

AGENDA ITEM NO 8

REPORT NO LB 28/22

ANGUS LICENSING BOARD – 9 JUNE 2022

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 an application to vary a premises licence under section 29 of the Licensing (Scotland) Act 2005 which requires to be determined by the Board.

1. RECOMMENDATIONS

It is recommended that the Board considers and determines the application to vary a premises licence as detailed in the **Appendix**, 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.

2. BACKGROUND

The Board has received an application to vary a premises licence under section 29 of the Licensing (Scotland) Act 2005 (“the Act”) which requires to be determined by the Board because the matters are not subject to delegation and can 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 LB28/22
ANGUS LICENSING BOARD – 9 JUNE 2022

(a) LICENCE NO. 313, BAR 1320, 1 WEST PORT, ARBROATH, DD11 1RF

Name of Applicant – Shahzaz Din

Type of Licence – On and Off Sales

Description of Variation

1. Core times

amend to:-

Friday and Saturday 11.00 to 02.00

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

Objection Received

A letter of objection received from Police Scotland dated 1 July 2021 will be submitted to members.

LATE OBJECTION RECEIVED

To consider or not the late objection received to be determined by the Board as a preliminary matter at the Hearing. No advance disclosure to Members.

The Board will be required to determine, having heard from the objector and the applicant, whether there are good reasons to permit the objection to be considered.

BACKGROUND INFORMATION.

For background information, it is suggested Members note Report LB 18/22 which is attached as Appendix 2 for members information.

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.

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