



Licensing Board

Wednesday, 17 February 2021

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Board** is to be held at remote locations via video conference, on **Wednesday, 17 February 2021** at **14:00**.

BUSINESS

- | | |
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| 1. Sederunt | |
| 2. Minute of Meeting of 2 December 2020 | 5 - 8 |
| 3. Application List | 9 - 10 |
| 4. Review of Premises Licence Fee for Variation of Premises | 11 - 14 |
| 5. Review of Premises Licences | 15 - 18 |
| 6. Appointment of Depute Chair | |

Moray Council Committee meetings are currently being held virtually due to Covid-19. If you wish to watch the webcast of the meeting please go to:

http://www.moray.gov.uk/moray_standard/page_43661.html

to watch the meeting live.

GUIDANCE NOTES

* **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

Clerk Email: alasdair.mceachan@moray.gov.uk

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 Maria McLean (Member)
Councillor Louise Nicol (Member)
Councillor Amy Taylor (Member)

Clerk Name: Alasdair McEachan
Clerk Telephone: 01343 563080
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Minute of Meeting of the Licensing Board

Wednesday, 02 December 2020

remote locations via video conference,

PRESENT

Councillor David Bremner, Councillor Frank Brown, Councillor Gordon Cowie, Councillor Louise Nicol

APOLOGIES

Councillor James Allan, Councillor Paula Coy, Councillor Ryan Edwards, Councillor Maria McLean, Councillor Amy Taylor

IN ATTENDANCE

Also in attendance at the above meeting were sergeant G Flett, Police Scotland, Sean Hoath, Senior Solicitor, Sana Sarwar, Solicitor, Emma Rapley, Licensing Standards Officer and Tracey Sutherland, Committee Services Officer all Moray Council.

1. Chair

The meeting was chaired by Councillor Gordon Cowie.

2. Minute of Meeting of 30 September 2020

The minute of the meeting of 30 September 2020 was submitted and approved.

3. Appointment of Depute Chair of Licensing Board

Following consideration it was agreed that the discussion of the item would be deferred to the next meeting due to the meeting only being quorate and to allow a fuller discussion.

4. Annual Functions Report

A report by the Clerk to the Board sought approval to publish the draft functions report which incorporates a report from the Licensing Standards Officer.

Following consideration the Board agreed to:

- i) note the draft annual functions report at Appendix 1 and agree the same; and

- ii) instruct the Clerk to publish the final report on the Board's web pages.

5. Appointment of Depute Clerk

A report by the Clerk to the Board requested the formal appointment of a new Depute Clerk to the Board.

Following consideration the Board agreed to appoint a replacement Depute Clerk to assist the provision of the Licensing Service.

6. Application List

- i) New Premises Licence - Dunkinty, Linkwood Elgin

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant introduced the application and answered questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

- ii) Major Variation - Benriach Distillery, Elgin

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative introduced the application and answered questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

- iii) Major Variation - Thunderton House Hotel, Elgin

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative introduced the application and answered questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

- iv) Major Variation - Strathisla Distillery

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant's representative introduced the application and answered questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

- v) Major Variation - Pinz Bowling Ltd

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant introduced the application and answered

questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

vi) Major Variation - Keystore, Findochty

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant introduced the application and answered questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

vii) Major Variation - Fiddichside Inn

The Depute Clerk introduced the application and advised that all the paperwork was in order and that no objections or representations had been received. The applicant introduced the application and answered questions. The Chair proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application.

7. Personal Licence Conviction Disclosure Case 1-2020

The Board noted that the applicant was in attendance along with the Chief Constable's representative Sergeant Flett of Police Scotland.

A report by the Clerk to the Board notified the Board that a representation had been received from the Chief Constable notifying the Board of the existence of a relevant conviction and the absence of a recommendation from the Chief Constable.

The Board heard from the appellant and Sergeant Flett. Following consideration Councillor Bremner moved that the licence be granted. As there was no one otherwise minded the Board agreed to grant the personal licence.

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.



REPORT TO: MORAY LICENSING BOARD ON 17 FEBRUARY 2021

**SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES
LICENCE FEE FOR VARIATION OF PREMISES LICENCE TO
ADD OFF SALES**

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To ask the Board to consider and agree a proposal to amend the fee to vary a premises licence to £50 on a temporary basis specifically and solely for the purpose of allowing the addition of off sales to premises licences and allow these applications to be processed by email circulation.

2. RECOMMENDATION

- 2.1 **It is recommended that the Board consider and agree to the proposal to temporarily amend the premises licence variation fee structure to add the proposed fee pursuant to the Board's power to set such fees under s.12 of the Licensing (Fees) (Scotland) Regulations 2007 and temporarily amend processing arrangements to deal with such applications as set out in para 1.1 of the report.**

3. BACKGROUND

- 3.1 By virtue of the Licensing (Fees)(Scotland) Regulations 2007 and in particular s.12(2) of the same Licensing Boards have the power to set fees for variations to premises licences other than minor variations and variations to the premises manager. These are generally termed major variations. Section 12(2) confirms that different fees may be determined in respect of different applications.
- 3.2 The current fees set for major variations to a premises licence are based on rateable value bandings in a similar way to premises licence application and annual fees. The current fees are £350 for a major variation to any premises falling within RV bandings 0 to 3 inclusive and £500 for bandings 4 to 6 inclusive.
- 3.3 As a result of the pandemic licensed premises have been seeking alternative ways to trade and one of the enduring restrictions on licensed premises has been the ability to trade on a take-away basis only. This includes the selling of alcohol for consumption off the premises i.e. off sales.

- 3.4 Coronavirus legislation and guidance from the Scottish Government automatically implied the ability for licensed premises to sell food on a take-away basis into all premises licence operating plans. However this did not include the implied ability to sell alcohol on an off sale basis. Any ability to sell alcohol on an off sale basis had to be specifically allowed for in the operating plan. A variation to add off sales is a major variation and must be decided by the Board (it cannot be delegated) and can therefore take some time to address even under normal circumstances.
- 3.5 Unfortunately many premises licences did not traditionally include off sales. For example an old restaurant alcohol licence did not include off sales so when it was translated, through grandfather rights, to the current style of generic premises licence it did not allow off sales. This has left many premises wanting to make alcohol off sales without the ability to do so without a major variation of their existing licence.
- 3.6 In the absence of Board meetings and given both time and financial pressures on the trade, licensing staff sought a way to allow trading and address the problem cheaply and at short notice. On a few prior occasions the Board had allowed an extended hours application to temporarily add certain activities to an operating plan rather than premises having to go through a full variation and pay £350 or £500 to fill the gap. So this method was adopted to allow a few premises to start trading at short notice in off sales based on £10 extended hours applications. Extended hours applications are used as it is not possible to obtain an occasional licence for a premises that is already licensed.
- 3.7 This addressed the immediate problem for the trade but has created extra work for the licensing team. The licensing team has had to process a significant number of applications during lockdown, particularly occasionals and extended hours. Licensing administration has been affected by the limited resources of time and staff availability. This has had an effect on the maintenance of the service. In addition the licensing service loses money on each temporary application as the cost of processing exceeds the statutory fee of £10.
- 3.8 Therefore, in order to reduce the overall number of applications, it is proposed that a cheaper, more convenient type of premises licence variation be allowed specifically and solely for the purpose of adding off sales to an existing premises licence.
- 3.9 The budget situation is not settled. Income has been down on previous years but with the final payment of annual fees it should be possible to balance or come close to balancing the liquor licensing budget for 2020/2021. Whilst there may be a small amount of income potentially lost by reducing the fee for this variation, there is no guarantee that applications will be made and by encouraging applicants the proposal has the advantage of saving all the money currently being lost on temporary applications.
- 3.10 Such a variation to the operating plan is a major variation that must be decided by the Board. The application process is set with forms and systems already in place. There is no need to change the administration. It is however proposed that rather than wait for Board meetings, these types of variations will be circulated for approval by email and determined by a majority view.

- 3.11 It is proposed that this process and fee will be a temporary addition to the licensing structure. It will remain in place during the period of general lockdown and can be reviewed when fees are subjected to the next annual review planned for June 2021.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

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

The Legal implications have been explained above.

(c) Financial Implications

Low impact. Potential loss of a small amount of anticipated income from variations which will be offset by the savings from not having to process numerous temporary applications.

(d) Risk Implications

None.

(e) Staffing Implications

Additional administration is required in pursuing unpaid annual fees.

(f) Property

None.

(g) Equalities/Socio Economic Impact

In considering any licensing matter the Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

(h) Consultations

None required.

5. CONCLUSION

5.1 The Board is invited to consider and agree to a proposal to add a temporary specific type of premises licence major variation to the liquor licensing portfolio and agree the process and fee for the same.

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

Background Papers:

Ref: SAH



REPORT TO: MORAY LICENSING BOARD ON 17 FEBRUARY 2021

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES LICENCES

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 To ask the Board to conduct a hearing to consider and determine the premises licence review proposal in respect of each of the premises listed in the schedule circulated to members separately.

2. RECOMMENDATION

- 2.1 **It is recommended that the Board consider and determine the premises licence review proposals having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005.**

3. BACKGROUND

- 3.1 On 22 July 2010 (para 4 of the minute refers) the Board delegated authority to the Clerk and his staff to make a premises licence review proposal in terms of s.37(1) of the Act for any premises where the annual fee remained outstanding for a period of six weeks after the due date.
- 3.2 Annual fees are due each year on the 1 October. Fees are payable in advance for the period 1 October to the 30 September the following year. Invoices are issued on the 27 August each year, in advance of the 1 October, to serve as written reminder to licence holders, as is required by Regulations.
- 3.3 By the delegated authority detailed in para 3.1 a premises licence review proposal in respect of each of the premises listed in the schedule has been made. Notice was sent by email (where possible as many premises are shut) or first class recorded post to all licence holders concerned on the 27th January 2021.
- 3.4 In addition to the final premises licence review proposal referred to above licence holders have been provided with an invoice, at least one reminder for the invoice and a further letter requesting payment. The Licensing Standards Officer has also attempted to make contact with relevant premises licence holders.

- 3.5 The Clerk will update the schedule and withdraw the proposal in respect of any licence fee that is paid prior to the date of the hearing.
- 3.6 The review proposals must state the grounds for review. Section 36(3) of the Act states the grounds for review, which are (a) that one or more of the conditions to which the premises licence is subject has been breached, or (b) any other ground relevant to one or more of the licensing objectives.
- 3.7 A review proposal(s) having been made, the Board is obliged to hold a hearing, in terms of s.38(1), to consider and determine the proposal(s).
- 3.8 In the present case, grounds for review are made out both in terms of ss.36(3) (a) and (b) of the Act.
- 3.9 By the failure to pay the annual licence fees which became due on 1 October 2020, the licence holders concerned are breaching a mandatory condition of the premises licence, which condition is imposed by paragraph 10(2) of Schedule 3 of the Act.
- 3.10 In addition, by the failure to pay the annual licence fees, the licence holders concerned have deprived the Board of revenue and this reduces the Board's ability to promote the licensing objectives.
- 3.11 At the review hearing section 39(2) confers on the Board the power to:
- i) Issue a written warning;
 - ii) Vary the licence;
 - iii) Suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
 - iv) Revoke the licence.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

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

The Legal implications have been explained above.

(c) Financial Implications

Loss of unpaid fees.

(d) Risk Implications

None.

(e) Staffing Implications

Additional administration is required in pursuing unpaid annual fees.

(f) Property

None

(g) Equalities/Socio Economic Impact

In considering this matter the Board should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

(h) Consultations

None required.

5. CONCLUSION

- 5.1 The Board should consider and determine the premises licence review proposals in respect of each premises listed in the schedule circulated separately to members having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005.**

Author of Report:	Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board
Background Papers:	
Ref:	SAH

