

ANGUS LICENSING BOARD – 15 SEPTEMBER 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 9 June 2022 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 9 June 2022, to refuse to grant a variation of the premises licence by varying the terminal hour for the service of alcohol from 2.30am on Fridays and Saturdays to 3.30am on Fridays and Saturdays; and
- (ii) the decision of the Sheriff in respect of this matter.

2. BACKGROUND

- 2.1 A report was presented to the Board at its meeting on 9 June 2022 in respect of an application by KWS Property Limited to vary Licence 318 in respect of Devitos, 11 Millgate, Arbroath, DD11 1NN. The application proposed additional activities, amending access times for children and young persons and to amend the core times; Friday 19.00 to 3.30; Saturday 13.30 to 3.30 and Sunday 12.00 to 02.00. Report LB 27/22 refers.
- 2.2 The Board granted the variation as respects additional activities, amending access times for children and young persons and also earlier opening times as per the application but refused to grant the request for the terminal hour of 3.30am on Fridays and Saturdays.
- 2.3 Upon refusal 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, was an unreasonable exercise of discretion and contrary to natural justice.
- 2.5 Upon receipt of the Appeal, and after careful consideration of the basis of the appeal, the office of the Clerk gave legal advice to the Convener 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 that the Board would not oppose the appeal against the decision of the Board on 9 June 2022. 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 has been agreed.
- 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 3.30am on Fridays and Saturdays.

3. FINANCIAL IMPLICATIONS

3.1 The Sheriff will make an award of expenses against the Licensing Board.

4. LEGAL IMPLICATIONS

4.1 Any legal implications for future Board hearings arising from this matter 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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