

## AGENDA ITEM NO 6

REPORT NO LB51/22

### ANGUS LICENSING BOARD – 10 NOVEMBER 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 applications to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 which require to be determined by the Board.

#### 1. RECOMMENDATIONS

It is recommended that the Board considers and determines each 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 applications to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 (“the Act”) which require 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 LB51/22  
ANGUS LICENSING BOARD – 10 NOVEMBER 2022**

**(a) LICENCE NO. 16, BRECHIN PARTY TIME, 1-3 SWAN STREET, BRECHIN, DD9 6EE**

**Name of Applicant** – Usman Hameed

**Type of Licence:** Off Sales

**Description of Variation**

**1. Operating Plan -**

Add at any other activities

The premises will offer a delivery service which may include alcohol via a third-party delivery service provider. All deliveries which include alcohol will be made within the permitted times to deliver alcohol allowed under the Act. The premises licence holder will take steps to ensure that the delivery partner operates a Challenge 25 age verification policy.

**Comments Received**

Licensing Standards Officer has suggested in her report that additional conditions should be applied to the licence in regard to the delivery sales of alcohol.

## LICENSING STANDARDS OFFICER REPORT

An application for a major variation was received on 30 August 2022 in respect of:

**Brechin Party Time, 1-3 Swan Street, Brechin, DD9 6EE**

**Premises Licence Number: 16**

### **Background:**

The premises, as you can see from the location plan, is located on the corner of Swan Street, and is surrounded by commercial properties. The applicant is Usman Hameed who is both the licence holder and the premises manager at these premises.

### **Licensing Standards Officer Report:**

The major variation application is to amend the operating plan to offer customers a delivery service. They are also adding a statement saying that "the premises will offer a delivery service which may include alcohol via a third-party delivery service provider. All deliveries including alcohol will be made within the permitted times to deliver alcohol allowed under the Act. The premises licence holder will take steps to ensure that the delivery partner operates a Challenge 25 age verification policy".

As the premises are offering this service the Board may wish to include the following additional conditions on the licence:

1. Alcohol sold or dispatched from the premises will be delivered only to residential or business addresses.
2. The Licenceholder shall exercise due diligence to check the age of customers or potential customers, be satisfied that they are aged 18 years of over before any sale is completed and otherwise shall comply with the age-related sale provisions in the Licensing (Scotland) Act 2005.
3. Sales of Alcohol may only take place within licensed hours. Any person submitting an order out with the licensed hours is to be advised that the order will be processed after the commencement of the next period of licensed hours.
4. The Licenceholder shall ensure that those persons who deliver the alcohol are aware of the provisions of, and restrictions on, the delivery of alcohol contained in the Licensing (Scotland) Act 2005.
5. A notice, or electronic notice if it is a third party operator, shall be affixed to every package containing alcohol dispatched from the premises stating that the package shall contain alcohol and that it is an offence to deliver it to a person under 18 years of age.

### **Statutory Checks**

I visited the premises on 29 June to carry out a routine compliance visit and all paperwork was found to be in order. I discussed with Mr Hameed that I would be suggesting additional conditions should the Board be minded to grant the application and he stated that he would be happy to comply with the delivery conditions.

I do not have any issues with the application and duly submit this report for consideration of Board Members.

Nicky Corletto  
Licensing Standards Officer  
Angus Council