



Licensing Board

Thursday, 07 February 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, 07 February 2019** at **10:00**.

BUSINESS

- | | | |
|----------|--|----------------|
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| 4 | Appointment of Depute Clerk | 15 - 16 |
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| | Licences | |
| | Report to the Clerk to the Board | |

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

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 Louise Laing (Member)
Councillor Maria McLean (Member)
Councillor Amy Patience (Member)

Clerk Name: Alasdair McEachan
Clerk Telephone: 01343 563080
Clerk Email: alasdair.mceachan@moray.gov.uk

THE MORAY LICENSING BOARD

MINUTE OF THE MEETING OF THE MORAY LICENSING BOARD

The Moray Council Chambers, Council Headquarters, High Street, Elgin on Thursday 19 December 2019

PRESENT

Councillors: J Allan
D Bremner
F Brown
G Cowie
P Coy
L Laing
M McLean
A Patience

APOLOGIES

Apologies were intimated on behalf of Councillors R Edwards

IN ATTENDANCE

Sean Hoath, Depute Clerk to the Licensing Board

1. PRIOR MINUTES

- (i) The Minutes of the Meeting held on 15 November 2018 were submitted and approved

There were no declarations of interest.

2. APPLICATIONS

(i) Major Variation – Laichmoray Hotel, Elgin

The Applicant was represented by Mr N. Ross of Grigor & Young Solicitors. 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 solicitor addressed the Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

(ii) Major Variation – Benromach Distillery, Forres

The Applicant's representatives, Ms Colville and Ms Keenan, were 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's representative addressed the Board and answered questions from the Board. The Convenor proposed granting the application and there being no-one otherwise minded it was agreed to grant the application.

3. Gambling Act 2005 – Review Of Statement Of Policy

There was a report to the Board confirming the statement of policy under The Gambling Act 2005 had been drafted and consulted upon. The depute clerk introduced the report. The Board noted the report, made no further changes to the draft policy and agreed the recommendations. The policy was approved for publication.

MORAY LICENSING BOARD

ITEM 3

MEETING, 7 February 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	Glenlivet Public Hall Glenlivet Ballindalloch AB37 9BX	The Glenlivet Public Hall	27 November 2018	Major variation application for increasing core hours and adding various activities to operating plan Operating Plan 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: MORAY LICENSING BOARD 7 FEBRUARY 2019

SUBJECT: APPOINTMENT OF DEPUTE CLERK

BY: CLERK TO THE BOARD

1. Reason for Report

- 1.1 The reason for this report is to request the formal appointment of a replacement Depute Clerk to the Board.

2. Recommendations

- 2.1 **It is recommended that the Board appoint a replacement Depute Clerk to assist the provision of the Licensing Service**

3. Background

- 3.1 There are currently three Depute Clerks – Mrs Margaret Forrest, Legal Services Manager (Litigation & Licensing), Mr Sean Hoath, Senior Solicitor (Litigation and Licensing) and Ms Morag Smith, Senior Solicitor (Litigation and Licensing).
- 3.2 Mrs Margaret Forrest, Legal Services Manager (Litigation & Licensing), will be leaving Moray Council at the end of January 2019 and in order to assist in advising of the Licensing Board, and administration of the same, the Clerk proposes that Mrs Aileen Scott, Legal Services Manager (Property and Contracts) is appointed from within the Legal and Democratic Services section, as a replacement.

4 Implications

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

The Moray Licensing Board exercises statutory functions under various Acts including the Licensing (Scotland) Act 2005, the Gambling Act 2005, which includes promoting licensing objectives such as :

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

The objectives of licensing regimes closely reflect some of the objectives of the Community Plan. Provision for appropriate staff and support will assist the Board in promoting community involvement and preventing the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the caring and healthy communities and environmental aspects of the Corporate Plan.

(b) Policy and Legal

None arising directly from this report.

(c) Financial Implications

None

(d) Risk Implications

The appointment of additional staff to support the Clerk should serve to maximise service delivery.

(e) Staffing Implications

Appointments can be made from within existing staff resources.

(f) Property

None.

(g) Equalities

None.

(h) Consultations

None required.

5. Conclusion

5.1 It is proposed that the Board appoint a replacement Depute Clerk to assist the provision of the Licensing Service.

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

Background Papers:

Ref: SH



REPORT TO: THE MORAY LICENSING BOARD 7 FEBRUARY 2019

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 at the meeting.

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 first class post to all licence holders concerned on the 7th January and 16th January 2019. The Clerk will notify the Board and withdraw the proposal in respect of any licence fee that is paid prior to the date of the hearing.
- 3.4 The review proposal 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.
- 3.5 A review proposal having been made, the Board is obliged to hold a hearing, in terms of s.38(1), to consider and determine the proposal.

- 3.6 In the present case, grounds for review are made out both in terms of ss.36(3) (a) and (b) of the Act.
- 3.7 By the failure to pay the annual licence fees which became due on 1 October 2017, 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.
- 3.8 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.
- 3.9 At the review hearing section 39(2) confers on the Board the power to:
- 3.9.1 Issue a written warning;
 - 3.9.2 Vary the licence;
 - 3.9.3 Suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
 - 3.9.4 Revoke the licence.

4. SUMMARY OF 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

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

None

(h) Consultations

None required.

5. CONCLUSION

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

Background Papers: There are no background papers

Ref: SAH

