

The Highland Licensing Board

Meeting – 19 February 2019

Agenda Item	9.1
Report No	HLB/022/19

Premises licence review hearing

Review application under section 36(1) of the Licensing (Scotland) Act 2005

Volunteer Arms, 47-49 High Street, Fort William, PH33 6DH

Report by the Clerk to the Licensing Board

Summary

This report relates to a premises licence review hearing under section 38 of the Licensing (Scotland) Act 2005 following submission to the Board of a premises licence review application under section 36(1) of the Act.

1. Background

- 1.1 An application has been received under section 36 of the Licensing (Scotland) Act 2005 from Police Scotland for a review of the existing premises licence for premises known as Volunteer Arms, 47-49 High Street, Fort William, PH33 6DH (Ref. HC/RSL/0486). The premises licence is held by Mr David Smillie.
- 1.2 The review application, dated 1 February 2019, is appended to this report (Appendix A). The alleged grounds for review and the information considered by the review applicant to support these grounds are as set out in the review application. In terms of section 36(6) of the Act, the Clerk to the Board is satisfied that the review application is neither frivolous nor vexatious and that it discloses matters relevant to one or more of the alleged grounds for review, which is one of the statutory grounds for review. A premises licence review hearing is accordingly necessary.
- 1.3 The Licensing Standards Officer for the area in which the premises are situated has been sent a copy of the review application in accordance with section 38(3) of the Act and has submitted a report on it which is also appended (Appendix B). The Board must take this report into account at the hearing.
- 1.4 The premises licence holder has also been sent a copy of the review application. The premises licence holder, Mr David Smillie; a representative from Police Scotland and the Licensing Standards Officer have been invited to attend the hearing. They have been advised of the hearing procedure which will be followed at the meeting and which may also be viewed via the following link:

http://highland.gov.uk/hlb_hearings

2. Legal position

2.1 Grounds for review

2.1.1 The statutory grounds for review of a premises licence are set out in subsections 36(3)(za) to (b) of the Act. They are:-

- 36(3)(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,
- 36(3)(a) that one or more of the conditions to which the premises licence is subject has been breached, or
- 36(3)(b) any other ground relevant to one or more of the licensing objectives.

2.1.2 For the purposes of the Act, the licensing objectives are-

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children and young persons from harm.

2.1.3 Where the ground alleged in the review application is that specified in subsection 36(3)(za), the application must include a summary of the information on which the applicant's view that the alleged ground applies is based.

Where the ground alleged is that specified in subsection 36(3)(a), the application must include notice of the condition or conditions alleged to have been breached.

Where the ground alleged is that specified in subsection 36(3)(b), the application must include notice of the licensing objective or objectives to which the alleged ground of review relates.

These requirements have been met in the review application.

2.2 The Board's powers in respect of the premises licence

2.2.1 In terms of section 39(1) of the Act, at a premises licence review hearing the Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review application considered at the hearing), decide

- to take no action, or
- to take such of the steps mentioned in section 39(2) of the Act as the Board consider necessary or appropriate for the purposes of any of the licensing objectives.

2.2.2 Those steps are-

- (a) to issue a written warning to the licence holder,
- (b) to make a variation of the licence for such period as the Board may determine,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence.

2.2.3 However, this is subject to the requirement in section 39(2A) that where the Board are satisfied that the ground for review specified in subsection 36(3)(za) is established (ie the ground that the licence holder is not a fit and proper person to hold the licence), the Board must revoke the licence.

2.2.4 A revocation under section 39(2A) takes effect at the end of the period of 28 days beginning with the day on which the Board makes the decision, unless the revocation is recalled by the Board. It must be recalled if the Board either grants an application under s33 for the transfer of the premises licence, or grants a premises licence variation application seeking a variation which the Board considers would remove the ground on which the licence was revoked under section 39(2A). The transfer or variation application must be received within the 28-day period, but the Board may then extend the 28-day period pending determination of the application.

2.2.5 Should the Board make a variation under section 39(2)(b) or suspend the licence under section 39(2)(c), the Board may subsequently revoke the variation or suspension, on the application of the licence holder, if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary.

2.3 Additional action in relation to personal licence holder working in the premises

2.3.1 In the course of a premises licence review hearing the Board may also make a finding in respect of any personal licence holder who is or was working in the premises that the personal licence holder concerned, while working in the premises, acted in a manner which was inconsistent with any of the licensing objectives.

2.3.2 Should the Board make such a finding, this will trigger a separate and subsequent hearing under section 84 of the Act in respect of the personal licence holder.

Recommendation

The Board is invited to hear from the representative of Police Scotland, the Licensing Standards Officer and the premises licence holder and then-

- (a) decide whether they are satisfied that any of the grounds for review set out in section 36(3) of the Act, and listed at **paragraph 2.1.1** above, are established and, if so
- (b) decide whether they consider it necessary or appropriate for the purposes of any of the licensing objectives to take any of the steps set out in section 39(2) of the Act and listed at **paragraph 2.2.2** above. In this regard, the Board must specify the licensing objective(s) in question.

If the Board is satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the premises licence, as explained at **paragraph 2.2.3** above.

The Board is also invited to decide, as explained at **paragraph 2.3.1** above, whether to make a finding in respect of any personal licence holder who is or was working on the premises that the personal licence holder, while working in the premises, acted in a manner which was inconsistent with any of the licensing objectives and, if so, to fix a further hearing under section 84 of the Act in respect of that personal licence holder.

Reference: HC/RSL/0486

Date: 5 February 2019

Author: IC/JT

Appendices: Appendix A – Premises licence review application dated 1 February 2019

Appendix B – Licensing Standards Officer's report dated 6 February 2019