

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO LICENSING BOARD – 28th June 2023

LICENSING (SCOTLAND) ACT 2005

APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE - HEARING

1 Executive Summary/Recommendations

- 1.1 This report relates to an application for a major variation of premises licence where adverse representations and objections have been received which requires consideration by the Board.

Recommendations

- 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 for further material to be made available;**
- (b) **Where the Board has concluded that there is sufficient evidence to allow a decision to be made, to consider the application, the representation made, the submissions made by the parties at the hearing and determine whether the application should be granted or refused in line with the legal test; and**
- (c) **If granting the application, to grant same subject to the local conditions set out at Section 3.11 and Section 3.12 of this report.**

2 Decision-Making Route

- 2.1 An application was lodged for a Major Variation of premises licence for the Banchory Lodge Hotel, Dee Street, Banchory, AB31 5HS. The application was dated 11th April 2022 and was lodged by Janet Hood, Solicitor, Edzell on behalf of Banchory Lodge Hotel Ltd, 34 Albyn Place, Aberdeen, AB10 1FW. This

- Change start time for off sales to 1000
- Change of designated premises manager
- Addition of seasonal hours in respect of inside the premises
- Amendment of activities – operation outwith core hours before the operation of the core hours and not after the terminal hour
 - Bar meals
 - Receptions
 - Recorded music, live performances, dance facilities, theatre, film – with events or conferences only, gaming
 - Amended information relating to outdoor drinking facilities to include terrace and pods for service of breakfasts, teas, coffees, snacks and meals until 11pm
- No alcohol to be served outwith core hours or after 11pm in external area
- Children and young persons' access revised to include the annexe known as the Cobbleheugh
- To include use of discreet hotel annexe known as Cobbleheugh and additional external areas
- Change of licensing objectives risk assessment to reflect change in activities
- Amended layout plans to reflect the change in activities, outdoor areas and children and young persons' access.

Consultations

3.3 The Depute Clerk examined the application in detail and the Applicant then addressed any issues requiring to be addressed. Thereafter, the Depute Clerk forwarded the application to the following persons or bodies as part of the consultation process:

- (a) Police Scotland;
- (b) Scottish Fire & Rescue Service;
- (c) The Environmental Health, Planning and Building Standards Services of Aberdeenshire Council;
- (d) The Licensing Standards Officer;
- (e) The appropriate Community Council; and
- (f) Neighbouring Occupiers

(g) Health Authority

- 3.4 At the same time as the application was consulted on, the applicant 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 to vary the Premises Licence had been made.
- 3.5 The Licensing Standards Officers checked to ensure the site notice had been appropriately displayed, and had been displayed for the correct time period, as part of the consultation exercise for the application.
- 3.6 The application was also advertised on the Council's website.

Objections and Representations

- 3.7 The following representations have been made by statutory consultees:
1. Police Scotland by letter dated 15th March 2023.
 2. Licensing Standards Officer by email dated 29th March 2023.
- 3.8 The following objections and representations have been made by members of the public:
3. Mr Alan Jackson: Representation received 29th March 2023.
 4. Mr Graeme Coutts: Representation dated 17th March 2023.*
 5. Mr William Gray: Objection by email dated 26th March 2023.
 6. Mr Michael Wilson: Objection by email dated 2nd April 2023.
 7. Dr and Mrs Shanks per Andrew Hunter, Solicitor, Aberdeen: Objection dated 3rd April 2023.

* Mr Coutts is prepared to withdraw his representation upon sight of an amended layout plan which is to be submitted by the applicant's agent, confirming that the applicant had reached agreement with Mr Coutts regarding the position set out in his representation.

** Mr Wilson did not receive notice of this hearing 14 days in advance as set out in the Board's Guidance document. This was due to a glitch in the IDOX licensing database following a system update which meant his objection was not visible in the system. However, following contact by Mr Wilson on 19th June

2023 to query why he had not received notice of the hearing, the oversight was confirmed and both the applicant and Mr Wilson were given notice of the objection on the evening of 19th June 2023. All parties involved in the hearing were issued with a copy of an updated Board report at the same time.

In terms of paragraph 11 of the Licensing (Procedure)(Scotland) Regulations 2007, parties to a hearing for this type of application must be notified not less than 7 days prior to the date of the hearing. The last date for notifying parties legally is therefore 20th June 2023. Members are advised that Mr Wilson intends to request that the Board defer consideration of the application to allow him time to properly prepare.

3.9 The applicant was provided with a copy of the representations and Objections in an Observations letter dated 4th May 2023 and Mr Wilson's objection on 19th June 2023. The applicant has confirmed that she wishes to proceed with the hearing on 28th June 2023 having received sufficient notice.

3.10 Copies of the representations and objections made are attached as **Appendix 2** to this report. The Applicant's Agent has agreed the recommended local and specific conditions set out in the observation letter which are as set out below.

Conditions

3.11 It is recommended that, if the Board grants the application, it is subject to the following local conditions:

Local Conditions

1. General Management for All Premises – Conditions 1-4
2. Noise – All Premises – Condition 5
3. Lockfast Store – All Premises – Condition 6
4. Children and Young Persons – On Sales Premises – Conditions 7-11
5. Vulnerability – All Premises – Condition 19
6. CCTV – All Premises – Condition 21
7. Beer Gardens and Outside Drinking Areas – Conditions 31 – 33

3.12 The Board may also attach conditions which are specific to the premises where required. The following specific conditions are recommended:

Specific Conditions

8. All outdoor drinking areas to be suitably delineated by a physical barrier or similar
9. Signage to be displayed indicating that no alcohol is to be removed beyond the identified delineated outdoor drinking areas.

3.13 **Appendix 3** contains the full list of available local conditions, as set out in the Board's Policy Statement.

Procedure

3.14 Each application should be considered on its own merits.

3.15 The legal test is attached as **Appendix 4** to this report.

3.16 The Applicant and those persons who made a representation or objected to the application have been invited to attend the Hearing.

3.17 Copies of this report together with the Legal Test and the Board's Guidance on procedures for Hearings, were issued to all parties.

3.18 The procedure to be followed is attached at **Appendix 5**.

3.19 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 6** to this Report, if submitted.

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

- (a) To grant the application;
- (b) Refuse the application;
- (c) Grant subject to varied hours and/or additional conditions or to partially grant the application; or
- (d) Determine that further evidence is required in which case the applications should be referred to the next available Board Meeting in

order that the applicants may present their case in full or further information can be obtained in the interim.

3.20 When coming to a decision the Board must consider the evidence provided and the contents of this report and 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 table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial		X	
Staffing		X	
Equalities and Fairer Duty Scotland		X	
Children and Young People's 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 processing of the application 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. The Council's Corporate and Directorate Risk Registers do not apply to the Licensing Board as it is a separate legal entity.
- 4.6. 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 this application in terms of paragraph 1.6 of the Scheme of Delegation which provides that consideration of a major variation to a premises licence is a matter reserved to the Board.

Karen Wiles

Clerk to the Board

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

Date: 19th June 2023

IDOX REFERENCE NUMBER: LAPREM/00028/22

List of Appendices:

Appendix 1: Major Variation Application

Appendix 2: Copy of Representations and Objections

Appendix 3: Local Conditions

Appendix 4: Legal Test

Appendix 5: Procedure for Hearing

Appendix 6: Written Submissions – where made