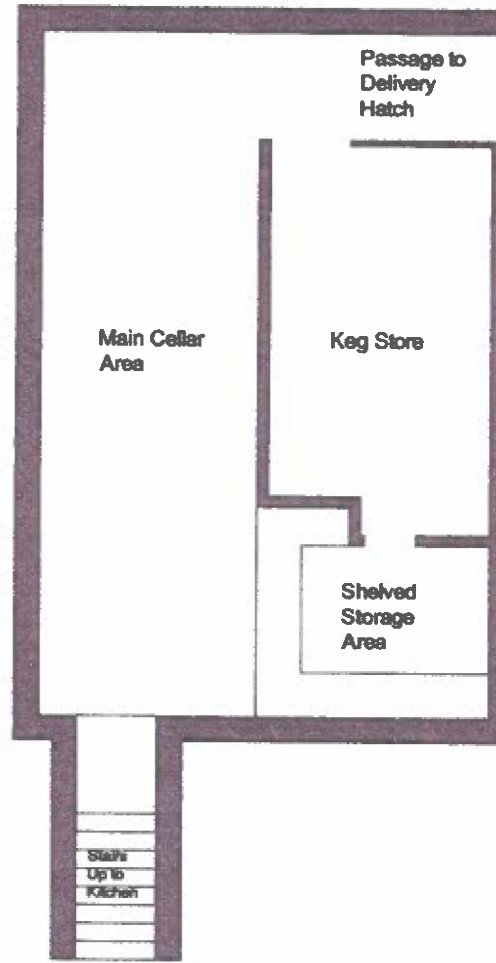
A Building Warrant will be required for formal use of the external area to ensure a formalised approach is taken to Section 2: Fire of the Non-domestic technical guidance. Previously the letter from the Scottish Minister, Kevin Stewart dated 13th July 2020 allowed for a period of time without the necessary consent in place as long as a pragmatic and safe approach to allowing use of these areas was taken (as consulted under the previous occasional Licenses).

This guidance from the Minister expired on the 30th September 2020. As this is a formal application for the use of this space to be utilised on a permanent basis a 'Building Warrant' and subsequent 'Acceptance of Completion Certificate' is required.



Site Plan (1:2500)

CAPACITY 70 PERSONS



Basement Plan (1:50)

CLIENT:		
Mrs L Watson		
JOB TITLE:		
Building Plan for License Application		
ADDRESS:		
Anchor Bar, 70 Ferry St, Montrose, DD10 8BY		
Scale:	drawing no:	
as per drawing	1 of 1	
Drawing Title:	date:	drawn by:
licence Drawing	13.05.08	GM / DP



JOHN D CRAWFORD Ltd

Architectural Services
72 NEW WYND MONTROSE
ANGUS
DD10 8RF

www.johndcrawford.co.uk
info@johndcrawford.co.uk

Tel - 01674 672064 Fax - 01674 672126

Designated Covered Smoking Area

Refer to
Plan Above

Exit

84 walkway additional fire exit 14

Entrance

Mill Lane

Proposed Beer Garden
to Mill Lane

Toilets

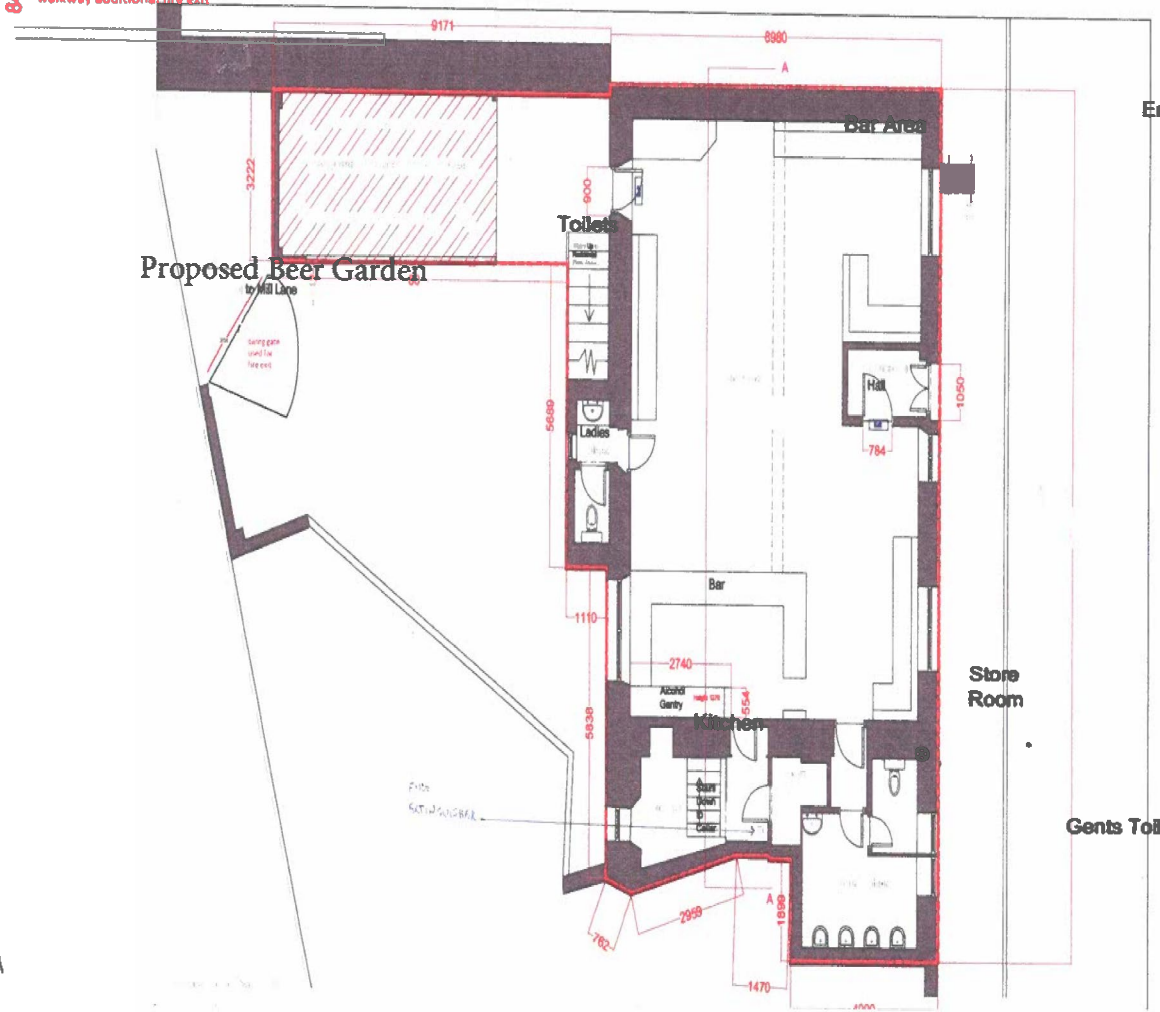
Bar Area

Bar

Store Room

Gents Toilets

Ground Floor Plan (1:50)



LICENSING STANDARDS OFFICER VISIT REPORT

An application for Major Variation has been received from David Donald in respect of:

ANCHOR BAR, 70 FERRY STREET, MONTROSE DD10 8BY

The premises are located on Ferry Street and adjacent to some residential and commercial premises.

Background:

An application from David Donald was received 18 December 2020. The Licensing Board at their meeting on the 18 February 2021 will consider this application.

Licensing Standards Officer's Report:

Due to the COVID-19 pandemic, I have been unable to visit these premises as I normally would when an application for Major Variation is received. However, I did have a video call meeting with the applicant on 25 January 2021 to discuss their application.

The application is to permit outdoor drinking facilities on the operating plan and to amend the layout plan accordingly. The applicant provided me with a virtual tour of the proposed outdoor area. The area is well enclosed and is accessible by the rear door of the premises. There is a large gate that opens onto the street for patrons to exit in the event of an emergency, but this will not be used to access to the outdoor drinking area.

The area had been operated as an outdoor drinking area under the Occasional Licence system since July 2020 when permitted under COVID-19 legislation. There have been no complaints in respect of the operation of the outdoor area and the applicant provided a noise management plan and COVID-19 risk assessment as part of that procedure. I discussed with the applicant the standard outdoor drinking area conditions which he was willing to accept being imposed on the licence if Members are minded to grant the variation.

I also discussed with him the requirement for a building warrant and completion certificate. Although this requirement was relaxed during the pandemic and was not required under the Occasional Licence applications, as this is a permanent addition to the licence, they both will be required. I provided the applicant with contact details of Building Standards and recommended he liaised with them to proceed with this. As of 11 February, I understand that the applicant has applied for their Building Warrant but it has not yet been determined. A verbal update will be provided to the Board at its meeting.

I also used the opportunity to undertake the statutory checks. I identified one issue:

- a) **Automatic Notification** - The Gambling Act 2005 prescribes that the premises licence holder sends the licensing authority written notification of their intention to make up to 2 Category C or D gaming machines available for use.

Our records show that the permit is in force, however they were unable to show it to me when requested. A new copy has been arranged and sent to the applicant. All other matters, such as the display of the s110 notice, keeping of a refusal book and keeping of training records were complied with to my satisfaction.

For the assurance of Board Members, as I have not visited this premises before, when COVID-19 restrictions permit, I will attend this premises at the first available opportunity to undertake a physical inspection of the premises.

I informed the applicant that the matters we discussed would form part of this report to be placed before Board Members.

I duly submit this report for consideration of Board Members.

Daniel J. Coleman
Licensing Standards Officer,
Angus Council

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(d) LICENCE NO. 57, ALDI STORES LIMITED, WESTERN ROAD, MONTROSE, DD10 8DE

Name of Applicant – Aldi Stores Limited, Holly Lane, Atherstone, Warwickshire, CV9 2NU

Type of Licence: Off Sales

Description of Variation

1. Operating Plan - add click and collect service and on line sales within and outwith core hours

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(e) LICENCE NO. 152, THE ROO'S LEAP, 2 TRAILL DRIVE, MONTROSE, DD10 8SW

Name of Applicant – Roo's Leap (Montrose) Limited, 2 Traill Drive, Montrose, DD10 8SW

Type of Licence: On and Off Sales

Description of Variation

1. **Terminal Hours** – opening times for on sales changed to 09.00 Monday to Sunday.

The Board is asked to note that the hours sought for on sales are outwith Board Policy.

2. **Activities** –

- (a) add bar meals, receptions, club and other group meetings and live performances to be allowed within and outwith core licensed hours.
- (b) restaurant facilities, televised sport and outdoor drinking to be allowed to take place out with core licensed hours (currently within core hours only).
- (c) add gaming within core hours.

The following activities/services may take place in the public parts of the premises –

- (a) Restaurant – breakfasts and other food and non-alcoholic beverages may be provided prior to 09.00 Mondays to Sunday.
- (b) Receptions/Clubs or other group meetings – may provide this facility to include as required food and non-alcoholic beverages prior to 09.00 Monday to Sunday.
- (c) Recorded music/live performances/televised sport – may be provided prior to 09.00 Mondays to Sunday.
- (d) Outdoor drinking facilities – may be provided prior to 09.00 Monday to Sunday.

3. **Other Activities**

- (a) Wine, spirit and beer tastings may take place during core licensed hours.
- (b) Food tasting events, charity events, quiz nights, product launches/promotions may take place both during and outwith core licensed hours.
- (c) A takeaway facility will be provided prior to and during core licensed hours for persons attending the premises and telephone/online orders for collection/delivery.

COMMENTS RECEIVED

Environmental and Consumer Protection.

This service would have no objections to the proposals subject to the conditions prohibiting the playing of amplified music in the outdoor drinking areas.

LICENSING STANDARDS OFFICER VISIT REPORT

An application for Major Variation has been received from Christopher Beattie in respect of:

Roo's Leap, 2 Traill Drive, Montrose, Angus, DD10 8SW

The premises are located beside Montrose Golf Links in a non-residential area.

Background:

An application from Brodies LLP Solicitors (on behalf of the applicant) was received 23 November 2020. The Licensing Board at their meeting on the 18 February 2021 will consider this application.

Licensing Standards Officer's Report:

Due to the COVID-19 pandemic, I have been unable to visit these premises as I normally would when an application for Major Variation is received. However, I did have a video call meeting with the applicant on 20 January 2021 to discuss several aspects of their application:

- 1) Changes to the Operating Plan:
 - a) Restaurant facilities, televised sport and outdoor drinking facilities (outwith core hours)
 - b) Bar meals, receptions, clubs or other group meetings and live performances (within and outwith core hours)
 - c) Gaming (within core hours)
- 2) Change of commencement hour: 11am to 9am Monday - Sunday

Changes to the Operating Plan

The applicant has proposed a series of changes to the Operating Plan of the premises. The times that any changes out with core hours commence are dependent on the Board's decision on matter two. The applicant has agreed and understands that if the Board refuse to permit on-sales from 9am, any references to these activities being provided before 9am will be changed to the time that the Board agree to commence on-sales from.

The applicant has advised that permitting these activities out with core hours are to permit breakfasts to be served both inside the premises and in their outdoor drinking area. They have also added gaming to their operating plan within core hours so that they are able to host charity evenings which may take the form of a race night or bingo evening. The applicant understands that no alcohol can be sold out with core hours.

Opening Hours

The applicant has applied to change their on-sales commencement hour from 11am to 9am each day of the week. As Members will be aware, this is some two hours before policy hours. The Policy reads:

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.*

I would remind members that the Board's policy hours have been established to promote the licensing objectives, in particular in this instance, protecting and improving public health. I would ask Member's if they consider permitting on-sales from 9am to be consistent with this objective, bearing in mind the well published relationship between Scotland and alcohol. I would ask if Board Member's consider increasing the availability of consumption of alcohol to be in keeping with this.

That said, however, I would also remind members that in terms of the Licensing Policy each application is to be determined on its own merits and are therefore entitled to grant this application if so minded.

To help the Board in its decision making, I would advise that the Licensing Department have received only one complaint about this premises. In July 2020, a complaint was received that the capacity of a temporary outdoor drinking area had been breached, with little or no social distancing taking place. However, after investigation and a visit from me, that complaint was determined to be unfounded. The premises are not located in a heavily residential area, with most adjacent premises being commercial or recreational in nature and the residents there being the licence holder and premises manager themselves.

The applicant advised me that the purpose of this proposal was to permit “champagne breakfasts” at their premises. It has not been submitted with the intention of operating a pub between 9am-11am. The premises are a restaurant and are seeking new ways of operating following the devastating impact of COVID-19 on the hospitality industry. The premises are not seeking to operate as a pub, alcohol will be served with food. The applicant understands that the hours he has applied for are out with policy and has intimated that he would be amenable to a 10am start for on-sales if Members were not satisfied with a 9am start. This may be, in the view of Board Members, more in keeping with the licensing objective of Protecting and Improving Public Health.

During the video call, I took the opportunity to ask the Licence Holder to show me if he had all statutory notices on display and all appropriate paperwork. For Member’s information, I had carried out an inspection during my July 2020 visit and identified no issues and identified no discrepancies on this occasion either.

I informed the applicant that the matters we discussed would form part of this Report to be placed before the Board.

I duly submit this report for consideration by Board Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council