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NITHSDALE DIVISIONAL LICENSING BOARD

Meeting of Wednesday 2 October 2024
at 10.00am – Remote Meeting

Tony Berretti – Mid and Upper Nithsdale;
John Campbell – Nith;
Linda Dorward – Lochar;
Ivor Hyslop (Convener) – Lochar;
Emma Jordan – North West Dumfries;
Tracey Little – Lochar;

VLAD VALIENTE
Clerk to the Licensing Board

Nithsdale Divisional Licensing Board

Meeting of Wednesday 2 October 2024
at 10.00am – Remote Meeting

1. **SEDERUNT, APOLOGIES AND CONVENER'S APPROVAL OF MEMBERS' REMOTE PARTICIPATION**
2. **DECLARATIONS OF INTEREST**
3. **MINUTE OF MEETING 20 SEPTEMBER 2024** 3 - 22
FOR APPROVAL.
4. **THE LICENSING (SCOTLAND) ACT 2005: REVIEW OF PREMISES LICENCE - THE HOLE I' THE WA', DUMFRIES - REPORT BY THE CLERK TO THE BOARDS** 23 - 32
5. **THE LICENSING (SCOTLAND) ACT 2005: REVIEW OF PERSONAL LICENCE - LUCY FORTEATH - REPORT BY THE CLERK TO THE BOARDS** 33 - 36

Next Meeting Date: Friday, 6 December 2024

NITHSDALE DIVISIONAL LICENSING BOARD

**Minute of Meeting of Friday 20 September 2024 at 10.30am
Remote Hearing**

MEMBERS PRESENT

Ivor Hyslop (Convener)	-	Lochar
Tony Berretti	-	Mid and Upper Nithsdale
John Campbell	-	Nith
Linda Dorward	-	Lochar
Emma Jordan	-	North West Dumfries;
Tracey Little	-	Lochar

IN ATTENDANCE

Stuart Davidson	-	Licensing Standards Officer
Cheryl Syme	-	Snr Licensing Officer
Caroline Treanor	-	Solicitor

VLAD VALIENTE
Clerk to the Licensing Boards

1. **SEDERUNT, APOLOGIES AND CONVENER'S APPROVAL OF MEMBERS' REMOTE PARTICIPATION**

6 Members present via MS Teams, the Convener approved Members' remote participation at the Hearing.

2. **DECLARATIONS OF INTEREST**

Councillors Campbell and Little stated that they knew the person who had submitted the Representation in respect of item no 10 but had not spoken to the person. However, they were of the view that they could still participate in fair decision making as they were not prejudiced in any way.

Councillor Hyslop stated for transparency that his business is near to the premises in respect of item no 10 but that his business does not sell alcohol and he was of the view that he could still participate in decision making in a fair manner and was not prejudiced in any way.

3. **MINUTES OF MEETING 23 JULY 2024**

Decision

AGREED

4. **LICENSING (SCOTLAND) ACT 2005: APPLICATIONS FOR OCCASIONAL LICENCES AND EXTENDED HOURS (GRANTED UNDER DELEGATED AUTHORITY) – REPORT BY THE CLERK TO THE BOARDS**

Decision

NOTED that the following Occasional Licences and Extended Hours had been granted under delegated powers during the period from **4 June 2024 until 4 September 2024**:

Occasional Licences : Applied for by a Personal Licence Holder

Total number issued 181

Occasional Licences : Applied for by a Premises Licence Holder

Total number issued 39

Occasional Licences : Applied for by a Voluntary Organisation

Total number issued 22

Extended Hours

Total number issued 2

5. **LICENSING (SCOTLAND) ACT 2005: APPLICATIONS FOR MINOR VARIATIONS (GRANTED UNDER DELEGATED AUTHORITY) – REPORT BY THE CLERK TO THE BOARDS**

Decision

NOTED that the applications in **Appendix 1** were granted under delegated authority

6. **LICENSING (SCOTLAND) ACT 2005: APPLICATIONS FOR TRANSFER OF PREMISES LICENCE (GRANTED UNDER DELEGATED AUTHORITY) – REPORT BY THE CLERK TO THE BOARDS**

Decision

NOTED that the applications in **Appendix 2** were granted under delegated authority

7. **LICENSING (SCOTLAND) ACT 2005: SURRENDER OF PREMISES LICENCE – REPORT BY THE CLERK TO THE BOARDS**

NOTED that the premises detailed in **Appendix 3** had surrendered their premises licence.

8. **LICENSING (SCOTLAND) ACT 2005: APPLICATION FOR VARIATION OF PREMISES LICENCE – THE CLUBHOUSE BAR, BANKEND ROAD, DUMFRIES - REPORT BY THE CLERK TO THE BOARDS**

Decision

The Applicant had requested before the meeting that the application be deferred to a future Board meeting as he had an urgent matter to attend to that morning. Members **AGREED** to **DEFER** determination of the application to a future Board Hearing date.

9. **LICENSING (SCOTLAND) ACT 2005: APPLICATION FOR VARIATION OF PREMISES LICENCE – GREENS, ST MICHAELS STREET, DUMFRIES – REPORT BY THE CLERK TO THE BOARDS**

Decision

Having heard from the Applicant, their Agent, Police Scotland and the Licensing Standards Officer, the Board **AGREED** to **GRANT** the application as detailed in **Appendix 4** subject to the following condition pursuant to its powers in terms of section 27 Licensing (Scotland) Act 2005 and as it considered necessary or expedient for the purposes of the preventing public nuisance objective:

- ‘No music shall be permitted in or be audible in the outside drinking area post 10pm’

10. **LICENSING (SCOTLAND) ACT 2005: APPLICATION FOR NEW PREMISES LICENCE – SUZIE’S PLACE, 3 CROWNS COURT, DUMFRIES – REPORT BY THE CLERK TO THE BOARDS**

Decision

Having heard from the Applicant, Licensing Standards Officer and Police Scotland, Members **AGREED** to **GRANT** the application as detailed in **Appendix 5**

Following a request by Andrew Hunter, Agent for Item 13, that his item be heard following item no 10 and at this stage of the meeting due to other professional commitments, Members Agreed to hold the rest of the Hearing in the following order of Items 13, 11, 12.

13. LICENSING (SCOTLAND) ACT 2005: PROVISIONAL PREMISES LICENCE APPLICATION – DUMFRIES BROOMS ROAD SERVICE STATION, BROOMS ROAD, DUMFRIES – REPORT BY THE CLERK TO THE BOARDS

Having heard from the Applicant's Agent, Police Scotland and the Licensing Standards Officer, Members **AGREED** to **GRANT** the application as detailed in **Appendix 6**

11. LICENSING (SCOTLAND) ACT 2005: PERSONAL LICENCE APPLICATION – EMMA JOHNSTONE - REPORT BY THE CLERK TO THE BOARDS

Decision

Members decided to determine the application in the absence of the applicant as she had failed to attend the previous meeting notwithstanding having been cited to do so and four written communications had been made to her since that meeting advising of today's Hearing and no response had been received to date. Having heard from Police Scotland as to the terms of their objection, the Board voted on the application:

11.1 MOTION by Councillor Jordan seconded by the Convener that the application be **REFUSED** on the grounds that having regard to the licensing objectives of preventing crime and disorder and securing public safety that the applicant is not a fit and proper person to be the holder of a Personal Licence and that it is otherwise necessary to refuse the application for the purposes of both these objectives.

11.2 AMENDMENT by Councillor Little seconded by Councillor Berretti that the application be **GRANTED**

Motion – 4 Votes being:

Councillor Jordan, Councillor Hyslop (Convener), Councillor Campbell and Councillor Dorward

Amendment – 2 Votes being:

Councillor Little and Councillor Berretti

Decision

The Motion carried and the application was **REFUSED**.

12. LICENSING (SCOTLAND) ACT 2005: PERSONAL LICENCE REVIEW – GARRY GIBSON – REPORT BY THE CLERK TO THE BOARDS

DECISION

Having heard from Police Scotland and the Personal Licence Holder, members **AGREED** to take **NO ACTION**

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

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 29
APPLICATIONS FOR MINOR VARIATION OF PREMISES LICENCES
GRANTED UNDER DELEGATED AUTHORITY**

<u>Application No. 1 – Ref L.6/112N</u>	
Name & Address of Applicant or Agent	Dynamic Retail Limited 1598 Dunbarton Road Glasgow G14 9DR
Name & Address of Premises	Scot Fresh Unit 1 78 Glasgow Street Dumfries DG2 9AQ
Nature of variation	Change of Designated Premises Manager to Fraser Scott
Effective Date of Minor Variation	11 June 2024

<u>Application No. 2 – Ref L.6/111N</u>	
Name & Address of Applicant or Agent	Shell UK Oil Products Limited Shell Centre London SE1 7NA
Name & Address of Premises	Shell Collin Annan Road Dumfries DG1 3SE
Nature of variation	Change of Designated Premises Manager to Farwa Iftikhar
Effective Date of Minor Variation	21 June 2024

<u>Application No. 3 – Ref L.6/051N</u>	
Name & Address of Applicant or Agent	Scottish Midland Co-operative Society Limited Hillwood House 2 Harvest Drive Newbridge EH28 8QJ
Name & Address of Premises	Scotmid 202/204 Lochside Road Dumfries DG2 0EB
Nature of variation	Change of Designated Premises Manager to Mandy Brockie
Effective Date of Minor Variation	21 June 2024

<u>Application No. 4 – Ref L.4/009N</u>	
Name & Address of Applicant or Agent	Guid of Players Theatre Royal 58-70 Shakespeare Street Dumfries DG1 2JH
Name & Address of Premises	Theatre Royal 58-70 Shakespeare Street Dumfries DG1 2JH
Nature of variation	Change of Designated Premises Manager's home address
Effective Date of Minor Variation	26 June 2024

<u>Application No. 5 – Ref L.3/012N</u>	
Name & Address of Applicant or Agent	Marco Fusi Drumlanrig Café Thornhill DG3 5LJ
Name & Address of Premises	Drumlanrig café & Restaurant 53-54 Drumlanrig Street Thornhill DG3 5LJ
Nature of variation	Change of Designated Premises Manager to Elvira Dear
Effective Date of Minor Variation	28 June 2024

<u>Application No.6 - L.6/038N</u>	
Name & Address of Applicant or Agent	Rasul Bros c/o Brooke and Brown WS 116 High Street Dunbar EH42 1JJ
Name & Address of Premises	Nisa Local 62-64 High street Sanquhar DG4 6BL
Nature of variation	Change of Designated Premises Manager to Jabad Ahmed
Effective Date of Minor Variation	1 July 2024

<u>Application No.7 - L.6/083N</u>	
Name & Address of Applicant or Agent	Licensing Matters Ltd For J & J Wilson (Shops) Ltd Driftwood Lodge 36A Old Hunstanton Road Hunstanton PE36 6HS
Name & Address of Premises	J&J Wilson Supermarket Gillfoot Southernness Holiday Park Southernness Dumfries
Nature of variation	Change of Designated Premises Manager to Scott Lloyd
Effective Date of Minor Variation	11 July 2024

<u>Application No.8 - L.1/031N</u>	
Name & Address of Applicant or Agent	Queensberry Event Hire Ltd Auchenlays Dumfries DG1 1RE
Name & Address of Premises	Manor Country House Hotel Torthorwald Dumfries DG1 3PT
Nature of variation	Change of Designated Premises Manager to Sophie Duncan and change of premises name to 'Torr House'
Effective Date of Minor Variation	1 August 2024

<u>Application No.9 - L.6/088N</u>	
Name & Address of Applicant or Agent	Suvethika Thinesh 35 Summerpark Road Dumfries DG1 3FT
Name & Address of Premises	Herries Court Dumfries DG1 3TL
Nature of variation	Change of Designated Premises Manager's address and change of name of premises to 'Premier'
Effective Date of Minor Variation	5 August 2024

<u>Application No.10 - L.6/112N</u>	
Name & Address of Applicant or Agent	Dynamic Retail Limited 78 Longtown Road Dundee DD4 8JU
Name & Address of Premises	Unit 1 78 Glasgow Street Dumfries DG2 9AQ
Nature of variation	Change of premises name to 'Spar' and change to layout plan (no change to capacity)
Effective Date of Minor Variation	5 August 2024

<u>Application No.11 - L.2/009N</u>	
Name & Address of Applicant or Agent	Whitbread Group PLC Whitbread Court Houghton Hall Business park Porz Avenue Dunstable Bedfordshire LU5 5XE
Name & Address of Premises	The Solway Gate Annan Road Dumfries DG1 3JX
Nature of variation	Change of Designated Premises Manager to Kishan Fernando
Effective Date of Minor Variation	21 August 2024

<u>Application No.12 - L.2/009N</u>	
Name & Address of Applicant or Agent	Whitbread Group PLC Whitbread Court Houghton Hall Business park Porz Avenue Dunstable Bedfordshire LU5 5XE
Name & Address of Premises	The Solway Gate Annan Road Dumfries DG1 3JX
Nature of variation	Change of Designated Premises Manager to Claire Dodds
Effective Date of Minor Variation	22 August 2024

<u>Application No.13 - L.5/008N</u>	
Name & Address of Applicant or Agent	Dumfries and Galloway Council Council Offices English Street Dumfries DG1 2DD
Name & Address of Premises	The Jaggy Thistle Robert Burns Centre Mill Road Dumfries DG2 7BE
Nature of variation	Change of Designated Premises Manager to Cassandra Howat
Effective Date of Minor Variation	29 August 2024

<u>Application No.14 - L.2/065N</u>	
Name & Address of Applicant or Agent	John Watson 89A Irish Street Dumfries DG1 2PQ
Name & Address of Premises	Liquid Lounge 87 Irish Street Dumfries DG1 2PQ
Nature of variation	Change of Designated Premises Manager to Brendan O'Donnell and change of premises name to 'Above and Below'
Effective Date of Minor Variation	9 September 2024

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

**THE LICENSING (SCOTLAND) ACT 2005
APPLICATIONS FOR TRANSFER OF PREMISES LICENCES
GRANTED UNDER DELEGATED POWERS**

<u>Application No 1. – Ref L.3/012N – SECTION 33</u>	
Name & Address of Applicant or Agent	Marco Fusi 54 Drumlanrig Street Thornhill DG3 5LJ
Name & Address of Transferee or Agent	Elvira Dear 5 Milehouse Crescent Dumfries DG1 1JZ
Name & Address of Premises	Drumlanrig Café & Restaurant 53-54 Drumlanrig Street Thornhill DG3 5LJ
Effective Date of Transfer	28 June 2024

Appendix 3

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

**THE LICENSING (SCOTLAND) ACT 2005 : SECTION 28(6)
SURRENDER OF PREMISES LICENCES**

<u>No. 1 – Ref L.6/113N</u>	
Name & Address of Licence Holder	The Dumfries Larder Ltd 170-172 High Street Dumfries DG1 2BA
Name & Address of Premises	The Dumfries Larder Ltd 170-172 High Street Dumfries DG1 2BA
Date Licence Surrendered	26 June 2024

<u>No. 2 – Ref L.3/009N</u>	
Name & Address of Licence Holder	Sharon Chan 6C Lincluden Road Dumfries DG2 0QG
Name & Address of Premises	Hong Kong Star 89 Friars Vennel Dumfries DG1 2RF
Date Licence Surrendered	9 July 2024

Nithsdale Divisional Licensing Board
Application for Variation of Premises Licence

Applicant/Agent	Star Pubs & Bars Limited 3-4 Broadway Park South Gyle Broadway Edinburgh EH12 9JZ
Address of Premises	Greens 59 St Michael Street Dumfries DG1 2QB
Nature of Variation	<p><u>Operating Plan</u></p> <p>Q5f add following wording to 'Any other Activities':</p> <ul style="list-style-type: none"> • Community fun days held at premises and comprising activities such as children's games, bouncy castles, face painting, mini football and other fun activities • Barbeque – usually held on the fun day or by special demand i.e. fund raising day for local charities • Karaoke nights according to business needs • Live music events both internally and externally, with external music being capped to a maximum of 6 events per year. • Showing of live televised events both internally and externally, with any showing of live televised events externally being for major sporting events only • Children parties • Portable bar to be used in external beer garden area <p>Q7 'Capacity' increase in capacity outdoors, to now read:</p> <p>On-sales 410 (<i>currently 350</i>)</p> <p>Indoors 310 (<i>no change</i>)</p> <p>Outdoors 100 (<i>currently 40</i>)</p> <p>(overall capacity not to exceed – 310)</p> <p><u>Layout Plan</u></p> <p>To amend the layout plan to extend the existing beer garden and bring it into the licensable area</p> <p><u>Any other Changes</u></p> <p>Change to description of premises to now read:</p>

	Family friendly premises offering food and drink with licensed outdoor beer garden and smoking area.
Last Date for Objections/Representation	Friday 19 July 2024

Applicant/Agent	Suzanne Howat 3 Hetland Cottages Carrutherstown Dumfries DG1 4JX
Address of Premises	Suzie's Place 2 Crowns Court Dumfries DG1 1HU
Description	Café serving hot and cold food and beverages on one floor with 42 covers, some seating outside.
Core Times	<p><u>On Sales</u></p> <p>Monday 11.00am – 11.00pm Tuesday 11.00am – 11.00pm Wednesday 11.00am – 11.00pm Thursday 11.00am – 11.00pm Friday 11.00am – 11.00pm Saturday 11.00am – 11.00pm Sunday 11.00am – 11.00pm</p> <p><u>Off Sales</u></p> <p>Monday 10.00am – 10.00pm Tuesday 10.00am – 10.00pm Wednesday 10.00am – 10.00pm Thursday 10.00am – 10.00pm Friday 10.00am – 10.00pm Saturday 10.00am – 10.00pm Sunday 10.00am – 10.00pm</p>
Activities	<p>Conference facilities, Restaurant Facilities, Bar Meals, Receptions, Club/Group Meetings, Recorded Music, Live Performances, Films, Gaming, Indoor/Outdoor Sports, Televised Sports and Adult Entertainment both within and outwith core hours.</p> <p>Outdoor Drinking within core hours.</p> <p><u>Further info 'outwith core hours'</u> – To provide hot/cold food and beverages, book club, play background music, markets, takeaway, activity night, funeral teas, bingo, quiz, dominos, darts etc before licensing times.</p> <p><u>Any other Activities:</u> Funeral teas, Bingo, Quiz Nights, Markets, Takeaway, Domino/Darts, Book Club, Activity Night.</p>

<p>Children and Young Persons</p>	<p>TERMS – Children - For the consumption of food and hot/cold drinks (non alcohol) at all times unaccompanied up until 5pm – no access to the bar. After 5pm they must be accompanied by an adult. Young Persons allowed in at all opening times unaccompanied.</p> <p>AGES – Children 0-15 years; Young Persons 16 to 17 years</p> <p>TIMES – Children will be allowed entry up until 5pm. Thereafter they must be accompanied by an adult. Young Persons allowed at all times unaccompanied.</p> <p>PARTS – Allowed entry in public parts of the premises except bar area.</p>
<p>Capacity</p>	<p>Onsales – 62 Indoors – 42 Outdoors – 20</p>
<p>Last Date for Objections/Representation</p>	<p>Friday 2 August 2024</p>

Applicant/Agent	Motor Fuel Limited Per Harper Macleod LLP 45 Gordon Street Glasgow G1 3PE
Address of Premises	Dumfries Brooms Road Service Station Brooms Road Dumfries DG1 2SH
Description	<p>The premises are located at Brooms Road, Dumfries, DG1 2SH.</p> <p>The premises has a general convenience store adjacent to petrol/derv filling station forecourt. The site has car parking separate from the fuel pumps. The premises do not form part of the nearby retail supermarket premises.</p> <p>The petrol/derv filling station forecourt area is not part of the area to be licensed. The premises offer substantial general convenience separate from, and supplementary to, the offer of petrol/derv.</p> <p>The applicant considers that persons within the locality of the premises are reliant on the premises to a significant extent as a principal source of petrol or derv or groceries and thereby satisfy the criteria of Section 123(5) of the Licensing (Scotland) Act and as such are not excluded premises.</p>
Core Times	<u>Off Sales</u> Monday to Sunday 10:00 to 22:00 hours
Activities	<p>Include recorded music within and outwith core hours.</p> <p>The premises may play background music in the retail areas of the store. The premises may operate outwith alcohol licensing, up to 24-hour basis.</p> <p><u>Any other Activities</u></p> <p>The premises comprise of a general convenience store with off sale facility adjacent to petrol/derv filling station forecourt. The premises offer takeaway “food on the go”. Customers may order groceries, food and drinks, including alcoholic drinks for home delivery from the premises.</p>
Capacity	9.228m2

Last Date for Objections/Representation	Friday 24 May 2024
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**DUMFRIES AND GALLOWAY LICENSING BOARDS
NITHSDALE DIVISIONAL LICENSING BOARD**

**LICENSING (SCOTLAND) ACT 2005 (THE ACT)
PREMISES LICENCE REVIEW (SECTION 36)
PREMISES: HOLE I' THE WA', 156 HIGH STREET, DUMFRIES
PREMISES LICENCE HOLDER: SUSAN SLOAN**

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 17 September 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
24 September 2024

OFFICIAL SENSITIVE: POLICE AND PARTNERS

17 September 2024

Your Ref: L.2/024N

Our Ref: AP/HJR/21203

Clerk of the Board
Nithsdale Divisional Licensing
Kirkbank House
English Street
Dumfries
DG1 2AD



**POLICE
SCOTLAND**

Keeping people safe

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: L2/024N

PREMISES:

HOLE I THE WA', 156 HIGH STREET, TOWN CENTRE, DUMFRIES, DG1 2BA.

PREMISES LICENCE HOLDER:

SUSAN SLOAN, 5 CARLYLE COURT, SUMMER PARK, DUMFRIES, DG1 3FL

In terms of section 36(1) of the Licensing (Scotland) Act 2005 I hereby make application to the Nithsdale Licensing Board for a review of the premises licence in respect of the premises known as Hole In The Wa' Inn, 156 High Street, Town Centre, Dumfries, DG1 2BA.

This application for review is made in terms of Section 36(3) (b) on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely:

- Preventing crime and disorder
- Securing Public Safety

Have been breached.

In support of this application, and in terms of section 36(5A) the following information is provided for your consideration: -

The Hole In The Wa premises was placed onto a six month intervention plan on 03 May 2024, by Police Scotland, due to a of series of incidents of violence, general drunkenness and serious concerns relating to staff training and housekeeping.

Over a 4 month period (Jan – April) There were 18 incidents recorded which identified that there was a risk to public and staff safety should the premises continue to operate as it was with these ranging from;

- Sexual Crime

OFFICIAL SENSITIVE: POLICE AND PARTNERS

- Drunkenness
- Assaults
- Disturbances
- Fail to Leave Premises

Two of the recorded incidents were more of a serious matter as follows:

At 2120 hours, On Saturday 03rd February 2024, Police were requested to attend due to a male causing a disturbance within the premises and being restrained by two male members of staff. During Police enquiries it was established that neither of the males who had been hands on held a valid Door Supervisor SIA Licence and had been ejecting people. They were then cautioned and charged with assault and informed that they would be reported for Section 3 of the Private Industry Security Act 2001 (carrying out a licensable activity without an SIA Licence).

At 0041 hours, on Sunday 21st April 2024, Police were contacted by the Scottish Ambulance Service Control reporting they were attending at the Hole in the Wa' due to the report of a male who had been glassed.

Through Police enquiries it was established that the victim had been heavily intoxicated and pushed two females to the ground which resulted in a short fight occurring with a doorman being assaulted however no one on this occasion was ejected and they continued drinking and socialising up until a second fight broke out resulting in the male victim being struck over the head with a glass bottle and punched in the face. It was later found that as a result of this altercation the victim had a broken jaw and required to have his head glued.

Police Scotland recommended that the premises should:

- Increase monitoring inside and outside the premises – to remove drunk individuals as required
- More close monitoring of patrons and their consumption of alcohol on the premises and early intervention to prevent drunkenness
- Ensure CCTV is fully operational
- More robust action to be taken by staff when dealing with those involved in incidents and continuing to contact Police Scotland to prevent criminality.
- Ensure staff are fully up to date in relation to actions after an incident, I.E preserving a crime scene, reporting to the Police, providing statements etc.
- Ensure staff are aware of licensing hours and their obligations around drunkenness.
- Ensure staff are aware of those who are subject to previous incidents and ensuring the refusal register is updated and fit for purpose.
- Regular checks of the toilets for drug misuse.
- Ensure door stewards are fully accredited through SIA and trained in de-escalation.
- Ensure robust checks are undertaken in respect of age verification in accordance with the challenge 25 policy.

These actions were agreed by the premises designated manager Alan Houliston.

The premises performance improved over the following three months and a positive review was completed with them on 01st August 2024, whereby Alan Houliston confirmed that they would continue to maintain these standards for the remaining three months of the intervention plan.

On Tuesday 13th August 2024, Police Scotland were completing enquiries into a serious and violent crime committed at a separate licensed premises in Dumfries and it was brought to Police attention that a violent crime had been committed by the same accused earlier in the evening within The Hole in the Wa', 156 High Street, Dumfries.

OFFICIAL SENSITIVE: POLICE AND PARTNERS

On the evening of Friday 09th August 2024, Security Staff at The Hole In The Wa recorded within their incident book that a male person had been removed from the premises after a glass had been thrown at another male injuring his head.

CCTV was reviewed by Police, and this incident had been captured on both cameras covering the lounge area, whereby it showed the accused male sat at a table near to the dancefloor in company of two other males. The footage shows a prolonged heated discussion between the victim and accused which results in the accused picking up a glass from a table and throwing it at the victim. It is unclear if the glass connects with the victim, but the accused grabs the back of his head. Nearby Security Staff thereafter remove the accused.

The victim is then observed to sit down, and blood can be seen on the back of their neck, and they leave the premises thereafter.

The victim was later conveyed to hospital due to a cut to the back of his head which would not stop bleeding. Where four staples were utilised to close the wound.

Police Officers spoke with the responsible personal licence holder in charge of the premises on this evening namely Ms Forteach and the two door stewards on duty who confirmed that this incident was not reported to the Police and the locus had been cleaned up.

Due to the premises failing to contact Police after this incident the accused has been free to attend other licensed premises where a further serious crime occurred, which resulted in another victim being admitted to hospital with initial life threatening injuries. The premises within the Hole In The Wa was also cleaned up and there were not forensic evidence opportunities as a result.

The latest assault in the premises remains sub judice with no further information able to be disclosed at this juncture.

This premises was previously performing poorly, and incidents of drunkenness and violence were high, the premises was given relevant advice on how to improve and given the opportunity to implement this. This most recent and serious incident shows that this premises continues to fail to prevent crime and disorder and safeguard its own patrons.

Since the premises was placed on the intervention on 03rd May 2024, the premises has had 26 Police inspections completed all of which were positive apart from one that mentioned drunkenness was apparent. There have also been 9 incidents documented at the premises.

Due to this 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

Steven Meikle
Chief Superintendent

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

LICENSING (SCOTLAND) ACT 2005**PREMISES: HOLE I' THE WA', 156 HIGH STREET, DUMFRIES, DG1 2AB, L.2/024N****LICENCE HOLDER: SUSAN SLOAN, 5 CARLYLE COURT, DUMFRIES, DG1 3FL**

1. Ms Susan Sloan has held the licence for these premises since 23 October 2020. The Designated Premises Manager is Alan Houliston, 5 Carlyle Court, Dumfries, DG1 3FL, personal licence number DG/N/0123.

2. The premises operate as a public house. The building consists of a public bar, lounge bar/restaurant and external beer garden.

3. The licensed hours for the premises are: -

On Sales

Monday to Saturday 0930am – 0100am

Sunday 1100am – 1200am

Off sales

Monday to Sunday 1000am – 1000pm

4. The occupant capacity of the premises is 150.

5. LSO visits – During the past 11 months, I have called at the premises as follows.

- 05.10.23 – Routine compliance inspection with Mr Houliston, staff training, relevant signage, and production of appropriate documentation all in order.
- 11.10.23 – Breach of Mandatory Condition 8 (2)(h) which related to wording on a social media post offering a free alcohol drink with a karaoke. This was pointed out to Mr Houliston and immediately rectified. No alcohol was dispensed as per the advert which was removed.

Review application

6. On Thursday 19 September 2024, I met with Ms Susan Sloan and Mr Alan Houliston, and prior to any discussion taking place regarding the review application submitted by the Chief Constable, I conducted a routine compliance inspection at the 'Hole i' the Wa' premises.

All staff training, relevant signage and documentation produced was found to be in order. There were no issues or concerns highlighted from an LSO perspective from the compliance inspection.

7. Ms Sloan thereafter confirmed she was the Premises Licence holder and her partner Mr Houliston the Designated Premises Manager (DPM). With regard to the review application, Ms Sloan confirmed the following.

7.1 Ms Sloan recognised there had been previous issues with security in the premises earlier this year and as such employed a new company called ELDA from Carlisle. Ms

Sloan confirmed they have increased security numbers on a Friday night to two stewards and a Saturday night to three stewards.

7.2 As a result of the security and stewarding issues, Ms Sloan also confirmed that Mr Houlston, has recently sat and passed his SIA Licence, 'Non-Front Line' which is a licence for those who are employers and supervisors.

7.3 The premises is currently subject to a Police Scotland Intervention Plan.

7.4 Ms Sloan and Mr Houlston accepted that the Intervention plan was a good thing for them, and they embraced this, carrying out increased regular meetings with staff.

7.5 Ms Sloan noted that Police visits were all positive during this time and was also recognised by Mr Houlston who is more hands on with regard to the premises in his role as DPM. The role of a DPM is being responsible for the day to day running of the premises, training and supervision of staff and ensuring the premises is run in accordance with the requirements of the licence.

7.6 Regarding the incident on 09.08.24. Both Ms Sloan and Mr Houlston confirmed they were on a family holiday out of the area. The premises were being supervised by Ms Lucy Forteath (Personal Licence Holder).

7.7 Ms Sloan and Mr Houlston stated to me that they were extremely disappointed and upset to hear of the incident in the premises and that the actions of their staff did not meet their expectations. That said Ms Sloan did confirm that she was fully responsible for this as the Premises Licence Holder.

7.8 Ms Sloan stated that they take the licensing objectives and review extremely seriously. As a result, both Mr Houlston and Ms Sloan have held a meeting with Ms Forteath and the security company. They stated to me they have established the following from their own enquiries: -

- The steward dealing with the incident believed Police had been called by Lucy Forteath and Ms Forteath believed Police had been called by the stewards.
- For reasons not known to them, Radio Link was not used to contact the Police. Radio Link is not always available for contacting Police but accept a 999 or 101 call should have been made to Police immediately.
- Both Ms Forteath and the supervisor steward admitted to them that they did not realise the seriousness of the injury sustained.
- This communication issue clearly identified by Ms Sloan and Mr Houlston meant they have now rectified this with a clear process that has been explained to staff whereby the supervisor or most senior Personal Licence Holder should call the Police regardless.
- All staff have been briefed regarding the incident and ensure learning is understood by all.
- The suspect who was responsible and others in his group that night have received a lifetime ban from the premises.
- The incident is clearly recorded on the incident log held within the premises and it also states the Police did a walk through of the premises an hour later. **I also inspected the incident book and noted the entry was signed and dated by a member of staff **

7.9 Ms Sloan also wished to advise me that they have twelve bar staff and eight are now Personal Licence Holders. They are hoping to secure another two staff on the personal licence course as they believe this should provide more skill and reassurance for her as Premises Licence holder.

8. Recommendation

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

Stuart Davidson
Licensing Standards Officer
20 September 2024

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

**LICENSING (SCOTLAND) ACT 2005 (THE ACT): SECTION 84A
CONDUCT INCONSISTENT WITH THE LICENSING OBJECTIVES
PERSONAL LICENCE HOLDER: LUCY FORTEATH**

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 17 September 2024, the Chief Constable, in terms of his power under section 84A the Act, submitted to the Board a report alleging that Lucy Forteath, the holder of a personal licence, has acted in a manner that is inconsistent with the licensing objectives, (a) Preventing Crime and Disorder and (b) Securing Public Safety (**Appendix**).

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

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

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.

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
- 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
Dumfries

24 September 2024

OFFICIAL SENSITIVE: POLICE AND PARTNERS

17 September 2024

Your Ref: DG/N/1059

Our Ref: AP/HJR

Clerk of the Board
Nithsdale Divisional Licensing
Kirkbank House
English Street
Dumfries
DG1 2HS



**POLICE
SCOTLAND**

Keeping people safe

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:
LUCY FORTEATH, 143 LOCHSIDE ROAD, LOCHSIDE, DUMFRIES, DG2 0EA
LICENCE NO: DG/N/1059**

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

- Preventing Crime and Disorder
- Securing Public Safety

Ms Forteath holds a Personal Licence which was issued by the Nithsdale Licensing Board on 26th August 2022 and is due to expire on 25th August 2032. At the time of the incident being reported she was working within the Hole in the Wa', 156 High Street, Dumfries.

The following information is provided for the Board's consideration.

During enquiries on 13th August 2024, with regards to a serious and violent crime committed at a separate licensed premises in Dumfries, it was brought to Police attention that a violent crime had been committed by the same accused earlier in the evening within the Hole in the Wa', 156 High Street, Dumfries.

On the evening of Friday 09th August 2024, Security Staff at The Hole in The Wa recorded within their incident book that a male person had been removed from the premises after a glass had been thrown at another male injuring his head.

CCTV was reviewed by Police, and this incident had been captured on both cameras covering the lounge area, whereby it showed the accused male sat at a table near to the dancefloor in company of two other males.

OFFICIAL SENSITIVE: POLICE AND PARTNERS

The footage shows a prolonged heated discussion between the victim and accused which results in the accused picking up a glass from a table and throwing it at the victim. It is unclear if the glass connects with the victim, but he appears to grab the back of his head. Nearby Security Staff thereafter remove the accused.

The victim is then observed to sit down, and blood can be seen on the back of their neck, and they leave the premises thereafter.

The victim was later conveyed to hospital due to a cut to the back of his head which would not stop bleeding, where four staples were utilised to close the wound.

Police Officers spoke with staff at the Hole In The Wa', and it was unclear at that time if this incident had been reported to Police. It was established that Lucy Forteath had been on duty on 09th August 2024.

Police Officers spoke with Ms Forteath and the two door stewards on duty on that evening, who confirmed that this incident was not reported to the Police and the premises had been cleaned up resulting in there being no forensic evidence opportunities.

Due to Ms Forteath failing to contact Police, an opportunity was missed to prevent the male attending at other licensed premises. On this occasion the male did assault a further male outside licensed premises, where the victim was conveyed to hospital with initial life-threatening injuries.

Due to this lack of action from a Personal Licence Holder who has completed relevant training and is in a position of authority and responsibility in respect of her patrons, public safety has been jeopardised and further serious crimes committed.

Ms Forteath would be well aware of her requirement to adhere to the Licensing Objectives and co-operate with Police Scotland by reporting incidents which occur on the licensed premises. Her conduct in this incident falls far below what could be reasonably expected of a licence holder working within one of the busier premises within Dumfries Town Centre.

Further to this I have to report that on 03rd September 2024, Lucy Forteath contacted the Police Service of Northern Ireland and was later traced and arrested in Belfast due to Attempted Criminal Damage and being intoxicated in public, she was held in custody overnight to appear at Laganside Magistrates Court the following day.

From checking Policing systems, we can see that the charge of attempted criminal damage is still pending and therefore is sub judicial and the charge of being intoxicated in a public place has been marked as no further action.

This additional incident increases concerns regarding Lucy Forteath's suitability as a Personal Licence Holder.

It is Police Scotland's opinion that the Board should consider all the options open to them under Section 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:

Yours faithfully

Steven Meikle
Chief Superintendent