



Licensing Board

Thursday, 14 November 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, 14 November 2019** at **10:00**.

BUSINESS

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests ***
3. **Minute of meeting of 5 September 2019** **5 - 6**
4. **Minute of the Special Meeting held on 7 November 2019**
to be tabled
5. **Application List** **7 - 16**
6. **Personal Licence Process for Convictions** **17 - 22**

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

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

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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 5 September 2019

1. SEDERUNT

PRESENT

Councillors: J Allan
G Cowie
P Coy
R Edwards
L Laing
M McLean
A Taylor

APOLOGIES

Apologies were intimated on behalf of Councillors D Bremner and F Brown

IN ATTENDANCE

Sean Hoath, Depute Clerk to the Licensing Board
Emma Rapley, Licensing Standards Officer

2. There were no declarations of group or individual members interests

3. MINUTES

- (i) The Minutes of the Meeting held on 13 June 2019 were submitted and approved

4. APPLICATIONS

(i) New Premises Licence – Gables B&B Dufftown

The Applicant was not present but had sent in a email asking for the matter to be determined in absence. The Depute Clerk introduced the application and advised that paperwork was outstanding and that no objections or representations had been received. The Convenor proposed the granting of the application and there being no-one otherwise minded it was agreed to grant the application as a provisional premises licence in view of outstanding s.50 certificates.

(ii) **Major Variation – Royal Oak Hotel Cullen**

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

(iii) **Major Variation – Old Mill Inn Brodie**

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

5. Licensing (Scotland) Act 2005 – Application for Personal Licence

There was a report to the Board confirming that the Chief Constable had confirmed a relevant conviction in respect of an Applicant for a personal licence case number 2 of 2019. As a result the Board could opt to hold a hearing to consider and determine the personal licence application. The applicant was present and was represented by Mr N Ross of Messrs Grigor & Young, solicitors. The Chief Constable's representative was also present. The Board made an initial determination not to hold a hearing. Accordingly it was agreed the application must be granted. In further discussion on the subject of convictions the Board agreed to ask for a report to the next meeting about the procedure for dealing with such cases.

6. Chief Constable's Annual Report

There was a report to the Board regarding the Chief Constable's (CC) duty to publish an annual report as to how the CC had exercised his functions under the Licensing (S) Act 2005. The report attached the CC's report. The report was introduced by the Depute Clerk. The Board noted and approved the content.

7. Social Responsibility Verbal Report

There was a verbal update to the Board from the Depute Clerk regarding ongoing activities in relation to the production of a social responsibility policy for licence holders. The Board noted progress.

MORAY LICENSING BOARD

MEETING, 14 November 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	Granary 14 Thunderton Place Elgin Moray IV30 1BG	Belhaven Pubs for Greene King Retailing Ltd	29 July 2019	Major variation to remove curfew condition and amend smoking area conditions accordingly and to amend opening hours to 10am for the start of on sales as ancillary to food and amend children's hours to 10pm. Paperwork in order No objections or representations
New Premises	Newtack Grange Crossroads Keith Moray AB55 6LQ	James Morrison	8 August 2019	New Premises application for gin distillery with off sales only 11am to 4pm weekdays Planning permission granted Paperwork outstanding No objections or representation
New Premises	Isla Bank House Seafield Avenue Keith Moray AB55 5BS	Nevean Raffle	19 September 2019	New Premises application for bed & breakfast with on sales only 1pm to 11pm every day plus activities Paperwork outstanding No objections or representation
New Premises	Pinefield Stores Pinefield Road Elgin IV30 6HZ	Eileen Stewart	27 September 2019	New Premises application for convenience store and deli with off sales only 10am to 10pm every day plus activities Paperwork outstanding No objections or representation

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 ON 14 NOVEMBER 2019

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION RENEWAL PROCESS FOLLOWING DISCLOSURE OF A RELEVANT CONVICTION AND SCHEME OF DELEGATION

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 This report is to notify the Board that several personal licences have now reached their ten year renewal mark and that during that ten year period the licence holder may have attracted one or more relevant conviction(s) and that a process is required for dealing with the licence renewals in these circumstances.

2. RECOMMENDATIONS

2.1 It is recommended that the Board:-

- i) note the reasons as to why a process is required to deal with relevant convictions on the renewal of a personal licence; and**
- ii) determine the process and if necessary amend the scheme of delegation;**

3. BACKGROUND

- 3.1 The Licensing (Scotland) Act 2005 provides that a personal licence lasts for a period of ten years from the date of issue and must then be renewed. A renewal application may be lodged in the 9 month period beginning 12 months prior to the expiry of the licence i.e. no later than 3 months before expiry.
- 3.2 An application to renew the licence is basically the same as an application for a new licence. The ten year anniversary of the licence is also a time when refresher training needs to be undertaken and applicants will often update

their training schedule at the same time as renewing the licence but the two are separate processes.

- 3.3 Section 73 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence, whether that is a new licence or a renewal. 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.
- 3.4 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe a list of offences which are relevant offences for the purposes of the Licensing (Scotland) Act 2005.
- 3.5 When the Chief Constable responds with notice of a conviction the Chief Constable may also include a recommendation for the determination of the application.
- 3.6 Where the Chief Constables makes a recommendation, s.74(5) of the Licensing (Scotland) Act 2005 states the Board must hold a hearing to consider and determine the application where the Chief Constable has made a recommendation;
- 3.7 Where there is no recommendation from the Chief Constable, s.74(5A) of the Licensing (Scotland) Act 2005 states the Board may hold a hearing to consider and determine the application where the Chief Constable has made no recommendation;
- 3.8 September 2019 is the tenth anniversary of the Act coming into force so this is the first time that licences have come up for renewal and a gap has been noted in the process.
- 3.9 During the course of a licence the licence holder is required to notify the Board if he/she is convicted of a relevant offence under s.82. Whenever the Board receives such a notification, in accordance with s.83 a copy is sent to the Chief Constable to confirm the conviction. If the Chief Constable confirms the conviction then, at the same time, the Chief Constable may make a recommendation about the personal licence. This gives rise to three potential courses of action:
 - If the conviction is not confirmed the Board may take no action; or
 - If the conviction is confirmed but there is no recommendation the Board must hold a hearing or determine to take no action; or
 - If the conviction is confirmed and a recommendation is made the Board must hold a hearing.
- 3.10 Previously the Board determined that in the circumstances described in para 3.9 above the Board would take no action.

- 3.11 If a hearing is held then if satisfied that it is necessary to do so for one of the licensing objectives the Board may make an order revoking, suspending or endorsing the personal licence.
- 3.12 In some instances the licence holder was unaware of the duty to report a relevant conviction and did not do so. The Court is also supposed to notify the Board of relevant convictions but has never done so. Again this may be because the person being convicted forgets to tell the Court that he/she is a personal licence holder.
- 3.13 Now licences are due for renewal the Chief Constable is reporting to the Board where relevant convictions occurred during the first ten year course of the licence. Some of those may never have been reported before and some may have been reported previously and no action taken at the time. There is no formal process for dealing with these cases.
- 3.14 This in turn can lead to one of several scenarios as follows:
- i) Conviction not previously disclosed at the time of conviction but is disclosed at the time of renewal and the Chief Constable makes no recommendation;
 - ii) Conviction not previously disclosed at the time of conviction but is disclosed at the time of renewal and the Chief Constable makes a recommendation;
 - iii) Conviction previously disclosed at the time of conviction and the Chief Constable made no recommendation so no action was taken and the conviction is further disclosed at the time of renewal and the Chief Constable again makes no recommendation;
 - iv) Conviction previously disclosed at the time of conviction and the Chief Constable made no recommendation so no action was taken and the conviction is further disclosed at the time of renewal and, for some reason, the Chief Constable makes a recommendation.
- 3.15 In each scenario the choice is simple, whether to hold a hearing or not. The Act requires the Board to hold a hearing whenever the Chief Constable makes a recommendation, so that covers scenarios 3.14 (ii) and 3.14 (iv) anyway. Therefore the Board is asked to confirm what should be done in scenarios 3.14 (i) and 3.14 (iii) where there is no recommendation. The Act says the Board “may” hold a hearing and where the Board may hold a hearing the Clerk has to bring the matter to the Board anyway to first determine whether to hold a hearing.
- 3.16 In the event that the Board chooses to delegate to the Clerk to determine not to hold a hearing in scenarios 3.14 (i) and 3.14 (iii) then the Clerk can always refuse to exercise the delegation and instead refer a matter to the Board when in doubt.

- 3.17 Alternatively the Board may choose to hold a hearing every time a conviction is disclosed, whether the Chief Constables makes a recommendation or not. This may be a clearer process and all relevant cases would be listed for hearing. Looking at existing records the number of cases is likely to be small and would not overwhelm Board agendas. There are currently six recorded cases of personal licence holders with relevant convictions. Should the Board choose this option then it will obviously supercede the previous decision not to take action on a conviction as it arises if the Chief Constable makes no recommendation.
- 3.18 The Board is then invited to instruct the Clerk to update the scheme of delegation accordingly.
- 3.19 If a hearing is to be held in respect of a new/renewed licence then at that 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:
- i) 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
 - ii) If satisfied that, having regard to the licensing objectives, it is otherwise necessary to refuse the application then refuse the application; or
 - iii) If not so satisfied grant the application.
- 3.20 If a hearing is held then it should be noted that, even in the absence of a recommendation by the Chief Constable, it is possible for the Board to conclude that it is necessary to refuse the application for the purpose of any of the licensing objectives. However, in the absence of such a recommendation, the Board should be slow to draw the conclusion that refusal is necessary for the purpose of a licensing objective.
- 3.20 If a hearing is not held then the Board must grant the application.
- 3.21 The licensing objectives are:
- Preventing crime and disorder
 - Securing public safety
 - Preventing public nuisance
 - Protecting and improving public health
 - Protecting children from harm

4. IMPLICATIONS

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

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives as previously described.

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

In each individual case 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. The risk within the process is that convictions the Board may feel relevant might not be considered as a direct result of the Chief Constable's view.

(e) Staffing Implications

More hearing will mean more staff time to prepare and present reports and cases that ultimately may not require intervention.

(f) Property

None.

(g) Equalities/Socio Economic Impact

There are no issues in this case beyond the general equalities issues that arise in each individual case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1. It is proposed that the Board note the need for a process to deal with the existence of a relevant conviction in certain circumstances;

5.2. It is proposed that the Board determine the process;

5.3. It is proposed that the Board instruct the Clerk to amend the scheme of delegation if required.

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

Background Papers: There are no background papers

Ref: SAH