

ANGUS LICENSING BOARD – 16 SEPTEMBER 2021

APPLICATIONS FOR AN OCCASIONAL LICENCE

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to present 10 applications from 4 premises for an occasional licence under the Licensing (Scotland) Act 2005 which require to be determined by the Board.

1. RECOMMENDATIONS

It is recommended that the Board consider and determine each Application in terms of one of the following options:-

- (i) to grant the application, subject to the Mandatory Conditions and any other discretionary or local conditions which the Board may wish to impose; or
- (ii) to refuse the application on one or more of the grounds referred to in Paragraph 3.2.

2. BACKGROUND

The Board has received ten applications from 4 premises for an occasional licence under the Licensing (Scotland) Act 2005 which require to be determined by the Board. The applications are detailed within **Appendix 1** of the Report.

3. LEGAL IMPLICATIONS

3.1 In respect of each application the Board must consider whether any of the grounds for refusal specified in Section 59(6) of the Licensing (Scotland) Act 2005 applies and – (a) if none of them applies, the Board must grant the application;

- (b) if any of them applies, the Board must refuse the application.

3.2 The grounds for refusal are:-

- (a) that the premises to which the application relates are excluded premises;
- (b) that the application must be refused under section 56(6A), (If the granting of an occasional licence application would result in the occasional licence limit being exceeded), 64(2) (If the granting of an occasional licence application would allow alcohol to be sold in the premises for a continuous period of 24 hours or more), or 65(3) (If the granting of an occasional licence application is such that the hours proposed in the application would permit alcohol to be sold for consumption off the premises before 10am, after 10pm, or both);
- (c) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
- (d) that, having regard to –
 - (i) the nature of the activities proposed to be carried on in the premises to which the application relates;
 - (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.

3.3. In determining any application which is to be determined in accordance with Paragraph 3.2, the Board must take into account any report from a Licensing Standards Officer under Section 57(3) of the Licensing (Scotland) Act 2005.

3.4. The Board must also, in determining any application, have regard to a notice made by any person to the Board under section 58 of the Licensing (Scotland) Act 2005 objecting to the occasional application on any ground relevant to one of the grounds for refusal specified at paragraph 3.2 above, and to any representations made to the Board concerning the application, including, in particular, representations –

- (i) in support of the application, or
- (ii) as to conditions which the person considers should be imposed.

The Board may reject a notice of objection or representation under Section 58 of the Licensing (Scotland) Act 2005 if the objection or representation is frivolous or vexatious.

3.5. Where the Board grants an Occasional licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of Schedule 4 of the Licensing (Scotland) Act 2005) as they consider necessary or expedient for the purposes of any of the licensing objectives.

The Board may not impose a condition which -

- (i) is inconsistent with any condition –
 - (a) to which the occasional licence is subject by virtue of Schedule 4,
 - (b) or prescribed
- (ii) would have the effect of making any such condition more onerous or more restrictive; or
- (iii) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

4. INFORMATION

To assist the Board in determining each occasional licence application, Reports have been raised by the Licensing Standards Officer as detailed in **Appendix 1** of this report.

5. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

6. HUMAN RIGHTS IMPLICATIONS

In dealing with the matters set out in this report the Board will have regard to any human rights issues pertaining to the applicant.

7. CONSULTATION

The Chief Constable of Police Scotland and the Licensing Standards Officer have been consulted in the preparation of this Report.

8. NOTIFICATION

The Applicants, and or their Agents or representatives, have been given a copy of this report and its appendices and been invited to attend the Board.

REPORT AUTHOR: Nannette Page, Team Leader

EMAIL DETAILS: LEGDEM@angus.gov.uk

ANGUS LICENSING BOARD – 16 SEPTEMBER 2021

(a) ROYAL HOTEL, CASTLE STREET, FORFAR, DD8 3AE,

OCCASIONAL LICENCE APPLICATIONS – 6214 and 6215

Dates Requested: 22nd September to 5th October 2021 & 6th October to 19th October 2021

Report by Licensing Standards Officer

The applicant, Donald Stewart submitted five occasional licence applications on 3rd August 2021. Three of the five applications were granted under delegated authority by the Convener, Vice Convener and local member on 18th August 2021 due to the dates of the applications being received and were granted with conditions.

Background:-

The five applications were to licence the Roof Top Terrace of the Hotel, which is used as an outdoor drinking area, but which is not included on the current premises licence.

Mr Stewart informed me that he has always used the Roof Top Terrace as an outside drinking area. but unfortunately, the premises licence does not permit this. I therefore informed Mr Stewart of this and provided relevant guidance.

Mr Stewart has advised me that a major variation application will be submitted to allow the Roof Top Terrace area to be used on a permanent basis shortly. As far as I am aware an Application for Major Variation has not been received to date.

A noise complaint was received through the generic law Licensing email address on 22nd July from a neighbour who said the premises were holding a "Disco" within the roof top terrace area of the premises on Saturday 17th July 2021 from 7pm until 10pm and the music was extremely loud that it could be heard above their television. This could not be verified due to the complaint coming in after the event. I telephoned Mr Stewart who advised there wasn't a disco but there was music being played. He assured me that it wasn't loud and that this wouldn't happen again. I informed Mr Stewart that due to COVID Regulations and applicable Scottish Government Guidance at the time that music shouldn't have been played at all.

Objection from Environmental Health

Environmental Health have objected to the Occasional licence unless the following conditions are applied to the licence but the applicant states that they would not be willing to comply with these as their business would suffer and the premises would not be viable. I would ask Members to consider whether they wish to grant the licence without these conditions or apply these conditions despite the applicant's unwillingness. I would ask Members to note that the premises has been operating, albeit unlicensed, without the conditions and these conditions are attached but that these conditions are attached routinely to similar areas.

The Convener, Vice Convener and Local Member have previously granted earlier applications with the following conditions attached:

1. Patrons shall not be permitted to use the external drinking areas beyond 21.00.
2. No music to be played in the external drinking areas.
3. No music or amplified sound to be played from an indoor area with the intention of it being heard in the outdoor area

Additional Conditions

1. Licence to be operated in line with the Noise Management Plan.
2. Licence to be operated in line with the layout plan submitted with the Occasional Licence Application.
3. The premises will only be operated where permitted by, and in accordance with, legislation, regulations and directions of the UK and Scottish Governments relative to the COVID-19 pandemic whether relating to the protection of public health, restrictions of social gatherings, requirement for social distancing or otherwise. For the avoidance of doubt, the legislation, regulations and directions of the UK and Scottish Governments relative to the COVID-19 pandemic shall override any conditions contained in this document should they conflict.
4. All drinks must be decanted into plastic containers at the point of sale.
5. The licence holder shall maintain a record of Customer details as outlined by the Scottish Government Test and Protect programme here:
<https://www.gov.scot/publications/coronaviruscovid-19-tourism-and-hospitalitysectorguidance/pages/collecting-customer-contact-details>
6. Children and young persons will only be permitted into licensed premises where the primary purpose of allowing them access is to consume a meal. Children and young persons will only be permitted in licensed premises until 9.00pm or one hour after cessation of serving of food to the individual person or group of persons consuming the meal, whichever is the earlier.

To explain Condition 6, the applicant is wishing to permit children and young person's access within the area until 10pm. Board policy would normally only allow children and young person access in relation to an occasional licence where the catering is for family activities and then it is normal practice for this entry to only be allowed until 9pm.

I duly submit this report for consideration of Board Members.

Nicky Corletto
Licensing Standards Officer
Angus Council

**(b) STAG HOTEL, 142 CASTLE STREET, FORFAR
OCCASIONAL LICENCE APPLICATIONS: 5855 and 6180**

Dates Requested: - 27th September – 10th October 2021 and 11th – 24th December 2021

On sales and off sales – 11am to 9pm daily

Report by Licensing Standards Officer

The Occasional Licence Applications are in respect of a beer garden, which is situated on the garden area to the north of the Stag Hotel, Forfar. The applicant, Susan Campbell has requested that the occasional licences have on sales only from 11am until 9pm each day.

The applicant has already been granted a total of 22 Occasional Licences in respect of this outdoor area. This is in excess of Board policy at Section 4.4.4.

Having regard to the section of Statement of Licensing Policy noted above, the applicant is generally required to demonstrate that the Occasional Licence applied for is for a special event so that the Occasional Licence process is not being seen to circumvent the full Premises Licence/Major Variation process.

The applicant has not yet submitted a Major Variation application.

The Board ought to bear in mind the terms of the Statement of Licensing Policy 6.6, namely that, every application needs to be dealt with on its own merits and that they are not restricted in your decision making.

Reason for Comments

I would ask Members to consider these 2 Occasional Licence applications for the following reasons:-

- Having regard to the Board's own Statement of Licensing Policy at section 4.4.4, these applications bring their total number of Occasional licence applications to 24. The applicant has not submitted an application for a Major Variation and it is not clear when the applicant intends on submitting one.

If the Board is minded to grant the application(s), I would recommend granting the licences subject to the mandatory and local conditions as well as additional conditions detailed in **Appendix 2** of this Report.

Nicky Corletto
Licensing Standards Officer
Angus Council

(c) **MARKET ARMS, 95 HIGH STREET, MONTROSE, DD10 8QY**
OCCASIONAL LICENCE APPLICATIONS 6098 and 6099

Dates Requested: - 28th September – 11th October 2021 and 12th October – 25th October 2021

On sales – 11am to 9pm daily

Report by Licensing Standards Officer

The applicant, William Dorward has submitted Occasional licence applications in respect of the pavement café which is situated on the pavement directly outside the Market Arms, Montrose. The applicant has requested that the licences be granted with on sales from 11am until 9pm each day. There is no request for off-sales.

Members should note that the applicant has been granted permission by the Roads Authority to use the pavement area. A condition has been attached to the Road permit that the area can only be used until 8pm. The Board considered similar applications at their last meeting and only granted the licence until 8pm in line with the Road permit.

The applicant has already been granted a total of 7 Occasional Licences in respect of this outdoor area which is in excess of the Board policy at Section 4.4.4.

Having regard to the section of Statement of Licensing Policy noted above, the applicant is generally required to demonstrate that the Occasional Licence applied for is for a special event so that the Occasional Licence process is not being seen to circumvent the full Premises Licence/Major Variation process.

The applicant has not indicated that they intend to apply for a Major Variation.

The Board ought to bear in mind the terms of the Statement of Licensing Policy 6.6, namely that, every application needs to be dealt with on its own merits and that they are not restricted in your decision making.

Reason for Comments

I would ask the Members to consider the 2 Occasional Licence application for the following reasons:

Having regard to the Board's own Statement of Licensing Policy at section 4.4.4, these applications bring their total number of Occasional licence applications to 9. The applicant has not submitted an application for a Major Variation.

If the Board is minded to grant the applications, I would recommend granting the licences subject to the mandatory and local conditions as well as additional conditions detailed in **Appendix 2** of the Report.

Nicky Corletto
Licensing Standards Officer
Angus Council

**(d) JONATHAN CALDER, 24 SANDERSON PLACE, NEWBIGGING, DD5 3RQ
OCCASIONAL LICENCE APPLICATIONS 6242 - 6245**

Dates Requested: 25th September - 8th October 2021; 16th October – 29th October 2021;
6th November – 19th November 2021 and 27th November – 10th December 2021

Report by Licensing Standards Officer

Jonathan Calder, Personal Licence Holder, submitted four applications for Occasional Licences on 24th August 2021 in respect of a business involving preparing cocktail packs to be delivered to people in their homes. The applicant has requested that the licence runs from 25th September 2021 with off sales from 10am to 10pm each day. There is no application for on sales.

The applicant has already been granted a total of 12 Occasional Licences since COVID 19 restrictions impacted the trade. This is in excess of Board policy at Section 4.4.4.

The Board temporarily relaxed this part of their policy until 12 August 2021. Any occasional licences applied for where the proposed start date was prior to 12 August 2021 have been granted under delegated authority in line with this relaxation.

Having regard to the section of Statement of Licensing Policy noted above, the applicant is generally required to demonstrate that the Occasional Licence applied for is for a special event so that the Occasional Licence process is not being seen to circumvent the full Premises Licence process.

At the time of previous Occasional Licence applications submitted earlier in the year, the applicant was emailed during May 2021 informing him that he was expected to make movement towards applying for a Premises Licence and highlighted the terms of the Policy. The applicant was emailed again during July 2021 requesting that he provide us with an update in terms of the future of his business asking when he would be applying for a Premises Licence. I have had communication with Mr Calder who confirms that he will be submitting a Premises Licence and has since applied for his section 50 certificates from the relevant departments and a premises licence application will be lodged as soon as the section 50 certificates have been issued to him.

Reason for Comments

I would ask the Members to consider these Occasional Licence applications for the following reasons:

- Having regard to the Board's own Statement of Licensing Policy at section 4.4.4, these applications bring their total number of Occasional licence applications to 16.

If the Board is minded to grant the application(s), I would recommend granting subject to the mandatory and local conditions as well as additional conditions detailed in **Appendix 2** of the Report with the exception of conditions 1,2, and 7 on the basis that it is an off-sales delivery service.

Nicky Corletto
Licensing Standards Officer
Angus Council

Additional Conditions for Occasional Licences:

- 1) No music to be played in the outdoor area
- 2) No music to be played from an indoor area with the intention of it being heard in the outdoor area
- 3) Licence to be operated in line with Noise Management Plan if applicable
- 4) Licence to be operated in line with layout plan
- 5) The premises will only be operated where permitted by, and in accordance with, legislation, regulations and directions of the UK and Scottish Governments relative to the COVID-19 pandemic, whether relating to the protection of public health, restrictions of social gatherings, requirement for social distancing or otherwise. For the avoidance of doubt, the legislation, regulations and directions of the UK and Scottish Governments relative to the COVID-19 pandemic shall override any conditions contained in this document should they be at conflict.
- 6) All drinks must be decanted into plastic containers at the point of sale
- 7) Premises are expected to provide adequate recycling facilities for the plastic and disposable crockery
- 8) The Licence Holder shall maintain a record of Customer details as outlined by the Scottish Government Test and Protect programme here:
<https://www.gov.scot/publications/coronaviruscovid-19-tourism-and-hospitality-sector-guidance/pages/collecting-customer-contact-details/>