

THE ABERDEENSHIRE LICENSING BOARD

Minute of the Meeting of the ABERDEENSHIRE LICENSING BOARD, held by MICROSOFT TEAMS only on WEDNESDAY 26th April 2023 at 10.15 a.m.

Sederunt:

Board Members:

Mrs Marion Ewenson (Convenor); Mr Geoff Crowson; Mr Jeff Goodhall; Mr Trevor Mason; Mr Richard Menard; Mrs Jenny Nicol; Ms Mel Sullivan; Mr Iain Taylor

In Attendance:

Fiona M. Stewart and Lynsey Kimmitt, Depute Clerks to the Board; Lisa Godini, Keith Simpson and Kevin MacDonald Licensing Standards Officers; Sergeant Neil Grant, Police Scotland;

Observing:

Jenny Mearns, Administrator (Livestream), Harriet Tevendale and Clark Simpson, Paralegals; Beatrice Hay and Delsya Borland, Administrators

Forum Members:

None

The Convenor welcomed everyone to the meeting.

1. APOLOGIES FOR ABSENCE

Ms Dawn Black and Mr Stewart Adams had tendered their apologies for the meeting.

Apologies were also received from Lauren Cowie and Jill Joss, Depute Clerks and Sarah Ward, Licensing Standards Officer

2. DECLARATIONS OF INTEREST

No declarations of interest were made.

3. STATEMENT ON EQUALITIES

*In making decisions on the following items of business, the Board **agreed**, in terms of Section 149 of the Equality Act 2010:-*

1. To have regard to the need to: -

- (a) Eliminate discrimination, harassment and victimisation;*
- (b) Advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and*

(c) Foster good relations between those who share a protected characteristic and persons who do not share it.

2. Where an Integrated Impact Assessment was provided, to consider its contents and take those into account when reaching their decision.

4. **MINUTES OF BOARD MEETING OF 22nd FEBRUARY 2023 – FOR APPROVAL**

The Board agreed the Minutes were a correct record of the meeting.

5. **LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR PREMISES/PROVISIONAL PREMISES LICENCES – NON CONTENTIOUS**

Following consideration of a report by the Clerk, dated 19th April 2023 in respect of applications for premises/provisional premises licences, copies of which had been circulated in advance, the Board decided the applications as undernoted:

1. **Ardoe House Hotel, South Deeside Road, Blairs, Aberdeen**

Granted subject to

- the local conditions set out in the Board report,
- the specific conditions set out in the Board report

2. **Aspire, St. John the Baptist Church, Seafield Terrace, Portsoy**

Granted subject to

- the local conditions set out in the Board report
- the specific conditions set out in the Board report

3. **Cammies, Cammachmore, Stonehaven**

Granted subject to

- the local conditions set out in the Board report,
- the specific conditions set out in the Board report

4. **Fraserburgh Hotel, 5-13 Mid Street, Fraserburgh**

Granted subject to

- the local conditions set out in the Board report,
- the specific conditions set out in the Board report

5. **Almondine, Unit 2 Burn Lane, Inverurie**

Granted subject to

- the local conditions set out in the Board report,
- the specific conditions set out in the Board report

6. The Residence and Hummingbird Café, Rebecca Carr Resident, Midmill, Kintore, Inverurie

Following receipt of the Certificate of Compliance, Granted subject to

- the local conditions set out in the Board report,
- the specific conditions set out in the Board report

6. LICENSING (SCOTLAND) ACT 2005 - MAJOR VARIATIONS – NON-CONTENTIOUS

Following consideration of a report by the Clerk, dated 19th April 2023 in respect of applications for major variations of premises licences, copies of which had been circulated in advance, the Board decided the applications as undernoted:

1. Aldi Stores Ltd, Harlaw Road, Inverurie

Granted subject to

- the local conditions set out in the Board report,
- The specific conditions set out in the Board report

7. LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR PROVISIONAL PREMISES LICENCE - HEARING – THE TSB BUILDING, 12 MAIN STREET, TURRIFF

1. The applicant was represented by Christine Hosie.
2. The objectors were neither present nor represented at the hearing, but their written submission had been circulated to the Board and all parties in advance of the hearing
3. Sgt Neil Grant represented the Chief Constable
4. Sarah Ward, Licensing Standards Officer was not present but was represented by Kevin MacDonald, Licensing Standards Officer
5. Louise Manson represented Environmental Health
6. The applicant was invited to speak to the application
7. Sgt Grant spoke to the Chief Constable's Representation
8. Kevin MacDonald spoke to the Licensing Standards Officer's representation
9. Louise Manson spoke to the Environmental Health representation
10. The applicant was afforded an opportunity to respond to the submissions made by the other parties
11. An opportunity was afforded to Members to ask questions of all parties
12. The Board invited concluding remarks in reverse order
 - a. Louise Manson had nothing to add

- b. *Kevin MacDonald had nothing to add*
 - c. *Sgt Grant had nothing to add*
 - d. *The applicant had nothing to add*
13. *No legal advice was required from the Depute Clerk*
14. *The Depute Clerk read out the terms of the legal test*
15. *The Board opted not to adjourn to deliberate the application*
16. *The Board was satisfied they had sufficient information to make a decision*
17. *Mr Goodhall, seconded by Mr Mason, moved as a motion that there was no evidence before the Board to support any of the grounds of refusal and that the application be granted subject to the recommended local and specific conditions outlined in the report.*
18. *No amendment was proposed.*
19. *The Board confirmed the decision was unanimous*

The decision of the Board was, therefore, that the application was GRANTED, there being no evidence to support any of the grounds of refusal, subject to the recommended local and specific conditions set out in the report.

8. LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR REVIEW OF PREMISES LICENCE – HEARING – THE LEARNEY ARMS, TORPHINS

- 1. *Louise Manson represented Environmental Health*
- 2. *The Licence Holder was represented by David Scott, Solicitor, Aberdeen*
- 3. *Mr Chowdhury was neither present nor represented at the hearing*
- 4. *Lisa Godini, Licensing Standards Officer was present at the hearing.*
- 5. *Louise Manson was invited to speak to the Complaint*
- 6. *Lisa Godini was invited to speak to her report*
- 7. *David Scott was invited to address the Board in respect of the Complaint, the report and the submissions made in respect thereof.*
- 8. *An opportunity was afforded to Members to ask questions of all parties.*
- 9. *The Board invited concluding remarks in reverse order*
 - a. *David Scott made concluding remarks*
 - b. *Lisa Godini made concluding remarks*
 - c. *Louise Manson made concluding remarks*

10. *The Board adjourned to deliberate the application*
11. *On resuming the bench, the Depute Clerk summarised what had been discussed during the adjournment*
12. *The Board confirmed they had sufficient evidence upon which to make a decision*
13. *The Board firstly dismissed the following grounds of review as set out in the complaint:*
 - a. *The Premises Licence Holder has failed to comply with the requirements of Noise Abatement Notices issued by Environmental Health Service on the basis that this was outwith the Board's remit and was enforceable under other legislative means*
 - b. *The manner in which the premises are operating breached local condition No 6 attached to the current premises licence – on the basis that there were no local conditions currently attached to the premises licence.*
14. *The Board found that the first ground for review, namely that the premises were operating in a manner which failed to comply with the Preventing Public Nuisance Licensing Objective was a relevant ground for review in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005. Mr Taylor, seconded by Mr Menard, moved as a motion that this ground for review was upheld on the basis of the number of complaints that had been brought forward, that management had been able to control the noise for certain times but not for others and that the situation had been deteriorating.*
15. *No Amendment was proposed.*
16. *The Board confirmed the decision was unanimous*
17. *Thereafter, the Board considered the steps open to them in terms of Section 39 of the 2005 Act.*
18. *Mr Crowson, seconded by Mrs Sullivan, moved as a motion that it was necessary for the purposes of the Preventing Public Nuisance Licensing Objective to issue a written warning to the Premises Licence Holder and to vary the terms of the Premises Licence to attach Conditions 1 and 5 of the Board's local conditions to the licence.*
19. *No amendment was proposed.*
20. *The Board confirmed the decision to be unanimous*
21. *Thereafter, the Board unanimously agreed that there was no requirement to take action against the Designated Premises Manager in respect of Section 84 of the 2005 Act.*

The decision of the Board was therefore that the premises were operating in a manner which failed to comply with the Preventing Public Nuisance Licensing Objective which was a relevant ground for review in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005 on the basis of the number of complaints that had been brought forward, that management had been able to control the noise for certain times but not for others and that the situation had been deteriorating. The activity was linked to the sale of alcohol in

that there would be no noise issues if the sale of alcohol was not taking place within the licensed premises.

Further the Board agreed that it was necessary for the purposes of the Preventing Public Nuisance Licensing Objective to issue a written warning to the Premises Licence Holder and to vary the terms of the Premises Licence to attach Conditions 1 and 5 of the Board's local conditions to the licence.

Finally, the Board agreed that no action in terms of Section 84 of the 2005 Act was required in relation to the Designated Premises Manager.

9. LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE – HEARING – THE PORT PAPER SHOP, PORT ELPHINSTONE, INVERURIE

- 1. The applicant was represented by Mrs Rajwant at the Hearing*
- 2. The applicant's agent was neither present nor represented at the hearing but had lodged written submissions, which had been circulated to the Board and all parties in advance of the hearing*
- 3. Lisa Godini, Licensing Standards Officer was present at the hearing*
- 4. The applicant was invited to speak to the application*
- 5. Lisa Godini was invited to speak to her representation*
- 6. The applicant was afforded an opportunity to respond to the submissions of the LSO.*
- 7. An opportunity was afforded to Board Members to ask questions of both parties*
- 8. The Board invited concluding remarks in reverse order*
 - a. Lisa Godini made concluding remarks*
 - b. The Applicant made concluding remarks*
- 9. Legal advice was not required from the Depute Clerk*
- 10. The Depute Clerk read out the terms of the Legal Test*
- 11. The Board opted not to adjourn to deliberate the application*
- 12. The Board confirmed they had sufficient information upon which to make a decision*
- 13. Mrs Ewenson, seconded by Mr Menard, moved as a motion that the application be refused in terms of Section 30(5)(b) of the 2005 Act on the basis that it would contravene the licensing objectives relating to the protection of children and young persons from harm and preventing public nuisance and in terms of Section 30(5)(c)(iii) of the 2005 Act on the basis that, having regard to the types of persons likely to frequent the premises, particularly children and young persons, the premises being located on a main route to schools, the Board considered the premises to be unsuitable for use for the sale of alcohol in accordance with the proposed variation given the sizeable increase in the alcohol display compared to the size of the shop overall.*
- 14. No amendment was proposed.*
- 15. The Board confirmed the decision to be unanimous*

The Board decision was therefore that the application be REFUSED in terms of Section 30(5)(b) of the 2005 Act on the basis that it would contravene the licensing objectives relating to the protection of children and young persons from harm and preventing public nuisance and in terms of Section 30(5)(c)(iii) of the 2005 Act on the basis that, having regard to the types of persons likely to frequent the premises, particularly children and young persons, the premises being located on a main route to schools, the Board considered the premises to be unsuitable for use for the sale of alcohol in accordance with the proposed variation given the sizeable increase in the alcohol display compared to the size of the shop overall.

10 LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE – HEARING – THE DROUTHY LAIRD, INVERURIE

- 1. Mr & Mrs Parker were present at the hearing*
- 2. Lorna McHardy was neither present nor represented at the hearing*
- 3. Iona Mathieson was neither present nor represented at the hearing*
- 4. Sergeant Grant represented the Chief Constable at the Hearing*
- 5. Building Standards were neither present nor represented at the hearing*
- 6. Lisa Godini, Licensing Standards Officer was present at the hearing*
- 7. Louise Manson represented Environmental Health at the hearing*
- 8. The Applicant was invited to speak to the application*
- 9. Sgt Grant spoke to the Chief Constable's representation*
- 10. Lisa Godini spoke to her representation*
- 11. Louise Manson spoke to the Environmental Health representation*
- 12. The Applicant was afforded an opportunity to respond to the submissions made.*
- 13. An opportunity was afforded to Board Members to ask questions of all parties.*
- 14. The Board invited concluding remarks in reverse order*
 - a. Louise Manson had nothing to add*
 - b. Lisa Godini made concluding remarks*
 - c. Sgt Grant had nothing to add*
 - d. The Applicant made concluding remarks*
- 15. The Board did not require legal advice from the Depute Clerk*
- 16. The Depute Clerk read out the terms of the Legal Test*

17. *The Board opted not to adjourn to deliberate the application*

18. *The Board confirmed they had sufficient evidence upon which to make a decision*

19. *Mr Menard, seconded by Mr Crowson, moved as a motion that a justification to depart from the Board's Policy on hours had been made on the basis that the LSO had given assurances that the proposed conditions meant the premises could be managed properly, the diversity of activities provided in the premises and that the proposed local and specific conditions, with the addition of:-*

- a. *a door steward being in place from midnight on the days the late hours were operating being added as a specific condition*
- b. *7 days advance notification to the Police and LSO of when the 2am opening will apply*

and that, none of the grounds of refusal being found to apply, the application should be granted in those terms.

20. *No amendment was proposed.*

21. *The Board confirmed the decision to be unanimous*

The Board therefore granted the application as applied for, subject to the recommended local and specific conditions and the additional specific condition that a door steward be in place at the door from 12.00 midnight on the days when late opening was operated at the premises.

11. LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR PERSONAL LICENCE - HEARING – ALEXANDRA ESSON

1. *The applicant was neither present nor represented at the hearing having indicated in advance that she would not be attending, that the terms of the report were clear, and she had nothing to add, and she was happy for the Board to proceed in her absence.*
2. *Sgt Grant represented the Chief Constable at the hearing*
3. *The Board agreed to proceed with the hearing in the absence of the applicant.*
4. *The Board heard Sgt Grant speak to the Chief Constable's report.*
5. *An opportunity was provided to Board Members to ask questions of Sgt Grant*
6. *Sgt Grant was afforded an opportunity to make concluding remarks but made none.*
7. *The Board did not require legal advice from the Clerk*
8. *The Board opted not to adjourn to deliberate the application*
9. *The Board concluded they had sufficient information upon which to make a determination*

10. Mr Menard, seconded by Mr Mason, moved as a motion that, on the basis of the time that had passed since the relevant offence, that there was no evidence before the Board that the applicant had reoffended in any way, that none of the grounds of refusal applied, the applicant was a fit and proper person to hold a personal licence and the application should be granted.

11. No amendment was proposed.

12. The Board confirmed the decision to be unanimous

The decision of the Board was therefore to GRANT the application

12. LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR EXTENDED HOURS – HEARING – THE MARINE HOTEL, STONEHAVEN

1. The applicant was represented by Mr Robert Lindsay
2. Keith Simpson, Licensing Standards Officer was present at the hearing
3. The Clerk advised the Board that the application required to be made by the premises licence holder, 6DN Limited, but that the application had been made by Mr Robert Armstrong as an individual person.
4. Having established that Mr Armstrong was not a director of 6DN Limited, the Board unanimously determined that the application was not competent.

No further action was therefore required in relation to the application

13. LICENSING (SCOTLAND) ACT 2005 - REVIEW OF STATEMENT OF LICENSING POLICY 2023 – 2028 – ANALYSIS OF ENGAGEMENT EXERCISE

Having considered the terms of a report by the Depute Clerk setting out the responses to the engagement exercise and providing an analysis of the evidence submitted to date in respect of the main issues agreed by the Board, dated February 2023, copies of which had been circulated to members in advance, the Board agreed the following for the purposes of drafting a Licensing Policy Statement to be submitted to the Board for approval for consultation on 28th June 2023:

1. That permitted operating hours be harmonised across Aberdeenshire
2. That the permitted hours be as follows:

Opening hours – 10.00am

Terminal hour for premises other than nightclubs – 01.00am

Terminal hour for nightclubs – 02.00am (Sun – Thurs)

- 03.00am (Fri-Sat)

There should be no additional operating hours for private functions

Festive Hours

For premises other than nightclubs – 01.30am

Fri & Sat preceding 25th December

24-26th December inclusive

Fri & Sat preceding 31st December

1st January

31st December – 03.00am

3. Hours applicable to Occasional Licences and Occasional extensions

10.00 – 0100

4. That the localities for the purpose of overprovision be local settlements based on the evidence provided in Appendix 2 to the report

5. that there was no evidence to date of overprovision in relation to on sale premises

6. That there was evidence to date that in relation to Off sale premises, 3 settlements were overprovided for, 4-5 required a watching brief and there was no evidence of overprovision in the remaining settlements

7. Authorised officers to consider options for setting an approved capacity for alcohol displays in off sales and present them at the June Board

8. Noted that further statistical data was still to be obtained

9. Agreed to retain the late applications policy for occasional licences

10. Noted that the local conditions for occasional licences would be reviewed

11. Agreed that the Premises Licence Conditions be reviewed and that they should incorporate the suggested additional conditions recommended in the report and that the terminal hour for outside drinking areas be amended to 10.00pm

12. Agreed to retain the provisions relating to the end of aisle alcohol displays

13. Agreed to retain the policy provisions relating to vertical drinking establishments

14. Noted that the formal consultation process would include exploring interest in and the potential for reinstating the Aberdeenshire Licensing Forum

10. DATE OF NEXT MEETING – 28th June 2023

Noted

The Convenor drew the meeting to a close, at which point the recording of the meeting ended.

The recordings of the meeting can be found at the following links:

[Part One](#)

[Part Two](#)

[Part Three](#)

[Part Four](#)

[Part Five](#)