

Cunninghame House
Irvine
KA12 8EE

5 April 2019

North Ayrshire Licensing Board

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 8 April 2019 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Minutes

Submit Minutes of the Board Meeting held on 4 February 2019.

2. Licences and Applications under the Licensing (Scotland) Act 2005

Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005. (copy enclosed)

3. The Equality Act 2010: Mainstreaming Report 2019 – 2021

Submit report by the Clerk to the Licensing Board on the Mainstreaming of duties under The Equality Act 2010. (copy enclosed)

4. Annual Joint Meeting with Local Licensing Forum

Submit report to the Licensing Board to update Members on the current position of the Local Licensing Forum as required by Section 10(3) of Licensing (Scotland) Act 2005. (copy enclosed)

Licensing Board

Sederunt: Ronnie McNicol (Convenor)
Todd Ferguson (Vice-Convenor)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L Reid
Angela Stephen

Chair:

Apologies:

Meeting Ended:

Agenda Item 2

8 April 2019

North Ayrshire Licensing Board

| | |
|---------------|---|
| Title: | Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005. |
|---------------|---|

| | |
|-----------------|--|
| Purpose: | To advise the Board of the Law and the factual background. |
|-----------------|--|

| | |
|------------------------|--|
| Recommendation: | That the Board determines whether or not to grant the Applications listed. |
|------------------------|--|

1. Executive Summary

- 1.1 The Licensing Board is responsible for determining Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 (such as Review Hearings involving holders of Premises Licences and Personal Licences).
- 1.2 The Board has approved a Scheme of Delegation whereby certain matters can be delegated to the Clerk and other licensing staff. Matters which cannot be delegated, or where the officers have declined to exercise the delegation, are referred to the Board.

2. Background

- 2.1 The Applications and other matters before the Board are detailed in the attached appendices. Each appendix contains a Report prepared by licensing staff for each individual case before the Board. These Reports set out the particular factual and legal issues which licensing staff consider arise in each case, and set out the action which the Board would be entitled to take.
- 2.2 Where relevant, the reports have been copied to the Applicants or Licence-Holders. Where objections or representations are competent, these have been copied to the Applicant so that a response might be made at the Board Hearing.

3. Proposals

- 3.1 In each case, after considering the Application and after hearing any submissions for the Applicant and persons making objections or representations, the Board should determine whether or not to grant the Application or take appropriate action.

4. Implications/Socio-economic Duty

| | |
|--------------------------------------|--|
| Financial: | There are possible financial implications in relation to any Licensing decision. |
| Human Resources: | None. |
| Legal: | There are possible legal implications in relation to any licensing decision. Many Board decisions may be appealed against, but not all, and not all parties to a case have a right of appeal. |
| Equality/Socio-economic Duty: | <p>Equality Act 2010 imposes duties on the Council:</p> <p>Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council:</p> <p>"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".</p> <p>Section 149(1) ("Public sector equality duty") the Council:</p> <p>"must, in the exercise of its functions, have due regard to the need to-</p> <p>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</p> <p>(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;</p> <p>(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."</p> <p>The "Relevant Protected Characteristics" are age; disability; gender reassignment, pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Board otherwise in a particular case, there are no significant impacts to be considered.</p> |

| | |
|--|---|
| Children and Young People: | See "Equality/Socio-economic Duty". |
| Environmental & Sustainability: | None. |
| Key Priorities: | An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders and the compliance with the statutory Licensing Objectives in Section 4 of the 2005 Act) helps progress towards one of the "priority areas" of the "NAC Community Planning Partnership Local Outcomes Improvement Plan 2017 – 2022 (LOIP): "A Safer North Ayrshire". |
| Community Benefits: | Not applicable, as the Report does not relate to tendering or procurement exercises. |

5. Consultation

- 5.1 Consultation has taken place in line with statutory requirements. The requirements vary depending on the particular issue raised, and where appropriate these are detailed in the report for each case.

Aileen Craig
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)**, on **01294-324305**.

Background Papers

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APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

| Case No. | Licence No. | Applicant/Licence Holder | Premises | Comments |
|----------|-----------------|---|---|--|
| 1. | 0503 | Isle of Arran Distillers Ltd | Lagg Distillery Visitor Centre Kilmory Isle of Arran KA27 8PG | Application for Grant of Provisional Premises Licence – Section 45 |
| 2. | 0469 | Arran Brew Limited | Public House 11-13 Bridge Street Kilbirnie KA25 7BL | Application for Extension of Provisional Period – Section 45(7) |
| 3. | 0470 | Arran Brew Limited | Dreghorn Brewery 96 Main Street Dreghorn Irvine KA11 4AB | Application for Extension of Provisional Period – Section 45(7) |
| 4. | 0150 | P/ship of Allison Fullarton & Gary Fullarton | Alton Inn 57 Byres Road Kilwinning KA13 6JU | Application for Variation of Premises Licence – Section 29 |
| 5. | 0085 | Rodger Property Limited | Sheiling Bar 144 Main Street Largs KA30 8JN | Application for Variation of Premises Licence – Section 29 |
| 6. | 149 & 150/19 | Signature Works (Scotland) Limited | Pitchers 18 Bank Street Irvine KA12 0AD | Applications for Extended Hours – Section 68 Clerk to Report |
| 7. | 173 & 174/19 | Crofters Arran Limited | Crofters Shore Road Brodick Isle of Arran KA27 8AJ | Applications for Extended Hours – Section 68 Clerk to Report |

Application for Grant of Provisional Premises Licence - Section 45

| | |
|-----------|--|
| Applicant | Isle of Arran Distillers Ltd. |
| Premises | Lagg Distillery Visitor Centre, Kilmory, Isle of Arran, KA27 8PG |
| Ref. | 503 |

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL).

The proposal is for a Visitor Centre comprising of retail area, downstairs cafe, with beer garden and picnic area. There are two tasting rooms and a restaurant with an outdoor balcony.

The PPL relates to Premises which are to be constructed or converted for use as Licensed Premises, and is valid for a period of four years. During this period, the Applicant can request the Board to Confirm the PPL, or to extend the period.

The Premises cannot sell alcohol until the PPL is Confirmed. The Licence-Holder will apply to the Board for Confirmation once the construction or conversion is complete, and will then have to give the Board both a "Building Control Certificate" and a "Food Hygiene Certificate". A "Food Hygiene Certificate" is needed because there will be a "Food Business" within the Food Safety Act 1990. This Certificate is needed for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

The Board decision on the Licence relates only to licensing legislation, and does not act as permission or certification under other legislation, such as Planning or Building Control. If the Premises Licence is granted and Confirmed, the Premises cannot operate until all other legislative requirements are met.

2. Status of the Premises as a 'Visitor Attraction'

This status has three consequences:

- (1) the usual rule in off-sales restricts the display of alcohol to two areas - an area agreed between the Board and the Applicant, and an area which is inaccessible to the public. This rule does not apply to 'Visitor Attractions' (Licensing (Scotland) Act 2005, Schedule 3, Paragraphs 13(1) and 13(3);
- (2) another rule prohibits 'drinks promotions' within 200 metres of the Premises. This rule does not apply to these Premises because
 - (a) they are not "used only or primarily" for off-sales (Paragraph 13(1A)), and
 - (b) the Premises are a 'Visitor Attraction' (Paragraph 13(3)); but

(3) the Premises are liable for the full licensing fees. The fee reduction granted to 'Visitor Attractions' applies only where the premises only have off-sales (The Licensing (Fees) (Scotland) Regulations 2007 No. 553, Regulation 4(1)(b)). The Applicant seeks a Licence for both on-sales and off-sales. Therefore, when the Premises later apply for Confirmation of the PPL, the Applicant will have to pay a fee based on its Rateable Value.

3. Objections and Representations

| | |
|--------------------------|--|
| Police | No objection |
| Community Council | No response received during the period for objection or representation |
| Fire | No objection |
| Health Board | No response received during the period for objection or representation |
| Others | None |

4. Detailed proposal

The Premises have both on-sales & off-sales. Summary of Operating Plan:

- (a) Licensed Hours
- (b) Capacity
- (c) Activities other than the sale of alcohol
- (d) Access for Under-18s

(a) Licensed Hours

| | <i>Proposal</i> | <i>Policy</i> |
|---|------------------------|--|
| On-Sales | | |
| Monday | 10.00 - 23.00 | Outside Policy: premises cannot sell alcohol before 11.00 a.m. but Board has agreed in the past to earlier opening to serve breakfasts and soft drinks |
| Tuesday | " | |
| Wednesday | " | |
| Thursday | " | |
| Friday | 10.00 - 1.00 | |
| Saturday | " | |
| Sunday | 10.00 - 23.00 | |
| Off-Sales | | |
| The proposal is for 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy. | | |

(b) Capacity

| | |
|--------------------------------|---------------------|
| On-Sales (persons) | 320 |
| Standing / Seated | 201 / 119 (63%/37%) |
| Off-Sales (sq. mtr.s) * | 46.17 |

CASE 1

** Note: this figure has been calculated by Board staff. Applicant has failed to include this in the mandatory Operating Plan, and this figure will be added to O.P. 7 if the Licence is granted. Regulations require locations and dimensions of all Off-sales display areas. Dimensions required are length and height.*

Although the Premises are a 'Visitor Attraction', and some rules are relaxed, the capacity is still relevant to the consideration of Overprovision.

(c) Activities other than the sale of alcohol

| | <i>Proposal</i> |
|---|-----------------|
| Accommodation | |
| Conference facilities | x |
| Restaurant facilities | x |
| Bar meals | |
| | |
| Receptions (weddings, funerals, birthdays, retirements, etc.) | x |
| Club or other group meetings | |
| | |
| Recorded music | x |
| Live performances | x |
| Dance facilities | |
| Theatre | |
| Films | |
| Gaming | |
| Indoor/Outdoor sports | |
| Televised sport | |
| | |
| Outdoor Drinking | x |
| | |
| Adult entertainment | |
| | |
| <i>Other activities</i> | |
| <i>Guided tours around with tasters.</i> | |

(d) Access for Under-18s

(1) Children under 12:

have access to all areas until during operating times or to the terminal hour. Must always be with adult.

(2) Children 12-15, and Young Persons (16-17):

Do not need to be accompanied by adult if in the downstairs cafe, retail area, and outside areas between 10.00 and 18.00. Need to be with adult when in the upstairs bar and restaurant.

(3) Vault:

All under-18s must be accompanied by an adult.

5. Issues

Advice: The Board has a discretion to grant or refuse the Application. Subject to the Board's views about Overprovision, it is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

If a Ground for Refusal applies, the Board must refuse. However, the Board is obliged to grant the Application if the Applicant accepts a suitable modification to the Operating Plan or Layout Plan (or both), where that modification deals with the potential Ground for Refusal: Section 23(7).

If no Ground for Refusal applies, the Board must grant: Section 23(4)-(5).

Overprovision

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

Paragraph 3.5(d) of the Licensing Policy Statement 2018-2022 is:

"Where the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board may regard the grant of a new Licence (or Variation of an existing one) as not calling for refusal, on the view that such Premises may not be a significant contributor to overall disorder.

However, since the Board:

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*

- endorses the view that "alcohol is not an ordinary commodity",*

it may refuse the Application here also. 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour."

Accordingly, while the Board is entitled to refuse the Application due to Overprovision, it is not bound to do so, so the present Report omits the usual details about the Policy. If the Board considers that this is an issue which should be investigated, the case could be continued.

6. Observations

(a) Outdoor Drinking

The Applicant seeks two 'Outdoor Drinking Areas' (coloured purple on the Location Plan) and also the Premises also have a first-floor balcony.

The Board is obliged to take account of two Licensing Objectives:

(c): 'preventing public nuisance'

(d): 'protecting & improving public health'

So whenever the Board considers an Application which involves outdoor drinking, the Board should consider the possibility of disturbance to neighbours. In the present case, the Premises are in a rural area and the nearest neighbour is a farm over 200 metres away.

The Premises Licence would be subject to the Board's Standard Conditions, which include:

"C.5.1 No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in Outdoor Drinking Areas."

C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm."

The reason that the phrase "alcoholic or not" is used is that the Board is unlikely to know that a container contained Alcohol, e.g. if the Board received a complaint, all that the complainer might be able to say was "I saw a customer drinking from a container" - without being able to say that there was Alcohol in it.

The Board has allowed early use of such areas in other cases, adding to C.5.2 words such as "except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."

Even if the Board permits the Outdoor Drinking Area initially, and/or alters either Licence Condition, it may review that decision later if satisfied that the operation of that Area is not consistent with the Licensing Objectives.

(b) Seasonal Variations

The Application states

"During the winter we will reduce our opening hours, however we plan to have evening events during December."

The Licence does not have to be amended later if the Applicant proposes a reduction in hours, but the Licence will not permit operation outside the Core Hours specified in Operating Plan Q2/Q3 (i.e. the ordinary trading hours, 7-days-a-week). The Applicant requires to include in Operating Plan Q4 the intention to seek extra hours, but this is only an intention.

The way for Premises to obtain extra hours is to apply to the Board for 'Extended Hours' under Section 68 (an Occasional Extension) as and when the hours are

wanted. Applications should be lodged at least 28 days in advance of the proposed date (see Statement of Practice in Licensing Policy Statement 2018-22, Annex C - on Board's website). The individual requests are then copied to the Police, who can make representations. The Extension will be granted only if within Board Policy. Each year the Board decides the Policy for the forthcoming Christmas-New Year period.

The Board has not made any Determination under Section 67 authorising a general extension of hours throughout North Ayrshire.

(c) Exclusion area around bar

Having regard to the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm", Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

"No person under 18 will be permitted to remain within 1 metre of any bar."

7. Licence Conditions

If the Licence is granted, it will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

- A (All Premises)
- B (Off-Sales)
- C (On-sale Premises)

The operation of these Conditions is qualified in these particular Premises: see Part 2 of this Report ("Status of the Premises as a 'Visitor Attraction' ").

Application for Extension of Provisional Period - Section 45(7)

| | |
|-----------|---|
| Applicant | Arran Brew Ltd. |
| Premises | "The Weavers" Public House, 11-13 Bridge Street, Kilbirnie KA25 7BL |
| Ref. | 469 |

On 18 May 2015 the Board granted the Applicant a Provisional Premises Licence (PPL) for a bar/diner with a micro-brewery in the public house building formerly known as the "The King's Arms" or "The Bowery".

The PPL relates to Premises which were to be constructed or converted for use as Licensed Premises, and is valid for a period of four years ("the Provisional Period"). During that period, the Applicant can request the Board to Confirm the PPL, or to extend the period. If neither of these happen, the PPL will expire on 18 May 2019.

Section 45 of the Licensing (Scotland) Act 2005 includes:

"(7) On the Application of the Holder of a Provisional Premises Licence made before the expiry of the Provisional Period, the Licensing Board which issued the Licence may, if satisfied as to the matter mentioned in subsection (8), extend the Provisional Period by such period as the Board considers appropriate.

(8) That matter is that—

(a) completion of the construction or conversion of the Premises to which the Licence relates has been delayed, and

(b) the delay has been caused by factors outwith the Premises Licence Holder's control.

(9) Where the Provisional Period in relation to any Provisional Premises Licence has been extended under subsection (7), references in this section and section 46 to the Provisional Period are to that period as so extended.

...

(11) In this section, "construct" and "convert" have the same meanings as they have for the purposes of the Building (Scotland) Act 2003 (asp 8). "

If the Board is satisfied both:

(1) that the Applicant has requested an extension of the Provisional Period; and

(2) that Section 45(8) is established,

the Board has a discretion to extend the PPL.

The length of the extension is a matter for the Board's discretion, but should relate to the estimated completion of the construction or conversion.

CASE 2

The decision of the Board relates only to the PPL, and does not operate as a grant or variation of any other statutory requirement (such as Planning Permission or Building Warrant).

Application for Extension of Provisional Period - Section 45(7)

| | |
|-----------|---|
| Applicant | Arran Brew Ltd. |
| Premises | Brewery, 96 Main Street, Dreghorn, KA11 4AB |
| Ref. | 470 |

Preliminary

On 18 May 2015 the Board granted the Applicant a Provisional Premises Licence (PPL) for a bottling plant and distribution centre in the grounds of the former Dreghorn primary school. The Premises were to have an off-sales facility but a capacity of zero, as the Premises will supply to order rather than by retail to the general public.

The PPL relates to Premises which were to be constructed or converted for use as Licensed Premises, and is valid for a period of four years ("the Provisional Period"). During that period, the Applicant can request the Board to Confirm the PPL, or to extend the period. If neither of these happen, the PPL will expire on 18 May 2019.

Section 45 of the Licensing (Scotland) Act 2005 includes:

"(7) On the Application of the Holder of a Provisional Premises Licence made before the expiry of the Provisional Period, the Licensing Board which issued the Licence may, if satisfied as to the matter mentioned in subsection (8), extend the Provisional Period by such period as the Board considers appropriate.

(8) That matter is that—

(a) completion of the construction or conversion of the Premises to which the Licence relates has been delayed, and

(b) the delay has been caused by factors outwith the Premises Licence Holder's control.

(9) Where the Provisional Period in relation to any Provisional Premises Licence has been extended under subsection (7), references in this section and section 46 to the Provisional Period are to that period as so extended.

...

(11) In this section, "construct" and "convert" have the same meanings as they have for the purposes of the Building (Scotland) Act 2003 (asp 8). "

If the Board is satisfied both:

(1) that the Applicant has requested an extension of the Provisional Period; and

(2) that Section 45(8) is established,

the Board has a discretion to extend the PPL.

CASE 3

The length of the extension is a matter for the Board's discretion, but should relate to the estimated completion of the construction or conversion.

The decision of the Board relates only to the PPL, and does not operate as a grant or variation of any other statutory requirement (such as Planning Permission or Building Warrant).

Application for Variation of Premises Licence - Section 29

| | |
|-----------|--|
| Applicant | Partnership of Allison Fullarton & Gary Fullarton |
| Premises | "The Alton Inn", 57 Byres Road, Kilwinning, KA13 6JU |
| Ref. | 150 |

1. Summary of Variation Request(s)

| No. | Variation |
|------------|--|
| 1 | Increase on-sales hours to NALB Policy |
| 2 | Increase off-sales hours to NALB Policy |
| 3 | Amend access arrangements for under-18s - increase the 'meal' period to 8.30 p.m. |
| 4 | Amend access arrangements for under-18s - increase the 'private function' period to Core Hours (midnight or 1.00 a.m., and with Extended Hours, 1.00 or 2.00 a.m.) |
| 5 | Amend access arrangements for under-18s - to allow children of staff on the Premises |
| 6 | Open up cellar area - increase capacity from 60 to 80 |
| 7 | Remove Conditions as to the playing of pool and darts in areas admitting 'Children' (under-16s) |

Note to Applicant

The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, Planning Permission, Building Warrant, Roads Consent or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation.

2. Issues

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

Variation 1: Increase on-sales hours to NALB Policy

Advice: the Board is entitled to grant this request as there is no statutory reason to refuse or breach of Board policy.

Variation of Hours - On-Sales

| | Current | Proposed |
|--------|----------------|-----------------|
| Monday | 11.00 - 23.00 | 11.00 - 24.00 |

CASE 4

| | | |
|-----------|---------------|---------------|
| Tuesday | 11.00 - 24.00 | 11.00 - 24.00 |
| Wednesday | 11.00 - 23.00 | 11.00 - 24.00 |
| Thursday | 11.00 - 24.00 | 11.00 - 1.00 |
| Friday | 11.00 - 1.00 | 11.00 - 1.00 |
| Saturday | " | 11.00 - 1.00 |
| Sunday | 12.30 - 24.00 | 11.00 - 24.00 |

Variation 2: Increase off-sales hours to NALB Policy

Advice: the Board is entitled to grant this request as there is no statutory reason to refuse or breach of Board policy.

Variation of Hours - Off-sales

| | <i>Current</i> | <i>Proposed</i> |
|-----------|-----------------------|------------------------|
| Monday | 18.00 - 21.00 | 10.00 - 22.00 |
| Tuesday | " | on all days |
| Wednesday | " | |
| Thursday | " | |
| Friday | " | |
| Saturday | " | |
| Sunday | " | |

Variation 3: Amend access arrangements for under-18s - increase the 'meal' period to 8.30 p.m.

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

At present Children (aged 0 - 15) are allowed if accompanied by an adult:

- (a) to take a meal between the hours of 12 noon and 6.30 p.m..
- (b) to attend a private function to 11.00 p.m.

Young People (aged 16 - 17) are allowed for the same hours, but do not need to be accompanied for meals.

The proposals are:

- (a) increase the 'meal' period to 8.30 p.m.;
- (b) increase the 'private function' period to Core Hours (midnight or 1.00 a.m., and with Extended Hours, 1.00 or 2.00 a.m.)
- (c) there is an unspecific request to allow 'children' of staff to be on the premises.

The Board must have regard to Licensing Objective (e): "protecting Children and Young Persons from harm". The Board would have to be satisfied that the arrangements for supervision and times of access were consistent with this.

Variation 4: Amend access arrangements for under-18s - increase the 'private function' period to Core Hours (midnight or 1.00 a.m., and with Extended Hours, 1.00 or 2.00 a.m.)

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

The proposals are summarised in the note to Variation 3.

The Board must have regard to Licensing Objective (e): "protecting Children and Young Persons from harm". The Board would have to be satisfied that the arrangements for supervision and times of access were consistent with this.

The 'private function' proposal should be treated separately from the 'meal' proposal because it would mean that under-18s could be on the premises long after 8.30 p.m. - the Premises have Core Hours until midnight or 1.00 a.m. (depending on the day of the week). On occasions when the Premises have a grant of Extended Hours, the Core Hours would be 1.00 or 2.00 a.m..

The Licence-Holder should consider adding to the Operating Plan words such as:

"Children under 10 years of age attending a private function should not be on the Premises after 10.00 p.m.." (in Q6(b) of the O.P.)

Variation 5: Amend access arrangements for under-18s - to allow children of staff on the Premises

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

The Variation Application includes:

"Permit children of staff members for limited times (can be explained)"

The Board would need to be told:

- how old are the children?
- what times would the children be on the premises?
- where on the Premises would they be?
- what arrangements for supervision and safeguarding would there be?

The Board must have regard to Licensing Objective (e): "protecting Children and Young Persons from harm". The Board would have to be satisfied that the arrangements for supervision and times of access were consistent with this.

The Licence-Holder should consider adding to the Operating Plan words such as:

"Children of staff members may be on the Premises until 8.30 p.m. if they are

- accompanied by a parent or guardian.

- in a part of the Premises which is continuously under supervision by staff (either line-of-sight or by CCTV), or

- in the toilets.

This applies to Children (aged 5 to 15 years), and to Young Persons (aged 16 to 17 years) whose parent is on the staff of the Premises."

(in Q6(b) of the O.P.)

Variation 6: Open up cellar area - increase capacity from 60 to 80

Advice: the cellar referred to is the area at the right of the Premises, as viewed from Byres Road, which had a door for deliveries.

The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

The Ground which appears to apply is:

- Overprovision may result from the grant of the Variation

If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

The general approach to Overprovision throughout North Ayrshire

1. Section 30(5) is:

"(5) The Grounds for Refusal are— ...

(d) that the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of the same or similar description as the subject premises (taking account of the variation), in the locality."

Section 30(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I.

2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

(a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

(b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;

2. Nightclubs (or parts of Premises which operate as nightclubs);

3. Other On-sales Premises (Public Houses);

4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose;

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;

6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment.

4. The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

(a) the existing number and capacities of Premises in that 'Locality' and in that 'Function Type' is already sufficient,

(b) Overprovision would result if the Application was to be granted, and

(c) the Application should be refused.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the Additional Factors relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both Additional Factors occur.

The Present Case

7. Applying the Policy here:

(a) The Subject Premises are in the "Kilwinning" Locality (including Pennyburn, Blacklands, Whitehurst Park, Woodside) (Locality 3);

(b) Additional Factor (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);

(c) The Subject Premises are in Function Type 3 (On-sales other than entertainment venues, e.g. public houses);

(d) Additional Factor (Function Type): any Application for Premises in FT 3 (public houses) is especially unlikely to be granted (regardless of the Locality).

8. One of the Additional Factors is present here, so the presumption of refusal is strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

10. The Board has accepted that it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board has done. The Board is satisfied that throughout North Ayrshire there has for many years been a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

11. The LPS, Annex D includes:

"2.4. ... The Board encourages inclusive growth, as long as this promotes the Licensing Objectives. For example, while new premises may bring immediate jobs, in the longer term increased availability of alcohol is likely to have a detrimental impact on alcohol-related harms, and impact on the objective of 'Protecting and Improving Public Health'. The Board is unlikely to accept the suggestion that it is necessary to include an off-sales alcohol sale facility within a convenience store selling general groceries.

3.5. ... the Board:

- accepts that the consumption of alcohol in any circumstances has the

potential to injure health, and

- endorses the view that “alcohol is not an ordinary commodity”, ...

3.6. The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application."

Variation 7: Remove Conditions as to the playing of pool and darts in areas admitting 'Children' (under-16s)

Advice: the Board has a discretion to grant or refuse this request and should make a decision after hearing the Applicant and any objectors, and taking into account the considerations set out below.

Considerations:

The Licence is subject to NALB Standard Conditions, including C.10.3 (d) and (e), which prohibit the playing of darts, pool, snooker or any other game in areas of the Premises to which Children (under 16) are admitted, and prohibit dartboards, pool tables etc. there. As with any non-mandatory condition, it is always open to the Board to vary or remove it if the change is not inconsistent with a Licensing Objective.

The Board should consider whether or not this Application is inconsistent with Licensing Objective (e): 'protecting Children and Young Persons from harm'.

If the Board agree to the proposal, the Licence should have this added:

"Standard Conditions C.10.3 (d) and (e) do not apply, and Children will be allowed to enter the part of the Premises containing a dartboard, pool table or other facilities, on these conditions:

(1) if the Child is under supervision of an adult of 18 or over, the Child can use those facilities or remain in the area where those facilities are, or

(2) whether the Child is supervised or not, he/she can pass through the area for the sole purpose of immediately and necessarily travelling to or from the Premises' toilets,

(3) The dispensation will only apply to the current Layout Plan. If the layout of the Premises changes, facilities are moved, or new facilities are added, a new request for dispensation will be needed, and the fact that the Board has agreed to the current one does not mean that a future dispensation will be agreed;

(4) *The Board may from time to time, on one or more occasions, reconsider the question of dispensation and may withdraw or vary it."*

If this was the only request, the Applicant might have requested a Dispensation in accordance with Board policy, and if the proposal appeared suitable to the Clerk then the Dispensation might have been granted without a formal application for Variation to the Board.

3. Effect on Licence Conditions (Section 30(6))

The Licence was granted subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5 (this will be noted on any Premises Licence and Summary issued later).

If Variation 7 is granted, any Premises Licence and Summary issued later will contain the words set out above in the note to that Variation proposal.

Application for Variation of Premises Licence - Section 29

| | |
|-----------|---|
| Applicant | Rodger Property Ltd. |
| Premises | "Sheiling Bar", 144 Main St., Largs, KA30 8JN |
| Ref. | 085 |

Notes to Applicant

1. The Premises cannot sell alcohol until the Board grants a further variation application, to appoint a Premises Manager.

2. The Board's decision will not act as permission or certification under other legislation (the Board's decision is not, for example, Planning Permission, Building Warrant, Roads Consent or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Board only deals with licensing legislation.

3. Although the Operating Plan with the Licence refers to 'Gaming', that is not a Licence under the separate Gambling legislation. Unless the proposed activities are covered by entitlements or exemptions under that legislation, separate Permits or Licences may be needed. The Applicant should contact the Board office for advice on what is required.

The provisions of the Gambling Act 2005:

- allowing "Equal Chance Gaming" (such as Poker) without a Permit
- allowing the use of Gaming Machines without a Permit (called "the Automatic Entitlement")
- allowing the playing of Bingo without a Licence
- "Licensed Premises Gaming Machine Permits"

only allow Gambling during the Core Licensed Hours.

If the Premises are open outside these hours then there must be no gaming and any Gaming Machines should be switched off.

The Applicant should discuss with the Licensing Standards Officer or other Licensing staff what permits will be needed, e.g. the "Authorised Entitlement" does not take effect until the Board is notified.

To be exempt from regulation under the Gambling Act 2005, any fundraising proposal would require to satisfy the exemption rules for 'non-commercial lotteries'.

1. Summary of Variation Request(s)

The background to the variations requests is the redevelopment of the Premises, moving from Premises operating as a traditional 'public house' to a business with a greater emphasis on food. At the time of preparing this Report the Premises are being rebuilt and accordingly the Environmental Health Department has not been able to comment on the proposals for food preparation and service. The Layout Plan approved for Building Warrant purposes on 26 September 2018 gives no detail about the numbers of tables and chairs. The areas stated are Dining 25.0 sq.m., and Bar 57.5 sq.m. (the Clerk estimates that this would be within the Licensed capacity of 140 customers, so no issue with the "securing public safety" Licensing Objective is likely to arise, although this figure has not been confirmed by Protective Services).

The variation requests are:

| No. | <i>Variation</i> |
|------------|--|
| 1 | <i>Add "restaurant" and "bar meals" to the Licence</i> |
| 2 | <i>Amend access rules for under-18s</i> |
| 3 | <i>Change Description of Premises</i> |

2. Issues

This gives the position for each of the numbered 'Variation Requests' summarised above. Where the legislation makes a decision mandatory, this is stated. Otherwise, the Board has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

Variation 1: Add "restaurant" and "bar meals" to the Licence

Advice:

(a) The Board may choose not to decide this variation application until either:

- the Applicant lodges a further plan; and/or
- the Premises have been completed and inspected by either Board Members or the Licensing Standards Officer.

(b) the Board is entitled to refuse this request as there are issues relating to the statutory Licensing Objectives and a Mandatory Licence Condition.

See Notes for Variation 2.

Variation 2: Amend access rules for under-18s

Advice: the Board has a discretion to grant or refuse this request and should make

a decision after hearing the Applicant and any objectors, and taking into account the considerations set out below.

Proposal:

Terms for Under-18 access (Operating Plan 6(b)) - Children aged 0 - 13 must be accompanied by an adult for the purposes of having a snack or a meal. Older Children, and Young People, do not need to be accompanied.

Ages for Under-18 access (Operating Plan 6(c)) - ages 0 - 17.

Times for Under-18 access (Operating Plan 6(d)) - ages 0 - 17 allowed till 10.00 p.m., or for full Core Hours if attending private function.

Parts of Premises for Under-18 access (Operating Plan 6(e)) - All public parts.

Baby-changing Facilities

The current version of the Licence limits children access to over-5s to avoid compliance with a Mandatory Condition.

Since the Premises are now to admit children under 5, the mandatory condition requiring Baby-Changing Facilities accessible by both genders applies (2005 Act, Schedule 3, Paragraph 12, S.C. C.3). Since the condition is mandatory by statute, the Board has no power to vary it or dispense with compliance.

The Application does not indicate where these facilities would be.

Applicant should:

- (a) state where such facilities will be (e.g. in a 'disabled toilet', or in both the ladies' and gents' toilets), or
- (b) amend the Operating Plan to exclude children under 5; or
- (c) give Board an undertaking that the Premises will not open until necessary facilities are available to the public.

Without such facilities, or without children under 5 being excluded, the Board may consider that reasons to refuse exist:

- (a) inconsistency with Licensing Objective (d) ("protecting and improving public health");
- (b) inconsistency with Licensing Objective (e) ("protecting children and young people from harm");
- (c) unsuitability for use for the sale of alcohol, given that their use will involve a breach of a mandatory licence condition.

The Board should consider the Licensing Objectives "securing public safety" and "protecting and improving public health", and may vary the Licence Conditions as they consider necessary or expedient for the purposes of any of the Licensing Objectives (Sections 30(6), 27(6), and 27(10)).

If granting Variations 1 and/or 2, the Board should consider attaching further conditions:

"The Premises will not open to the public until all these conditions are met:

(a) the Premises have been inspected by the Council's Environmental Health Department and that Department has told the Board that the Premises are suitable for the provision of food and drink to the public;

(b) the Premises have told the Board where Baby-Changing Facilities accessible by both genders will be (unless the Children access is limited to age 5 and older);

(c) the Premises Licence has been further varied by the appointment of a Premises Manager."

Variation 3: Change Description of Premises

Advice: The description follows from the other variation requests, so the Board's decision depends on those decisions.

The proposed description is

"Terraced 3-storey building located on Main Street in Largs Town Centre, with Premises Licence with the facilities for food. There is a strong provision of public transport within short walking distance, with buses and trains a short walk away, serving local and regional destinations, and a taxi rank is available at the train station. In the basement there is a cellarage and storage. The Premises sell alcohol, both on- and off- premises, hot and cold beverages and food."

3. Effect on Licence Conditions (Section 30(6))

No variation of the Conditions is appropriate, although the existing application of the existing Conditions will change if the Premises admit children under 5.

If Variations 1 and/or 2 are granted, the Conditions set out above should be added.

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Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

| | |
|----------------|---|
| Title | Equality Act 2010 |
| Purpose | To update Members on the current position |
| Recommendation | That Members adopt the draft Report attached to this Report: Mainstreaming Report 2017-2019 |

1. Executive Summary

1.1. North Ayrshire Licensing Board ("NALB") is:

- (a) the "Licensing Board" under the Licensing (Scotland) Act 2005, and
- (b) the "Licensing Authority" under the Gambling Act 2005.

1.2. NALB is a "Listed Authority" for the purpose of the Equality Act 2010 and the present Report implements two reporting duties imposed by that Act.

2. Background

2.1. Under the Equality Act 2010 "Listed Authorities" have a "Public Sector Equality Duty" (here "PSED"). This requires public authorities to consider how, through the exercise of their functions, they can contribute to a more equal society and eliminate discrimination, advance equality and foster good relations in everything that they do, whether that is in design and delivery of services, decisions made or the policies applied.

Section 149(1) provides:

"A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a Relevant Protected Characteristic and persons who do not share it."*

2.2. "Relevant Protected Characteristic" (here "RPC") is defined by Section 149(7) and means:

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- (a) age
- (b) disability
- (c) gender reassignment
- (d) pregnancy and maternity
- (e) race (including colour, nationality, or ethnic or national origins)
- (f) religion or belief
- (g) sex
- (h) sexual orientation

2.3. The Equality Act 2010 places reporting duties on the Board. These are detailed in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 No. 162, amended by Regulations 2015 No. 254 and 2016 No. 159):

- (a) "Outcomes Report" - Under Regulation 4 each Listed Authority must publish every 4 years a set of "Equality Outcomes" which it considers will enable it to better perform the Section 149 Equality Duty. An "Equality Outcome" is defined as a result that the Listed Authority aims to achieve in order to further one or more of the needs mentioned in section 149 (the "Public Sector Equality Duty").
- (b) "Mainstreaming Report" - Under Regulation 3 any Listed Authority must publish a report on the progress it has made to make the Equality Duty integral to the exercise of its functions so as to better perform that duty every 2 years;

2.4. On 13 September 2017 the Board adopted both an "Outcomes Report" and a "Mainstreaming Report" (Reports (a) and (b)). The present Report to the Board relates to reporting duty (b).

2.5. A Listed Authority has a further obligation. Regulation 6 requires a Listed Authority to gather information on its employees and their RPCs. NALB does not have any employees:

- (a) Its staff, both legally qualified and administrative, are employed by North Ayrshire Council ("NAC") (the "Relevant Council" under Licensing (Scotland) Act 2005, Schedule 1, Paragraph 8);
- (b) the Licensing Standards Officer is an employee of NAC, not NALB: Section 13(1).

Regulation 6 is implemented by NAC, which is itself a Listed Authority and complies with the requirements of the Equality Act 2010. The 2010 Act is relevant to the operation of the

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Board in the same way that it is relevant to the Council as a whole, for example in how the Board treats members of the public using Licensing services.

3. Proposals

It is proposed that the Board consider the attached draft Reports and approve them after making any appropriate modifications.

4. Implications/Socio-economic Duty

| | |
|---------------------------------|--|
| Financial: | None. |
| Human Resources: | None. |
| Legal: | None. |
| Equality/Socio-economic Duty: | This Report concerns the Board's reporting duties under the Equality Act 2010. The separate "Public sector duty regarding socio-economic inequalities" imposed by Section 1(1) of that Act applies to the <u>Council</u> but not the <u>Licensing Board</u> as the Board is not one of the authorities listed in Section 1(3). |
| Children and Young People: | See "Equality/Socio-economic Duty". Age is one of the "Protected Characteristics". |
| Environmental & Sustainability: | None. |
| Key Priorities: | An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress towards one of the "Priority Areas" of the "NAC Community Planning Partnership Local Outcomes Improvement Plan 2017 – 2022 (LOIP): "A Safer North Ayrshire". |
| Community Benefits: | Not applicable, as the Report does not relate to tendering or procurement exercises. |

5. Consultation

5.1 No consultations are required.

Aileen Craig
Clerk

For further information please contact William O'Brien, Solicitor (Licensing), on 01294-324305.

Background Papers

The Equality Act 2010: Mainstreaming Report 2017 - 2019

North Ayrshire Licensing Board

The Equality Act 2010: Mainstreaming Report 2017 - 2019

1. Introduction

1.1. North Ayrshire Licensing Board ("NALB") is:

(a) the "Licensing Board" under the Licensing (Scotland) Act 2005 (regulating the sale of alcohol), and

(b) the "Licensing Authority" under the Gambling Act 2005 (regulating gambling, for example, gaming such as poker, the operation of lotteries, the use of gambling machines)

1.2. The Board makes decisions about applications for licences from those who wish to sell alcohol or run premises offering gambling. The Board also deals with complaints about licensed premises and those who hold licences.

1.3. Regulation in either case is not solely a Board function. For example, the laws restricting under-18 drinking are enforced by the Police, as are laws prohibiting the use by under-18s of certain gaming machines. Some gambling activities are regulated by a UK-body, the Gambling Commission, and not by local Boards.

1.4. The Licensing Board is made up of elected members of North Ayrshire Council. They are appointed to the Board by the Council. The Board does not employ staff. The work of the Board is supported by a Clerk, Solicitor (Licensing) and support staff, all of whom are employed by the Council.

1.5. Elected members on the Board have the same opportunities as any other Councillors to receive equalities training. As Council employees, the staff who support the work of the Board can all receive training on equalities in accordance with the Council's Equalities Policies. Those involved in policy development and review are able to access training. When Reports or other documents raising Policy issues are prepared for the Board (for example, the Licensing Policy Statements required under both pieces of primary legislation) these are accompanied by Equality Impact Assessments.

2. NALB and the Equality Act 2010

2.1. NALB is a "Listed Authority" for the purpose of the Equality Act 2010. "Listed Authorities" have a "Public Sector Equality Duty" under Section 149(1) (here "PSED"). This requires public authorities to consider how, through the exercise of their functions, they can contribute to a more equal society and eliminate discrimination, advance equality and foster good relations in everything that they do, whether that is in design and delivery of services, decisions made or the policies applied.

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Section 149(1) provides:

“A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a Relevant Protected Characteristic and persons who do not share it.”*

2.2. “Relevant Protected Characteristic” (here "RPC") is defined by Section 149(7) and means:

- (a) age
- (b) disability
- (c) gender reassignment
- (d) pregnancy and maternity
- (e) race (including colour, nationality, or ethnic or national origins)
- (f) religion or belief
- (g) sex
- (h) sexual orientation

2.3. The Equality Act 2010 places two reporting duties on the Board. These are detailed in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 No. 162, amended by Regulations 2015 No. 254 and 2016 No. 159):

- (a) "Outcomes Report" - Under Regulation 4 each Listed Authority must publish every 4 years a set of “Equality Outcomes” which it considers will enable it to better perform the Section 149 Equality Duty. An “Equality Outcome” is defined as a result that the Listed Authority aims to achieve in order to further one or more of the needs mentioned in section 149 (the "Public Sector Equality Duty").
- (b) "Mainstreaming Report" - Under Regulation 3 any Listed Authority must publish a report on the progress it has made to make the Equality Duty integral to the exercise of its functions so as to better perform that duty every 2 years.

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2.4. On 13 September 2017 the Board adopted both an "Outcomes Report" and a "Mainstreaming Report" (Reports (a) and (b)). The present Report to the Board relates to reporting duty (b).

3. The functions of NALB

3.1. The work of the Board in these two areas (Alcohol Licensing and Gambling Licensing) is underpinned by principles called "Licensing Objectives":

(a) Alcohol

The objectives underpinning alcohol licensing are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting Children (aged 0 - 15 years) and Young Persons (aged 16 or 17) from harm

(b) Gambling

The Licensing Objectives underpinning gambling licensing are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting Children (aged 0 - 15 years) and other vulnerable persons from being harmed or exploited by gambling

The Gambling Act 2005 does not itself extend the Licensing Objective to the protection of Young Persons (aged 16 or 17), but in North Ayrshire the Board has done this by including Young Persons in the definition of "vulnerable persons" in its Licensing Policy Statement.

3.2. In each case (alcohol and gambling licensing) one of the Licensing Objectives approximates to the Equality Act 2010 duties towards people with the Relevant Protected characteristic (RPC) of "age", although in the period of this Report no Board decision has been based solely on that Licensing Objective.

3.3. Neither statute expressly refers to compliance with the Equalities legislation, with one exception.

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The exception is under the alcohol legislation. The Law changed on 30 March 2018. An applicant for a Premises Licence (for example, for a public house, restaurant or off-sales shop) must provide the Board with a "Disabled Access and Facilities Statement" (DAFS) in a prescribed form, containing information about —

- (a) provision made for access to the Subject Premises by "Disabled Persons" (as defined by Section 6 of the Equality Act 2010);
- (b) facilities provided on the Subject Premises for use by "Disabled Persons", and
- (c) any other provision made on or in connection with the Subject Premises for "Disabled Persons".

3.4. The Board has no power to enforce the contents of a DAFS or to require the Applicant to make alterations to the DAFS. The requirement to produce a DAFS only applies to Applications made after 30 March 2018 and does not apply to Premises Licences granted earlier.

3.5. The "reasonable adjustment" obligations imposed by the Equality Act 2010 fall on the operator of Licensed Premises (as a "service provider"). Although a Licensing Board may impose such Licence Conditions as "they consider necessary or expedient for the purposes of any of the Licensing Objectives" (Licensing (Scotland) Act 2005, Section 27(6)), this power is qualified by Section 27(6) which prohibits any condition which

"(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment."

4. Mainstreaming Report 2017 - 2019

4.1. The Board values the diversity that exists within North Ayrshire and wishes to ensure full participation in the social, cultural and economic life of the area. The Board opposes all forms of unlawful discrimination including discrimination on the grounds of race or ethnicity, gender, sexual orientation, age, religion and disability and recognises that discrimination creates barriers to achieving equality for all people.

4.2. In Alcohol Licensing, the Licensing Policy Statement (2018-2022) includes:

"4.15. The Licensing Board is aware of wide public concern within its area and elsewhere in Scotland surrounding sectarian conduct which focuses on the religious divide between Christian denominations, racial prejudice or other discriminatory conduct."

4.16. If a Licensee behaves in such a fashion, or condones such behaviour by others, he may cause offence. Members of the public may consider themselves

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excluded from the Premises by reason of their religious beliefs or affiliations or racial identity or possession of Protected Characteristics under the Equality Act 2010. Such conduct can also intimidate, incite religious or sectarian hatred, and constitute a threat to public order or safety. Several Licensing Objectives are engaged:

'Preventing Crime and Disorder'

'Securing Public Safety'

'Preventing Public Nuisance'.

4.17. See Standard Condition A.15:

“(1) The Licensee shall not engage in, or permit, conduct or activities on the Premises:

(a) which cause offence, or

(b) which are likely to cause offence to a reasonable person, or

(c) which constitute a threat to public order or safety, or

(d) which are likely to discourage a particular part of the community from using the Premises,

on racial, religious, sectarian or other discriminatory grounds.

(2) The Licensee shall take reasonable steps to prevent any other person from engaging in such conduct or activities.

(3) The association of any Licensed Premises with a particular football club or the display of football programmes or football memorabilia within the Licensed Premises shall not of itself breach this condition: provided that any such material displayed does not contain any design, insignia, word or groups of words which discriminate on the basis of race, religion or are sectarian or which could reasonably be construed as being discriminatory or inciting racial, religious or sectarian hatred or violence.”

This condition therefore embeds the Board's stance against discriminatory behaviour of all kinds and on all grounds into licences.

4.3. Because of the importance that the Board attaches to the PSED, when the Clerk prepares Reports for the Board, the potential for the application of the "unsuitable premises" rule and the Equality Act 2010 is considered. A potential reason for refusing a Premises Licence is that the Subject Premises are "unsuitable", and it is possible that the Board will consider that suitable access and facilities for Disabled Persons are necessary elements.

The PSED is referred to in the 2018 - 2022 Licensing Policy Statement (in the context of

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“Protecting and Improving Public Health”): LPS paras. 2.14 - 2.16.

LPS Para. 4.27(c), which refers to the use of a removable barrier to delineate an outdoor drinking area (a 'beer garden'), requires that the barrier must be designed to allow access and exit for disabled persons.

If an Applicant has failed to produce a DAFS, the Board is informed and will defer the case to a later meeting until a DAFS is lodged.

4.4. The Board is committed to ensuring that everyone with an interest can participate in the licensing process. The Board deals with all of its business in an open and transparent way. Information and assistance will be made available to those who wish to apply for a licence, to make representations or to object to an application. The Board is also aware of the need to ensure that the licensing process is accessible to all. Assistance will be available on request for those who require assistance to access any part of the process.

The Board seeks to support this general commitment by

- Providing information both in written form and on the Council's website which complies with the Council's accessibility standards
- Holding meetings in public in the Council Chambers, which are accessible to the public
- Accessing the Council's interpreting and translation services when required
- Providing face-to-face advice and support to people who are applying for licences or who want to make representations or objections to licences
- Making reasonable adjustments to ensure accessibility and participation opportunity for those with protected characteristics

4.5. The Board consults widely with the community in relation to licence applications.

Consultation generally takes place with:

- Police Scotland
- Scottish Fire and Rescue
- North Ayrshire Council
- NHS Ayrshire & Arran
- Community Councils

In addition, applications for new licences and for major variations to existing licences are advertised on the Council website, and so consultation with the wider community takes place in that way. In addition, those who reside in very close proximity to premises seeking

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a licence are notified of the application by letter direct from the Board. This enables any member of the community to make representations or objections in relation to a licence application.

The Board's Statements of Licensing Policy are also subject to wide consultation within the Community, including other public authorities. In the case of both policies, consultation with the wider public took place via the Council's website.

4.6. The equality outcomes identified by the Licensing Board for the reporting period 2017-2021 are set out in the table below. The up-to-date position with each is shown "[...]".

| | Equality Outcome | Action |
|---|--|--|
| 1 | Service users across the protected characteristic groups are positive and engaged with the Licensing Board and the services it provides. | <ul style="list-style-type: none"> Customer satisfaction survey containing equality monitoring questions to be issued to applicants and used to identify equality issues. <i>[Survey forms continue to be available at the counter although there has been little use by the public. The questionnaire we issued to customers is still available but little-used since it was being completed by the same repeat customers. Their responses were favourable but they had nothing new to say. Consideration will be given to undertaking an online survey option to increase participation.]</i> The Board's new Licensing Policy Statement (due November 2018) to be Equality Impact Assessed. <i>[The LPS 2018-22 had an EIA]</i> Groups representative of the protected characteristics to be consulted as part of the consultation process required for the Board's new Licensing Policy Statement. <i>[There was public consultation on the draft policy.]</i> |
| 2 | Licensing information in North Ayrshire is easily accessible. | <ul style="list-style-type: none"> Translation statement to be included on all licensing applications and guidance issued by the Board as standard practice. <i>[This has not yet been actioned but will be further reviewed and the Board will be updated. There have been no requests for translation services.]</i> Information to be translated when requested by service users. |

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| | | <p><i>[To date there have been no requests for translation services but this would be provided if requested.]</i></p> <ul style="list-style-type: none"> • Increase the amount of licensing information which is accessible online. <i>[This has been done. Material is regularly reviewed, and new material added, for example we published FAQs about the Personal Licence Renewal process]</i> |
| 3 | Licensing staff have the appropriate skills and training to deliver an effective licensing service to persons with protected characteristics and have an increased awareness of equality issues. | <ul style="list-style-type: none"> • Customer satisfaction survey containing equality monitoring questions to be issued to applicants and used to assess the service provided to persons with protected characteristics. <i>[see above]</i> • A specific statement regarding the general equality duty to be included in the Board's new Licensing Policy Statement to ensure the duty underpins all work undertaken by licensing staff, including Board members. <i>[This has been done: Paras. 2.14-2.16 of LPS]</i> • Encourage and support staff, including Board Members, to identify and attend training courses on equality issues, whether available in-house or through external providers. <i>[The Members/Staff are part of the Council, so can access this training on that basis. The majority of Board Members have had training and the remainder will have had training within a year. Staff will have training by 31 May 2019.]</i> • The Board and its officers will wherever possible work, whether through the imposition of licence conditions, advice to licence holders or through joint working with Police Scotland, seek to promote the Licensing Objectives of the Licensing (Scotland) Act 2005 (particularly those relating to securing public safety, and protecting children and young persons from harm) in a manner which protects those with protected characteristics. <i>[This is done as a matter of course]</i> |

AGENDA ITEM 4

Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

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| Subject | Annual Meeting with Local Licensing Forum |
| Purpose | To update Members on the current position |
| Recommendation | That Members note the position |

1. Licensing (Scotland) Act 2005, Section 10(3) is:

"Each Licensing Board must hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for the Board's area."

2. The general functions of Local Licensing Forums are stated in Section 11:

(a) keeping under review—

(i) the operation of the 2005 Act in the Forum's area, and,

(ii) in particular, the exercise by the Board of their functions, and

(b) giving such advice and making such recommendations to the Board in relation to those matters as the Forum considers appropriate.

3. The Licensing Board must, in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum (Section 12(1)(a)). If the Board decide not to follow that advice or recommendation, they must give the Forum reasons (Section 12(1)(b)).

4. There has not been an occasion for the Board to give reasons to the Forum, since the Forum cannot comment on particular cases, but there is a possibility:

The Forum can advise the Board on general Policy matters. The Law permits a Board to have a Policy, but requires the Board to allow for the possibility of exceptions. Therefore each particular case is assessed on its merits. If the Board regularly made exceptions, it might be thought that the Policy itself was undermined. The Forum might then request a Statement of Reasons. The Forum's request would be considered by the Board, so that the Board could state their reasons.

5. The Forum is an advisory body. It can comment on general Policy, e.g. it is included in the Consultations leading to the Board's adoption of their Licensing Policy Statement. However, the Forum is prohibited from commenting on the Board's functions in relation to a particular case, e.g. an Application for a new Licence or the

AGENDA ITEM 4

variation of an existing Licence is intimated to the Police, Health Board, Community Council, neighbours, etc., but not to the Forum.

6. The Joint Meeting between the Board and Forum will be the final item of business at the Board's usual meeting. The Joint Meeting will be in public (Schedule 1, Paragraph 12(2) and Schedule 2, Paragraph 5(3)).