

## REPORT TO BANFF AND BUCHAN AREA COMMITTEE – 2 OCTOBER 2018

### CIVIC GOVERNMENT (SCOTLAND) ACT 1982 APPLICATION FOR GRANT OF STREET TRADER'S LICENCE

#### 1 Recommendations

- 1.1 The Banff and Buchan Area Committee is asked to consider an application for the grant of a Street Trader's Licence and the objection made in respect thereof and determine whether the application should be granted or refused.

#### 2 Background/Discussion

##### Application

- 2.1 Cojem Leisure Limited per Karen Forsyth, 24 Duthie Place Fraserburgh, submitted an application for the grant of a street trader's licence to operate a business from outside Dee Jays Nightclub, Denmark Street, Fraserburgh. AB43 9EY, on 20 July 2018.
- 2.2 The applicant is seeking to operate as follows:  
  
Outside Dee Jays Nightclub, Denmark Street, Fraserburgh. AB43 9EY, Fridays 22:00 – 03:15 hrs, Saturdays 11:00 – 03:15 hrs, Sundays 11:00 – 02:30 hrs.
- 2.3 Officers have delegated authority to grant street trader licence applications up to 23:00 hours. Any application seeking to trade hours between 23:00 and 07:00 requires to be considered by the Area Committee.
- 2.4 A copy of the application is attached as Appendix 1 to this Report.

##### Consultations

- 2.5 The Chief Constable, the Firemaster, Planning Services, Environmental Health and Building Standards were consulted on the application.
- 2.6 Police Scotland subsequently lodged an objection in respect of the application by letter dated 21 August 2018. A copy of the objection is attached as Appendix 2 to this report.
- 2.7 Where the applicant is trading from a fixed location, rather than operating a mobile route, the applicant required to advertise the application in the local press advising members of the public that an application had been made.
- 2.7 Following the publication of the advert in the press, no objections or representations have been lodged by Members of the Public.

- 2.8 The objection was intimated to the Applicant by letter dated 24 August 2018.
- 2.9 The Applicant, and the representative of the Chief Constable have been requested to attend the meeting by letter dated 31 August 2018. All parties have also been given copies of this Report, and the procedures for the hearing.

### **Procedure**

- 2.10 Each application should be considered on its own merits.
- 2.11 The legal test to be applied is set out at Appendix 3 to this report.
- 2.12 Members should follow the procedures outlined at Appendix 4 to this Report.
- 2.13 The Council's Head of Finance and the Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments have been incorporated.

### **3 Scheme of Governance**

- 3.1 The Area Committee is able to consider and take a decision on this item in terms of Section B – Area Committees: 1 – Administrative and General: 1.1 of the List of Committee Powers in Part 2A - List of Committee Powers of the Scheme of Governance as the matter is specific to their Area and not otherwise delegated to any other Committee.

### **Equalities, Staffing and Financial Implications**

- 4.1 There are no area, policy, finance, staffing or sustainability implications directly arising from this report.
- 4.2 An Equality Impact Assessment is not needed in this case because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 4.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.
- 4.4 The Town Centre Principle does not apply in respect of this matter as the Committee is considering the complaint as Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

**Ritchie Johnson**  
**Director of Business Services**

Report prepared by:- Noel McDonnell, Administrator  
Date: 24 August 2018



Aberdeenshire Council

**Civic Government (Scotland) Act 1982**



**APPLICATION FOR:-**

- (Please tick appropriate box)  **GRANT of a STREET TRADER LICENCE**  
 **RENEWAL of a STREET TRADER LICENCE**

**PLEASE COMPLETE THE RELEVANT QUESTIONS IN BLOCK CAPITALS**

**(Incomplete applications will be returned)**

**Section 1 (To be completed by all applicants)**

1. Full Name of Applicant	<b>Surname</b> FORSYTH	<b>First Name(s)</b> KAREN
2. Home Address	24 DUTHIE PLACE FRASERBURGH AB43 8WX	
3. Postcode	AB43 8WX	
4. Address for correspondence relating to this application (if different from the one above)		
5. Postcode		
6. Email Address	[REDACTED]	
7. Telephone Number(s)	[REDACTED]	
8. Date and Place of Birth	<b>Date of Birth</b>	<b>Place of Birth</b>
	[REDACTED]	[REDACTED]
9. Is the applicant to carry out the day-to-day management of the business, or event?	<input checked="" type="checkbox"/> YES (go to Section 2) <input type="checkbox"/> NO (go to next question)	
10. Full Name of employee or agent who will be the day-to-day manager	<b>Surname</b>	<b>First Name(s)</b>
11. Home Address of day-to-day manager		
12. Email Address of day-to-day manager		
13. Telephone Number of day-to-day manager		
14. Date and Place of Birth of day-to-day manager	<b>Date of Birth</b>	<b>Place of Birth</b>

**Section 2 (to be completed by all applicants)**

15. Are you are applying for the RENEWAL of a Licence. If YES, please state the expiry date of your current licence	<input type="checkbox"/> YES Expiry date of current licence .....  <input checked="" type="checkbox"/> NO (please go to question 16)
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16. Are you applying for a licence as an individual or as a company, firm or organisation? If as individual you will be the licence holder. If on behalf of a company, firm or organisation that will be the licence holder.	<input type="checkbox"/> INDIVIDUAL (Please go to question 20) <input checked="" type="checkbox"/> COMPANY, FIRM or ORGANISATION If a company, firm or organisation is entered that will be the licence holder.			
17. Full name of Company, Firm or Organisation	COJEM LEISURE LIMITED			
18. Address of Principal or Registered Office and telephone number	24 DUTHIE PLACE FRASERBURGH AB43 8WX			
19. Full names and private addresses of all Directors, Partners, Committee Members or other persons responsible for the management of the business (continue on a separate sheet if necessary)	Full Name (s)	Private Address(es)	Date(s) of Birth	Place(s) of Birth
	MARK DOWNIE FORSYTH	24 DUTHIE PLACE FRASERBURGH AB43 8WX	[REDACTED]	[REDACTED]
20. State precisely locality/localities by reference to street names or a sketch map if necessary in which it is proposed to act as a STREET TRADER (or for existing street trader in which you currently act)	DENMARK STREET DEE JAYS NIGHTCLUB DEE JAYS GROUND VAN			
21. Do you propose to remain stationary at any particular location for a period in excess of 20 minutes in any one day, including lay-bys?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (go to question 25.)			
22. If the answer to question above is YES please state the precise location from which you propose to trade.	DENMARK STREET DEE JAYS NIGHTCLUB DEE JAYS GROUND			
23. Are you the owner of the site(s) on which you propose to trade?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
<p>If the answer to the question above is NO a letter of consent from the landowner, including where the landowner is Aberdeenshire Council, must accompany this application.</p> <p>Where you propose to stop and trade for more than 20 minutes on any part of the public road including lay-bys then the consent of Aberdeenshire Council as Roads authority must be obtained. You will require to produce written consent from the Roads Authority that confirms that they consent to you trading from those specific locations indicated in the answer to question 22 above where any of those locations are part of the road network including lay-bys. The consent should confirm the times and duration for which consent is given as well as precise location.</p> <p>Where the proposed location(s) are on trunk roads including lay-bys written confirmation of agreement will be required from BEAR Scotland Ltd., BEAR House, Inveralmond Road, Inveralmond Industrial Estate, Perth, PH1 3TW</p> <p>Please note any necessary planning approval must be obtained and produced with the application.</p> <p>In the case of lay-bys other than at trunk roads, written confirmation of agreement will be required from the Roads Service of the Council</p> <p>In the case of Trunk Road lay-bys, written confirmation of agreement will be required from BEAR Scotland Ltd., BEAR House, Inveralmond Road, Inveralmond Industrial Estate, Perth, PH1 3TW</p>				

24. State days/hours and places during which it is proposed to act as a STREET TRADER	Days	Hours From	To	Places
	Monday	.....	to	.....
Tuesday	.....	to	.....	.....
Wednesday	.....	to	.....	.....
Thursday	.....	to	.....	.....
Friday	.....	10pm to	3.15am	DEEJAYS GROUND
Saturday	.....	11am to	3.15am	DEEJAYS GROUND
* Sunday	.....	11am to	2.30 pm	DEEJAYS GROUND
* WILL ONLY OPERATE TIL 2.30am on SUNDAYS WHEN DEEJAYS IS OPEN ON A SUNDAY NIGHT				
25. State nature of goods/services in which it is proposed to trade.	FAST FOOD - BURGERS /CHIPS / CHICKEN FILLETS			
26. State name and address of premises at which the goods will be stored when not being offered for sale.	SHIP INN 147 SHORE STREET FRASERBURGH AB43 9BP			
27. State type and registration number of vehicle or describe and give dimensions of Structure, Kiosk or Moveable Stall or Receptacle to be used in connection with the street trading. Include a sketch or plan if appropriate	FORD TRANSIT SD08 EGV			

**Section 3 DECLARATION (To be completed by all applicants)**

28. Has the applicant or any person named on the application ever applied for and been refused such a Licence or had such a Licence suspended?  If YES, please give details of which council refused/suspended the Licence and the date it was refused/suspended.	<input type="checkbox"/> YES Which Council?..... Date refused/suspended? .....
29. Do you or the day to day manager have <u>any</u> convictions against you? Note: "Convictions" includes <u>both</u> road traffic and criminal convictions. It includes <u>both</u> current and spent convictions	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
I declare that the particulars given by me on this form together with the details on the application attached are true and I hereby make application to Aberdeenshire Council for the grant or renewal of the Licence applied for.	
Date: ...19.7.18.....	Signature of Applicant/Agent: 
Address of Agent (if any): .....	
Any person who in connection with the making of this application makes any statement which he knows to be false or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £2500.	

**PLEASE READ THE ATTACHED NOTES AND COMPLETE THE ATTACHED PRIVACY NOTICE BEFORE YOU SUBMIT YOUR APPLICATION**

**Duration of Licences**

If granted, your Licence will come into effect on the date specified on the Licence. Licences are normally granted for 3 years, unless a shorter period is specified.

**Application Fee**

The fee for a Street Trader's Licence is non-refundable. Cheques/postal orders should be made payable to 'Aberdeenshire Council'

**The following documents require to be submitted with your application:-**

The following documents require to be submitted with your application:-

- Completed Application Form
- Written Confirmation from Land Owner/Roads Authority/Bear Scotland.
- Compliance Certificate from Environmental Health
- Cheque/Postal Order for the appropriate fee
- 2 Passport Photographs
- Completed and signed privacy notice

**Aberdeenshire Council require to carry out a FACE to FACE Identification Check under the Civic Government (Scotland) Act 1982. You will require to attend your local Licensing Office (or alternatively one of the Council Offices listed below) together with one of the following:-**

- UK Passport
- Non-UK Passport
- UK Photo Driving Licence

**Please ask for the ID check to be carried out when you lodge your application**

**Note:- Where your application is for a 'static' Street Trader's Licence you will be supplied with an advert which you must have advertised in a local newspaper, covering the area where you propose to trade at your own cost. Proof of advertising must be submitted before a licence can be issued. The application will not be determined until at least 28 days after the advert is placed in the newspaper.**

**Please submit your application to:-**

**Aberdeenshire Council (South),  
Legal & Governance,  
Viewmount,  
Arduthie Road,  
Stonehaven,  
AB39 2DQ**

APPENDIX 2

21 August 2018

Your Ref:

Our Ref: 344334

Head of Service  
Aberdeenshire Council  
Corporate Services  
Legal and Governance  
34 Low Street  
BANFF  
AB45 1AN



**POLICE  
SCOTLAND**  
Keeping people safe

Iain Livingstone QPM  
Deputy Chief Constable Designate

North East Division  
Queen Street  
Aberdeen  
AB10 1ZA

Dear Sir/Madam,

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982  
APPLICATION FOR GRANT OF A STREET TRADER'S LICENCE  
APPLICANT: COJEM LEISURE LIMITED, 24 DUTHIE PLACE,  
FRASERBURGH, AB43 8WX**

I refer to the above application for the grant of a Street Trader's Licence and intimate that, in terms of Section 3(1) of Schedule I of the Civic Government (Scotland) Act 1982, I make the following objection in relation to the application.

The application seeks to grant a street trader's licence in respect of licensing a hot foods van outside the premises known as 'Deejay's Nightclub' between 2200-0315 hours on Friday, 1100-0315 hours on Saturday and 1100-0230 hours on Sunday - when the nightclub is in operation.

It is my understanding that Mark Forsyth, who is named on the application as being responsible for the management of the van, is also one of the individuals named as being responsible for the premises licence in respect of 'Deejay's Nightclub'. As such, it is my opinion that the application cannot be considered in isolation.

The premises known as 'Deejays Nightclub', and the ground in which the application seeks to trade from, are adjacent to a built up residential area. As such, the premises is subject to a dispersal policy which seeks to prevent public nuisance by ensuring patrons leave the vicinity of the premises following the end of a trading day. I understand that this policy is a condition of the premises licence, therefore the hours applied for on the application extend beyond, and conflict with this policy.

Should the application be granted, I am of the opinion this would result in an increased risk of anti-social behaviour in the early hours of the morning, encouraging intoxicated persons to attend and remain in the area for a prolonged period of time, with an increased likelihood of public nuisance and potential for alcohol fuelled violence. The impact on the quality of life for residents and businesses in the immediate vicinity will be significant.

In terms of Section 3(1) of Schedule I of the Civic Government (Scotland) Act 1982, I object to the granting of such a licence and on the grounds that it would likely cause undue public nuisance and public disorder.

Yours faithfully

A black rectangular redaction box covering the signature of the Deputy Chief Constable Designate.

Iain Livingstone QPM  
Deputy Chief Constable Designate

For enquiries please contact the Licensing Department on 01224 306468.

### APPENDIX 3

**Civic Government (Scotland) Act 1982**  
**Section 39 and Schedule 1**  
**Grant or Renewal of Street Traders' Licences**

#### LEGAL TEST

A **Licensing authority SHALL** refuse an application to grant or renew a licence if, in their opinion:

- a. The applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either –
  - i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
  - ii. Not a fit and proper person to be the holder of the licence
- b. The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if they made the application themselves;
- c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
  - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
  - ii. The nature and extent of the proposed activity
  - iii. The kind of persons likely to be in the premises, vehicle or vessel
  - iv. The possibility of undue public nuisance; or
  - v. Public order or public safety; or
- d. There is other good reason for refusing the application;

And otherwise **SHALL** grant the application.

1. In terms of Section 39 (1) of the above Act, a licence known as a **street trader's licence**, **SHALL** be required for street trading by a person, whether on his own account or as an employee.
2. Section 39 (2) provides that "**street trading**" in this section means doing any of the following in a public place –
  - a. Hawking, selling or offering or exposing for sale any article.
  - b. Offering to carry out or carrying out for money or money's worth any service,

to any person in the public place and includes doing any of these things there in or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where this is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.

3. Section 39 (3) provides that a **street trader's licence shall not be required for -**
- a. The sale of newspapers only;
  - b. The sale of milk by or on behalf of a person registered under regulations made under section 19 of the Food Safety Act 1990.
  - c. The sale of coal, coke or any solid fuel derived from coal or of which coal or coke is a constituent;
  - d. Any activity in respect of which a certificate under the Pedlars Act 1871 has been granted;
  - e. Any activity in respect of which a licence is required under this Act apart from this section; or
  - f. Organising or participating in a public charitable collection within the meaning of subsection (16) of section 119 of this Act in accordance with permission granted under that section.

4. Section 39 (4) provides that where an application for a street trader's licence is made in respect of an activity which:

- a. consists or includes food business within the meaning of S.1(3) of the Food Safety Act 1990;

**“food business”** means any business in the course of which commercial operations with respect to food or food sources are carried out.

**“food”** is any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be, ingested by humans.

**It includes** drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment.

**It does not include** the following items:

- a. Feed;
- b. Live animals unless they are prepared for placing on the market for human consumption;
- c. Plants prior to harvesting
- d. Medicinal products;
- e. Cosmetics
- f. Tobacco and Tobacco Products
- g. Narcotic or psychotropic substances
- h. Residues and Contaminants”

**“food source”** means any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise).

AND

- b. Involves the use of a vehicle, kiosk or moveable stall,

The **licensing authority**, **SHALL**, without prejudice to paragraph 5(3) of Schedule 1 of this Act (**see**: LEGAL TEST section, above), refuse the application unless they are provided with a certificate by a food authority appointed for the purposes of Section 5 the Food Safety Act 1990, confirming that the vehicle, kiosk or moveable stall complies with such requirements as the Scottish Ministers, **MAY**, by order make.

5. Section 39 (4A), provides that, a “**food authority**” in terms of section 39(4), is a food authority in Scotland which, in respect of the activity mentioned in that subsection –
  - a. has registered the establishment that carries out or intends to carry out the activity for the purposes of Article 6.2 of Regulation EC No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, or
  - b. where no such food authority has registered the establishment for those purposes, a food authority which is-
    - i. The **licensing authority** to which the application mentioned in section 39(4) in respect of the activity is made, or
    - ii. Another **licensing authority** to which an application for a street trader’s licence in respect of the activity is or has been made.
6. Section 39 (5), provides that, an order made by the Scottish Ministers in terms of section 39(4) (**see**: bullet point 4, above), **MAY** specify other requirements by referencing provisions which are contained with other pieces of relevant legislation.
7. Section 39 (6), provides that, any statutory instrument containing an order made under section 39 (4) (**see**: bullet point 4, above) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
8. A **licensing authority**, **SHALL NOT**, in a case where a certificate falls to submitted to them (in relation to the display of a site notice) reach a final decision on an application to which the certificate relates until it has been so submitted.

## APPENDIX 4

### PROCEDURE

#### Members should follow the procedure below:-

- (a) Identify whether the applicant and his/her advisors are present.
- (b) Identify whether the Objector(s) and his/her advisors are present. [in turn]
- (c) If there are no spent convictions, go to (h) below.
- (d) Where the applicant has spent convictions the Chair should:-
  - (i) Invite the representative of the Chief Constable to satisfy the Committee that justice cannot be done unless the spent convictions are taken into account. (In the undernoted case, it is indicated that it would be improper to invite the applicant to make comment on the spent convictions)
  - (ii) The Chairman should invite members of the Committee to ask questions;

NOTE: In the case of O'Docherty v Renfrewshire Council 1998 SLT 327, it is suggested that "at the least some sort of inquiry as to the age and general nature of the convictions would be essential to any proper decision.

- (e) The Committee then has to determine whether or not it is satisfied that there is no other way of doing justice than to look at the spent convictions in considering the application. The Committee **MAY** go into private session to consider the submissions made. It is recommended, however, that the Committee not reach any decision during the retreat.
- (f) Thereafter, the Chairman should:
  - (i) Call for a motion regarding the spent convictions
  - (ii) Call for a seconder to the motion
  - (iii) Call for any amendment to the motion
  - (iv) Call for a seconder to any amendment proposed.
  - (v) If there is no amendment, the Chairman should confirm with the Committee that the decision is unanimous. (usually by a show of hands.)
  - (vi) If there is an amendment, then there **MUST** be a vote. The Chairman has the casting vote.
- (g) If the Committee has determined to consider the spent convictions, they will then be circulated for the Committee's perusal.
- (h) Invite the applicant to speak to his application (outline to the Committee why the application has been made and make any comments in relation to any observation/objection made in respect of the application)
- (i) Ask the Objector(s) to speak to the Objection(s) or Observation(s) [in turn]
- (j) Give the applicant an opportunity to address any issues raised by the Objector(s).
- (k) Members **MAY** then question all parties present.

- (l) Members should invite concluding remarks (objector(s) then applicant), but no new evidence, before considering the application.
- (m) The Committee **MAY** go into private session to consider the submissions made. It is recommended, however, that the Committee not reach any decision during the retreat.
- (n) Thereafter, the Chairman should:
  - (i) Call for a motion
  - (ii) Call for a seconder to the motion
  - (iii) Call for any amendment to the motion
  - (iv) Call for a seconder to any amendment proposed.
  - (v) If there is no amendment, the Chairman should confirm with the Committee that the decision is unanimous. (usually by a show of hands.)
  - (vi) If there is an amendment, then there **MUST** be a vote. The Chairman has the casting vote.

