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WIGTOWN DIVISIONAL LICENSING BOARD

Meeting of Tuesday 27th August 2024
at 10.30am – this meeting will be held online.

Andrew Giusti (Convener) – Stranraer and the Rhins;
Ben Dashper – Stranraer and the Rhins;
Katie Hagmann – Mid Galloway and Wigtown West;
Chrissie Hill – Stranraer and the Rhins;
David Inglis – Mid Galloway and Wigtown West;
Jackie McCamon – Mid Galloway and Wigtown West;

VLAD VALIENTE
Clerk to the Licensing Board

Wigtown Divisional Licensing Board

Meeting of Tuesday 27th August 2024
at 10.30am – this meeting will be held online.

1. **SEDERUNT, APOLOGIES AND CONVENER'S APPROVAL OF MEMBERS' REMOTE PARTICIPATION**
2. **DECLARATIONS OF INTEREST**
3. **LICENSING (SCOTLAND) ACT 2005 (THE ACT): SECTION 84A 3 - 8
- CONDUCT INCONSISTENT WITH THE LICENSING
OBJECTIVES - PERSONAL LICENCE HOLDER: ROBERT
JAMES MAXWELL - REPORT BY THE CLERK TO THE
BOARDS**
4. **LICENSING (SCOTLAND) ACT 2005 (THE ACT): PREMISES 9 - 18
LICENCE REVIEW (SECTION 36) - PREMISES: STAR INN, 11
DASHWOOD SQUARE, NEWTON STEWART, DG8 6EQ -
PREMISES LICENCE HOLDER: ROBERT JAMES MAXWELL -
REPORT BY THE CLERK TO THE BOARDS**

Next Meeting Date: Thursday 12 September 2024

**DUMFRIES AND GALLOWAY LICENSING BOARDS
WIGTOWN DIVISIONAL LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005 (THE ACT): SECTION 84A
CONDUCT INCONSISTENT WITH THE LICENSING OBJECTIVES
PERSONAL LICENCE HOLDER: ROBERT JAMES MAXWELL**

1. Reason for Report

As the Board has received a section 84A report from the Chief Constable it must, in law, hold a Hearing.

2. Background

2.1 On 18 July 2024, the Chief Constable, in terms of his power under section 84A of the Act, submitted to the Board a report alleging that Robert Maxwell, the holder of a personal licence, has acted in a manner that is inconsistent with the licensing objectives (1) Preventing Crime and Disorder, (2) Securing Public Safety and (3) Preventing Public Nuisance (**Appendix 1**).

2.2 In terms of procedure, both the Police letter and Notice of Hearing have been sent to the licence holder

2.3 A Personal Licence issued by a Licensing Board authorises the licence holder to supervise or authorise the sale of alcohol.

3. Determination

3.1 At its Hearing the Board *may*, after giving

- the licence holder concerned and
- such other persons as they consider appropriate an opportunity to be heard and
- if satisfied that it is necessary to do so for the purposes of any of the licensing objectives, make an order to:
 - a) revoke the licence;
 - b) suspend the licence for a maximum 6-month period as the Board considers appropriate; or
 - c) endorse the licence. (an endorsement expires after five years)

3.2 It is also open to the Board to take no action in which case Mr Maxwell will continue to retain his personal licence.

3.3 If, at the Hearing, the Board is satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence then the Board must make an order revoking the licence.

4. Recommendations

4.1 Members are asked to consider whether they wish to:

- revoke;
- suspend; or
- endorse the licence or
- take no action; and

4.2 note that if a determination is made that the licence holder is not a fit and proper person to be the holder of the personal licence then the Board has no discretion as to which action it wishes to take as it must, in law, revoke the licence.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries DG1 2HS

19 August 2024

OFFICIAL SENSITIVE: POLICE AND PARTNERS

15 July 2024

Your Ref: DG/W/0793

Our Ref: AP/COS

Clerk of the Board
Wigtown Divisional Licensing
Kirkbank
Council Offices
English Street
Dumfries
DG1 2HS



**POLICE
SCOTLAND**

Keeping people safe

Jim McMillan
T Superintendent

Dumfries & Galloway Division
Police Headquarters
Cornwall Mount
Dumfries
DG1 1PZ

Dear Sir/Madam,

**LICENSING (SCOTLAND) ACT 2005 - SECTION 84A
REPORT OF CONDUCT INCONSISTENT WITH LICENSING OBJECTIVES
PERSONAL LICENCE HOLDER: ROBERT JAMES MAXWELL, 4 HODKINSON
TERRACE, PRINCES STREET, NEWTON STEWART, DG8 6EY
LICENCE NO: DG/W/0793**

The Chief Constable hereby reports to the Licensing Board in terms of Section 84A of the Licensing (Scotland) Act 2005 that Robert James Maxwell has acted in a manner which is inconsistent with the licensing objectives articulated at Section 4(1) of Act, namely:

- Preventing Crime and Disorder
- Securing Public Safety
- Preventing Public Nuisance

Mr Maxwell holds a personal licence issued by Wigtownshire Licensing Board on 7 February 2023, which is due to expire on 6 February 2033. At the time of the below mentioned incidents he is the Premises Licence Holder and Designated Premises Manager for Star Inn, Newton Stewart.

The following information for two separate incidents which he has been charged for is provided below for the Board's consideration.

Description of Premises

OFFICIAL SENSITIVE: POLICE AND PARTNERS

The Star Inn is a public house situated within Dashwood Square, Newton Stewart. This is an area of both commercial and residential properties. The Premises Licence holder and Designated Premises Manager is Mr Robert Maxwell. The Operating Plan for the premises does not provide for accommodation, restaurant facilities or bar meals. The premises is licensed for On Sales only with its core hours being;

Day	Opening Time	Terminal Hour
Monday	11.00am	11.30pm
Tuesday	11.00am	11.30pm
Wednesday	11.00am	11.30pm
Thursday	11.00am	Midnight
Friday	11.00am	Midnight
Saturday	11.00am	Midnight
Sunday	12.30pm	11.30pm

Incident 1 - Saturday 15 June 2024

At 0040 hours, On Saturday 15 June 2024, Officers were on mobile patrol at Dashwood Square, Newton Stewart and noted the Star Inn to still have patrons within. Believing the premises to be licensed until 0000 hours on a Thursday, Friday and Saturday officers attended at the premises and noted about twenty patrons within with many drinking alcohol at the bar and tables. Some had full pints of lager and some were drinking from what looked like Budweiser bottles. There was also karaoke ongoing. Licence holder Robert Maxwell was standing at the front door. He was asked if he had an extended licence for this day and stated that he did not but advised officers that his licence was until 0030 hours.

Officers left to conduct further enquiries regarding the terminal hour for the premises. It was later confirmed that the terminal hour on a Thursday, Friday and Saturday is 0000 hours. CCTV footage obtained from the surrounding area shows persons leaving the premises between 0046 hours and 0053 hours.

On Thursday 4 July 2024, the enquiry officer contacted Mr Maxwell on his mobile to inform him that Police required to speak with him and to organise a suitable time. Mr Maxwell responded that he would be requesting his solicitor's attendance before speaking with police and further more that the police should no longer contact him about any further incidents as he would no longer aid police going forward.

Due to the officers observations of the consumption of alcohol after the terminal hour, on 5 July 2024 Mr Maxwell was cautioned and charged under the Licensing (Scotland) Act 2005 Section 63(1) – Prohibiting sale/consumption/taking away of alcohol outside licensed hours. Mr Maxwell made the following reply to the charge; "we weren't serving alcohol at that time and I was in the Central by 0035 hours, it was just bar staff in decorating".

Incident 2- Saturday 29 June 2024

OFFICIAL SENSITIVE: POLICE AND PARTNERS

At 0040 hours, On Saturday 29 June 2024, Officers were on mobile patrol at Dashwood Square, Newton Stewart and noted the Star Inn to still have patrons within. About fifteen patrons were observed within the premises with many drinking alcohol at the bar and tables. When asked the licence holder Robert Maxwell stated that he was licensed to 0030 hours. At 0045 hours police asked Mr Maxwell to remove the patrons from within the bar to which he declined and told police to do it themselves, at this point he adopted a hostile and combative demeanour with police.

Police thereafter removed patrons from within the premises with some minor resistance. During this time Mr Maxwell made no effort to aid police instead asking them to leave as it was a private family function and that he would take up the issue with the Licensing Board.

Due to the officers' observations of the consumption of alcohol after the terminal hour, at 0050 hours on 29 June 2024, Mr Maxwell was cautioned and charged under the Licensing (Scotland) Act 2005 Section 63(1) – Prohibiting sale/consumption/taking away of alcohol outside licensed hours.

Having completed the necessary training to apply for and be granted a personal licence Mr Maxwell would be well aware of his requirement to adhere to the licensing objectives and co-operate with police. As both the Premises Licence Holder and the Designated Premises Manager it is Mr Maxwell's responsibility to ensure that he is fully conversant with the information contained within the premises Operating Plan. By being found with the premises open in contravention of its licensed hours not once but twice Mr Maxwell has shown a complete disregard for licensing law. His refusal to help officers clear the premises when asked to do so and refusal to cooperate with Police Scotland enquiries falls far short of the behaviour that can be reasonably expected of a licence holder who is in a position of authority and has a duty of care for their patrons.

In light of the above two incidents, it is considered that the actions of Mr Maxwell do not support the licensing objectives of preventing crime and disorder, securing public safety and preventing public nuisance.

It is the Chief Constable's view that the Board should consider all options open to them under Sect 84(7) or 84(7A) of the Act.

In signing this report, I confirm that this report is made under the authority of the Chief Constable of Police Service of Scotland:

Signed:

Jim McMillan
T Superintendent

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**DUMFRIES AND GALLOWAY LICENSING BOARDS
WIGTOWN DIVISIONAL LICENSING BOARD**

LICENSING (SCOTLAND) ACT 2005 (THE ACT)

PREMISES LICENCE REVIEW (SECTION 36)

PREMISES: STAR INN, 11 DASHWOOD SQUARE, NEWTON STEWART, DG8 6EQ

PREMISES LICENCE HOLDER: ROBERT JAMES MAXWELL

1. Reason for Report

As the Board has received a premises licence review application and the Convener has determined that the application should not be rejected, the Board must hold a Hearing.

2. Background

2.1 The Board received an application for a Premises Licence Review from Police Scotland on 18 July 2024 in respect of the above-named premises (**Appendix 1**).

2.2 Where the Board receives an application for a Premises Licence Review it must hold a Review Hearing within 42 days of the date of the application, unless the Board rejects the application as being vexatious or frivolous or does not disclose any matter relevant to any ground for review.

2.3 The Convener has determined that the application should not be rejected.

2.4 In terms of legal procedure, Notice of the Hearing and a copy of the Premises Licence Review Application were forwarded to both the Licence Holder and Licensing Standards Officer (LSO) and Notice of the Hearing has also been given to Police Scotland.

2.5 The statutory LSO report that the Board is legally obliged to take into account is detailed at **Appendix 2**.

3. Determination

3.1 As democratically elected individuals, ultimate decision making power rests with elected Members and not Council Officers. Whilst Officers can give advice, they cannot clearly make decisions at Hearings. Ultimately, the Board must come to a lawful decision taking into account the following:

3.2. Grounds for Review

The Board must be satisfied that a ground of review is established in the first instance and the grounds for review are:

- 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;
- that one or more of the conditions to which the Premises Licence is subject has been breached; or
- any other ground relevant to one or more of the Licensing Objectives (those Objectives being):
 - (a) Preventing Crime and Disorder
 - (b) Securing Public Safety
 - (c) Preventing Public Nuisance
 - (d) Protecting and Improving Public Health

(e) Protecting Children and Young Persons from Harm.

3.3. Board's Powers on Review

At a Review Hearing, if the Board is satisfied that a ground for review has been established (whether or not on the basis of any circumstances alleged in the Premises Licence Review Application) the Board may take any of the following steps as are considered necessary or appropriate for the purposes of any of the Licensing Objectives.

3.4 The steps that the Board may take are to:-

- issue a written warning to the licence holder;
- make a variation of the licence (the Board can provide that the variation applies for a certain time period only);
- suspend the licence for such period as the Board may determine
- revoke the licence.

3.5 The above steps take immediate effect.

3.6 It is also open to the Board to take no further action even if a ground for review is established.

3.7 Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied 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 then the Board must revoke the licence.

3.8 This revocation takes effect after a 28 day period beginning with the day on which the Board makes the decision unless, during that 28 day period:

- the premises licence holder makes an application to transfer the licence and the Board grants that transfer; or
- a variation application is made which seeks to vary the licence and the Board considers that the variation, if granted, would remove the ground on which the licence was revoked.

3.9 If the Board receives either of the above applications and grants that application, then the Board must recall its revocation.

3.10 The Board also retains the power to extend the 28 day period pending determination of either a transfer or variation application.

4. Recommendations

4.1 Members are asked to consider

- (i) whether a ground of review exists; and
- (ii) if a ground of review is established, which discretionary steps (if any) it wishes to take as per paragraphs 3. 4 and 3.6 above;

4.2 If no ground of review is established then no order can be made.

Vlad Valiente
Clerk to the Licensing Boards
Kirkbank House
English Street
Dumfries DG1 2HS

19 August 2024

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15 July 2024

Your Ref: 0042W

Our Ref: 20986

Clerk of the Board
Wigtown Divisional Licensing
Kirkbank
Council Offices
English Street
Dumfries
DG1 2HS



**POLICE
SCOTLAND**

Keeping people safe

Jim McMillan

T Superintendent

Dumfries & Galloway Division
Police Headquarters
Cornwall Mount
Dumfries
DG1 1PZ

Dear Sir/Madam,

LICENSING (SCOTLAND) ACT 2005 - SECTION 36

PREMISES LICENCE REVIEW APPLICATION

LICENCE NO: 0042W

PREMISES: STAR INN, 11 DASHWOOD SQUARE, NEWTON STEWART, DG8 6EQ.

PREMISES LICENCE HOLDER: ROBERT JAMES MAXWELL

In terms of section 36(1) of the Licensing (Scotland) Act 2005 I hereby make application to the Wigtownshire Licensing Board for a review of the premises licence in respect of the premises known as STAR INN, 11 DASHWOOD SQUARE, NEWTON STEWART, DG8 6EQ.

This application for review is made in terms of the grounds set out at Section 36(3)(a): that one or more of the conditions to which the premises licence is subject has been breached on two occasions namely;

2. (1) Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.

The following information for two separate incidents which he has been charged for is provided below for the Board's consideration.

Description of Premises

The Star Inn is a public house situated within Dashwood Square, Newton Stewart. This is an area of both commercial and residential properties. The Premises Licence holder and Designated Premises Manager is Mr Robert Maxwell. The Operating Plan for the premises does not provide for accommodation, restaurant facilities or bar meals. The premises is licensed for On Sales only with its core hours being.

OFFICIAL SENSITIVE: POLICE AND PARTNERS

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OFFICIAL SENSITIVE: POLICE AND PARTNERS

Police thereafter removed patrons from within the premises with some minor resistance. During this time Mr Maxwell made no effort to aid police instead asking them to leave as it was a private family function and that he would take up the issue with the Licensing Board.

Due to the officers' observations of the consumption of alcohol after the terminal hour, at 0050 hours, on Saturday 29 June 2024, Mr Maxwell was cautioned and charged under the Licensing (Scotland) Act 2005 Section 63(1) – Prohibiting sale/consumption/taking away of alcohol outside licensed hours.

As both the Premises Licence Holder and the Designated Premises Manager it is Mr Maxwell's responsibility to ensure that he is fully conversant with the information contained within the premises Operating Plan. By being found with the premises open in contravention of its licensed hours not once but twice Mr Maxwell has shown a complete disregard for licensing law. His refusal to help officers clear the premises when asked to do so and belligerent attitude falls far short of the behaviour that can be reasonably expected of a licence holder working at one of the busier premises within Newton Stewart.

As this matter is still to be considered by the procurator fiscal this makes this matter sub-judice and no further information can be provided at this time.

I request that the Licensing Board considers the aforementioned grounds for review and takes such steps as it considers necessary or appropriate for the purposes of the Licensing Objectives under the terms of Section 39(2) or 39(2A) of the Act.

Yours faithfully

Jim McMillan
T Superintendent

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**DUMFRIES & GALLOWAY LICENSING BOARDS
LICENSING STANDARDS OFFICER REPORT**

LICENSING (SCOTLAND) ACT 2005

PREMISES: STAR INN, 11 DASHWOOD SQUARE, NEWTON STEWART DG8 6EQ

LICENCE HOLDER : ROBERT J. MAXWELL

1. Background

1.1 Mr Maxwell has held the licence for these premises since August 2022. He is also the designated Premises Manager.

1.2 The premises operates as a public house, regularly hosting live music and karaoke nights.

1.3 The on-sale operating hours for the premises are

- Monday to Wednesday 11am to 11.30pm
- Thursday to Saturday 11am to 12 midnight
- Sunday 12.30pm to 11.30pm

1.4 The occupant capacity of the premises is 80 persons.

2. Visit

2.1 I called at the premises on 7 August 2024 and met with the licence holder at which time the following matters were discussed:

2.1.1 Staff training – City & Guilds staff workbooks were examined for the 3 staff members and were found to be in order. The workbook covers the mandatory staff training set out in Regulations.

2.1.2 Signage – all statutory signage was displayed.

2.1.3 Refusals book – this was produced and contained entries.

2.1.4 Drinking-up time – discussed the 15 minutes permitted and last orders. Mr Maxwell says “last orders” are always called around 1140 where he has a midnight terminal hour.

2.1.5 Variation application – information was provided, on request from the licence holder, regarding the process to increase the licensed hours on a permanent basis, within the Licensing Board’s current policy.

3. Review Application

3.1 Discussion took place on the content of the review application submitted by the Chief Constable.

3.2 Mr Maxwell will attend the hearing in person and will be able to speak to the allegations. He stated to me:

3.2.1 The first incident involved staff staying behind decorating the premises for a birthday party with balloons, banners etc.

3.2.2 The second incident relates to allowing people to wait inside for a taxi or a lift home.

4. Recommendation

That the Board have regard to the information provided in reaching its decision in the Premises Licence Review.

Julia Farroll
Licensing Standards Officer
15 August 2024