

THE ABERDEENSHIRE LICENSING BOARD

REPORT TO LICENSING BOARD –14 October 2020

LICENSING (SCOTLAND) ACT 2005

**APPLICATIONS FOR PREMISES AND PROVISIONAL PREMISES LICENCES
NON-CONTENTIOUS APPLICATIONS**

1 BALLATER ROAD, ABOYNE - PREMISES LICENCE

THE GIN CO-OPERATIVE, MAYFIELD, OYNE, INSCH

1 Reason for Report / Summary

- 1.1 An application has been received for a (1) a provisional premises licence and (2) a premises licence. Such applications must be determined by the Board.

2. Recommendations

- 2.1 It is recommended that the Board considers the materials before them in respect of each of the two applications and–
- (a) Determines whether there is enough evidence before the Board to allow a determination to be made, or whether the Board needs to defer consideration of the matter to the next available Board Meeting for further material to be made available; and
 - (b) Where the Board has concluded that there is sufficient evidence before them to allow a determination to be made, to consider whether the application should be granted or refused.

3 Purpose and Decision Making Route

- 3.1 In terms of Section 17 of and in terms of Part 3 of the Licensing (Scotland) Act 2005, a premises licence is required to authorise the sale of alcohol on premises. A premises licence application may be made in relation to any premises despite the fact that at the time of application is made the premises

are yet to be, or are in the course of being constructed or converted for use as licensed premises. Such an application is known as a provisional premises licence application.

3.2 The Board has before it an application for a provisional premises licence for on and off sales for a restaurant/takeway at 1 Ballater Road, Aboyne and a premises licence for off sales for the Gin Co-operative, Mayfield, Oyne, Inch.

3.3 Details are provided in **Appendix 1** to this report.

3.4 In relation to the provisional premises licence application for 1 Ballater Road Aboyne -

3.4.1 there are no objections to the application;

3.4.2 the Licensing Standards Officer has provided a consultation response recommending that certain stipulated local conditions are attached to the licence and that a licensing objectives risk assessment is supplied before any subsequent confirmation of the provisional licence. The applicant's agent has indicated that the applicant is agreeable to the proposed conditions. (Details of the conditions are contained in the Appendix to this report)

3.4.3 the hours sought in the Operating Plan are within the Licensing Board's general policy on Licensing Hours as set out in its Statement of Licensing Policy.

3.5 In relation to the premises licence application for the Gin Co-operative there are no objections. Police Scotland made a representation recommending that no signage be displayed at the premises and that an age verification policy was in place and Challenge 25 carried out at point of delivery/collection. The applicant has agreed to this and has indicated that they are agreeable to it being incorporated in the operating plan.

4 Discussion

4.1 The Depute Clerk has determined, as outlined above, that the applications for a provisional premises licence and a premises licence listed in Appendix 1 to

this report is non-contentious application and asks that the Board grant the same.

- 4.2 Copies of the application forms, operating plan and layout plan where applicable can be made available for perusal by Board Members prior to the Board Meeting where needed.

Consultations

- 4.3 The Depute Clerk examined the application in detail and the Applicant then addressed any issues requiring to be addressed. Thereafter, the Depute Clerk forwarded the application to the following persons or bodies as part of the consultation process:

- (a) Police Scotland;
- (b) Scottish Fire & Rescue Service;
- (c) The Environmental Health, Planning and Building Standards Services of Aberdeenshire Council;
- (d) The Licensing Standards Officer;
- (e) The appropriate Community Council; and
- (f) Neighbouring Occupiers
- (g) Health Authority

- 4.4 At the same time as the application was consulted on, the applicant required to display a site notice at the premises, in a location where it could be easily read by members of the public, advertising the fact that an application had been made. The applicant's agent has provided the required certificate confirming that the site notice was displayed.

- 4.5 The applications were also advertised on the Council's website.

Objections and Representations

- 4.6 No objections were received in respect of either application.
- 4.7 In any cases where the statutory consultees had made representations these were copied to the applicant.

- 4.8 In both cases the applicant agreed to the recommendations contained in the representations. In the event that they had not agreed/ accept the recommendations then the relevant application would have had to go to the Board for a full hearing.
- 4.9 If the Board determines that the licence should be granted, it will take effect from the date of grant. In the case of the provisional premises licence application for 1 Ballater Road Aboyne applicant will not however be able to use the premises for the sale of alcohol until the Board grants an application for confirmation of the provisional premises licence at which point it will become a premises licence.
- 4.10 If the Board determine that further evidence is required in respect of either application, then it 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

- 4.11 Each application should be considered on its own merits.
- 4.12 Members' options in disposing of the applications are: -
- (a) To grant the application;
 - (b) Refuse the application;
 - (c) Grant subject to varied hours and/or additional conditions; or
 - (d) 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.
- 4.14 The legal test is attached as **Appendix 2** to this report.

5 Priorities, 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.

5.4 A provisional premises licence does not allow alcohol to be sold on the premises. This will only be permitted once an application for confirmation of the provisional premises licence is granted. A premises licence allows alcohol to be sold as soon as it is granted.

6 Scheme of Delegation

- 6.1 The Board can consider these application in terms of the current Scheme of Delegation which provides that consideration of a premises licences is a matter reserved to the Board.
- 6.2 Due to the applications being considered as non-contentious, they have been put to the Board for consideration without the applicants requiring to be present.

Karen Wiles

Clerk to the Board

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

Date: 29 September 2020

List of Appendices:

Appendix 1 - Details of applications and consultation responses

Appendix 2 – Legal Test

Appendix 1

Details of applications and consultation responses

Appendix 1

| Non - Contentious Application | | | |
|--|---|---|--|
| Name of Applicant | Name and Address of Premises | Type of Application | Remarks (if any) |
| <p>Shariful Alam Khan 10 Farquhar Avenue, Aberdeen</p> <p><i>Per</i></p> <p>Blackadders LLP, Glasgow</p> | <p>Restaurant and takeaway at 1 Ballater Road Aboyne</p> | <p>Provisional Premises Licence</p> <p>The application is in respect of a restaurant/takeaway.</p> <p>Hours will be:-</p> <p>On sales Mon-Thur 1100-0000 Fri-Sun 1100-0100</p> <p>Off sales Mon-Sun 1100-2200</p> | <p>Consultation responses were received from Environmental Health and the LSO</p> <p>Environmental Health would remind the applicant that should they be taking over the premises they are required to submit a Food Business Registration Form,</p> <p>The LSO recommended that the following local conditions are attached to the premises licence:-</p> <p>1, 2, 3, 4, 5, 19, 21</p> <p>Also a licensing objectives risk assessment should be submitted prior to confirmation of the provisional licence.</p> <p>The applicant has indicated that they are agreeable to these matters and it is therefore recommended that the provisional premises licence is granted subject to local conditions 1, 2, 3, 4, 5, 19 and 21:-</p> <p>1 The provisions relating to management of licensed premises contained within the Board's current policy statement, particularly Appendix 1 thereto, must be complied with.</p> |

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| | | | <p>2 Premises Licence Holders must ensure that the premises, internally and externally, are maintained in good, clean and tidy condition at all times</p> <p>3 Premises Licence Holders must ensure that Refusal Registers and Daily Incident logs are accessible for inspection by Police and Licensing Standards Officers</p> <p>4 The Licence Holder must ensure that any general authorisation for the sale of alcohol required within the premises is – • in writing • available for inspections by Police and Licensing Standards Officers • brought to the attention of and signed by all parties; and • enforced by the premises manager</p> <p>5 Noise from amplified and non-amplified music, singing and speech sourced from licensed premises shall not be audible in adjoining properties after 11.00 p.m.</p> <p>19 The Licence Holder must have in place a duty of care policy to ensure a standard approach is taken when any patron appears to be displaying signs of excessive intoxication. The Licence Holder must ensure that all staff have additional training in identifying signs of excessive intoxication and an enhanced awareness of vulnerability through intoxication. The Licence Holder shall ensure that staff training records are made accessible for inspection by Police Scotland and Licensing Standards Officers.</p> <p>21 Where a CCTV system is installed this must comply with</p> |
|--|--|--|--|

| | | | |
|--|--|--|--|
| <p>The Gin Co-operative Limited, per Mrs Natalie Reid (director)</p> | <p>The Gin Co-operative, Mayfield, Oyne, Inch, AB52 6QT</p> | <p>Premises Licence Off sales only 1000-2200hrs daily</p> | <p>the required standard and be maintained in working order and staff must be able to operate the system. Images recorded on CCTV must be kept for at least seven days and must be made available to Police Scotland on request</p> <p>-----</p> <p>Police Scotland recommended that the Operating Plan be amended to say that no external signage or advertisement will be displayed to show that the premises are licensed for the sale of alcohol and also that an age verification system is in place and that Challenge 25 is carried out at any point of delivery/collection.</p> <p>The applicant has agreed to this.</p> |
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Appendix 2

Legal Test

Appendix 2

Licensing (Scotland) Act 2005

Part 3 & Sections 17-28, 45

Grant Premises Licence or Provisional Premises Licence

LEGAL TEST

The legal test is set out in Section 23 of the Act.

- (1) An application for a premises licence is to be determined in accordance with this section.**
- (2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.**
- (3) In considering and determining the application, the Board MUST take account of the application documents**
- (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.**
- (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), 64(2) or 65(3) [the applicant has been lodged within a period of 12 months of the date of a previous refusal]
 - (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 or a licence.
 - (c) That the Licensing Board considers that the granting of the application would otherwise 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.

(6) In considering whether either of the grounds for refusal specified in Section 23(5)(ba) and (c) applies, the Licensing Board must in particular take into account –

- (a) any conviction, notice of which is given by the chief constable under Section 21(4)(b), and**
- (b) any report given by the chief constable under Section 24A(2) (power of the Board to request the Chief Constable to provide an anti-social behaviour report)**

(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, or layout plan, or both) 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.

(8) Where the Licensing Board REFUSES the application-

- (a) the Board MUST specify the ground for refusal, and**
- (b) if the ground for refusal is that specified in Section 23(5)(ba) or (c), the Board MUST specify the licensing objective or objectives in question.**

- 1. Section 4 of the Scottish Government’s Statutory Guidance to Licensing Authorities relates to premises licences. The Board should note that in terms of Section 142(4) of the Act, a Board deciding not to follow this guidance must give Ministers notice of that decision together with a statement of the reasons for it.**