

AGENDA ITEM NO 4

REPORT NO LB4/24

ANGUS LICENSING BOARD – 15 FEBRUARY 2024

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 variation prescribed by the Licensing (Minor Variations) (Scotland) Regulations 2011 or otherwise.

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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(a) LICENCE NO. 26, BLACK HORSE INN, 84 MURRAY STREET, MONTROSE, DD10 8JY

Applicant: Gordon Alexander Allan

Type of Licence: On Sales

Description of Variation

1. Operating Plan

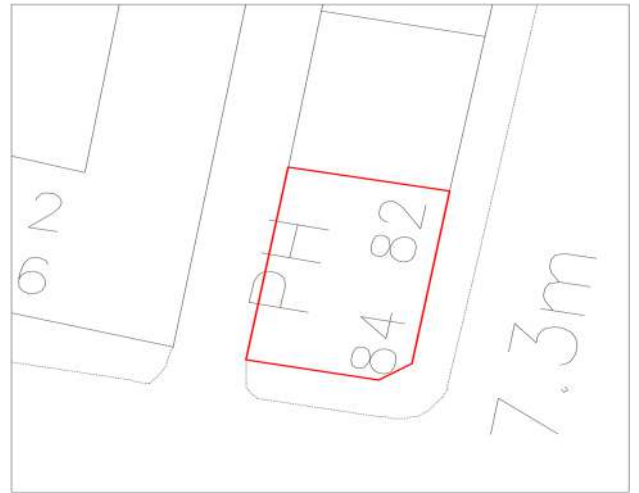
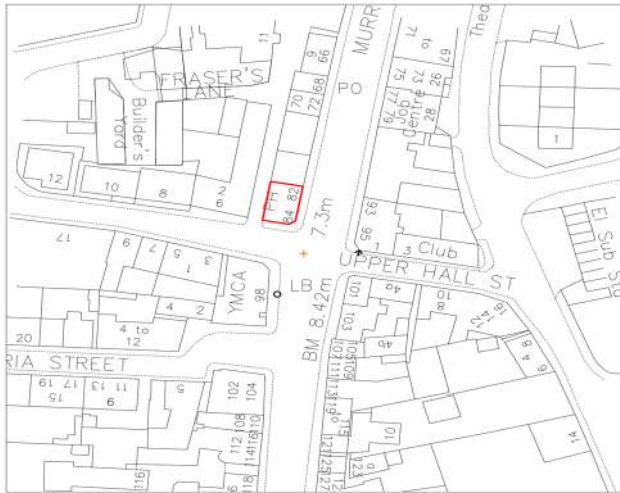
Add accommodation during core licensed hours and outwith core licensed hours.

2. Layout Plan

To include as part of the premises the accommodation above the premises, known as –
2A Lower Hall Street
Montrose
DD10 8JN

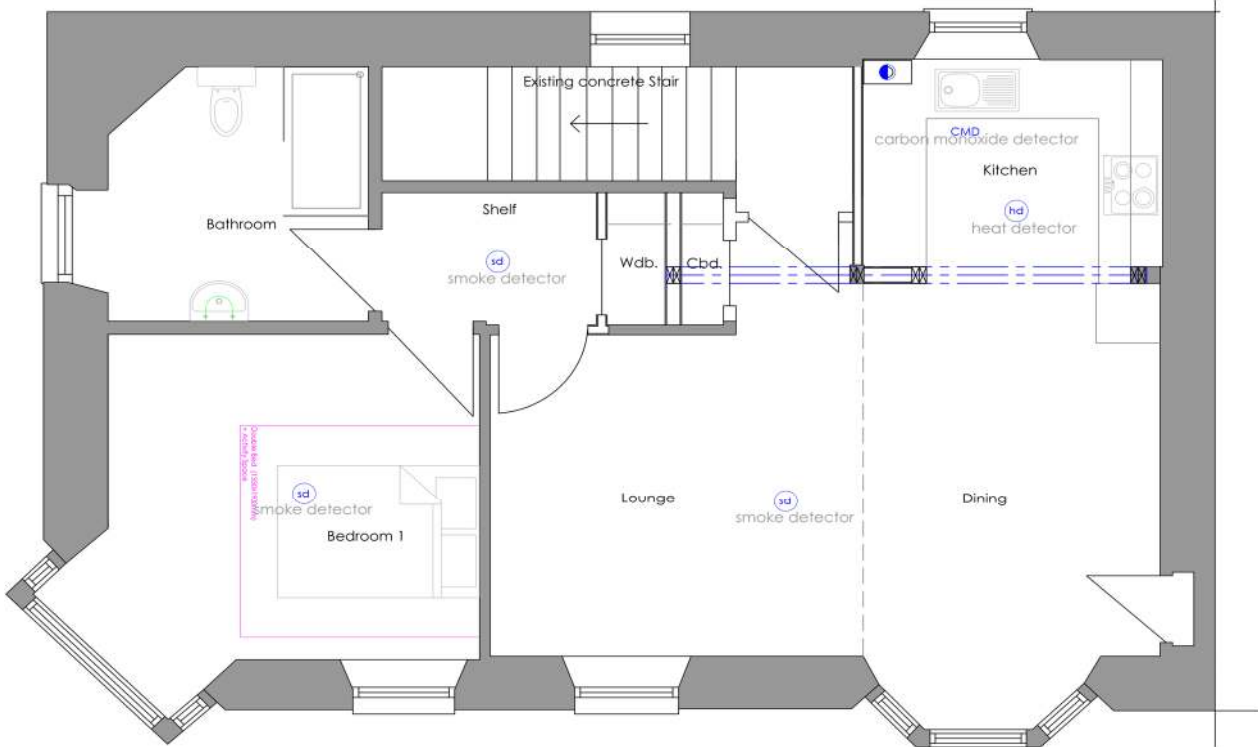
Comments Received

Licensing Standards Officer submitted representations, a copy of which are attached at the end of this Report.



Location Plan (1:1250)

Site Plan (1:250)



Proposed First Floor Plan

CLIENT	Mr Keith Lawrence
PROJECT	Flat above Black Horse Inn, 84 Murray Street, Montrose

(1:50)

LICENSING STANDARDS OFFICER REPRESENTATION

A major variation application was received on 12 December 2023 in respect of:

Black Horse Inn
Premises Licence Number: 26

Background: -

The premises are situated in Montrose. The current premises licence holder is Gordon Alexander Allan and the designated premises manager is Keith John Lawrence.

Major Variation:

The application is in respect of:

1. Adding accommodation above the premises, in and outwith core hours, for short-term letting of a flatted dwelling situated at 2A Lower Hall Street, Montrose, Angus.

I have not visited the premises.

Licensing Standards Officer Report:

On checking the system there have not been any complaints received in respect of these premises.

The major variation is to amend the existing on-sales only premises licence to include short-term let accommodation above the premises address. The address of the current licensed premises is 84 Murray Street, Montrose. The address of the proposed accommodation is 2A Lower Hall Street, Montrose, Angus. Members may wish to seek guidance from the Clerk to the Board in respect of any effect of the Civic Government (Scotland) Act 1982 in respect of the regulation of short-term let properties. I note the current licence terms do not permit children and young persons to be allowed entry to the premises when alcohol is being sold.

I note from the application form that amendment to the layout plan has not been ticked, albeit that a plan has been lodged representing the first-floor accommodation. I presume the applicant seeks to amend the layout plan for the property too, but Members may wish to confirm this with the Applicant.

I further note that the capacity of the premises is not proposed to increase with the proposed variation. It remains at 75. Again, Members may wish to make enquiry of the Applicant in this regard.

Lastly, I note the description of the premises as being "public house on ground level" which will be inaccurate if the variation is granted.

Tina Magson
Manager – Legal Team 1 on behalf of the Licensing Standards Officer
Angus Council