

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO LICENSING BOARD – 20th December 2023

LICENSING (SCOTLAND) ACT 2005

**APPLICATIONS FOR OCCASIONAL LICENCE – REPEATED APPLICATIONS
POLICY**

HEARING

1 Executive Summary/Recommendations

1.1. This report relates to repeated applications for occasional licences for day-to-day trading which, in terms of the Board's Policy in respect of repeated applications for occasional licences, are being brought to the Board for consideration.

The Licensing Standards Officer has highlighted the policy in representations made to these applications. In line with the Policy therefore, the Clerk has declined to deal with these applications and is asking the Board to determine them in accordance with the Legal Test and the terms of the Board's Policy.

A history of applications for the premises is included in the report for background information.

Recommendations

1.2. **It is recommended that the Board considers the materials before them and, in respect of each application, –**

- (a) **Determines whether there is enough evidence before the Board to allow a determination to be made, or whether the Board needs to defer consideration of the matter to the next available Board meeting for further material to be made available; and**
- (b) **Where the Board has concluded that there is sufficient evidence before them to allow a determination to be made, to consider in**

respect of each of the applications made, whether said applications should be granted or refused.

- (c) **If minded to grant the applications, to grant subject to the local conditions listed at Section 3.22, the specific condition referred to at Section 3.23 and any other conditions the Board may determine to be required in respect of the applications.**

2. Decision-Making Route

- 2.1. The undernoted applications have not been considered by the Board previously.

3. Discussion

- 3.1. In terms of Section 58(1) of the 2005 Act, A Licensing Board may, on application of a premises Licence Holder, personal Licence Holder or voluntary organisation, made in relation to any premises (other than licensed premises) in the Board's area, issue to the applicant an occasional licence authorising the sale of alcohol on the premises.

Application(s)

- 3.2. The following applications are the most recent applications to be lodged by Oliver James Payne, a premises licence holder, for Dunecht Whisky, Unit 4, Woodburn Road, Blackburn Industrial Estate, Aberdeenshire, AB21 0RX.

- (a) LAOCC/02476/23: 25th January – 7th February 2024 – 10.00am – 10.00pm
- (b) LAOCC/02477/23: 8th – 21st February 2024 – 10.00am – 10.00pm
- (c) LAOCC/02478: 22nd February – 6th March 2024 – 10.00am – 10.00pm
- (d) LAOCC/02479/23: 7th - 20th March 2024– 10.00am – 10.00pm
- (e) LAOCC/02480/23: 21st March – 3rd April 2024 – 10.00am – 10.00pm

- 3.3. Copies of the application forms are attached as **Appendix 1** to this Report and referred to for their terms.

Consultations

- 3.1. Police Scotland and the Licensing Standards Officer were consulted on the applications.
- 3.2. Police Scotland advised that they were happy with the terms of the application by emails dated 14th November 2023, each response being in identical terms, subject to the following conditions:
1. An age verification system to be in place at the point of sale and delivery of alcohol. (local condition 42)
- 3.3 The Licensing Standards Officer lodged a representation by email dated 14th November 2023 in respect of the most recent five applications.
- 3.4 A copy of the representation is attached as **Appendix 2** to this report and referred to for its terms.

Publicity

- 3.5 The applications were advertised on the Board's website for the statutory period of 7 days.
- 3.6 No objections/representations were received as a result.
- 3.7 Copies of representations made were issued to the Applicant on 30th November 2023.

Policy Hours

- 3.8 The applications comply with the Board's Policy in respect of the hours applied for.

Repeated Applications Policy

- 3.9 Supplementary Policy Statement 4 sets out the Board's Policy in respect of Operating Hours, as well as Occasional Extensions and Occasional Licences.

The Policy is attached as **Appendix 3** to this report and is referred to for its terms. This continues the policy included in the Board's previous Statement of Licensing Policy.

- 3.10 Section 4.35 provides that the Board considers activities such as dances, discos, dinner dances, wedding receptions, parties where a disco or band is provided are generally acceptable for granting an occasional licence.
- 3.11 Additionally, the Board regularly grants occasional licences to permit stall holders at events and markets to provide an off sale facility.
- 3.12 Section 4.36 provides that if the Board sees a pattern of applications for occasional licences or extensions developing for functions or days or hours that could otherwise be accommodated within the operating plan for the premises, the Board may decline to deal with such applications and instead advise that the applicant apply for a major variation of their premises licence to accommodate such events.
- 3.13 Section 4.45 provides that repeated applications for Occasional Licences for the same unlicensed premises and which are:
- Not for detailed specific events; and/or
 - For activities that have been occurring (either in identical or largely similar terms) on the premises regularly over a period of at least 3 months)

Will not generally be considered to be suitable for the grant of an Occasional Licence and will not be granted by the Board under delegated authority but will require a hearing before the Board.

- 3.14 Officers are asking the Board to consider these applications in terms of Section 4.45 of the Board's Policy. In support of the officer's decision to do this, the history of applications for the premises is set out below.

History

1. LAPREM/05118/20 – Application for Grant of Premises Licence for Dunecht Garage, The Terrace, Dunecht, Westhill, AB32 7AX by a different

applicant on behalf of Dunecht Whisky Ltd was lodged on 3rd November 2021. Following difficulties obtaining the required Section 50 certificates for the premises, the applicant withdrew the application on 16th March 2022.

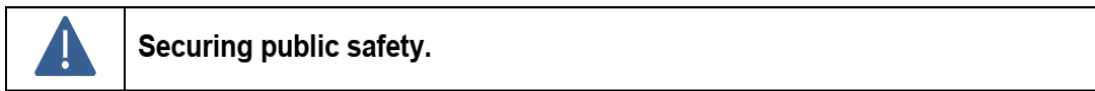
2. The following Occasional Licence Applications have been lodged to date, for a different address, by a different individual but who uses the same email address as Dunecht Whisky Limited, all to trade between the hours of 10.00am – 10.00pm:

<u>Ref No</u>	<u>From - To</u>	<u>Issue Date</u>
LAOCC/02021/23	26/10/23 to 08/11/23	11/10/23
LAOCC/02471/23	16/11 to 29/11/2023	15/11/23
LAOCC/02472/23	30/11 to 13/12/2023	16/11/23
LAOCC/02473/23	14/12 to 27/12/2023	30/11/23
LAOCC/02474/23	28/12 to 10/01/2024	30/11/23
LAOCC/02475/23	11/01 to 24/01/2024	30/11/23
LAOCC/02476/23	25/01 to 07/02/2024	LSO rep
LAOCC/02477/23	08/02 to 21/02/2024	LSO rep
LAOCC/02478/23	22/02 to 06/03/2024	LSO rep
LAOCC/02479/23	07/03 to 20/03/2024	LSO rep
LAOCC/02480/23	21/03 to 03/04/2024	LSO rep

- 3.15 The above demonstrates a pattern of occasionals for regular trading.
- 3.16 The Board’s policy provides that such Occasional Licences **may** be granted where there is sufficient evidence that there is movement towards an application for a premises licence or a major variation of premises licence being progressed **OR** under adequate explanation as to why a premises licence or a major variation of a premises licence is not being applied for. This will be considered on a case-by-case basis. The Board expects such premises to be operating under a Premises Licence and Occasional Licences should not be used as an alternative.
- 3.17 Section 4.46 of the Board’s policy places an onus on the applicant to explain their position to the Board:

“Section 59(6) of the Act specifies the grounds for refusal of an application for an Occasional Licence. These grounds include “that the Licensing Board

considers the granting of the application would be inconsistent with one or more of the licensing objectives”. These licensing objectives include:-



The degree of scrutiny afforded by an application for a Premises Licence is not present where premises operate under a series of consecutive Occasional Licences. Accordingly, in the interests of better securing public safety and/or for better protecting and improving public health, the Board considers that it is not generally appropriate for a premises to operate on a series of consecutive Occasional Licences rather than apply for a Premises Licence and, in these circumstances, the Board will require an applicant to explain why an application for a Premises Licence is not being made.”

Implications

- 3.18 If the Board determines that an occasional licence should be granted, the licence will take effect for the duration of the event.
- 3.19 If the Board refuses an occasional licence, then no alcohol can be sold during the event.

Legal Test

- 3.20 The Legal Test is as set out in **Appendix 4** to this report.
- 3.21 If granted, mandatory conditions listed in the 2005 Act will attach to the occasional licence.
- 3.22 If the Board is minded to grant the applications, the following local conditions should apply to the licence:
- Conditions 1,3,4,8,16, 42 and 43.

Appendix 5 contains the list of available local conditions

3.23 The Board may also attach conditions which are specific to the premises to be licensed, where required. If minded to grant, the following specific conditions should apply to the licence:

- None.

Procedure

3.24 Each application should be considered on its own merits.

3.25 The basis of this report are the applications, representations and the submissions from the parties made at the hearing. If the Board is not satisfied that there is sufficient information to make a decision, the matter should be deferred to allow further information to be obtained.

3.26 All parties have been invited to attend the hearing by email dated 30th November 2023. Copies of this report, the legal test and the Board's Guidance on Procedures for hearings were included with the letter. Parties will be given the opportunity to participate in the meeting by whichever of the following means the person prefers: (a) telephone, or (b) written representations, including by means of an electronic communication [e-mail]. Any written submissions lodged with the Clerk will be circulated to all parties and to Members in advance of the hearing and will be taken to form part of this report.

3.27 The Board should follow the procedure outlined at **Appendix 6** of this report.

3.28 Members' options in disposing of the application are: -

- (a) To grant the application(s);
- (b) Refuse the application(s);
- (c) Grant subject to varied hours and/or additional conditions; or

- (d) Determine that further evidence is required in which case the applications should be referred to the next available Board Meeting in order further information can be obtained in the interim.

Where more than one application is being considered, the Board should make a separate decision in respect of each application under consideration.

3.28 When coming to a decision the Board must consider the evidence provided and the contents of the legal test. Supplementary advice and information can be made available by officers, if required.

4 Priorities, Implications and Risk

4.1 The Board must determine this matter on its own merits in accordance with the legal tests set out in the relevant legislation. The Board is a separate legal entity to Aberdeenshire Council and therefore the Council's priorities do not apply to this report.

4.2 The applications are being considered against the terms of the Board's Repeated Applications Policy.

4.3 The table below shows whether risks and implications apply if the recommendations are agreed:

Table 1 Risks and Implications

Subject	Yes	No	N/A
Financial		X	
Staffing		X	
Equalities and Fairer Scotland Duty		X	
Children and Young Peoples' Rights and Wellbeing		X	
Climate Change and Sustainability			X
Health and Wellbeing			X
Town Centre First			X

- 4.4 An Integrated Impact Assessment has not been carried out as the processing of the applications has not identified any issues that would fall within the remit of those part of the IIA that and the Board must determine this matter in line with the legal test.
- 4.5 There are no staffing and financial implications.
- 4.6 The Council's Corporate and Directorate Risk Registers do not apply to the Licensing Board as it is a separate legal entity.
- 4.7 The Council's Town Centre Principle does not apply in respect of this matter as the Licensing Board is a separate legal entity.

5. Governance

- 5.1 The Board has authority to determine these applications as per the provisions of Section 4.45 of Supplementary Policy Statement 4 of the Board's previous and current Statement of Licensing Policy.

Karen Wiles
Clerk to the Board

Report Prepared by Fiona M Stewart, Senior Solicitor (Governance), Depute Clerk to the Board

Date: 30th November 2023

IDOX File Reference: LAOCC/02476/23; LAOCC/02477/23; LAOCC/02478/23; LAOCC/02479/23; LAOCC/02480/23

List of Appendices

- Appendix 1 – Applications**
- Appendix 2 – Representations from LSO**
- Appendix 3 – Supplementary Policy 4**
- Appendix 4 - Local Conditions**
- Appendix 5 – Legal Test**
- Appendix 6 – Procedure**