

THE MORAY LICENSING BOARD

THURSDAY 16 JANUARY 2014

NOTICE IS HEREBY GIVEN that the Meeting of **THE MORAY LICENSING BOARD** is to be held within the The Moray Council, Council Chambers, High Street, Elgin on Thursday 16 January 2014 at 10.00am.


Rhona Gunn
CLERK

8 January 2014

BUSINESS

1. Prior Minutes
 - (i) Minutes of the Meeting held on 6 December 2013 (copy attached)
 - (ii) Minutes of the Special Meeting held on 14 January 2014 (to be tabled)

The Licencing (Scotland) Act 2005

2. Applications Section— Appendix 1
3. Review of Premises Licences Various Hearings Following the Making of Premises Licence Review Proposals - Report by the Clerk (copy attached)
4. Personal Licence Hearing Following Disclosure of Relevant Conviction by Licence Holder (Case Number 1 of 2014 – Report by the Clerk (copy attached)

CONTACT PERSON:	Rhona Gunn
Telephone No:	01343 543451 Ext 3152- Direct Line: 563152
Room No:	102

THE MORAY LICENSING BOARD**SEDERUNT****COUNCILLOR J ALLAN****COUNCILLOR G ALEXANDER****COUNCILLOR S CREE****COUNCILLOR M HOWE****COUNCILLOR B JARVIS****COUNCILLOR A MCLEAN****COUNCILLOR M McCONACHIE****COUNCILLOR R H SHEPHERD****COUNCILLOR C TUKE****CLERK TO THE BOARD: Mrs R Gunn****Telephone No: 01343 543451 Ext 3152 - Direct Line: 563152****Room No: 102**

APPENDIX 1

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. 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.

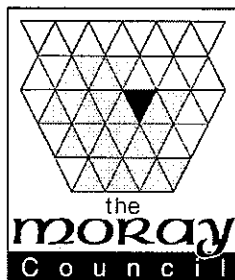
MORAY LICENSING BOARD LICENSING BOARD

MEETING, 16 JANUARY 2014 at 10:00am in Council Chambers, Council Headquarters, High Street, Elgin, IV30 1BX

Licensing (Scotland) Act 2005

Variation (Major)(s)

	Premises	Applicant	Date Received	Comments
1	KISS 9 CLUNY SQUARE BUCKIE AB56 1AH	MORVEN HOLDINGS LIMITED	3 December 2013	Variation to extend area covered by licence and to vary provisions for children and YP. Site visit arranged. Representations from police and LSO. Applicant cited.
2	ST ANDREWS GARMOUTH ROAD LHANBRYDE ELGIN IV30 8PD	PAULINE ANN MATHESON	28 November 2013	To vary Sunday core opening time from 12.30pm to 12noon. Paperwork in order. No objs/rep Applicant not cited.
3	BENROMACH DISTILLERY AND MALT WHISKY VISITOR CENTRE INVERERNE ROAD FORRES IV36 3EB	SPEYMALT WHISKY DISTRIBUTORS LIMITED	12 December 2013	To vary Sunday core opening time from 12.30pm to 10am. Paperwork in order. No objs/rep Applicant not cited.



REPORT TO: THE MORAY LICENSING BOARD 16 JANUARY 2014

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – REVIEW OF PREMISES LICENCES VARIOUS HEARINGS FOLLOWING THE MAKING OF PREMISES LICENCE REVIEW PROPOSALS

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.

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 22nd July 2010 (paragraph 4 of the minute refers) the Board delegated authority to the Clerk 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 By that delegated authority a premises licence review proposal in respect of each of the premises listed in the schedule has been made. Notice was sent by recorded delivery to all licence holders concerned on the 18th December 2013. The Depute 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.
- 3.3 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.
- 3.4 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.
- 3.5 In the present cases, grounds for review are made out both in terms of ss.36(3) (a) and (b) of the Act.

- 3.6 By the failure to pay the annual licence fees which became due on 1st October 2013, 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.
- 3.7 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.
- 3.8 At the review hearing section 39(2) confers on the Board the power to:
- 3.8.1 Issue a written warning;
 - 3.8.2 Vary the licence;
 - 3.8.3 Suspend the licence for such period as the Board may determine including suspending the licence unless and until the fee is paid; or
 - 3.8.4 Revoke the licence.

4. **SUMMARY OF IMPLICATIONS**

(a) **Single Outcome Agreement/ Service Improvement Plan**

None

(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 work is required in pursuing unpaid annual fees.

(f) **Property**

None

(g) **Equalities**

None

(h) **Consultations**

None required.

5. **CONCLUSION**

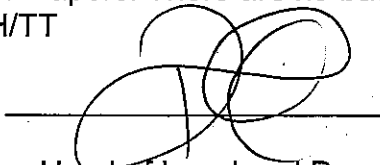
The Board should consider and determine the premises licence review proposals in respect of each premises listed in the schedule circulated separately to members having regard to the powers available to the Board under s.39(2) of the Licensing (Scotland) Act 2005.

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

Background Papers: There are no background papers

Ref: SAH/TT

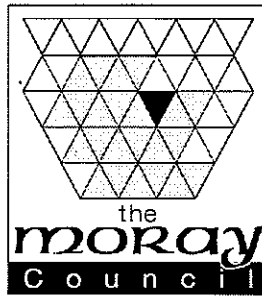
Signature



Date

7/1/14

Designation Head of Legal and Democratic Services, Clerk to the Board
Name Rhona Gunn



ITEM: 4

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REPORT TO: THE MORAY LICENSING BOARD ON 16 JANUARY 2014

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION BY LICENCE HOLDER (CASE NUMBER 1 OF 2014)

BY: CLERK TO THE BOARD

1. REASON FOR REPORT

- 1.1 The Licensing (Scotland) Act 2005 section 82 provides that where a personal licence holder is convicted of a relevant offence then he/she must give notice of the conviction to the relevant Licensing Board within a month of conviction.
- 1.2 This report is to notify the Board:
 - 1.2.1 That notice of relevant convictions has been received from a personal licence holder;
 - 1.2.2 The Chief Constable has confirmed to the Clerk that the licence holder (reference case number 1 of 2014) has been convicted of a relevant offence and made a recommendation to revoke the licence for the purposes of preventing crime and disorder and securing public safety;
 - 1.2.3 That, as a result, s. 83(7) of the Licensing (Scotland) Act 2005 requires the Board to hold a hearing to consider and determine whether any further order should be made in respect of the personal licence for the purposes of preventing crime and disorder and securing public safety.

2. RECOMMENDATIONS

It is recommended that the Board:-

- 2.1 **Note the existence of a relevant conviction and the requirement to hold a review hearing following confirmation of the conviction by the Chief Constable;**

- 2.2 Note any recommendations from the Chief Constable, hear from the parties, consider the matter and determine whether one of the possible orders set out in paragraph 3.11 is necessary for the purposes of the preventing crime and disorder and securing public safety objectives;**

3. BACKGROUND

- 3.1 The Licensing (Scotland) Act 2005 section 82 provides that where a personal licence holder is convicted of a relevant offence then he/she must give notice of the conviction to the relevant Licensing Board within a month of conviction.
- 3.2 On the 3 January 2014 the Clerk received notice from the licence holder, that they had been convicted of a relevant offence.
- 3.3 By virtue of s.81 the Court was also obliged to notify the Board of any relevant conviction but, to the date of writing of this report, nothing has been received from the Court.
- 3.4 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005. The list of relevant offences within the Regulation includes, amongst others, the offence disclosed by the licence holder.
- 3.5 Accordingly the personal licence holder has been convicted of a relevant offence.
- 3.6 Upon receipt of notice of the relevant convictions from the licence holder, and in accordance with statutory procedure, the Clerk sent notice of the same to the Chief Constable's representative. In return, on the 6 January 2014, the Chief Constable's representative issued a notice that confirmed the existence of the relevant convictions.
- 3.7 A copy of the notice referred to in paragraph 3.6 above has been separately circulated to members.
- 3.8 The Licensing (Scotland) Act 2005 further provides at s.83(5) that where the Chief Constable proposes to give a notice confirming a conviction and considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the licence holder's personal licence should be revoked, suspended or endorsed, the Chief Constable may include in the notice a recommendation to that effect.
- 3.9 It should be noted that in this case the Chief Constable has included a recommendation for revocation for the objectives of preventing crime and disorder and public safety.

- 3.10 This report is to notify the Board of the requirement under s. 83(7) of the Licensing (Scotland) Act 2005 to hold a hearing as a result of receipt of the Chief Constable's notice.
- 3.11 At the hearing the Licensing Board may, having regard to the conviction and any recommendation contained in the chief constable's notice, after giving the licence holder concerned and the Chief Constable an opportunity to be heard and if satisfied that it is necessary to do so for the purposes of the crime prevention objective make one of the following orders:
- 3.11.1. revoking;
 - 3.11.2. suspending for such period, not exceeding 6 months, as the Board considers appropriate; or
 - 3.11.3. endorsing;
- the personal licence held by the licence holder concerned.
- 3.12 The Licensing (Scotland) Act 2005 provides for a system akin to driving licence endorsements whereby an endorsement will remain on the licence for 5 years from the date of endorsement. If at any time a licence holder amasses 3 endorsements then the Board must hold a further hearing to determine whether to suspend or revoke the licence..

4. IMPLICATIONS

(a) Council/Community Planning Priorities

In the exercise of functions under the Licensing (Scotland) Act 2005 the Licensing Board is to have regard to and promote the licensing objectives which are:

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

The licensing objectives closely reflect some of the objectives of the Community Plan and are intended to promote community involvement and prevent the consumption of alcohol from being the source of nuisance, anti-social behaviour and harm. This is also true of the social inclusion and environmental aspects of the Corporate Plan.

With particular regard to relevant convictions the Board is to have regard to the crime prevention objective.

(b) Policy and Legal

Legal implications have been explained above.

(c) **Financial Implications**

None.

(d) **Risk Implications**

The Board is to have regard to any of the licensing objectives, particularly the crime prevention objective and decide whether the risk justifies intervention on such grounds.

(e) **Staffing Implications**

None.

(f) **Property**

None.

(g) **Equalities**

There are no issues in this case.

(h) **Consultations**

Consultation is not required.

5. **CONCLUSION**

5.1 It is proposed that the Board note the existence of a relevant conviction and the requirement to hold a hearing following confirmation of the conviction and the making of a recommendation by the Chief Constable;

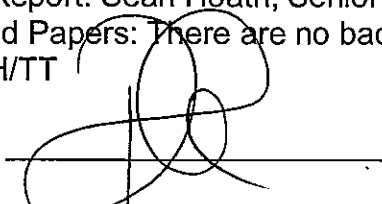
5.2 It is proposed that the Board, having regard to the notice from the Chief Constable, hear from the parties, consider the matter and determine whether one of the possible orders set out in paragraph 3.11 is necessary for the purposes of the preventing crime and disorder and securing public safety objectives.

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

Background Papers: There are no background papers

Ref: SAH/TT

Signature



Date

7/1/14

Designation Head of Legal and Democratic Services, Clerk to the Board

Name Rhona Gunn