

AGENDA ITEM NO 5

REPORT NO LB14/23

ANGUS LICENSING BOARD – 16 FEBRUARY 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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LICENCE NO. 180, LINKS PARK STADIUM, WELLINGTON STREET, MONTROSE, DD10 8QD

Name of Applicant: Montrose Football Club Limited

Type of Licence: On Sales

Description of Variation

1. Operating Plan

- (a) Add off sales Monday to Sunday 10.00 to 22.00

For the provision of selling branded beers and spirits in gift packs and special editions. Sales would take place from the already licensed area of the ground.

- (b) The applicant also requested to amend Sunday on sales commencement time from 11.00am to 12.30pm.

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

2. Supplementary Information

Alcohol Prohibition

For two hours before the start of any designated sporting event and one hour after, it is an offence for a person to be in the relevant area of a designated sports ground, or attempt to enter it, in possession of alcohol or a controlled container (e.g. bottle or can) or while drunk. Links Park Stadium is a designated sports ground for this purpose.

“The relevant area” means any part of the designated sports ground—

- (a) to which spectators attending a designated sporting event are granted access on payment; or
(b) from which a designated sporting event may be viewed directly.

Display of Alcohol

It is a Mandatory Condition of a Premises Licence that alcohol which is for sale only for consumption off the premises may be displayed only in one or both of the following—

- (a) a single area of the premises agreed between the Licensing Board and the holder of the licence; or
(b) a single area of the premises which is inaccessible to the public.

In terms of the Premises Licence (Scotland) Regulations 2007, the layout plan of a premises licence is to show:-

- (a) the location of the area or areas to be used for the display of alcohol;
(b) the maximum width and height (in metres) of the frontage to be used for the display of alcohol within that area or those areas; and
(c) the maximum linear measurement (in metres) of any displays of alcohol outside the frontage referred to in head (b)

Comments Received

Licensing Standards Officer advises Board members that during match play the premises cannot offer off sales alcohol as no alcohol is allowed other than in hospitality.

LICENSING STANDARDS OFFICER REPORT

An application for a Major Variation Application was received from Montrose Football Club Limited on 15 December 2022 in respect of:

**Montrose Football Club Limited, Links Park Stadium, Wellington Street, Montrose, DD10 8QD
Premises Licence Number: 180**

Background: -

This is an application for a major variation to the premises licence to:

1. Addition of off sales

Licensing Standards Officer Report:

The major variation application was received on 15 December 2022 whereby the applicant has applied for the addition of an off sales licence to allow for the sale of gift packets of branded beer and spirits. The premises have applied for off sales as per the permitted hours of 10:00am to 10:00pm each day. It should be noted by the Board members that during match play the premises cannot offer off sales alcohol as no alcohol is allowed other than in hospitality.

Statutory Checks

I have been unable to visit the premises but can confirm that to date no complaints have been received.

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

Kevin Leith
Licensing Standards Officer