

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO LICENSING BOARD HEARING – 24th April 2024

LICENSING (SCOTLAND) ACT 2005

**APPLICATIONS FOR MAJOR VARIATIONS OF VARIATION OF PREMISES
LICENCE – NON-CONTENTIOUS APPLICATIONS**

1. Executive Summary/Recommendations

1.1. This report relates to applications for major variations of premises licences which can only be determined by the Licensing Board.

The applications were all made before approval of the Board's New Statement of Licensing Policy which took effect from 1st November 2023. In terms of the revised Scottish Guidance for Licensing Authorities applications must be determined under the Policy Statement which informed applicants of the Board's intentions, which means that these applications need to be determined under the Board's previous Policy Statement. Only applications received and processed after 1st November 2023 will be subject to the new Policy Statement.

This means that the Board's overprovision policy does not apply to the applications listed at **Appendix 1** to this Report.

All Applicants have, however, opted to agree the local conditions set out under the new Policy Statement as listed against each application in **Appendix 1**.

Recommendations

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

(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.

2. Purpose and Decision-Making Route

- 2.1. The applications referred to in **Appendix 1** of this report have not been previously considered by the Board.
- 2.2. The Depute Clerk has determined that the applications for major variation of premises licences listed at **Appendix 1** to this report are non-contentious applications and asks that the Board consider same.

3. Discussion

Consultations

- 3.1. The Depute Clerk examined the applications in detail and the Applicants then addressed any issues requiring to be addressed. Thereafter, the Depute Clerk forwarded the applications to the following persons or bodies as part of the consultation process:
 - (a) Police Scotland;
 - (b) Scottish Fire and Rescue Service;
 - (c) The Environmental Health, Planning and Building Standards Services of Aberdeenshire Council;
 - (d) The Licensing Standards Officer;
 - (e) The appropriate Community Council;
 - (f) Public Health, and
 - (g) Neighbouring Occupiers.
- 3.2. At the same time as the applications were consulted on, the applicants required to display a site notice at the premises, in a location where it could be easily read by members of the public, advertising the fact that an application had been made. The Licensing Standards Officers checked to ensure the site notices had been appropriately displayed, and had been displayed for the correct time period, as part of their consultation exercise for the premises.

3.3. The applications were also advertised on the Council's website.

Objections and Representations

3.4. In relation to each of the applications to be considered by the Board –

(a) There are no valid objections to the application.

(b) the size and capacity of the premises, the general nature of the premises, and any entertainment to be provided on the premises are to be substantially the same as at the date of the application; and

(c) the hours sought in the Operating Plan are within the Licensing Board's general policy on Licensing Hours as set out in its Statement of Licensing Policy.

3.5. In some cases, the Licensing Standards officers, Police Scotland and Building Standards Officers made representations. These were copied to the applicants who have made the appropriate amendments to their applications in order to satisfy the representations made.

3.6. The Board indicated in its Policy Statement that local conditions would apply to premises licences in certain circumstances. The Depute Clerk has listed the relevant conditions it is recommended that the Board apply to the licence in the table in **Appendix 1**. The Applicant has agreed to the proposed conditions in each case. **Appendix 2** contains the list of available local conditions, as set out in the Board's Policy Statement.

3.7. Any applicant who has taken issue with representations made will have their application considered at a full hearing of the Board, which will be the subject of a separate report.

3.8. In light of the fact that these applications are considered to be non-contentious, they have been put to the Board for consideration without the applicants requiring to be present.

3.9. If the Board does not consider that this is a sufficient hearing to consider the application, then consideration of the application should be deferred to a future

Board Meeting to allow for further information to be provided and/or to allow the applicant to be cited to attend.

Implications

3.10. If the Board determines that the application should be granted, the variation will take effect from the date of grant. An amended premises licence will be prepared and issued to the licence holder.

3.11 Where the Board refuses an application, the licence holder retains the premises licence as originally granted by the Board, or as previously varied by the Board, and can continue to trade that licence.

Procedure

3.12 Each application should be considered on its own merits.

3.13 Members' options in disposing of the applications are:-

(a) To grant the application;

(b) Refuse the application;

(c) Grant subject to varied hours and/or additional conditions; or

(d) Determine that further evidence is required in which case the application should be referred to the next available Board Meeting in order that the applicant may present their case in full or further information can be obtained in the interim.

3.14 When coming to a decision the Board must consider the evidence provided and the contents of this report. Supplementary advice and information can be made available by Officers, if required.

3.15 The legal test is attached as **Appendix 3** to this report.

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 within the terms of the Board's 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 the IIA 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 can consider these applications in terms of paragraph 1.6 of the current Scheme of Delegation which provides that consideration of such applications is a matter reserved to the Board.

Karen Wiles
Clerk to the Board

Report Prepared by: Harriet Tevendale, Paralegal
Date: 16th April 2024

Appendices

Appendix 1 – List of Applications to be considered

Appendix 2 – List of Local Conditions

Appendix 3 – Legal Test