

# **THE ABERDEENSHIRE LICENSING BOARD**

**REPORT TO LICENSING BOARD HEARING – 20<sup>th</sup> December 2023**

**LICENSING (SCOTLAND) ACT 2005**

**Sections 36 - 40**

**APPLICATION FOR REVIEW OF PREMISES LICENCE - HEARING**

## **1. Executive Summary/Recommendations**

1.1. This report relates to a request for a review of a premises licence in terms of Section 36(1) of the Licensing (Scotland) Act 2005 (“the 2005 Act”) which is a matter which can only be determined by the Licensing Board.

The request follows repeated attempts to seek payment of the annual fee relating to the premises licence concerned and evidence from the Licensing Standards Officer that the named designated premises manager on the premises licence is not in charge of the premises on a day-to-day basis.

### **Recommendation**

1.2. **It is recommended that the Board considers the materials before them and –**

(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; and**

(b) **Where the Board has concluded that there is sufficient evidence before them to allow a determination to be made:**

**the Board should consider the request for review of the Licence as attached at Appendix 1 to this Report and consider -**

(i) **If any of the grounds for review have been established; AND**

(ii) **Where any of the grounds for review have been established what steps require to be taken under Section 39(2) of the Act.**

(c) **Determines whether the Board requires to hold any hearing in terms of Section 84 of the Act in respect of any personal licence holder working at the premises where appropriate to do so.**

## **2. Purpose and Decision-Making Route**

2.1. Sarah Ward, Licensing Standards Officer lodged an application for review of a premises licence by letter dated 29<sup>th</sup> November 2023. The application seeks the review of the premises licence for Durn House, Durn Road, Portsoy Licence Number AB-N-P309. A copy of the review application is attached as **Appendix 1** to this Report and referred to for its terms.

2.2. The grounds for review submitted by the LSO are:-

- i. Failure to pay Annual fee per Schedule 3 paragraph 10 of the Licensing (Scotland) Act 2005;
- ii. Failure to comply with Section 14 (2) (a) (i) of the Act, Compliance notice served 24<sup>th</sup> October 2023;
- iii. History of Non-Compliance
- iv. The Named Designated Premises Manager on the licence is not generally working within the premises on a day-to-day basis.

2.3. Durn House, Durn Road, Portsoy, AB45 2XT is the subject of premises licence No AB-N-P309. The premises licence holder is Durn House Limited, 71-75 Shelton Street, London, SC2H 9JQ. The Company has been the premises licence holder since 8<sup>th</sup> February 2023. The Designated Premises Manager named on the licence is Matthew Gillic. His Personal Licence Number is 20/00134/PERLIC issued by Moray Licensing Board.

2.4. A copy of the premises licence is attached as **Appendix 2** to this Report.

2.5. A copy of the review application was forwarded to the Licence Holder on 2<sup>nd</sup> December 2023.

2.6. This matter has not been considered by the Board previously.

### 3. Discussion

- 3.1. It is recommended that the Board proceeds to consider the application for review of the premises licence and:
- (a) Considers if any of the grounds of review have been established; and
  - (b) If so established, what steps, if any, require to be taken as per Recommendation 1.2.(b)(ii), (iii) of this Report.
- 3.2. Payment of the annual fee is a mandatory condition of a premises licence. Where an LSO believes that a condition of licence has been breached, he/she may service a notice on the Licence Holder under Section 14(2) of the 2005 Act requiring such action to be taken to remedy the breach as may be specified in the notice.
- 3.3. If the Licence Holder fails to take the action specified in the Section 14(2) notice, the LSO may make an application for review of the licence on the grounds that one of the conditions of the licence has been breached. The Board MUST hold a hearing to determine the review application.
- 3.4. The LSO's letter of 29<sup>th</sup> November 2023 advises that a ground of review of the premises licence is that one of the conditions of the premises licence has been breached, namely that the Licence Holder has failed to pay the annual fee of £280.00. This ought to have been paid by 1<sup>st</sup> October 2023. The request for review letter narrates the steps that have been taken to try to ensure that the annual fee is paid. The final step was the issue of a Compliance Notice under Section 14(2) of the 2005 Act on 24<sup>th</sup> October 2023 which gave the Licence Holder a further 7 days to make payment, failing which an application for review of the licence would be brought before the Board. A copy of the Compliance Notice is included in the Application for Review which forms **Appendix 1** to this Report. The Compliance Notice was sent by recorded delivery mail and has not been responded to.

### Consultations

- 3.5. In terms of Section 38(4) of the Act, where not the person seeking the review application, the Licensing Standards Officer must prepare and submit a report to the Board on the premises licence review proposal.
- 3.6. No consultations have taken place in respect of this review application, it having been submitted by the Licensing Standards Officer.

### **Legal Test**

- 3.7. The Legal Test forms **Appendix 3** to this Report.

### **The Board's Powers**

- 3.8. If the Board is not satisfied that a ground of review is established then no action can be taken.
- 3.9. Where the Board is satisfied that a ground of review is established under Section 39(1) of the 2005 Act (whether or not on the basis of any circumstances alleged in the premises licence review proposal/application considered at the hearing) the Board may take any of the following steps as the Board considers necessary or appropriate for the purposes of any of the licensing objectives:-
  - (a) **Issue a Written Warning.** Where a written warning is given, the licence holder can continue to trade under the terms of his premises licence as currently granted;
  - (b) **Vary the terms of the Licence:** Where a variation of the licence is made, the licence holder can continue to trade under the terms of the varied premises licence
  - (c) **Suspend the licence for such period as the Board sees fit.** Where the Board suspends the licence, the licence holder cannot trade for the duration of the suspension.
  - (d) **Revoke the Licence.** Where the Board revokes the licence, there is no longer a premises licence that can be traded.

- 3.10. The Board may also make a finding in terms of Section 84 of the Act in respect of any personal licence holders who are or were working in the licensed premises in respect of which the premises licence was issued acted in a matter which was inconsistent with any of the licensing objectives and call for a Hearing to consider whether the personal licences held by those persons should be revoked, suspended or endorsed as per Recommendation 1.5(c) of this Report. To that end, the Designated Premises Manager has also been informed of the review application and has a right to be in attendance, but not take part in, the premises licence review hearing.
- 3.11. The Licence Holder has the right to appeal any of the decisions made by the Board with regard to the premises licence.

### **Procedure**

- 3.12. The review of premises licence should be considered on its own merits.
- 3.13. The Licence Holder, Chief Constable, and the Licensing Standards Officer have been invited to attend the Hearing by letter dated 2<sup>nd</sup> December 2023. Notices included a copy of this report, the Legal Test and the Board's Guidance on procedures for Hearings.
- 3.14. The Designated Premises Manager has also been invited to attend the Hearing as the outcome of the Hearing may affect his personal licence.
- 3.15. Members should follow the procedure outlined at **Appendix 4** to this Report.
- 3.16. In terms of the Board's procedure, any documentation/written submissions lodged by any of the parties, will be circulated to Members and all parties prior to the meeting taking place, where it is possible to do so. Such written documentation/submissions will form **Appendix 5** to this Report, if submitted.
- 3.17. 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 test 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 table below shows whether risks and implications apply if the recommendations are agreed:

**Table 1 Risks and Implications**

<b>Subject</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
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	

4.3 An Integrated Impact Assessment (“IIA”) has not been carried out as the application for review has not identified any issues that would fall within the remit of the IIA and the Board must determine this matter in line with the legal test.

4.4 There are no staffing and financial implications.

4.5 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Licensing Board is considering the application as the Licensing Authority in a quasi-judicial role and must determine each application on its own merits in accordance with the legal tests set out in the relevant legislation.

4.6 The Town Centre Principle does not apply in respect of this matter as the Board is considering the applications as Licensing Authority in a quasi-judicial role and must determine the applications on their own merits in accordance with the legal tests set out in the relevant legislation

## **5 Governance**

5.1 In terms of paragraph 1.11 of Part 1 of the Boards' current approved Scheme of Delegation, such hearings are a matter reserved to the Licensing Board.

**Karen Wiles  
Clerk to the Board**

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

**Date: 2<sup>nd</sup> December 2023**

**File Reference: LAPREM/00212/22**

### **Appendices**

**Appendix 1 – Application for Review of Premises Licence**

**Appendix 2 – Copy Premises Licence**

**Appendix 3– Legal Test**

**Appendix 4 – Procedure**

**Appendix 5 – Written Submissions**