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30 December 2014

Your Ref:

Our Ref: AD/DASU/SID37411/9235/14

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ABERDEEN  
AB10 1AB



Sir Stephen House QPM  
Chief Constable

Aberdeen City Division  
Queen Street  
Aberdeen  
AB10 1ZA

Dear Sir

**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.

The variation requested by the applicant consists of amendments to the Operating Plan, namely;

1. To vary the condition attached to the premises licence that restricts terminal hour of the outside drinking area to 2200 hours and amend the terminal hour for this area to 0100 hours.
2. To vary the condition attached to the premises licence that restricts the capacity of the outside drinking area to 48 persons seated, to be

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amended to allow a capacity for both standing and seated persons with the seated person capacity limited to 48 persons.

It is noted that there is no indication on the application what time trading will commence in the outside area for day to day business, nor does the application state what the additional standing capacity figure would be. In addition, it is noted from the layout plan which accompanied the application that the Occupant Capacity figures quoted state that the external seating is for 50 persons and not 48 as stated in the application.

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

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.

It is also noted that it is unclear from the application whether or not the additional 48 seated persons and unspecified numbers of standing patrons are included or are additional to the current 834 patron capacity of the premises.

The Police Service of Scotland has concerns regarding the blurring of the lines between what have historically been known as public houses and other premises which operate as nightclubs. Nightclubs are in general open until 0200 hours during the week and until 0300 hours at weekends. Their status as being markedly different to other licensed premises is recognised by Government who have passed legislation in the form of The Licensing Conditions (Late Opening Premises)(Scotland) Regulations 2007. These regulations impose additional controls and safety measures in the form of conditions relating to first aid, the requirement for a personal licence holder to be present after 0100 hours, CCTV provision, door stewards, and the safety of patrons in toilets.

The applicant 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. In basic terms, this means that without offering such significant entertainment, premises cannot or should not be awarded late opening until 0200 or 0300 hours by the Licensing Board.

Regardless of the current or requested new operating hours, the Police Service of Scotland is 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 and is in fact not normally open for business before 2100 hours. For example, following a lengthy period of closure for refurbishment, the premises re-opened on Friday 12 December 2014 at 2230 hours.

In addition to Appendix 4, The Aberdeen City Licensing Board Statement of Licensing Policy at 20.8 states that significant entertainment provided should be the **principal attraction** for patrons attending the premises and that the

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consumption of alcohol should be **ancillary** to the entertainment, 'in order to be consistent with the licensing objectives.'

The current and applied for operating hours are presumably in recognition of the significant entertainment currently provided internally at the premises. On the assumption that the premises intends to operate the proposed outside drinking area from some time during 'daytime trading' hours 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, as per Appendix 4 of the Board's Policy, if the premise is still entitled to have the benefit of late opening until 0200 or 0300 hours.

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, the Police Service of Scotland questions 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. The addition of an outdoor drinking area and the consumption of alcohol from 1100 until 0100 hours will become the principal, and not ancillary, 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 that premises with outside areas should operate in a manner which does not cause disturbance or nuisance to others in the vicinity.

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 the Police Service of 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

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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 terminal hour for the outside area remains unchanged at 2200 hours, the number of persons to be seated be clarified, and that a specific number of standing patrons be declared in the Operating Plan to the satisfaction of the Board.

The Chief Constable also recommends that local conditions 2,3 and 4 in respect of the external area remain unchanged.

The Chief Constable is aware that in July 2014 the applicant previously applied for a similar variation to the operating plan in respect of using the outside area until 0100 hours. The application was granted at a sitting of the Board on 16 September 2014, however the operating plan was modified at that time with the current local conditions imposed including a restriction in the use of the outdoor area which was to terminate at 2200 hours.

If the variation were granted, the 'blurring of the lines' between what differentiates a public house to a nightclub will be further eroded, and it is anticipated that other licensed premises may also seek to amend their operating plans, and in particular public houses who want to open until 0200 or 0300 hours, knowing that the requirements of Appendix 4 in the Board's Policy can be overcome regardless of whether or not significant or non-significant entertainment is provided. A precedent could be set if this application is granted in full, which would be all the more concerning in an area already recognised by the Board as being overprovided for, along with the crime and other statistical data which supports this.

The Chief Constable is aware that the Policy at 2.12 states:

**There is a presumption of a common approach in the reasoning behind planning and licensing decisions and conditions attached to planning permissions may relate to one or more of the five licensing objectives.**

The Chief Constable therefore invites the Board follow this presumption of a common approach in its decision making in dealing with this application and that it upholds the terms of its own Policy and maintains the distinction between late opening nightclub premises and other types of on sale premises in a consistent manner.

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

Yours faithfully

Chief Inspector

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