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29 July 2014

Your Ref:

Our Ref: AD/DASU/SID33039/9898/14

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**POLICE
SCOTLAND**

Keeping people safe

Sir Stephen House QPM
Chief Constable

Aberdeen City Division
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FOR THE ATTENTION OF MR ERIC ANDERSON

Dear Sir

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**LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR THE VARIATION OF A PREMISES LICENCE
THE PRIORY, 27 BELMONT STREET, ABERDEEN, AB10 1JS**

I refer to the above variation of a premises licence in terms of Section 29(5) of the Licensing (Scotland) Act 2005.

The premises currently has operating hours of between 1100 and 0200 hours Monday to Thursday, 1100 to 0300 Friday and Saturday and 1230 and 0200 hours on Sunday.

The applicant premises are situated in the 'Belmont Street locality', which is within an area of overprovision as detailed within the Aberdeen City Licensing Board Statement of Licensing Policy 2013 - 2016. As a statutory consultee in the overprovision assessment process, Police Scotland provided Aberdeen City Licensing Board with detailed analytical data in respect of crimes and offences connected to licensed premises, and other crimes where the consumption of alcohol by either the perpetrators or victims of crime was a key

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factor, all of which impacted significantly on the Preventing Crime and Disorder licensing objective, amongst others.

The variation requested by the applicant consists of amendments to the operating plan and layout plan, namely;

1. Change to on sale consumption commencement hour to 1400 hours Sunday to Thursday, and 1500 hours on Friday and Saturday.
2. A change to the licensed area to include an outdoor drinking area as delineated by a red line on the layout plan which accompanied the application.

Although not stated in the application form or proposed new Operating Plan, Police Scotland have spoken with the agent for the applicant who has advised that the applicant requests that the terminal hour for the outdoor area be 0100 hours. The agent also advised that it is the intention of the applicant to open and operate the premises from 1400 or 1500 hours daily when it is anticipated that the outdoor area will primarily be in use. The agent was unable to confirm if significant entertainment would be on offer at this time.

In terms of Section 29(5) this request can be considered a variation.

In respect of point 1 above, Police Scotland have no objection.

In respect of point 2 above, in terms of Section 22(1)(b)(ii) and (iii) of the Licensing (Scotland) Act 2005, the Chief Constable wishes to make the following representation.

The premises currently operates as a nightclub, and offers 'significant entertainment' (as defined within Appendix 4 of the Aberdeen City Licensing Board Statement of Licensing Policy 2013 - 2016) in the form of recorded music for dancing.

Regardless of the current or requested new operating hours, Police Scotland are not aware of the premises ever having utilised its full opening hours. For example, the premises has never been known to have opened at 1100 hours or in recent times to have been open for business before 1800 hours, and in fact, is not normally open for business before 2100 hours.

Police Scotland have noted that the layout plans accompanying the application indicate it will be furnished with tables and seating for 48 persons. No dance floor facilities are indicated on the plan in this area. It is unclear from the application whether or not these 48 persons are included or are additional to the current 834 patron capacity of the premises.

In addition to Appendix 4, The Aberdeen City Licensing Board Statement of Licensing Policy at 20.8 states:

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Premises in the City that provide significant entertainment (to the satisfaction of the Board) may apply and be granted hours until 02.00 Sunday – Thursday and 03.00 on Fridays and Saturdays .The Board regards significant entertainment to be entertainment which is of such a nature to be the principal attraction for patrons to attend the premises and where alcohol is served to patrons only as an ancillary accompaniment to their attendance and /or participation in the entertainment provided. The Board considers in these cases that the entertainment is the principal reason for patrons attending the licensed premises and that the consumption of alcohol would therefore be ancillary to such entertainment in order to be consistent with the licensing objectives. This would apply to premises such as nightclubs (with dance floor areas/facilities included in their operating plan and detailed in their layout plan) where recorded or live music for dancing is provided.

Other examples of where significant entertainment may apply are discos, DJs, adult entertainment, and live music for concerts, cabaret and theatrical plays. Some examples where the Board does not consider there to be significant entertainment are pool, darts, dominoes, leisure facilities and background music.

The Board are entitled to distinguish between premises of different descriptions offering different facilities or activities. e.g. Section 27(9) of the 2005 Act allows the Board to impose conditions in relation to the sale of alcohol on a premises to which a licence relates or any other activity carried on in such premises.

In light of the evidence before the Board on the levels of alcohol consumption in the city and the levels of alcohol related crime the Board wish to promote in terms of the objectives the types of premises which can operate where the service and sale of alcohol is not the primary objective thus contributing to the positive night time economy in the City but not adding to the health or crime related harms associated with are premises which focus wholly or mainly on alcohol consumption.

The current and applied for operating hours are presumably in recognition of the significant entertainment currently provided. On the assumption that the premises intends to operate the proposed outside drinking area from 1400 or 1500 hours onwards, it is difficult to imagine what form of significant entertainment will be provided at that time, and if there is no such entertainment on offer, the Chief Constable queries if the premise are still entitled to have the benefit of late opening until 0200 or 0300 hours.

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Taking cognisance of the overall requirement to provide significant entertainment which should be the principal attraction for patrons attending premises with alcohol consumption ancillary to this, and with a duty to uphold the Preventing Public Nuisance licensing objective relating to noise nuisance, Police Scotland question how the outdoor drinking area can be operated as part of a nightclub premises when there are no facilities for dancing and any music provided for dancing is likely to conflict with the stated licensing objective. It could be argued that for some patrons the addition of an outdoor drinking area and the consumption of alcohol from 1400 or 1500 hours will become the principal attraction for attending the premises, with little regard the recorded music and dancing facilities, whether they are offered or not.

The Chief Constable notes that the Policy at 19.2 states:

... Applicants, who propose to provide outdoor areas, should ensure that their use will not cause disturbance or nuisance to the occupiers of other premises in the vicinity. The Board may impose where necessary local conditions such as the provision of CCTV camera(s) to assist in the management and control of such areas and in support.

It is recognised that other licensed premises in the area have outdoor drinking facilities, some until a terminal hour of midnight or 0100 hours. However, all of these premises are either restaurants (2) or what could be described as public houses (3). None are nightclubs. Very few are known to utilise their outdoor areas for the full hours available to them, other than during warm summer weather.

It is the opinion of Police Scotland that the customer profile of those attending restaurants and public houses is broadly different to those who attend nightclubs, and that any such customers at these type of venues may very generally be categorised as people who consume alcohol earlier in the evening, in the knowledge that the terminal hour is either midnight or 0100 hours, at which time the majority of them go home. In very general terms, the customer profile of nightclubs involve younger people, who may drink alcohol either at home or in public houses in the early or mid-evening before entering a nightclub anytime from 2200 hours until 0130 hours or even later.

If the applicant is seeking to introduce a multi-purpose or 'hybrid' type operation at the premises, with patrons using the outdoor drinking area solely for the consumption of alcohol without significant entertainment being offered in the area at any time from the commencement hour onwards, the Chief Constable does not object to this, but in terms of Section 22(1)(b)(ii) and (iii) of the Licensing (Scotland) Act 2005, is of the opinion that the variation in its current form should be modified so that the following conditions are applied. This will clearly define the differing use of the premises at different times, be compliant with the Board's own Policy, and support the Preventing Public Nuisance licensing objective:

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1. The outdoor drinking area is to be restricted to 48 persons, or be in line with the number of seats provided.
2. The outdoor drinking area to cease operation at 2200 hours with no further drinks of any kind being served, taken or consumed there thereafter. It is recognised that after 2200 hours, patrons from within may still use the outdoor area as a smoking area. However, the removal of drinks from inside the premises is forbidden.
3. No recorded music, including background music, to be played in the outdoor drinking area.

If the Board are minded to grant the variation for the outdoor area with a later cessation time than 2200 hours, the following further conditions are sought:

4. It is a condition that the licence holder will ensure that from 2200 onwards, they shall employ or use suitably licensed door supervisors at or near the entrance to, or within the premises, to maintain order and/or security and prevent patrons breaching the licensing objectives. In addition to regular deployments of door supervisors at the entrance door, additional stewards will be employed whose sole responsibility is to supervise the outdoor drinking area until the terminal hour or earlier cessation time for the outdoor area. (This condition is sought in replacement of the local condition currently attached to the premises licence)
5. From 2200 hours onwards access to the outdoor drinking area should be delineated by the use of a roped barrier or similar structure in order to keep the entrance pathway separated and clear for other patrons queuing to enter or leaving the premises.
6. The existing CCTV system should be modified to ensure that it captures all of the outdoor drinking area, including instances when any canopies or other structures are erected over the tables and chairs, which would otherwise obscure normal CCTV coverage.

This representation is submitted for your attention when considering this application.

Yours faithfully

Murray Main
Chief Inspector

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