

SOUTH ABERDEENSHIRE LICENSING BOARD
REPORT TO LICENSING BOARD – 4 December 2019
LICENSING (SCOTLAND) ACT 2005
PREMISES CEASED TO HAVE EFFECT UNDER S28 (5)(B)

1 Reason for Report / Summary

- 1.1 In the last year a number of licensed premises in South Aberdeenshire have either closed or are being used for other activities that does not involve the sale of alcohol. Following non-receipt of the relevant annual fee, these premises are now in breach of their mandatory conditions as set out in schedule 3 of the Act. This report details such premises and recommends that the Board considers that the premises licences have ceased to have effect under S28 (5)(b).

2. Recommendations

- 2.1 It is recommended that the Board considers the materials before them and, in respect of each premise in turn –
- (a) Determines whether there is enough evidence before the Board to allow a determination to be made that the premises licences have ceased to have effect, or whether the Board needs to defer consideration of the matter to the next available Board Meeting for further material to be made available; or
 - (b) Where the Board has concluded that there is insufficient evidence before them to allow a determination to be made, to consider in respect of each of the premises, whether said premises should be subject to review.

3 Purpose and Decision Making Route

- 3.1 In terms of Section 28 (5)(b) of the Licensing (Scotland) Act 2005, a Premises Licence ceases to have effect where the licensed premises in respect of which the licence was issued cease to be used for the sale of alcohol.
- 3.2 In terms of Section 6.13 of the South Aberdeenshire Divisional Policy statement, where any premises ceases to be used for the sale of alcohol for

a period of more than three months, the relevant Board will conclude that the licence has ceased to have effect in terms of Section 28 of the Act. A new premises licence will be required before alcohol can then be sold from the premises. The relevant Board will consider each case on its own merits. This period may be extended if circumstance arise that merit this. Licence holders should request extensions in writing to the relevant Board and should outline the reasons the extension is sought. All requests will be considered by the relevant Board.

- 3.3 Four premises are now ready to be put before the Board for consideration. Details compiled by the Licensing Standards Officer are provided in Appendix 1 to this report

4 Discussion

- 4.1 The Depute Clerk is of the view that the following Premises Licences listed in Appendix 1 to this report are no longer used for the sale of alcohol and asks that the Board considers whether the criteria for ceases to have effect under section 28 of the Act have been met.
- 4.2 If the Board determine that further evidence is required, the application should be referred to the next available Board Meeting in order that the applicant may present their case in full or further information can be obtained in the interim.

Procedure

- 4.3 Each case should be considered on its own merits.
- 4.12 Members' options in disposing of the applications are: -
- (a) To determine that the premises have ceased to be used for the sale alcohol and therefore cease to have effect and the licence will fall.
 - (b) Determine that further evidence is required in which case the application should be referred to the next available Board Meeting in order that the applicant may present their case in full or further information can be obtained in the interim.
- 4.13 When coming to a decision the Board must consider the evidence provided and the contents of this report. Supplementary advice and information can be made available by Officers, if required.

5 Board Policy, Implications and Risk

5.1 The applications are within the terms of the Board's policy.

5.2 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial		X	
Staffing		X	
Equalities			X
Fairer Scotland Duty			X
Town Centre First			X
Sustainability		X	
Children and Young People's Rights and Wellbeing			X

5.3 An Equality Impact Assessment is not needed in this case because the Board is carrying out a quasi-judicial function and there will be no differential impact on the protected characteristics of any party to the proceedings.

Karen Wiles

Clerk to the Board

Report Prepared by Peter Robertson , Depute Clerk to the Licensing Board

Date: 21 November 2019

List of appendices:

Appendix One - details of application

APPENDIX ONE

Name and Address of Premises	Premises Licence No.	Remarks (if any)
Newtonhill Stores 2/4 Skateraw Road Newtonhill	AB-S-P043	These premises were closed as a village store for almost two years. There is now a new lease in place and the current tenant has refurbished the property which is now used as a café. There is no requirement at present for a licence at the premises as no alcohol is required to be sold. Attempts to contact the current licence holder to surrender the licence have proved fruitless but given the licence holder has no longer any control of the premises, it is considered that the premises have ceased to have effect.
ABV Craft Drinks 22 Dee Street Banchory	AB-S-P188	These premises were closed for approximately 6 months having been a specialist beer and wine retail shop. The premises have been taken over as a gift shop and contact with the new leaseholder has indicated that there is no requirement for a licence. It is considered that the premises have ceased to have effect.
Spar 13 High Street Laurencekrk	AB-S-P154	These premises were used for many years as a retail shop with an off sales licence. It has now been closed for between 6 and 9 months and is considered not to be re-opening in the near future. The current licence holders have not surrendered the licence, nor have they paid the annual fee due. It is considered that the premises have ceased to have effect.
Glen Lui Hotel 14 Invercauld Road Ballater	AB-S-P024	These premises have been used for many years as a country hotel in the village of Ballater. It has now been sold and is currently empty and has not traded since early this year. The current licence holders have not surrendered the licence, nor have they paid the annual fee. They are believed to be in Fife and attempts to contact them have proved fruitless. The new owners are allegedly going to demolish the current building and build a new private home on the site. There are no current planning applications in the system that would support this at present. It is considered that the premises have ceased to have effect.