



Licensing Board

Thursday, 04 April 2019

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Board** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Thursday, 04 April 2019** at **10:00**.

BUSINESS

- | | | |
|----------|--|----------------|
| 1 | Minute of Meeting - 7 February 2019 | 5 - 6 |
| 2 | Application List | 7 - 16 |
| 3 | Personal Licence Application Hearing Following
Disclosure Of Relevant Conviction On Application 1 Of
2019 | 17 - 20 |

Any person attending the meeting who requires access assistance should contact customer services on 01343 563217 in advance of the meeting.

* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

** **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

*** **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

Clerk Name: Alasdair McEachan

Clerk Telephone: 01343 563080

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THE MORAY COUNCIL

Licensing Board

SEDERUNT

Councillor Gordon Cowie (Chair)
Councillor James Allan (Member)
Councillor David Bremner (Member)
Councillor Frank Brown (Member)
Councillor Paula Coy (Member)
Councillor Ryan Edwards (Member)
Councillor Louise Laing (Member)
Councillor Maria McLean (Member)
Councillor Amy Taylor (Member)

Clerk Name: Alasdair McEachan
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THE MORAY LICENSING BOARD

MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD

The Moray Council Chambers, Council Headquarters, High Street, Elgin on Thursday 7 February 2019

1. SEDERUNT

PRESENT

Councillors: J Allan
G Cowie
P Coy
R Edwards
L Laing
A Patience

APOLOGIES

Apologies were intimated on behalf of Councillors Bremner, Brown and McLean

IN ATTENDANCE

Sean Hoath, Depute Clerk to the Licensing Board

2. PRIOR MINUTES

- (i) The Minutes of the Meeting held on 19 December 2018 were submitted and approved

There were no declarations of interest.

3. APPLICATIONS

(i) Major Variation – Glenlivet Public Hall

The Applicant was represented by Mr H Monro. The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. Cllr Laing proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

4. Appointment of Depute Clerk

The report was introduced by the Depute Clerk. The Board noted the changes to staffing and agreed to appoint Aileen Scott as Depute Clerk.

5. Licensing (Scotland) Act 2005 – Review Of Premises Licences

There was a report to the Board confirming that review proposals had been made in respect of premises detailed on the list of premises tabled at the meeting. The review proposals were made on the basis of breach of licence condition for non payment of annual fees and other grounds relating to the licensing objectives. The Board was obliged to hold a hearing to consider and determine the review proposals. The Board found that grounds for review had been established. The Board then went on to consider what steps were necessary and appropriate pursuant to the licensing objectives. After discussion the Board agreed to immediately suspend the licences for the premises detailed on the list and further specified that in the event of payment of the fee the suspension would be automatically lifted and in the event the fee remained unpaid then the matter should be brought back before the Board for further review at the first available meeting after 3 months from today's date.

MORAY LICENSING BOARD

MEETING, 4 April 2019 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Type	Premises	Applicant	Date received	Comments
Major Variation	Baxters Highland Village Baxters Food Group Ltd Fochabers IV32 7LD	Andrew Tough Manager Baxters Highland Village	18 January 2019	Major variation application to amend the Operating Plan to vary core on sales hours and include various activities within and out with core hours Paperwork in order No objections or representations
Major Variation	The Speyside Whisky Shop 110A High Street Aberlour AB38 9NX	Emily Ellis C/o Grigor & Young LLP	15 February 2019	Major variation application to vary the current licence to allow for on-sales, so that the business can offer tasting sessions Paperwork in order No objections or representations
Major Variation	Scribbles Pizza House 154 High Street Elgin IV30 1BD	Faith Houlding C/o Scribbles (Scotland) Ltd	20 February 2019	Major variation application to amend the Operating Plan to include 'live performances' as an activity within core hours Paperwork in order No objections or representations
Major Variation	Zed Bar, Joannas, Downtown USA, Moray Playhouse, 195-199 High Street Elgin IV30 1DJ	CS2010 Limited C/o Grigor & Young LLP	28 February 2019	Major variation application to remove the Varied Curfew and Curfew conditions listed under the Specific Conditions of the Premises Licence Paperwork in order No objections or representations

MORAY LICENSING BOARD

MEETING, 4 April 2019 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Major Variation	Johnstons of Elgin Newmill Road Elgin IV30 4AF	Johnstons of Elgin C/o Grigor & Young LLP	5 March 2019	Major variation application to amend the Operating Plan to extend core hours and extend the hours for children and young people Paperwork in order No objections or representations
New Provisional Licence	Glenallachie Distillery Glenallachie Aberlour AB38 9 LR	The Glenallachie Distillers Company Limited	14 November 2018	New provisional licence application Paperwork in order No objections or representations

Key to Colour Coding of Applications within Appendices to the Agenda of Business for the Moray Licensing Board

All matters are to be heard by the Moray Licensing Board and the Moray Licensing Board has the final decision. However, in accordance with Government Guidance and locally agreed procedure, applications may be submitted to the Board with a general recommendation.

Please note that colour coding may be subject to change given the nature of the licensing procedure. Documents may be received and/or negotiations resolved following publication of the agenda.

RED

Indicates that the application will normally require to be heard, whether by virtue of general procedural rules or as a result of problems arising. This should apply to all new premises/provisional licence applications. There may be ongoing negotiations to resolve problems.

YELLOW

Indicates changing circumstances with the application. It is not ready to be granted at the time of publication but there are not normally major problems e.g. procedural issues or ongoing negotiations. Applications will normally be submitted with recommendation for grant or deferral.

GREEN

Indicates that all is in order with the application. All documents have been received and checked. All procedures have been followed. There are unlikely to be any representations, objections or problems or the same have been resolved. It is being submitted with a recommendation for grant but members are free to make enquiries as they see fit.

Licensing (Scotland) Act 2005

Licensing Objectives

Section 4 sets out the licensing objectives:

- “(1) For the purposes of this Act, the licensing objectives are—
- (a) preventing crime and disorder,
 - (b) securing public safety,
 - (c) preventing public nuisance,
 - (d) protecting and improving public health, and
 - (e) protecting children and young persons from harm.”

Applications for a Premises Licence or Provisional Premises Licence

Section 20 Application

By section 20 any person (over 18) may apply to the appropriate Licensing Board for a premises licence in respect of any premises.

An application under subsection must—

- (a) contain a description of the subject premises, and
- (b) be accompanied by—
 - (i) an operating plan for the subject premises,
 - (ii) a “layout plan” of the subject premises, and
 - (iii) the certificates required by section 50(1).

Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Objections / Representations

By section 22 any person may, by notice to the Licensing Board—

- (a) object to the application on any ground relevant to one of the grounds for refusal (detailed below)
- (b) make representations to the Board—
 - (i) in support of the application,
 - (ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or
 - (iii) as to conditions which the person considers should be imposed.

A representation is not an objection to a licence being granted. It means the representer would like to see a changes or changes to the licence or conditions on the licence before it is granted.

Where a Licensing Board receives a notice of objection or representation the Board must—

- (a) give a copy of the notice to the applicant, and
- (b) have regard to the objection or representation in determining the application,

unless the Board rejects the notice as being frivolous or vexatious.

Where a Licensing Board rejects a notice of objection or representation as frivolous or vexatious, the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

Consideration and determination of a Premises Licence Application

Section 23(4) states that:

“(4) The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies and—

- (a) if none of them applies, the Board must grant the application, or
- (b) if any of them applies, the Board must refuse the application.”

Possible Courses of Action

1. Grant the licence as applied for;
2. Grant the licence with a condition(s) under s.27(6). Determine the licensing objective and how the situation can be improved and the exact terms of a condition.
3. Grant the licence with a modification to the operating plan under s.23(7) which states that
“(7) Where the Licensing Board considers that—
 - (a) they would refuse the application as made, but
 - (b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,the Board must, if the applicant accepts the proposed modification, grant the application as modified.”
4. Refuse - In section 23(5) of Act:
(5) The grounds for refusal are—
 - (a) that the subject premises are excluded premises,
 - (b) that the application must be refused under section 25(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*),
 - (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of the premises licence,

- (c) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,
 - (d) that, having regard to—
 - (i) the nature of the activities proposed to be carried on in the subject premises,
 - (ii) the location, character and condition of the premises, and
 - (iii) the persons likely to frequent the premises,the Board considers that the premises are unsuitable for use for the sale of alcohol,
 - (e) that, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises, in the locality.
5. Defer – if for example the Board wanted to arrange a further site visit.

Consequences of Refusal

Section 25 says that where a Licensing Board has refused a premises licence application the Board must refuse any subsequent premises licence application in respect of the same premises before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.

Applications to Vary a Licence

Section 29 Application

By section 29(1) a premises licence holder may apply to the appropriate licensing Board for a variation of the licence. Such an application must be accompanied by

- (a) the premises licence to which the application relates, or
- (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

Meaning of Variation

Section 29(5) defines a variation as meaning any variation (which includes addition deletion or other modification) of:

- (a) any of the conditions to which the licence is subject (*other than those to which the licence is subject by virtue of section 27(1) which are Schedule 3 mandatory conditions and cannot be changed*);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence.

Generally a variation that involves a change to the information contained within the operating plan is not a minor variation and it requires to be determined by the Licensing Board.

Any variation that involves:

- (i) a change to the layout plan that does not affect the operating plan
- (ii) a restriction on the access for children/young persons
- (iii) a change of premises manager
- (iv) reduction in the alcohol display area or capacity
- (v) reduction in the core hours

can be considered to be a minor variation which must be granted and so is dealt with under delegated powers.

Notice of Application

Notice of the application has been given to—

- (a) each person having a notifiable interest in neighbouring land *i.e. neighbours within 4 metres of the boundary of the premises*
- (b) the community council within whose area the premises are situated,
- (d) the chief constable, and
- (e) the fire service
- (f) the NHS

Section 22 applies the same as it does to a premises licence application and so any person may, by notice to the Licensing Board object to the application on any ground relevant to one of the grounds for refusal or make representations to the Board concerning the application.

Determination of the Variation Application

Section 30(3) provides that the Licensing Board must hold a hearing for the purpose of considering and determining the application. The Board must consider whether any of the grounds for refusal applies and:

- (a) if none of them applies, the Board must grant the application;
- (b) if any of them applies, the Board must refuse the application;

Section 30(5) provides that the grounds for refusal are:

- (a) that the application must be refused under section 32(2) (*licence refused within the last year*), 64(2) (*licence sought for 24 hours continuous*) or 65(3) (*off sale hours outside 10am to 10pm*);
- (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives;
- (c) that, having regard to the nature of the activities carried on or proposed to be carried on in the subject premises, the location, character and condition of the premises, and the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation;

(d) that the Board considers that if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

Where the Licensing Board refuses the application the Board must specify the ground for refusal, and where relevant the Board must specify the licensing objective or objectives in question.

Subsequent Applications Following Refusal

Section 32 says that where a Licensing Board has refused a premises licence variation application the Board must refuse any subsequent premises licence variation application in respect of the same premises licence, and seeking the same variation made before the expiry of the period of one year beginning with the date of the earlier refusal UNLESS at the time of the earlier refusal the Board directed that this provision would not apply or the Board is satisfied that there has been a material change of circumstances.



REPORT TO: THE MORAY LICENSING BOARD 4 APRIL 2019

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION ON APPLICATION (REFERENCE CASE NUMBER 1 OF 2019)

BY: CLERK TO THE BOARD

1. REASON FOR THE REPORT

1.1 This report is to notify the Board:

- That notice of a relevant conviction has been disclosed on an application for a personal licence;
- The Chief Constable has confirmed to the Clerk that the applicant (reference case number 1 of 2019) has been convicted of relevant offence and the Chief Constable has objected to the application and recommended that it be refused for the purposes of the licensing objectives;
- That, as a result, s.74(5) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether the licence should be granted or refused.

2. RECOMMENDATIONS

2.1 It is recommended that the Board:-

- i) **note the existence of a relevant conviction and the fact the Board must hold a hearing following receipt of the Chief Constable's confirmation of a relevant conviction and consequent recommendation for refusal; and**
- ii) **hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard to any of the licensing objectives;**

3. BACKGROUND

- 3.1 The applicant submitted an application for a personal licence dated 13 February 2019 and validated on the 19 February 2019. Within the application, applicants are asked to confirm whether they have been convicted of any relevant offence(s).
- 3.2 The applicant in this case disclosed an offence. A copy of the application form from the applicant has been circulated separately to members.
- 3.3 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005.
- 3.4 The Licensing (Scotland) Act 2005 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence. The Chief Constable then has up to 21 days to respond to the notice of application with notice as to whether the applicant has been convicted of a relevant or foreign offence.
- 3.5 The Chief Constable has confirmed to the Clerk that the licence applicant (reference case number 1 of 2019) has been convicted of a relevant offence and a copy of the Chief Constable's letter has been circulated separately to members.
- 3.6 The Chief Constable's letter also confirmed that the Chief Constable objects to the granting of this application and recommends that the application be refused having regard to the licensing objectives of preventing crime and disorder and securing public safety.
- 3.7 This report is to notify the Board that under s.74(5) of the Licensing (Scotland) Act 2005 the Board must hold a hearing to determine the application as a result of receipt of the Chief Constable's notice.
- 3.8 The Board's scheme of delegation requires that an application for a personal licence where the applicant has been convicted of a relevant offence must be determined by the Board.
- 3.9 At the hearing the Licensing Board must, after having regard to the Chief Constable's notice and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
 - If satisfied that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence refuse the application; or
 - If satisfied that it is otherwise necessary for the purposes of any of the licensing objectives, refuse the application; or
 - If not so satisfied grant the application.

3.10 The licensing objectives are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young persons from harm

4. IMPLICATIONS

(a) Moray 2023 A Plan for the Future/Service Plan

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

The Board is to have regard to any of the licensing objectives, particularly the crime prevention objective and decide whether the risk justifies intervention on such grounds.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the existence of a relevant conviction and the requirement to holding a hearing following confirmation of the conviction by the Chief Constable and the Chief Constable's consequent objection to the application.

5.2 It is proposed that the Board, hear from the parties, consider the matter and determine whether to grant or refuse the licence.

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers: There are no background papers

Ref: SAH