Falkirk Council Licensing Board Functions Report

2021 / 22

Clerk to the Licensing Board

The Foundry

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# Introduction – Falkirk Council Licensing Board

* 1. Falkirk Council Licensing Board ("the Board") is the licensing authority for the local government area of Falkirk for the purposes of the Act.
	2. The Board during this period was made up of 10 members, all of whom are elected members of Falkirk Council. The Convener of the Board was Councillor Niall Coleman until March 2022 and the Depute Convener was Councillor Robert Bissett. While the Board is made up of members elected to Falkirk Council, it is independent of the Council, being a separate legal entity with its own constitution and statutory procedures.
	3. A list of members currently sitting on the Board is available on the Council’s website at:

[http://www.falkirk.gov.uk/services/council-democracy/councillors-decision-](http://www.falkirk.gov.uk/services/council-democracy/councillors-decision-making/committees/committee.aspx?committee=132) [making/committees/committee.aspx?committee=132](http://www.falkirk.gov.uk/services/council-democracy/councillors-decision-making/committees/committee.aspx?committee=132)

* 1. Falkirk is situated right at the centre of Scotland and has a growing population of over 160,890, with just under 60,000 people working in the area. This is an increase of 0.3% from 2018 and is the highest ever population. The population is expected to grow yet further to over 168,000 by 2035 making it one of the fastest growing areas in Scotland. The principal town of Falkirk is centrally located and provides the main shopping, service and employment. Separated by a narrow green belt are the urban areas of Larbert/Stenhousemuir, Polmont and Grangemouth. The former two are largely residential in character, while Grangemouth is home to the largest petrochemical complex in Scotland, as well as a major port on the River Forth. In the western reaches of the area lie the settlements of Denny/Dunipace, Bonnybridge and Banknock, while to the east, overlooking the Forth, sits the town of Bo’ness. There are 18 smaller villages scattered across the rural parts of the area. The area has seen a growth in tourism in recent years with visitors’ attractions such as the iconic Kelpies, Helix Park, Callendar House and park and the Falkirk Wheel.
	2. The Licensing (Scotland) Act 2005 as amended ("the Act") makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold.
	3. Under the Act, Licensing Boards are responsible for considering applications for:-
		+ premises licences
		+ occasional licences
		+ provisional licences
		+ temporary licences
		+ personal licences
		+ transfer of premises licences
		+ variation of premises licences
		+ extensions of licensing hours in respect of:
			- the sale of alcohol by retail; and
			- the supply of alcohol in members clubs

# The Licensing Objectives

* 1. The Act sets out the following five licensing objectives (“the licensing objectives”):
* preventing crime and disorder
* securing public safety
* preventing public nuisance
* protecting and improving public health
* protecting children and young persons from harm
	1. The licensing objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. Breach of the licensing objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence, or an occasional licence may be based on any one or more of the licensing objectives.
	2. In exercising its functions under the Act, the Board are required to have regard to the licensing objectives as well as the statutory Section 142 guidance and their Statement of Licensing Policy.

# Annual Functions Report

* 1. Information and assistance are made available to persons wishing to apply for a licence, make representations or lodge objections or a review. Application forms are available to be downloaded from the Council’s website as well as guidance notes, legislation and statutory reports. All documents are in an accessible format
	2. The Board meets monthly except January and July and convenes special meetings when the need arises. The Board met for all the scheduled meetings during this period and it had 2 special meetings convened (26 May 2021 and 28 March 2022). The dates and minutes of the meetings are available on the Council’s website:

[**http://www.falkirk.gov.uk/coins/calendar.asp**](http://www.falkirk.gov.uk/coins/calendar.asp)

* 1. Due to the pandemic, the council offices were closed and staff worked from home where possible. In December 2021, the service moved to new office accommodation in Larbert, but staff continued to work primarily from home. By the start of April 2021, the Licensing Section had fully adapted from being a front- line service with much of its business being carried out face to face to a remote service.
	2. The Licensing Facebook page continued to be an invaluable communication method and was used frequently to post updates on the changes to how the service operated and changes to the legislation introduced by the Coronavirus (Scotland) Act 2020, policy changes, etc. Advice and guidance on the licensing pages of the Falkirk Council website was also continually updated during this period in relation to the disruption to services etc.
	3. The Board continued to meet remotely using WebEx which allowed meetings to be live steamed on Falkirk Council’s YouTube channel. Technical support was provided from officers in Democratic Services who offered all attendees a dry run at connecting. Paperwork was issued electronically.
	4. Some premises continued to operate outdoor drinking areas that were established during the previous year to allow them to trade when restrictions prevented indoor drinking or reduced capacity due to social distancing. One premises had a non-minor variation granted to add outdoor drinking to their operating plan, the Red Hoose in Dunipace, and another had a variation grated to increase the size of their outdoor drinking area, the Union Inn in Camelon.
	5. At their meeting on 18 August 2021, the Board set their fees. The Board again instructed officers to have a pragmatic approach to the late payment of annual fees and delayed consideration of the annual report detailing late payers from November 2020 to February 2022. All fees were paid over the phone by credit or debit card or by bank transfer and were all paid by the end of 2021.
	6. Applications before the Board continued to be dealt with in an open and transparent manner in accordance with licensing legislation and its statement of licensing policy. Reports to the Board are written, as far as possible, in Plain English. During this period, officers asked that applications and supporting documentation be submitted electronically as an online application and payment portal is not currently available.
	7. At their meetings, the Board attempted to make the process as informal as possible and consistent with the carrying out of the Board's quasi-judicial function. The Board always attempts to follow best practice in enforcement including adoption of standards, which, will in its actions, be proportionate, accountable, consistent, transparent and targeted.
	8. At the start of 2021/22, site visits to premises for new and provisional premises licence applications and those non-minor variations that are seeking changes to children and young person access or have objections were temporarily stopped

due to the pandemic with the visits being carried out by the Licensing Standards Officer’s and a PowerPoint presentation was shown at the relevant Board meeting. This worked well and provided consistency to the application process. Site visits were restarted in November 2021.

# Decisions of the Board 2021/22

* 1. The Board is required to determine applications for new and provisional premises licences and those variations that do not fall within the definition of “minor” variation. In addition, the Board determines applications for occasional licences, transfers, extended hours and personal licences to which objections or representations have been made and reviews of premises and personal licences.
	2. Each application is determined on its own merits and the Board looks to its statement of licensing policy and the five licensing objectives to underpin their decision-making. Most objections and representations are submitted by Police Scotland and neighbouring properties/local residents. As reported in the previous reports, only on one occasion since the commencement of the Act in September 2009 has the local Health Board such a submission. This position remains unchanged.
	3. During the period 1 April 2021 to 31 March 2022, the Board determined applications for **5 new premises licences, 4 provisional premises licence, 28 non-minor variations**, **1 occasional licence**, **1 extension of hours**, **2 personal licence notifications of conviction, 2 personal licence reports of conduct inconsistent with the Licensing Objectives, 1 section 135 application in relation to a premises licence transfer and 4 premises licence reviews.**

The table below shows the total number of licences in force on 31 March 2022:

|  |  |
| --- | --- |
| **Type Of Licence** | **Number** |
| Premises Licence | 339 |
| Personal Licences | 1155 |

* 1. In relation to the applications for **new premises licences (including provisional applications)** and **non-minor variations**, no objections or representation were received. For the first part of this period, due to the pandemic, the Board were unable to visit the premises and instead, photographs of the premises and their surroundings were taken by the Licensing Standards Officers and presented at the meeting. The Board did not impose any specific conditions during 2021/22 however it did ask for a number of undertakings in relation to several the applications and details of these are in the relevant paragraph to the application below.
	2. A Licensing Standards Officer contacts all those who submit an objection or

representation to discuss their concerns should any be received.

* 1. Details of the applications are below. All other applications were dealt with under delegated powers.

New Premises Licences

Shop at 2 Braeview *(Off Sales) -* this application was for an independent grocery store. No objections or representations were made to the application which was granted by the Board. No specific conditions were put on the licence however, an undertaking was given by the applicant that he would amend the layout plan removing the shelving area that is not shown on the plan, that both the CCTV monitors will be working and that the non-EPOS till will be taken out of use immediately.

*Z & R Grocers (Off Sales) -* this application was for an independent grocery store. No objections or representations were made to the application which was granted by the Board. No specific conditions were put on the licence.

*Day to Day Grocers (Off Sales) -* this application was for an independent grocery store. No objections or representations were made to the application which was granted by the Board. No specific conditions were put on the licence.

*Falkirk Distillery Bonded Warehouse (Off Sales) -* this application was for the bonded warehouse of a newly built distillery where the main building had yet to be completed. The application is to permit the online sale of products via the company’s web site and delivery. No representations or objections were made to the application. The application was granted by the Board without the addition of any specific conditions.

*Glen Village Store* *(Off Sales) -* this application was for an independent grocery store. No objections or representations were made to the application which was granted by the Board. No specific conditions were put on the licence.

Provisional Premises Licences

*Carronside Service Station (Off Sales)* - these premises are on the forecourt of a petrol station. There were no objections or representations, and the application was granted at the September 2021 meeting. It was confirmed in August 2022. No specific conditions were put on the licence however the Board asked the applicant to give an undertaking that no alcohol delivered or collected until a non-minor variation is submitted and granted, and that the layout plan would be amended to show a single accessible area.

*Crossroads Service Station (Off Sales)* - these premises are on the forecourt of a petrol station. There were no objections or representations, and the application was granted at the September 2021 meeting. It was confirmed in January 2022. No specific conditions were put on the licence.

*Polmont Service Station (Off Sales)* - these premises are on the forecourt of a petrol station. There were no objections or representations, and the application was granted at the September 2021 meeting. It was confirmed in August 2022. No specific conditions were put on the licence however the Board asked the applicant to give an undertaking that no alcohol delivered or collected until a non-minor variation is submitted and granted.

*Food Warehouse (Off Sales)* - these premises are part of the Iceland group. There were no objections or representations, and the application was granted at the November 2021 meeting. It has not yet been confirmed. No specific conditions were put on the licence.

Non-Minor Variations to Premises Licences

This type of application requires to be determined by the Licensing Board. 28 applications for non-minor variations received during 2021/22 were determined by the Board; 26 of which had no objections or representations submitted and were granted with no specific conditions or undertakings. These premises are:

|  |  |  |
| --- | --- | --- |
| Spa | M&S Simply Food | David’s Kitchen |
| Mexican Texmex | Northstar | Monterey Jacks |
| Red Hoose | Bridge Inn | Co-op, Laurieston |
| SparRoyal British LegionLidlPetrol Station, BanknockBowhouse HotelLidl, Carron | Day Today ExpressPlough HotelSainsburys, LarbertScotfreshCarronvale Filling StationLidl, Bo’ness | AldiScotmidSainsburys, DennyGrangemouth Rugby ClubCo-op, Carron |

*Crown Hotel, Dennyloanhead* *(On Sales)*- this application was to vary the licence to increase on sale hours, add off sales hours, dance facilities and outdoor drinking. One objection and one representation in support of the application were submitted by neighbours. The objection was in relation to the addition of outdoor drinking and referred to noise issues. The applicant withdrew this element of the application at the meeting. The rest of the variations were granted, and no specific conditions were placed on the licence.

Union Inn *(On and Off Sales)*- There were no objections or representations submitted to this application which was to substantially increase the size of the outdoor drinking area. The application was granted by the Board with the applicant giving an undertaking that he would submit an amended layout plan for the outdoor drinking area showing the correct measurements and the location of the CCTV cameras.

Spar *(Off Sales)*- There were no objections or representations submitted to this application which was to increase the size of the alcohol display area and amend the layout plan accordingly. The application was granted by the Board with the applicant giving an undertaking that he would submit an amended layout plan showing a single accessible area.

As advised in last year’s report, the Board had already started to see a slight increase in the number of applications, both new and provisional premises licence applications and non-minor variations which sought to include online sales, home delivery and “click and collect” services of alcohol and groceries in their operating plan. This number increased during 2021/22 as premises looked for ways to futureproof their sales in light of the pandemic.

Transfers of Premises Licences

24 applications to transfer premises licences were received during the period 2021/22 all of which were granted under delegated powers.

Occasional Licences

As detailed in paragraph 4.3, the Board considered 1 application for an **occasional licence** during this period. It was submitted by the Plough Hotel in Stenhousemuir for an outdoor drinking area. One objection, raising noise nuisance concerns, was made by a local resident who lived opposite the proposed outdoor drinking area. Previous occasional licences had been granted for this outdoor drinking area and no complaints had been received. The Board considered the objection at a special meeting on 26th May 2021 and granted the occasional licence with no additional conditions. A subsequent application to vary the licence to include the outdoor drinking area was granted by the Board at the November meeting. No objections or representations were made to the application, and it was granted.

During 2021/22, with the lifting of restriction, the Board saw an increase in applications for occasional licences with 392 being made.

Extended Hours Applications

The Board determined one application for extended hours during this period. The application was made by City, a nightclub in Falkirk town centre and was for additional hours that were outwith policy for a Halloween event. The Board granted the extension.

An application for extended hours for a wedding reception at Mannerstons was granted under delegated powers during this period.

New Personal Licences

On the 31 March 2022, 1,155 personal licences were in force. A total of 136 applications for new personal licences were received, all of which were granted under delegated powers.

Renewal of Personal Licences

The Board was not required to determine any applications for the renewal of a personal licence where the Chief Constable had submitted a notice of

conviction(s).

Personal Licence Revocations

Section 87 of the Licensing (Scotland) 2005 Act provides that if a personal licenceholder fails to comply with the duty to undertake training and notify the appropriate Licensing Board within the statutory timescale, then the issuing Board *must* revoke the licence. The original provision was that the applicant cannot apply for another personal licence for a period of five years; however this has now been amended by the Air Weapons & Licensing Act 2015 which allows an application to be lodged for a new personal licence by a person whose licence has been revoked. It is important to note that this relaxation only applies where the licence has been revoked for failure to comply with Section 87.

251 personal licences were revoked during 2021/22, the revocations all being as a result of licenceholders failing to comply with the requirements of mandatory refresher training.

Personal Licence – Report of Conduct Inconsistent with the Licenising Objectives

During the period 2021/22, the Licensing Board considered two reports from the Chief Constable of conduct inconsistent with the licensing objectives:

*Mr M* - the report referred to the licensing objectives of Preventing Crime and Disorder and Securing Public Safety and detailed the circumstances surrounding a conviction for a domestic. After hearing from all parties, the Board agreed to take no further action.

*Mr C -* the report referred to the licensing objectives of Preventing Crime and Disorder, Securing Public Safety, Protecting and Improving Public Health and Protecting Children and Young Persons from Harm and detailed the circumstances surrounding a conviction for the possession of controlled drugs with intent to supply. A remote Hearing was held and the decision was to endorse the personal licence. The decision was on a division with 4 members voting to endorse the licence and 1 voting for a 3-month suspension of his personal licence.

# Licensing Board Training

* 1. As stated at the beginning of this report, during this period the Licensing Board comprises 10 members who were elected in the local elections in May 2017. 5 members have served previously on the Licensing Board, although 1 subsequently resigned and was replaced by a new member. As required by the Act, all members received training, provided by from Alcohol Focus Scotland, and passed the exam.
	2. The Board recognises the need for continuous development of understanding and awareness of licensing law and practices, as well as wider issues. This is essential to making informed licensing decisions. With this in mind, Board members are asked to undertake on-line training in relation to equality legislation and data protection and information security and are regularly updated by officers and partners in relation to changes in legislation and other relevant matters.
	3. At the February meeting, the members heard from a representative of the Chief Constable in relation to their Spiking Toolkit.

# Licensing Forum

* 1. The role of Licensing Forum is to keep under review the operation of the Licensing Act in the Falkirk area and to give advice and make recommendations to the Board in relation to those matters as the Forum considers appropriate. The Forum is the community's voice on alcohol licensing issues and the Board welcomes the views that all the members bring. The composition of the Forum is statutory.
	2. Information on the role of the Forum is available on the Falkirk website:

[http://www.falkirk.gov.uk/services/law-licensing/licensing/alcohol/licensing-](http://www.falkirk.gov.uk/services/law-licensing/licensing/alcohol/licensing-board/licensing-forum.aspx) [board/licensing-forum.aspx](http://www.falkirk.gov.uk/services/law-licensing/licensing/alcohol/licensing-board/licensing-forum.aspx)

Information on the dates, times and venue of their meetings can also be accessed via the above link.

* 1. The manager of the Licensing Team attends the Forum on occasion to provide any information to the Forum on any emerging issues in the area, changes in legislation, consultations etc. should that be requested. Board members are also welcome to attend.
	2. The Act states that the Licensing Board and Licensing Forum must meet annually, although there is nothing stopping them from meeting more often. The Falkirk Licensing Board and Licensing Forum agreed during this period that they would have two joint meeting a year. Meetings were held on A joint meeting was held remotely on 28 October 2021 and 17 March 2022. The minutes are attached as Appendices 1 and 2.

# Reviews

Premises Licence Reviews

* 1. Any person may apply to the Licensing Board for a review of a premises licence. Grounds for review are that one or more of the conditions on the licence have been breached or for any other ground relevant to the licensing objectives. Where an application for a review is submitted, a hearing must be held. The majority of such applications have previously been submitted by Police Scotland with other applications received from the Licensing Standards Officer, the Border Agency and local residents.
	2. During the period 2021/22, there were 4 premises licence reviews notifications:

*Bowhouse Mini Market -* . The review was submitted by the Chief Constable in terms of section 36 (3) za and 36(3)a that having regard to the licensing objectives, the licence holder was not a fit and proper person to be the holder of a premises licence and that one or more of the conditions to which the premises licence is subject had been breached. The review related to the premises licence holder, who was also the designated premises manager, continuing to sell alcohol when his personal licence had expired in September 2019. The Board was satisfied, having heard submissions from all parties, that no grounds for review were established in relation to the licence holder not being fit and proper person to hold the premises licence and therefore no further action was taken. In relation to the breach of the mandatory condition, the Board found that grounds were established and agreed to make an Order to issue a written warning to the licence holder. A transfer of the premises licence was subsequently lodged and granted under delegated powers.

*Barrie Food Store –* The review was submitted by the Chief Constable and was in relation to a relevant offence committed by the premises licenceholder. After hearing from the various parties, the Board found that grounds for review in terms of Section 36(3)(b) of the Act had been established and made an Order to issue a written warning.

*Bo’ness Express –* The review was submitted by the Licensing Standards Officer and was in relation to the failure of the licenceholder to comply with a section 14 notice. After hearing from the various parties, the Board found that grounds for review had been established and made an Order to suspend the premises licence for two calendar months.

*Star Inn -* The review was submitted by the Chief Constable and was in relation to breaches of one or more of the conditions to which the premises licence is subject had been breached. The conditions that were breached relate to the provisions that must be in place for the screening of “Old Firm” football matches. The Board, having been satisfied that a ground for review was established, agreed to make on order to issue a written warning to the licence holder. The Board did not make a finding under Section 84 in relation to any personal licenceholder that was working on the premises at the time.

Personal Licence Reviews - Notification of Conviction

* 1. During 2021/22, the Board considered 2 personal licences where it had been made aware of relevant convictions:

*Miss McA* – The Chief Constable notified the Board that the licenceholder had been convicted of a relevant offence in terms of proceeds of crime legislation and made a recommendation for revocation. The licenceholder had failed to notify the Board. A remote Hearing was held and the decision of the Board was to revoke the personal licence.

*Mr S* - The Chief Constable notified the Board that the licenceholder had been convicted of a relevant offence namely assault to injury however he did not make a recommendation for refusal. The licenceholder had failed to notify the Board. A remote Hearing was held and the decision was to endorse the personal licence. The decision was on a division with 5 members voting to endorse the licence and 3 voting to take no further action

 Section 135 Application

At the June 2021 meeting, the Board considered a report under Section 135 of the Licensing (Scotland) Act 2005. Under this section, the Board can relieve failure to comply with rules and any other requirement. The Board agreed there were exceptional circumstances in relation to the application and considered it appropriate in terms of s135 to relieve the failure to submit an application timeously and allow a transfer application to be lodged.

# Conclusion

* 1. The period 2021/22 saw the final lifting of restrictions in relation to covid-19 and the start of a return to the pre-pandemic levels of applications. The Licensing Team moved to new premises and continued to work in a hybrid style. The pandemic delayed further the plans for the move to an online application and payment portal however it is hoped that migration to the new system will take place in January 2023.