

THE ABERDEENSHIRE LICENSING BOARD

Minute of Meeting of the ABERDEENSHIRE LICENSING BOARD, held by SKYPE only on WEDNESDAY 12th August 2020 at 10.15 a.m.

Sederunt:

Board Members:

Mr B Topping (Convenor), Mr. S. Calder; Mrs. M. Ewenson; Mr. A Forsyth; Mr. G Reynolds; Mrs. A Stirling; Mr. L. Wilson

In Attendance:

Lauren Cowie, Fiona M. Stewart, Depute Clerks to the Board; Sergeant G. Flett, Police Scotland; Lisa Godini and Trevor Lackie, Licensing Standards Officer;

Observing:

Delsya Borland, Licensing Team

Forum Members:

None

The Convenor welcomed everyone to the meeting of the Board and outlined the protocols for the meeting.

The Sederunt of the meeting was then taken.

1. APOLOGIES FOR ABSENCE

Mr Argyle, Mr Hutchison and Ms Harper tendered their apologies for the meeting.

2. DECLARATIONS OF INTEREST

All Members of the Board declared an interest in item 8 on the agenda on the basis that one of the objectors was the husband of an Aberdeenshire Councillor who was a colleague. However, having applied the objective test, all Board Members had determined that the interest was remote and insignificant and therefore they remained and participated in the consideration of the item.

3. STATEMENT ON EQUALITIES

Consider, and if so decided, adopt:- "In line with the Council's legal duty under section 149 of the Equality Act 2010 the Board, in making decisions on the attached reports, shall have due regard to the need to":-

- (i) eliminate discrimination, harassment and victimisation;*
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and*

(iii) foster good relations between those who share a protected characteristic and persons who do not share it.

Agreed

4. **MINUTES OF BOARD MEETING OF 3rd JUNE 2020 – FOR APPROVAL**

The Minutes were approved

5. **LICENSING (SCOTLAND) ACT 2005 - APPLICATIONS FOR PREMISES/PROVISIONAL PREMISES LICENCES – NON-CONTENTIOUS**

Following consideration of a report by the Clerk in respect of applications for Premises/Provisional Premises licences, the Board decided the applications as undernoted:

(1) **PREMIER NEWS, KINTORE STREET, AUCHENBLAE**

Granted

Thereafter, the Board agreed that applicants for non-contentious applications for premises/provisional premises licences did not require to be asked to attend the Board.

6. **LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR MAJOR VARIATION – NON CONTENTIOUS**

Following consideration of a report by the Clerk, in respect of applications for major variations of premises licence, the Board decided the applications as undernoted:

(1) **MORRISONS, INVERURIE**

GRANTED subject to the following conditions:-

- There will be a recorded age verification system in place in respect of remote/online sales
- Challenge 25 will be carried out at any point of collection or delivery of alcohol

(2) **THE TASTING ROOM, INVERBERVIE**

GRANTED subject to the following conditions:-

- There will be a recorded age verification system in place in respect of remote/online sales
- Challenge 25 will be carried out at any point of collection or delivery of alcohol
- That children are only permitted entry after 2300 hours whilst accompanied by a responsible person aged 18 years or over for the purposes of the party dining or attending a private function
- That young persons are only permitted entry after 2300 hours whilst accompanied by a responsible person aged 18 years or over.

(3) **MORRISONS, BANCHORY**

GRANTED subject to the following conditions:-

- There will be a recorded age verification system in place in respect of remote/online sales
- Challenge 25 will be carried out at any point of collection or delivery of alcohol

(4) The HILTON GRANT VACATIONS CLUB, BALLATER

GRANTED

Thereafter, the Board agreed the layout of information for such reports moving forward.

7. APPLICATION FOR PROVISIONAL PREMISES LICENCE – MEGA DOG TAP, ELLON - HEARING

1. The Licence Holder was represented by Peter Lawson, Solicitor, Glasgow. James Brown, Retail Director of Brewdog was also in attendance at the meeting.
2. Trevor Lackie, Licensing Standards Officer was present at the hearing;
3. The Board heard Mr Lawson's submissions. The submissions included reference to written material, which had been circulated to Members in advance of the meeting;
4. The Board heard Mr Lackie's submissions.
5. An opportunity was afforded to Mr Lawson to respond to Mr Lackie's submissions.
6. An opportunity was afforded to Board Members to ask questions of both parties;
7. An opportunity was afforded to Mr Lackie to make concluding remarks but she declined to do so;
8. An opportunity was afforded to Mr Lawson to make concluding remarks;
9. The Board did not require legal advice from the Clerk
10. The Board determined to retire to deliberate the matter and adjourned.
11. On resuming the bench, the Convenor asked if Members had any other issues they wished to raise with the parties, there were none. The Board then debated the matter;
12. Mr Reynolds, seconded by Mr Forsyth, moved as a motion that the application be granted as applied for;
13. Mrs Stirling, seconded by Mrs Ewenson, moved as an amendment that the determination of the application be deferred to the special meeting of the Board due to take place on 2nd September 2020 and that the applicant lodge an amended risk assessment in more robust and clearer terms, particularly in respect of the protection of children and young persons from harm and Prevention of Crime and Disorder Licensing Objectives.
14. On a division there voted:

For the Motion

B Topping

A Forsyth

G Reynolds

L Wilson [4 votes]

For the Amendment

S Calder

M Ewenson

A Stirling

[3 votes]

15. The motion was passed by 4 votes to 3.

The decision of the Board was therefore that provisional premises licence was GRANTED as applied for.

8. APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE – BREWDOG, INVERURIE – HEARING

1. The Licence Holder was represented by Peter Lawson, Solicitor, Glasgow. James Brown, Retail Director of Brewdog was also in attendance at the meeting.
2. L Scoular was neither present nor represented at the meeting.
3. N McGillivray was neither present nor represented at the meeting.
4. P Watt was neither present nor represented at the meeting.
5. K Whyte was present at the meeting.
6. The Clerk reminded Board Members that the objections lodged by those persons not in attendance could still be taken into account in considering the application.
7. Lisa Godini, Licensing Standards Officer was in attendance at the hearing;
8. The Board heard Mr Lawson's submissions. ;
9. The Board heard Mr Whyte's submissions.
10. An opportunity was afforded to Mr Lawson to respond to Mr Whyte's submissions.
11. An opportunity was afforded to Board Members to ask questions of both parties. Points of clarification were also asked of the Licensing Standards Officer;
12. An opportunity was afforded to Mr Whyte to make concluding remarks;
13. An opportunity was afforded to Mr Lawson to make concluding remarks;
14. The Board did not require legal advice from the Clerk
15. The Board determined not to retire to deliberate the matter;
16. The Board then debated the matter;
17. Mrs Ewenson, seconded by Mrs Stirling moved as a motion that the hours sought be granted in respect of Friday and Saturday nights only and that the terminal hour for the outside area remain at 8.00pm Sundays to Thursdays. The licence was also to be conditioned to ensure the smoking area was moved to the front of the premises rather than the garden area with appropriate steps to ensure no nuisance from smoke to neighbouring premises or customers entering the premises.
18. No amendment was proposed.
19. The motion was passed unanimously on a roll call vote.

The decision of the Board was therefore that the hours sought were granted in respect of Friday and Saturday nights only and that the terminal hour for the outside area remained at 8.00pm Sundays to Thursdays. The licence was also to be conditioned to ensure the smoking area was moved to the front of the premises rather than the garden area with appropriate steps to ensure no nuisance from smoke to neighbouring premises or customers entering the premises.

9. APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE – THE BOAT INN, ABOYNE – HEARING

This application was deferred to a special meeting of the Board to be held on Wednesday 2nd September 2020 at 2.00pm for consideration.

10(i) CHIEF CONSTABLE'S REPORT TO THE ABERDEENSHIRE LICENSING BOARD 2019/2020

Following consideration of the Chief Constable's report, presented by Sergeant Flett, the Board noted and endorsed the content of the report.

The Board also recognised the value of the partnership working carried out by the Police and the Licensing Standards Officers in dealing with issues related to Licensed Premises which was reflected in the lack of reviews considered by the Board.

10(ii) BOOZE CRUISES GUIDANCE

Following consideration of a report by the Clerk, the Board:-

1. Considered the term of the Guidance Document attached to the report;
2. Approved the terms of the Guidance Document as draft Guidance in respect of Booze Cruises
3. Noted that the Guidance would be revised to take account of COVID 19 restrictions
4. Authorised the Clerk to conduct a public consultation exercise on the terms of the draft Guidance, including the licensed trade and bus operators
5. Asked the Clerk to prepare a timeline for finalising work in respect of the Guidance

10(iii) FUNCTIONS AND FINANCE REPORT 2019/2020

Following consideration of a report by the Clerk, the Board:-

1. Approved the terms of the combined Financial and Functions Report for the financial year 1st April 2019 – 31st March 2020, as set out at Appendix 1 to the Report; and
2. Authorise the Clerk to publish the document on the Board's website and provide the Scottish Government with a copy.

10(iv) BOARD DATES FOR CYCLE 2021 – 2022

Following consideration of a report by the Clerk, the Board agreed the following dates, all meetings to be held in Woodhill House once physical meetings resumed:-

Wednesday 23rd June 2021
Wednesday 18th August 2021
Wednesday 13th October 2021
Wednesday 15th December 2021
Wednesday 9th February 2022
Wednesday 20th April 2022

11. DATE OF NEXT MEETING – 14th October 2021

Noted

The Convenor thanked everyone for attending the meeting and drew the meeting to a close, at which point the recording of the meeting ended.

The recording of the meeting can be found at: <https://www.youtube.com/watch?v=KBoNGBIGdHQ>

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THE ABERDEENSHIRE LICENSING BOARD

Minute of Special Meeting of the ABERDEENSHIRE LICENSING BOARD, held by SKYPE only on WEDNESDAY 2 September 2020 at 2.00pm

Present:

Board Members:

Mr Brian Topping (Convenor); Mr. S. Calder; Mrs. M. Ewenson; Mr. A Forsyth; Ms. V. Harper; Mr. G Reynolds; Mrs. A Stirling; Mr. L. Wilson

In Attendance:

Fiona M. Stewart and Lauren Cowie, Depute Clerks to the Board; Sergeant G. Flett, Police Scotland; Lisa Godini, Licensing Standards Officer; Beatrice Hay, Administration Assistant

Observing:

Keith Simpson, Senior Licensing Standards Officer, Kirsty Street, Trainee Solicitor; Kieran Beattie, Press and Journal

1. APOLOGIES FOR ABSENCE

Mr Peter Argyle had tendered his apologies in advance of the meeting.

2. DECLARATIONS OF INTEREST

There were no declarations made.

3. STATEMENT ON EQUALITIES

Consider, and if so decided, adopt:- "In line with the Council's legal duty under section 149 of the Equality Act 2010 the Board, in making decisions on the attached reports, shall have due regard to the need to":-

- (i) eliminate discrimination, harassment and victimisation;*
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and*
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it.*

Agreed

4. LICENSING (SCOTLAND) ACT 2005 – APPLICATION FOR MAJOR VARIATION OF PREMISES LICENCE – THE BOAT INN ABOYNE - HEARING

- 1. Mr Haywood, was present at the hearing via telephone.*

2. *Louise Cunningham, Environmental Health Officer was present at the hearing via skype.*
3. *The Chief Constable was represented by Sergeant Gill Flett who was present at the hearing via telephone.*
4. *Lisa Godini, Licensing Standards Officer was present at the hearing via skype.*
5. *Building Standards were not present or represented at the hearing. The Depute Clerk advised that Jeremey Mitchell was on standby in case the Board had any questions.*
6. *Mr Lewis Steven, Objector, was not present or represented at the hearing; The Depute Clerk confirmed his letter of objection could still be considered at the hearing.*
7. *Mrs Susan Grigor, Objector, was not present at the hearing but was represented by Mr Neil Smilie.*
8. *Mr Neil Smile, Objector, was present at the hearing via telephone.*
9. *Mr and Mrs Fenella Scott, Objectors, were not present or represented at the hearing; The Depute Clerk confirmed their letter of objection could still be considered at the hearing.*
10. *Mr James Barr, who had lodged a late representation, was present at the hearing via telephone.*
11. *The Depute Clerk confirmed the procedure for the hearing for all parties present and advised the Board that there were two preliminary issues that required to be considered.*
Preliminary Issue 1
12. *The Board invited Mr Barr to explain why he was unable to lodge his representation within the prescribed time and why the Board should agree to accept it as a late representation.*
13. *Board Members were invited to ask questions of Mr Barr but had no questions they wished to ask*
14. *The Board unanimously agreed that the representation should be accepted in terms of Section 235(1) of the Licensing (Scotland) Act 2005.*
Preliminary Issue 2
15. *The Depute Clerk advised that a letter of support had been received after the cut off time of 2.00pm on 1st September 2020, which time had been set by the Convenor. Did the Board wish to take it into account as part of the consideration of the application?*
16. *The Board unanimously agreed to take it into account.*
17. *The Depute Clerk confirmed that all parties had received copies of both the late representation and the letter of support in advance of the hearing. The documents were emailed to Board Members and the meeting was paused to give Board Members time to peruse same.*
18. *The meeting was resumed, and the Depute Clerk confirmed that the Board and all parties should now have the following documents in front of them for consideration:-*
 - *The Board Agenda (report item 4)*
 - *The additional submissions lodged by the applicant*
 - *The letters of support numbered 1 – 14**
 - *The late representation submitted by Mr Barr***The Depute Clerk advised that letter number 7 had not been circulated. It had been a further late representation but had subsequently been withdrawn in advance of the Hearing.*
19. *Mr Haywood was invited to speak to the application.*
20. *Louise Cunningham was invited to speak to the Environmental Health objection.*

21. *Sergeant Flett was invited to speak to the representation made by the Chief Constable*
22. *Lisa Godini was invited to speak to her representation*
23. *Mr Smilie was invited to speak on behalf of Mrs Grigor in respect of her objection.*
24. *Mr Smilie was invited to speak in respect of his objection.*
25. *Mr Barr was invited to speak to his representation*
26. *Mr Haywood was afforded an opportunity to speak in response to the submissions made in respect of the objections and representations to the application.*
27. *An opportunity was afforded to Board Members to ask questions of all parties present.*
28. *An opportunity was afforded to all parties present to make concluding remarks in the following order:*
 - *Mr Barr*
 - *Mr Smilie*
 - *Lisa Godini*
 - *Sergeant Flett*
 - *Louise Cunningham*
 - *Mr Haywood.*
29. *The Board did not require legal advice from the Clerk*
30. *The Board unanimously determined to retire to deliberate the matter. At this point, all parties and observers were removed from the meeting and the recording of the meeting paused.*
31. *On resuming the bench, the Convenor asked the Depute Clerk to summarise the issues discussed by the Board:*
 - *Parking issues – parking outwith the car park of the premises not being within the control of the applicant*
 - *Noise nuisance*
 - *Covid 19 issues*
 - *Personal statements made by both objectors and the applicant not being relevant to the consideration of the application but the incidents relating thereto did have a general bearing on the application.*
 - *Read out the Legal Test for all parties advising that paragraphs (a) and (d) were not relevant to the application but paragraphs (b) and (c) were relevant.*
32. *Board Members were asked if they had any further issues they wished to address with any of the parties before reaching a decision. There were none.*
33. *The Board confirmed that they had sufficient evidence upon which to make a decision.*
34. *The Board unanimously granted the following parts of the application:*
 - *Adding outdoor drinking as an activity*
 - *Updating the capacity figures to reflect the addition of the outdoor seating areas*
 - *Adding takeaway food as an activity*
 - *Allowing children and young persons access to licensed eating and drinking areas*
 - *Noting the hotel now had 8 letting rooms housed in a detached building within the boundary of the main hotel. 16 bedrooms were now available solely for the purpose of guest accommodation.*

35. *The Board then considered the four areas the applicant sought to have added to the licence for the purpose of serving food and drink to customers sitting outside, as follows:*

Area D

Mrs Ewenson, seconded by Mrs Stirling, moved as a motion that Area D be added to the licence subject to the conditions recommended by the Licensing Standards Officer and the Chief Constable which were:

- *A terminal hour of 2200hrs on all days requested*
- *No amplified music to be playing, or other forms of entertainment therein*
- *Where there is no existing delineation/boundary, the area to be delineated by barrier or similar.*

No amendment was proposed.

The proposal was passed unanimously verbally by Board Members.

Area B

Mr Forsyth, seconded by Mr Topping, moved as a motion that Area B be added to the licence subject to the same terms as Area D (as listed above).

No amendment was proposed.

The proposal was passed unanimously verbally by Board Members.

Area C

Mr Forsyth, seconded by Mr Topping, moved as a motion that Area C be added to the licence subject to the same terms as Area D (as listed above).

No amendment was proposed.

The proposal was passed unanimously verbally by Board Members.

Area A

Mrs Stirling, seconded by Mr Forsyth moved as a motion that Area A should not be granted as to grant would be inconsistent with the licensing objective relating to preventing public nuisance because of issues relating to noise [S30(5)(b) of the Licensing (Scotland) Act 2005] and that the area was unsuitable for the sale of alcohol because of the loss of amenity to neighbouring properties [Section 30(5)(c) of the Licensing (Scotland) Act 2005]

No amendment was proposed.

The motion was passed unanimously on a roll call vote.

36. *The Board confirmed that the grant of the application was subject to receipt of the certificate of compliance relating to the display of the site notice relating to the application and the local conditions referred to in paragraph 4.24 of the report applied to the licence.*
37. *No amendment was passed.*

The decision of the Board was therefore as follows:

1. *The addition of Area A as an outside drinking area was **REFUSED** as to grant would be inconsistent with the licensing objective relating to preventing public nuisance because of issues relating to noise [S30(5)(b) of the Licensing (Scotland) Act 2005] and that the area was unsuitable for the sale of alcohol because of the loss of amenity to neighbouring properties [Section 30(5)(c) of the Licensing (Scotland) Act 2005]*
2. *The addition of Area B as an outside drinking area was **GRANTED**.*
3. *The addition of Area C as an outside drinking area was **GRANTED**.*
4. *The addition of Area D as an outside drinking area was **GRANTED**.*
5. *Areas B, C and D were granted subject to the following conditions:*
 - *A terminal hour of 2200hrs on all days requested*
 - *No amplified music to be playing, or other forms of entertainment therein*
 - *Where there is no existing delineation/boundary, the area to be delineated by barrier or similar.*
6. *The Board **GRANTED** the following parts of the application:*
 - *Adding outdoor drinking as an activity*
 - *Updating the capacity figures to reflect the addition of the outdoor seating areas as granted by the Board*
 - *Adding takeaway food as an activity*
 - *Allowing children and young persons' access to licensed eating and drinking areas*
7. *The Board **NOTED** that the hotel now had 8 letting rooms housed in a detached building within the boundary of the main hotel. 16 bedrooms were now available solely for the purpose of guest accommodation.*
8. *The Board **CONFIRMED** that the grant of the application was subject to receipt of the certificate of compliance relating to the display of the site notice relating to the application and the local conditions referred to in paragraph 4.24 of the report applied to the licence.*

13. **DATE OF NEXT MEETING**

The Board noted that the date of the next meeting would be 14 October 2020.

The recording of the meeting can be found at: <https://www.youtube.com/watch?v=hEHiQRwT7Ug>