

AGENDA ITEM NO 7

REPORT NO LB3/23

ANGUS LICENSING BOARD – 19 JANUARY 2023

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 for the same variation of the 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 TO REPORT LB3/23
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(a) **LICENCE NO. 203, LODGE THE BRUCE 593 MASONIC, 52 GARDYNE STREET,
FRIOCKHEIM, DD11 4SP**

Name of Applicant – Lodge the Bruce 593 Masonic

Type of Licence: On Sales

Description of Variation

1. Activities

Add within core licensing hours:

Recorded Music
Live Performances
Gaming

No Comments Received

- (b) **LICENCE NO. 274, WELLBANK VILLAGE HALL, 3A KELLAS ROAD, WELLBANK, DD5 3PE**

Name of Applicant – Wellbank & District Amenities Association

Type of Licence: On Sales

Description of Variation

1. Operating Plan

- (a) Add off sales -

Friday, Saturday and Sunday from 17.00 to 22.00

- (b) Activities -

Add accommodation, theatre, films and gaming within and outwith core hours

Add conference, restaurant, bar meals, receptions, club meetings, recorded music, live performances, dance facilities, indoor/outdoor sports, and televised sport outwith core hours

- (c) Further details of activities outwith core hours –

Accommodation outwith core hours is to provide a resilience hub for the community and local area during adverse events. It is also to provide accommodation for local groups such as Girl Guiding to hold sleepovers for units. During these times the bar will be closed and no alcohol sales will be offered.

We are a village hall for the community and as a result are used for various activities during and outwith the core licensing hours. The licensed bar is a secondary function of the hall. Activities can occur prior to the opening hours of the bar and some activities i.e. recorded music could be on after terminal hours for staff cleaning up.

Activities can include but not limited to parties, retirements, funeral and wedding receptions, quiz nights and family events. We have the indoor facilities as well as the outdoor beer garden and picnic area.

The provision of theatre, films and gaming will allow a wider variety of activities to the local community which they currently do not have access to.

No Comments Received

(c) LICENCE NO. 279, SPAR, 42 LINDSAY STREET, KIRRIEMUIR, DD8 5AP

Name of Applicant – CJ Lang and Son Limited

Type of Licence: Off Sales

Description of Variation

1. Operating Plan

(a) Activities - add gaming within and outwith core hours.

(b) Further details of activities outwith core hours – add the following: -

The premises may open for general trade prior to the commencement of core hours. Recorded music may be played, such as Spar Radio, prior to the commencement of core hours. This is background levels only.

National Lottery tickets/cards can be purchased prior to core hours.

(c) Any other activities – add the following text: -

The primary activity undertaken in the premises is the general retail sale of the following: Groceries, confectionery, bread & cakes, crisps/snacks, non-foods, toiletries, frozen & chilled foods, fruit/vegetables/flowers, news & magazines, toys, tobacco & cigarettes, beers/wines/spirits and other alcoholic products and non-alcoholic drinks.

Charity collection point and charitable events take place. Food to Go. Click & collect. Home Deliveries. Paypoint payment. National Lottery outlet. External automated cash machine. Sampling & promotional activities.

2. Capacity

Increase off sales capacity from 12.49m² to 18.21m²

No Comments received

**APPENDIX 1 TO REPORT LB3/23
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(d) LICENCE NO. 310, RAILWAY INN, 1 GARDYNE STREET, FRIOCKHEIM DD11 4SN

Name of Applicant – The Railway (Friockheim) Ltd

Type of Licence: On and Off Sales

Description of Variation

1. Children and Young Persons

- (a) amend terms from “Accompanied by a responsible adult” to: -
Accompanied by a responsible adult between 11.00 and 21.00 daily
- (b) amend ages from 16-17years to: -
5 -17year old
- (c) amend times from “Local Children's Conditions with the exception of condition 2(a)(v) shall apply in accordance with the activity or service provided on the premises” to: -
11.00 – 21.00 daily
- (d) amend parts from “pool area, lounge seated area, not at bar” to: -
Seating areas with tables in lounge, pool table, toilets. No seating at bar.

Comments Received

Licensing Standards Officer submitted a representation stating “the application does not refer to the Model Local Conditions – Children and Young Persons as per Angus Licensing Board’s Statement of Licensing Policy. Members of the Board may wish to make enquiry of the applicant around compliance or not with the conditions.”

Building Standards confirmed if there are no changes to occupancy numbers as stated they would have no comments to make.

The Board are asked to note the applicant confirmed by email on 22 November 2022 that the capacity would remain at the current figure of 65.

Major Variation Application – Railway Inn, Friockheim

Report on behalf of Licensing Standards Officer

Applicant Details

Applicant: The Railway (Friockheim) Limited

Applying as: A Company

Premises or area to be licenced: The Railway Inn, Gardyne Street, Friockheim, DD11 4SN

Dates required: All days of the week

Times required:

On sales: Mon, Tues, Wed, Thurs, Sun 11:00hrs - 00:00hrs
Friday and Saturday 11:00hrs - 01:00hrs

Off sales: All days of the week 11:00hrs - 22:00hrs

Comments on behalf of LSO for Licensing Board Consideration

I submit a representation. The application does not refer to the Model Local Conditions – Children and Young Persons as per Angus Licensing Board’s Statement of Licensing Policy. Members of the Board may wish to make enquiry of the applicant around compliance or not with the conditions.

Tina Magson, Team Leader – Legal and Democratic Services