

Item: 4

Orkney Islands Area Licensing Board: 10 March 2022.

Review of Premises Licence – Fusion, 10/12 Ayre Road, Kirkwall.

Report by Licensing Standards Officer.

1. Purpose of Report

To review the premises licence held in respect of Fusion, 10/12 Ayre Road, Kirkwall.

2. Recommendations

It is recommended:

2.1.

That the Board determines what action to take following a review in respect of the premises licence relating to Fusion, 10/12 Ayre Road, Kirkwall.

3. Introduction

3.1.

On 20 January 2022, the Licensing Board noted that the Licensing Standards Officer had submitted an application for a premises licence review in respect of the premises licence held by Light Fantastic (Orkney) Limited in relation to premises known as Fusion, 10/12 Ayre Road, Kirkwall, arising from the breach of a mandatory condition relating to the premises licence, for non-payment of the statutory annual fee.

3.2.

The Board resolved that a relevant ground for review had been disclosed and, accordingly, the premises licence held at Fusion, 10/12 Ayre Road, Kirkwall, be reviewed.

4. Background

4.1.

A premises licence has been held by Light Fantastic (Orkney) Limited at Fusion, 10/12 Ayre Road, Kirkwall (the premises), since 1 September 2009.

4.2.

In terms of Regulation 7 of the Licensing (Fees) (Scotland) Regulations 2007 (the Regulations), the holder of a premises licence must make payment of an annual fee in respect of the performance in relation to that licence of functions by the relevant

Board, the local authority within the area of which the premises are situated and that local authority's Licensing Standards Officers (LSOs).

4.3.

The requirement to make payment of an annual fee referred to above is incorporated within the mandatory conditions prescribed in terms of Section 27 and Schedule 3 of the Licensing (Scotland) Act 2005 (the Act) and contained in the premises licences which are issued by the Board.

4.4.

A breach of a condition of a premises licence comprises a statutory ground on which an LSO, or any other person, may apply to the Board for a review of the premises licence in terms of Section 36 of the Act.

4.5.

On 20 January 2022, the LSO submitted to the Board a report comprising an application for a premises licence review in respect of the premises licence held by Light Fantastic (Orkney) Limited in relation to the premises, arising from a breach of a mandatory condition relating to the premises licence, for non-payment of the statutory annual fee.

4.6.

In terms of Section 38 of the Act, the Board was required to assign a review hearing for the purposes of considering and determining the application unless the Board considered that the application was vexatious or frivolous or that it disclosed no relevant ground for review.

4.7.

The Board resolved that a relevant ground for review had been disclosed and, accordingly, the premises licence be reviewed.

5. Non-payment of Annual Fee

5.1.

In accordance with Regulation 9 of the Regulations, invoices were issued on 11 August 2021 in respect of the annual fees for all premises licences held for the period 1 October 2020 to 30 September 2021.

5.2.

Despite three subsequent reminders having been sent to the licence holder on 14 September, 12 October and 16 November 2021, the annual fee payable in respect of the premises for the period 1 October 2020 to 30 September 2021, remains outstanding.

5.3.

On 17 November 2021, a licensing compliance notice in terms of Section 14(2)(a)(i) of the Act was issued to the holder of the premises licence referred to above. The licensing compliance notice contained advice that:

- Payment of the annual licensing fee was a mandatory condition of the premises licence.
- Failure to pay the fee would result in an application to the Board to review the holder's premises licence.
- The holder's premises licence could be suspended or revoked in the event of non-payment.

6. Premises Licence Review

6.1.

On 20 January 2022, the Board determined to hold a hearing for the purposes of considering and determining a premises licence review application in respect of the premises. Such a hearing is known as a "review hearing".

6.2.

In terms of paragraph 13 of the Licensing (Procedure) (Scotland) Regulations 2007, a review hearing requires to be held no later than 42 days after the date on which the licensing board received the premises licence review application. This period is extended in terms of the Coronavirus (Scotland) Act 2020 where, for a reason relating to coronavirus, a Board is unable to hold a review hearing within the usual period. In these circumstances, the Board must hold the hearing as soon as reasonably practicable after the end of that period. In this instance, the delay of 7 days has been minimal.

6.3.

The licence holder was requested to attend, or be represented at, the hearing. They were also advised that they should consider seeking independent legal advice and that they may be accompanied or represented by a legal or other representative at the hearing.

6.4.

In terms of Section 39 of the Act, at a review hearing in relation to any premises licence, the Board may, if satisfied that a ground for review is established, take any of the following steps if the Board considers this necessary and appropriate for the purposes of any of the licensing objectives:

- Issue a written warning to the licence holder.
- Make a variation of the licence.
- Suspend the licence for such period as the Board may determine.
- Revoke the licence.

6.5.

The licensing objectives are defined in Section 4 of the Act as:

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

6.6.

In terms of Section 39A of the Act, the Board must give notification of their determination to the premises licence holder and the premises licence review applicant (in this case the LSO). If the Board determines to take one of the steps detailed at section 6.4 above, the premises licence holder may require the Board to give a statement of reasons for their decision.

6.7.

In terms of Section 131 of the Act, a sanction listed in section 6.4 of this report can be appealed to the Sheriff Principal.

6.8.

In terms of Section 132 of the Act, a decision of the Board which is appealed continues to have effect despite the appeal. However, there is an exception whereby, on the application of any appellant and if satisfied on the balance of convenience that it is appropriate to do so, the Sheriff Principal may set aside a decision to suspend or revoke a premises licence pending determination of any appeal, thus permitting the licence holder to trade.

7. Financial Implications

The Regulations prescribe the maximum fees payable based on the rateable value of the premises. In this instance the annual fee payable under Regulation 7 as determined by this Board is £500.

8. Legal Aspects

The legal aspects are contained within the body of this report.

9. Contact Officer

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