

## AGENDA ITEM NO 6

REPORT NO LB45/22

### ANGUS LICENSING BOARD – 15 SEPTEMBER 2022

#### PREMISES LICENCE – 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

**REPORT AUTHOR: Tina Magson, Team Leader – Legal**  
**E-MAIL: [LEGDEM@angus.gov.uk](mailto:LEGDEM@angus.gov.uk)**

**APPENDIX 1 TO REPORT LB45/22  
ANGUS LICENSING BOARD – 15 SEPTEMBER 2022**

**(a) LICENCE NO 318, DEVITOS, 11 MILLGATE, ARBROATH, DD11 1NN**

**Name of Applicant** – KWS Property Limited, Devitos, 11 Millgate, Arbroath, DD11 1NN

**Type of Licence:** On Sales

**Description of Variation**

**1. Core Hours**

Amend terminal hours on: - Friday from 02.30 to 03.30; and  
Saturday from 02.30 to 03.30.

**The Board are advised that the hours requested are out with Board Policy**

**Objection Received**

Police Scotland submitted a letter of objection dated 20 May 2022, **a copy of which will be submitted to members.**

In addition, the Board have also received 4 notices of objections, all within the relevant consultation period and **copies of each objection will be submitted to members.**

**Late Objection Received**

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

**Comments Received**

**Environmental Health comments**

The reason for the variation is the extension of the operating hours to include opening until 03.30hrs on Saturday and Sunday mornings. In this regard entertainment noise is a potential concern however this service can confirm that we have not received any justifiable complaints related to entertainment noise from these premises. That being the case this service would not object to this application and have no other comments to make.

## LICENSING STANDARDS OFFICER REPORT

An application for a major variation of a premises licence was received in respect of:

**Devitos Nightclub, 11 Millgate, Arbroath, DD11 1NN**

### **Premises Licence No 318**

The premises, as you can see from the location plan, is located on the South side of the Millgate, towards the junction of Burnside Drive. There are both residential and commercial properties within this location. The current premises licence holder is K.W.S Property Ltd, 11 Millgate Road, Arbroath, DD11 1NN. The premises manager is Maureen Milne, and this has been the position since 16 June 2010.

### **Background:**

The application to vary the premises licence was received on 28 April 2022.

### **Major Variation**

The application is in respect of:

- Changing core hours on Friday and Saturday: 02.30 to 03.30 hours (an increase of one hour each day).

The Board are reminded that the changes to the core hours are outwith the Board Policy.

### **Statutory Checks**

I have been unable to visit the premises so cannot comment on the statutory paperwork and notices, but I can advise that the previous LSO visited the premises in 2021 and confirmed that all paperwork was in order and that the venue had extensive policies in relation to vulnerable people, dispersal and first aid which are in addition to the statutory requirements. The method of recording refusals of sale is to a particularly high standard as it is kept in good detail.

The personal licence of Maureen Milne, the premises manager, is currently valid and she is due to undergo her refresher training no later than September 2024.

On checking the systems there was a noise complaint made to Environmental Health last year. The complaint was from a neighbour who alleged to be able to hear loud music in their home from Thursday to Sunday. Scott Gillespie and Martin Petrie from ECP visited the premises on 2<sup>nd</sup> September 2021. They were given a tour by Kevin Sivewright, a connected person of the licence, who explained how the premises were operated. He explained that the nightclub has an existing ventilation system to allow ventilation for COVID purposes and this stops the doormen having to leave the doors open. He explained that the building is spread over two levels, a ground level bar/nightclub which is open Thursday to Sunday and a first level floor disco which is only open on a Saturday, and it was likely that the noise problem was coming from inadequate noise insulation on the ground floor.

The main entrance to the ground floor disco has a 3-door system. A large outer door, a set of double swing doors and then a single door. On inspection they found some issues with the middle set of swing doors in that they didn't meet neatly in the middle and there were gaps underneath which could have accounted for the noise escape. It was agreed that this would be investigated, and door staff would be advised to keep the outer doors closed between patrons entering and leaving the premises. As far as I am aware the measures put in place have helped mitigate the noise issues.

A further complaint was received on 9<sup>th</sup> September 2021 regarding noise, anti-social and unreasonable behaviour which included fighting, swearing, and urinating in the street. The complainer was disabled and lived in a ground floor flat. She stated that she is too afraid to go out of her property on Friday and Saturday evenings.

PC Yvonne Mas and PC Darren Smith, Police Scotland visited the premises on 1<sup>st</sup> October 2021. In attendance at the meeting was Kevin Sivewright, a connected person of the licence, Andy Hardie Head Door Steward and Janet Hood, Agent for the premises licence holder. At this meeting they were advised that on busy nights, Fridays & Saturdays, there are 7 door stewards on duty. They endeavour to get

patrons into the premises as quickly as possible to alleviate any noise issues. The club has a refusals book and staff are briefed on persons who are not allowed access. They have a clicker system in place, and they limit the entry capacity to 400 persons.

The problem the Club has is that people congregate and sit on a wall opposite the club and the door stewards are only insured to disperse patrons who are in the curtilage of the licence premises. The premises have signage reminding patrons that they are in a residential area and to be good neighbours. The DJ reminds patrons not to linger at the end of the night.

I feel that the premises are doing everything they can to reduce anti-social behaviour and noise issues for residents. You are never going to be able to stop the noise of a high volume of people, under the influence of alcohol, exiting the premises at the end of the evening and they have procedures in place to try to alleviate this.

The Boards policy has been put in place to promote the licensing objectives of prevention of crime and disorder, prevention of public nuisance and protecting and improving public health and I would remind Board members that each application is to be determined on its own merits.

The premises licence already has the additional conditions regarding children and late-night premises.

I duly submit this report for consideration by the Board.

Nicky Corletto  
Licensing Standards Officer  
Angus Council

