

**ANGUS LICENSING BOARD – 24 MARCH 2022**

**APPEAL TO THE SHERIFF COURT**

**REPORT BY THE CLERK TO THE LICENSING BOARD**

**ABSTRACT**

The purpose of this Report is to advise the Board of an Appeal against a decision of the Board at the meeting of 12 August 2021 and the outcome of the Appeal.

**1. RECOMMENDATIONS**

It is recommended that the Board notes:-

- (i) that an appeal was lodged at Forfar Sheriff Court against the decision of the Board at its meeting of the Board on 12 August 2021, to refuse to grant a variation of the premises licence by varying the terminal hour for the service of alcohol from 1am on Fridays and Saturdays to 2am on Fridays and Saturdays; and
- (ii) the decision of the Sheriff, having regard to the Joint Minute lodged in process, in respect of this matter.

**2. BACKGROUND**

- 2.1 A report was presented to the Board at its meeting on 12 August 2021 in respect of an application by Mr Din to vary Licence 313 in respect of Bar 1320, 1 West Port, Arbroath, DD11 1RF. The application proposed to amend the core times to Monday to Thursday 11:00 to 24:00, Friday and Saturday 11:00 to 02:00 and Sunday 11:00 to 24:00. Report LB 32/21 refers.
- 2.2 The Board granted core times as per the application in respect of Monday to Thursday and Sunday but refused to grant the request for the terminal hour of 2am on Fridays and Saturdays.
- 2.3 Upon refusal of the aforesaid the Appellant lodged an appeal in terms of section 131 of the Licensing (Scotland) Act 2005 at Forfar Sheriff Court.
- 2.4 The basis of the appeal was that the Board's refusal was based on an error in Law and incorrect material fact and based on an unreasonable exercise of discretion.
- 2.5 Upon receipt of the Appeal, and after careful consideration of the basis of the appeal (including seeking the advice of Counsel), the office of the Clerk gave legal advice to the Convenor and Vice Convenor of the Board on the prospects of successfully defending the Board's decision. The Clerk obtained agreement to discuss terms of settling the case with the Appellant.
- 2.6 Having regard to the desire to minimise expense, agreement was reached by way of a Joint Minute that the Board would not oppose the appeal against the decision of the Board on 12 August 2021. This was on the basis that the case would be remitted back to the Board for reconsideration of its decision and an award of expenses being made against the Board. The extent of these expenses is still being finalised.
- 2.7 Given the above, a further report has been submitted to this meeting of the Board to permit the Board to reconsider its decision in respect of the terminal hour of 2am on Fridays and Saturdays.

**3. FINANCIAL IMPLICATIONS**

- 3.1 The Sheriff has made an award of expenses against the Licensing Board. The extent of these expenses is still being finalised and will be met from the Licensing budget.

**4. LEGAL IMPLICATIONS**

- 4.1 Counsel was instructed to provide an advice note to the Board regarding this matter. Counsel's advice will be communicated to Members.

**5. HUMAN RIGHTS IMPLICATIONS**

- 5.1 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 licence holder.

**REPORT AUTHOR:** Tina Magson, Team Leader – Legal Team 1

**E-MAIL:** [LEGDEM@angus.gov.uk](mailto:LEGDEM@angus.gov.uk)