

Cunninghame House,
Irvine.

15 January 2014

North Ayrshire Licensing Board

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, 3rd Floor, Cunninghame House, Irvine on **MONDAY 20 JANUARY 2014** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Minutes

Confirm the Minutes of the Board Meetings held on 30 September 2013 and 19 November 2013.

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. Personal Licence Retraining

Submit report to the Licensing Board for Consideration of acceptable evidence of Personal Licence Retraining

Licensing Board

Sederunt: Ronnie McNicol (Convenor)
 Tom Marshall (Vice-Convenor)
 Robert Barr
 John Bruce
 Ian Clarkson
 Catherine McMillan
 Alex McLean
 Alan Munro
 Donald Reid
 Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Agenda Item 2

20 January 2014

North Ayrshire Licensing Board

Subject: Licences and Applications under the Licensing (Scotland) Act 2005

Purpose: To inform the Licensing Board on the background to applications received under the Licensing (Scotland) Act 2005.

Recommendation: That the Licensing Board determines the applications.

1. Introduction

- 1.1 The Licensing Board is responsible for determining applications made under the Licensing (Scotland) Act 2005, and for determining questions under that Act.
- 1.2 The Board has previously approved a Scheme of Delegation whereby certain matters can be delegated.

2. Current Position

- 2.1 The applications before the Board are set out in the attached appendices. Each appendix contains reports prepared by licensing staff for each individual case before the Board.
- 2.2 Appropriate consultation has taken place with Police Scotland and with the Council's Building Standards and Planning Sections. Where relevant the reports have been copied to the applicants and any persons making objections or representations. Any objections or representations have been copied to the applicants, so that a response might be made at the Board Hearing.

Clerk to the Licensing Board

Reference :

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

APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence Applicant/Licence Holder No.	Premises	Comments
1.	0171 Walcal Property Development Limited 51A Townfoot Dreghorn Irvine KA11 4EH	The Market Bar 35 Howgate Kilwinning KA13 6EW	Premises Licence Review Application - Section 36
2.	NA0192 Marie McLaughlan 64 Hawthorn Court Kilwinning KA13 6DW		Consideration of Personal Licence - Section 84 (in connection with Case 1)
3.	NA0193 Margaret Frearson 44 Kilwinning Road Irvine KA12 8RY		Consideration of Personal Licence - Section 84 (in connection with Case 1)
4.	0067 Abacus Estates Limited Linden Court House 52 Liverpool Street Salford Greater Manchester M5 4LT	Latrobes 69-71 Princes Street Ardrossan KA22 8DG	Application for Transfer of Premises Licence - Section 33
5.	0449 Jagir Singh 25 Berry Drive Irvine KA12 0LJ	The Metro Nightclub 2 Hamilton Street Saltcoats KA21 5EN	Application for Grant of Provisional Premises Licence - Section 45
6.	0082 Greene King Brewing & Retailing Ltd c/o Belhaven Pubs Atrium House 6 Back Walk Stirling FK8 2QA	Turf Hotel 32 Eglinton Street Irvine KA12 8AS	Premises Licence Review Proposal - Section 37
7.	0080 Greene King Retailing Ltd c/o Belhaven Pubs Atrium House 6 Back Walk Stirling FK8 2QA	The Waterside 14 Bath Street Largs KA30 8BL	Premises Licence Review Proposal - Section 37

8. 0085	Greene King Retailing Ltd c/o Belhaven Pubs Atrium House 6 Back Walk Stirling FK8 2QA	Sheiling Bar 144 Main Street Largs KA30 8JN	Premises Licence Review Proposal - Section 37
9. 0255	R & E Hyslop 11 Paddock View Crosshouse Kilmarnock KA2 0BH	The Delta Bar 15 Bridgegate Irvine KA12 8BJ	Premises Licence Review Proposal - Section 37
10. 0093	June Tudhope 97 Ladyford Avenue Kilwinning KA13 6DS	Victoria Bar 2/4 Howgate Kilwinning KA13 6EJ	Premises Licence Review Proposal - Section 37
11. 0029	Messrs Reid and Mochan 37 New Street Stevenston KA20 3HD	Cross Keys Bar 1 Fullerton Place Stevenston KA20 3EH	Premises Licence Review Proposal - Section 37
12. 0182	Rosemount Taverns Limited 5 Fitzroy Place Glasgow G3 7RH	Eglinton Arms 27 Main Street Dreghorn Irvine KA11 4AQ	Premises Licence Review Proposal - Section 37
13. 0236	Richard Waugh 31 Ardrossan Road Seamill West Kilbride KA23 9NA	The Merrick Hotel 31 Ardrossan Road Seamill West Kilbride KA23 9NA	Application for Transfer of Premises Licence - Section 33
14. 0410	Springside Bowling Club Kyle Avenue Springside Irvine KA11 3AU	Springside Bowling Club Kyle Avenue Springside Irvine KA11 3AU	Application for Variation of Premises Licence - Section 29
15. 0242	Rosemount Taverns Limited 5 Fitzroy Place Glasgow G3 7RH	Castlehill Vaults 2/6 Princes Place Ardrossan KA22 8HB	Application for Variation of Premises Licence - Section 29
16. 0307	GSK Sports and Social Club Shewalton Road Irvine KA11 5AP	GSK Sports and Social Club Shewalton Road Irvine KA11 5AP	Application for Variation of Premises Licence - Section 29

17. 0367	Zulfiqar Ali 1 Milgarholm Avenue Irvine KA12 0ER	Broomlands Supermarket 35 Broomlands Gate Lewis Crescent Broomlands Irvine KA11 1HB	Application for Variation of Premises Licence - Section 29
18. 0436	Nicandro Arcaro 4 Tollerton Drive Irvine KA12 0QA	Kiss Nightclub 13 Bridgegate Square Irvine KA12 8BJ	Premises Licence Review Application - Section 36

Premises Licence Review Application - Section 36

Premises	The Market Bar, 35 Howgate, Kilwinning KA13 6EW
Premises Licence Holder	Walcal Property Development Ltd.
Ref.	171

1. Background

By letter of 3 December 2013 the Chief Constable made a Review Application under Section 36 informing the Board of certain circumstances relating to these Premises. Copies of the letter will be distributed to Members at the Meeting.

2. Ground(s) for Review

The Chief Constable submits that there are grounds relevant to the following Licensing Objectives:

- (a) preventing crime and disorder
- (c) preventing public nuisance

3. Capacity etc.

The Premises are Licensed for both on-sales and off-sales, and have a capacity of 88 customers, and an off-sales display capacity of 9.0 square metres.

Activities other than the sale of alcohol:

	<i>Permitted (x)</i>
Accommodation	
Conference facilities	
Restaurant facilities	
Bar meals	
Receptions (including weddings, funerals, birthdays, retirements, etc.)	
Club or other group meetings	
Recorded music	x
Live performances	
Dance facilities	
Theatre	
Films	
Gaming	x
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	
Adult entertainment	

Other activities permitted
Pool, darts, dominoes, jukebox and 2 gaming machines

Access by Children and Young Persons

The Premises do not allow persons under 18.

4. Licensed Hours

The operating hours are:

On-sales:

Mon	10.00	24.00
Tue	10.00	24.00
Wed	10.00	24.00
Thur	10.00	24.00
Fri	10.00	1.00
Sat	10.00	1.00
Sun	12.30	23.00

The Police letter is incorrect in stating that the Sunday On-sales hours start at 10.00.

Off-Sales:

Mon	10.00	22.00
Tue	10.00	22.00
Wed	10.00	22.00
Thur	10.00	22.00
Fri	10.00	22.00
Sat	10.00	22.00
Sun	12.30	22.00

5. Additional Powers of inquiry

The Board is entitled by Section 38(5) to

(a) obtain further information from such persons, and in such manner, as the Board thinks fit, and

(b) consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Application or Proposal. If the Board proposes to do this, it should inform the Licence Holder of its intention and consider whether an adjournment is appropriate.

6. Board's Powers on Review

The Board must hear the Applicant and the Licence Holder, and decide whether or not a Ground for Review is established.

If so, the Board may take any one or more of the following steps if it considers necessary or appropriate for the purposes of any of the Licensing Objectives:

- (a) issue a Written Warning to the Licence Holder;
- (b) make a Variation of the Licence - either indefinitely or for a specific time. The Variation may relate to any part of the Licence, for example:
 - (i) the operating hours for the Premises (or any part);
 - (ii) the Premises Manager (if any) can be removed;
 - (iii) the activities which may be carried on on the Premises (or any part);
 - (iv) the terms for access by persons under 18 to the Premises (or any part);
 - (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions);
- (c) Suspend the Licence for a specific time; if the Board imposes a Suspension, then it should not have immediate effect unless this is considered necessary in the public interest; most Suspensions should be postponed to give the PLH the opportunity to appeal to the Sheriff Court. Any Board order takes effect immediately, and is not postponed by an appeal, but if appealing the PLH can ask the Sheriff to recall the Suspension pending appeal. The postponement is in the Board's discretion, but 7 days would be reasonable.
- (d) Revoke the Licence. Similar considerations apply to the question, whether or not the Revocation should have immediate effect.

The Board is not obliged to take any of these steps, and it may decide that although a Ground for Review is established, no action is required.

The Board may take these steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure.

7. Personal Licence

Under Section 84, whether or not the Board takes any action in relation to a Premises Licence, the Board may consider that any Personal Licence Holder who is or was working in the Licensed Premises concerned (for example, a Premises Manager or a member of staff) acted in a manner which was inconsistent with any of the Licensing Objectives. If there is a suggestion that staff training was inadequate, the Premises Manager's Personal Licence may be reviewed whether or not he was present at the time of the circumstances alleged.

If the Licence Holder is working in Licensed Premises in North Ayrshire, and has had the opportunity to be heard, the Board Meeting which considers the present Premises Licence Review can consider that review at the same time as the Hearing relating to the Premises Licence.

Otherwise, the Board should either:

- (a) continue the case to a later date to allow notice to be given to the Personal Licence Holder, or
- (b) notify the appropriate other Licensing Board, and make a recommendation to that Board as to whether the Personal Licence should be Revoked, Suspended or Endorsed. That Board will then hold a Hearing.

Whichever Board holds the Review Hearing may, if it considers it necessary for any of the Licensing Objectives:

- (a) Revoke the Personal Licence,
- (b) Suspend the Personal Licence for up to 6 months,
- (c) Endorse the Personal Licence. An endorsement lasts 5 years. If the Licence Holder gets 3 Endorsements in a 5 year period, then the Board would have to consider whether the Licence should be Suspended (for up to 6 months) or Revoked (these are not automatic).

The Board is not obliged to take any of these steps, and may decide to take no action.

Application for Transfer of Premises Licence - Section 33

Applicant	Abacus Estates Ltd.
Transferee	Mr. Gary McKenna
Premises	"Latrobes" (formerly "Trisha's") 69-71 Princes St., Ardrossan KA22 8DG
Ref.	PR067

Preliminary

There is no proposal to change the Premises Manager or to make any other Variation to the Licence. The Premises cannot sell alcohol until the Licence is varied so as to include a Premises Manager (who must separately have a Personal Licence).

1. Background

The holder of the Licence has requested the Board to Transfer the Licence, and has authorised the proposed Transferee (Mr. McKenna) to lodge the application.

2. Initial Procedure

The Application has been intimated to the Chief Constable, who is obliged to respond to the Board with a Notice stating either that:

- (a) neither the Transferee nor any Connected Person has been convicted of any Relevant Offence or Foreign Offence, or
- (b) that there are such convictions.

In either case, the Chief Constable may recommend that the Board should refuse the Transfer Application, if he considers that it is necessary for the purposes of any of the Licensing Objectives.

There is no other consultation, and no display of a Site Notice.

3. Hearing

The Chief Constable had made a Refusal Recommendation under Section 33(7) of the Licensing (Scotland) Act 2005 (as substituted by the Criminal Justice and Licensing (Scotland) Act 2010, Schedule 6, Paragraph 7(2), which commenced on 13 December 2010 by S.S.I. 2010-413). That Recommendation is contained in the Chief Constable's letter dated 7 January 2014, which is a Notice for the purposes of Section 33.

A copy of the Chief Constable's Notice has been given to the Applicant.

Due to the content of the Chief Constable's Notice the Board must hold a Hearing for the purpose of considering and determining the Transfer Application.

4. Background

4.1. The Premises Licence was granted to Tyne & Tay Taverns Ltd. on 20 January 2009. The Premises had been unoccupied for several years and the Licence was granted without the usual inspection beforehand by NAC Building Standards. The Solicitors for Tyne & Tay therefore undertook to the Board prior to the grant that the Premises would not re-open until such time as

- (a) there was a new PLH;
- (b) the Premises had been brought up to the appropriate standard;
- (c) the Premises had been inspected by the relevant officials and found to be in an acceptable condition.

4.2. The Licence was transferred to Abacus Estates Ltd. ('Abacus') on 22 October 2009. It was not then varied, and the Licence remained similar to the Public House Licence which had existed for many years under the Licensing (Scotland) Act 1976. The Licence was unchanged until 30 September 2013.

4.3. On that date the Board granted a number of Variations, on the request of Mr. McKenna (who had the authority of Abacus to seek these).

4.4. Mr. McKenna's proposal was to convert the premises from a Public House to a restaurant/bistro. As originally licensed, the operation of the Premises was to be similar to the operation under the 1976 Public House Licence, e.g. under-18s were not admitted, and there was no permission for either restaurant facilities or bar meals.

4.5. The Variation granted on 30 September involved a substantial change in the operation: the Layout Plan showed a kitchen, bar meals were to be offered, and ages 0-17 were to be permitted with adult supervision, if eating.

4.6. Mr. McKenna applied for and was granted the appropriate Building warrant and substantial works were carried out, with a view to the Premises re-opening in late 2013 or early 2014.

4.7. In September 2013 Mr. McKenna entered into a lease with Abacus. Until 20 December he did not seek the Transfer of the Licence into either his own name or of any company he controls.

4.8. On 19 November 2013 the Board refused a Transfer Application made by Ms. Marian Small relating to the same Premises, following a Refusal Recommendation made by the Police.

4.9. The Premises have never had a Premises Manager, and accordingly, whether or not the present Transfer application is granted, they cannot trade until the Licence is further Varied, so as to nominate a Premises Manager.

5. Conclusion

In terms of Section 33(10) the Board must have regard to the Chief Constable's Notice and determine whether or not it is necessary to refuse the Transfer Application for the purposes of any of the Licensing Objectives:

- (a) if so satisfied, the Board must refuse the Application,
- (b) if not so satisfied, the Board must grant the Application.

Unlike other licensing procedures, the legislation does not provide for objections or representations by third parties - it neither obliges the Board to look at third party comments nor prevents the Board from doing so. Therefore the Board has a discretion to decide whether or not to do so. A representation has been received from Melissa Carnegie of Barnardo's (the children's charity) in Arbroath. Copies will be placed in Members' packs and it will be for the Board to decide whether or not to take that representation into account.

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Jagir Singh
Premises	"The Metro Nightclub", 2 Hamilton St., Saltcoats KA21 5EN
Ref.	449

Preliminary

The Board is entitled, but not obliged, to request a report from the Chief Constable detailing all cases of Antisocial Behaviour, and all complaints or other representations made to Police which have taken place on, or in the vicinity of, the Premises, in the previous year. (The Board's power is under Section 24A, as added by the Criminal Justice and Licensing (Scotland) Act 2010).

Before proceeding to determine the Application itself, the Board should decide whether or not to request a Report. If it does, it must defer further consideration until the Report is produced.

This Report was prepared provisionally before the end of the Site Notice display period, which ends on 10 January 2014. No objections have been received to date. If there are any, these will be copied to the Applicant, and all letters will be handed to Members at the Meeting.

The Applicant should lodge the following Certificate. Until the Board has it it cannot determine the Application: Display of Site Notice

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL) for a Nightclub. The building previously held a Premises Licence (NALB ref. 002) but the Licence lapsed in December 2011 when the then PLH lost his right to occupy the building, and the building has not traded since.

The PPL relates to Premises which are to be 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 conversion is complete, and after Certificates as to Building Control (and if appropriate Food Hygiene) are issued. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

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

The previous Licence was granted during the Transitional Period without a Building Standards Certificate because the Premises already had a Licence under the Licensing (Scotland) Act 1976 and benefitted from 'grandfather rights' provisions. The Licence now requested does not have 'grandfather rights', and such a Certificate will be needed later, when Confirmation is requested.

2. Detailed proposal**(a) Licensed Hours (on-sales)**

Either the request is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<i>Proposal</i>	<i>Policy</i>
Monday		
Tuesday		
Wednesday		
Thursday		
Friday	22.00 - 2.00	OK on all days
Saturday	"	
Sunday	"	

* Although the OP refers only to nightclub hours on 3 days, the OP also states:

"There will also be functions held in the premise when not in use as a nightclub, catering for funerals, weddings and birthdays. Meals will be available during these functions, but not sold during the nightclub use."

The Applicant's agent has advised that no alcohol will be sold at these functions.

(b) Capacity

On-Sales (persons)	685
Standing / Seated	513 / 172 (75%/25%)

(c) Activities other than the sale of alcohol

	<i>Proposed</i>
Accommodation	
Conference facilities	
Restaurant facilities	
Bar meals	x
Receptions (including weddings, funerals, birthdays, retirements, etc.)	x
Club or other group meetings	
Recorded music	x
Live performances	x
Dance facilities	x
Theatre	
Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	

Adult entertainment	

	Other activities
Proposed	None

(d) Access for Under-18s

Terms and Ages (OP 6(b) & (c))	No under-21s allowed while operating as a nightclub. Under-18s are allowed during funerals and other functions, if with adult..
Times (OP 6(d))	Under-18s of all ages allowed at funerals and other functions.
Parts (OP 6(e))	Under-18s will only be allowed on the ground floor, where the funerals and other functions take place.

3. Issues

The Board must consider whether or not overprovision would arise if the premises were licensed.

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2016, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

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.

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.

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.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors
- (d) other similar premises in the Locality

(a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

The Subject Premises are in Locality 2 : Three Towns (Ardrossan, Saltcoats & Stevenston).

(b) the Function Type of the Premises

The Board's Overprovision Policy distinguishes Premises by 'Function Types'.

The Subject Premises are in Function Type 2 (Entertainment venues, e.g. nightclubs).

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are in one of 4 Localities where Applications are especially unlikely to be granted (regardless of the Function Type) - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley";
- (2) Function Type: The presumption of refusal applies to FT 2, 3 & 6 (nightclubs, pubs, and 'Part K' Clubs (regardless of the Locality);

(d) other similar premises in the Locality

There are 5 Premises of the same Function Type in the Locality, although none in Saltcoats. However, the Board may consider that it is appropriate to compare Function Type 3 (On-sales other than entertainment venues, e.g. public houses).

In the Locality, there are 29 premises of the Function Type 3, and the Locality has a total capacity of 7,492 customers.

The population of that Locality is 30,966 people (Source: Population from 'Scottish Neighbourhood Statistics' 2011).

4. Observations

Since the Premises are to admit children under 5, the Mandatory Condition requiring Baby-Changing Facilities accessible by both genders applies (Sch. 3, Para. 12, SC C.3). The Application does not indicate where these facilities would be.

Applicant should:

- (a) state where such facilities will be, or
- (b) amend OP to exclude children under 5; or
- (c) give Board an undertaking that the Premises will not open until necessary facilities are in.

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

- (a) Application is inconsistent with L.O. (d): "protecting and improving public health";
- (b) Application is inconsistent with L.O. (e): "protecting children from harm";
- (c) Premises are unsuitable for use for the sale of alcohol.

5. 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)
- C (On-sale Premises)
- D (Late Opening Premises)
- E (Special Late Opening Premises)
- F (Entertainment)

Board should also consider whether it is necessary to attach an additional specially-worded condition to the Licence, and/or whether this additional Condition should be applied:

- X.1 (CCTV to show inside Premises and any Outdoor area)

Report

to

North Ayrshire Licensing
Board

by

Solicitor (Licensing)

Subject:	Premises Licence Review Proposals under Section 37 relating to various Premises with on-sales hours earlier than 11.00 a.m.
Purpose:	To summarise the background
Recommendation:	That the Board consider and determine the individual Reviews for each of the Premises listed in the attached Schedule

1. The Licensing Policy Statement (LPS)

On 19 November 2013 the Board adopted a LPS for the 3 years from 1 December 2013.

On 21 October 2013, during the discussion of the draft LPS, the Board decided to make a Review Proposal under Section 37 (Review of Premises Licence on Licensing Board's initiative) in relation to Premises which have opening hours which are potentially affected by the Board's Policy (except for sporting clubs such as golf or bowls clubs).

The 'Ground of Review' is that the existence of 'early hours' is a ground relevant to the "protecting and improving public health" Licensing Objective.

The LPS includes the following:

"On-sales - Early-opening

7.5. The Board considers that the commencement of On-sales of alcohol before 11.00 a.m. is likely to be inconsistent with the Licensing Objective "protecting and improving public health". Exceptionally the Board may allow early-opening to permit the provision of breakfast facilities for shift workers from nearby factories, markets, etc..

On a case-by-case basis the Board may agree to the hours starting at or after 10.00 a.m. if the Licence Holder satisfies the Board that there is a need for this, arising from the particular circumstances of the Premises. The Board would expect evidence, and not simply anecdotal evidence, that there is an actual need for the hours already licensed.

7.6. Where Applicants seek the grant or variation of Premises Licence to permit On-sales before 11.00 a.m.:

(a) *The Operating Plan will have to indicate an intention to provide certain facilities, e.g. the provision of cooked meals throughout the early opening period (snacks and crisps are not considered to constitute 'meals');*

(b) *The Applicant will require to satisfy the Board that there is a demonstrable demand from patrons to provide those facilities. It is not sufficient to refer generally to 'customer demand'. What is required is evidence that there is a quantifiable demand.*

7.7. *If the Board is later satisfied that early-opening is not appropriate in particular Premises, it may seek to Review the Premises Licence on the basis that early-opening is not consistent with that Licensing Objective.*

7.8. *The Board may also review early-opening authorised under 1976 Act Regular Extensions and continued to 2005 Act Premises Licences under the 'grandfather rights' provisions.*

7.9. *Although the normal earliest opening time permitted is 11.00 a.m., the Board might permit a temporary Occasional Extension ("Extended Hours") to allow early-opening if the request relates to:*

(a) *the activities of customers of the Premises associated with a sporting event, for example the participation of customers in a sports tournament,*

(b) *the meeting of customers prior to travelling to a sporting event such as an 'away' football match;*

(c) *the live TV broadcast of a major sporting event in a different time zone where the broadcast is outside hours already licensed.*

7.10. *Regardless of any decision about early hours, any Outside Drinking Areas associated with the Licensed Premises will be permitted to operate no earlier than 11.00 a.m. and no later than 10.00 p.m.."*

2. Background

Many Premises in North Ayrshire have 'early hours' (i.e. opening before 11.00 a.m. on one or more days).

The Review Proposals relate to Premises where the 'early hours' were granted by earlier Boards as "Regular Extensions" under the Licensing (Scotland) Act 1976. The Board's records of decisions years ago are brief (e.g. "customer demand"). The Licences and the Regular Extensions expired on 1 September 2009, when the Licensing (Scotland) Act 2005 took effect, but the effect of the Regular Extensions was maintained under the 'grandfather rights' provisions of the Transitional Regulations. The present Board has not granted 'early hours'.

Rather than have all 79 Reviews call at a single Meeting, along with the usual business of a Meeting, these 79 cases are being processed in blocks. The block of cases calling at the Board on 20 January 2014 involve Premises which have the earliest of the early-opening hours - up to 8.30 a.m.. Later Boards will have further blocks, covering later periods, until all 79 Premises have been considered.

These Premises are listed on the attached spreadsheet, giving in each case the Premises Licence ref., the name, town and postcode of the Premises, and the opening hours on each day of the week currently permitted.

In each case, the Board has written to the PLH explaining the reason for the Review and intimating the date, time and place of the Meeting:

"This letter is being sent to many P.L. Holders in North Ayrshire.

You do not require to take any action if you agree with the Board's Proposal (set out below), but if you do not agree then you have the chance to attend the above hearing and make representations.

I should also make clear that your licence is not at risk - all that is proposed is moving licensed hours to 11.00 a.m..

You may wish to take independent legal advice before you decide what to do. Whatever you decide to do, please write to me to confirm your position.

The Licensing Board's policy is that, in general, on-sales should not begin before 11.00 a.m., but in practice there have been many exceptions. Many Premises have early hours, and often have had them for years. It is possible that individual Premises gained them on the basis that they were providing cooked breakfasts to shift workers, but since most of the early hours were granted as 'Regular Extensions' under the previous legislation (the Licensing (Scotland) Act 1976), it is possible that explanations offered years ago are no longer relevant.

The Board and the Local Licensing Forum have reviewed the situation of on-sales Premises having opening hours before 11.00 a.m.. The Board is concerned at the possibility that many Premises have Early Hours but do not provide cooked breakfasts.

The Board's approach to Licensed Hours is set out in its Licensing Policy Statement 2013-2016 (Part 7, especially Paragraphs 7.5 - 7.10).

The Board has decided that:

- (1) Licences throughout North Ayrshire with Early Hours should be reviewed;*
- (2) there should be a presumption that on-sales should not start before 11.00 a.m.;*
- (3) on a case-by-case basis the Board may agree to the hours starting at or after 10.00 a.m. if the Licence Holder satisfies the Board that there is a need for this, arising from the particular circumstances of the Premises. The*

Board would expect evidence, and not simply anecdotal evidence, that there is an actual need for the hours already licensed.

Under Section 37 of the 2005 Act the Board may, on their own initiative, propose to review any Premises Licence on any of the 'Grounds for Review' stated in Section 36(3)(b), i.e. grounds relevant to one or more of the Licensing Objectives. The Board has reviewed previous grants of Early Hours and considers that these raise issues which are relevant to all the Licensing Objectives set out in Section 4, and particularly the L.O. "protecting and improving public health". Accordingly, on 21 October 2013 the Board made a Review Proposal applying to all on-sales Licences with Early Hours: the Grounds for Review are that the continued operation of early hours is inconsistent with all of the Licensing Objectives.

At the Hearing the Board will hear any representations you wish to make before making a decision. Although any decision will take into account the circumstances of each particular Premises, you should be aware that the Board is likely to vary the Licence to limit on-sales to 11.00 a.m. unless it is satisfied that there is an exceptional justification for Premises to open before then.

Whatever you want to do, I should be grateful if you would write to confirm:

- (a) whether or not you agree to the proposed Variation;*
- (b) whether or not you intend to attend the Hearing.*

I look forward to hearing from you."

The Board will be given copies of any responses received. At the date of completing this report (8 January), only one of the 7 Premises has responded.

3. Procedure

The Board must deal with each case individually and should proceed by calling each case in turn.

There are two questions for the Board:

- (a) is the Ground for Review is established?
- (b) if the answer is 'no', there will be no further action, and the Review Proposal will be discharged. If the answer is 'yes', the Board should consider what action (if any) is appropriate.

The Board's approach should depend on whether or not the PLH has taken up the opportunity to make representations, but in either case the Convenor should ascertain from the whole Board, during the public session, what their views are on the particular case.

4. Representations

If the PLH has taken up the opportunity to make representations:

- (a) the PLH should address both questions.
- (b) the Board may (but is not obliged to) retire to consider the Review in private, before returning to the public meeting to take a decision.
- (c) In the case of other Reviews, if the Board is satisfied that the Ground for Review is established, the Board may take any one or more of a range of steps if it considers necessary or appropriate for the purposes of any of the Licensing Objectives. In an 'early hours' review, some of these steps are not appropriate. Those which remain are:
 - (i) the Board might Vary the Licence so that the opening time is 11.00 a.m. on all seven days;
 - (ii) the Board might Vary the hours in a different way (for example, to a different time from 11.00 a.m. or for different days);
 - (iii) the Board might decide that although a Ground for Review is established, no action is required.

5. No Representations

If the PLH has not taken up the opportunity to make representations, the Board is entitled to follow its Policy:

- (a) It may decide without retiring;
- (b) It may decide that the Ground for Review is established;
- (c) It may decide to Vary the Licence so that the opening time is 11.00 a.m. on all seven days.

6. Other matters

Whatever the Board decides:

- (a) the Board is entitled to direct that any variation should take effect immediately. However, to allow for intimation to the PLHs affected it is suggested that the Board might defer the variation until 7 days after the Board Meeting. As with other Board decisions, the law allows 7 days for intimation.
- (b) If the Board has decided to vary the Licence, suitable paperwork will be issued to the PLH without charge.

Application for Transfer of Premises Licence - Section 33

Applicant	Mr. Richard Waugh
Premises	"The Merrick Hotel", 31 Ardrossan Road, Seamill, KA23 9NA
Ref.	236

1. Introduction

1.1. The current Licence Holder, Mr. Richard Waugh, requests the Board to transfer the Licence to Mr. David McCulloch.

1.2. Transfer Applications are rarely considered at a Meeting of the Board. The normal procedure is that a Transfer Application is sent to the Chief Constable, who advises the Board that the Transferee and any Connected Person does, or does not, have "relevant or foreign convictions". There is no other procedure, and no publicity. If there is no adverse comment from the Chief Constable the Application is usually granted under Delegated Powers by the Clerk.

1.3. In the present case the Chief Constable has not reported any adverse material, and has not made a Refusal Recommendation. The reason that this case is calling at a Meeting is that there are a number of issues in the present case which suggest that the Application should be refused as incompetent. There have been extensive discussions and correspondence over many months between the Solicitor (Licensing) and all interested parties, but the issues remain unresolved, and accordingly the case is being referred to a Meeting of the Board, as it is not appropriate to exercise Delegated Powers.

1.4. There is caselaw to the effect that it is not appropriate for the Clerk to reject an Application as incompetent where there is the possibility of a difference of opinion, and that such cases should be referred to a Meeting of the Board.

2. Background

2.1. The Merrick Hotel consists of a bar and restaurant on the ground floor, guest bedrooms on the first floor, and private apartments on the second (top) floor.

2.2. The Premises Licence was granted to Mrs. Maureen Waugh on 25 August 2009. It was transferred to Mr. Richard Waugh on 15 September 2010, and Mrs. Waugh was the Premises Manager.

2.3. Until 27 July 2011 the building was owned by Mrs. Waugh. On that date, she was sequestrated by the Sheriff at Kilmarnock and Mr. Kenneth Patullo of Begbies Traynor (Scotland) LLP, 10-14 West Nile Street, Glasgow G1 2PP was appointed as her Trustee in Sequestration. This meant that her whole estate (including title to the building) passed to her Trustee (under Section 31 of the Bankruptcy (Scotland) Act 1985).

2.4. Since the Premises Licence was not held by Mrs. Waugh, it was not affected. Since the Trustee agreed that Mr. Waugh could remain on the Premises, his Licence continued (and was not affected by the rule described at (a) below).

2.5. The estate had a number of secured creditors, and in 2013 the creditor with priority over the others (the Royal Bank of Scotland - "RBS") repossessed the building and negotiated a sale to Mr. McCulloch. Missives were concluded on 3 December 2013.

2.6. It is the Clerk's understanding that that sale was due to settle on 6 January 2014 (that date raises another issue, discussed at (c) below).

3. The questions

3.1. The Board should consider the three questions discussed below, and determine each. If the conclusion is that all should be answered 'yes', the Transfer should be granted. If any one or more is answered 'no', the Transfer should be refused as incompetent.

3.2. The questions are:

- (a) does the Premises Licence still exist?
- (b) have the Licensed Premises ceased to be used for the sale of Alcohol?
- (c) does Mr. Waugh have a right to trade from the Premises at the date of the Board's decision on the Transfer Application?

(a) "does the Premises Licence still exist?"

a.1. Court decisions appear to establish that a Licence falls irretrievably if the licence-holder loses the right to trade:

Campbell v Neilson (1897) 24 R (J) 28, (1896) 4 SLT 269
West Wemyss United Services Club, 1948 SLT (Sh Ct) 33
Edward Barrett Ltd. v City of Dundee DLB, 1992 SLT 963 (OH)

a.2. It is possible that the Licence fell in March 2013, so there is now (January 2014) nothing for the Board to Transfer.

a.3. The Board would need to be satisfied that all use of the building by Mr. Waugh since the sequestration has been with the consent of the Trustee and later RBS. It is not enough that he was permitted to remain resident in the building. Due to the physical arrangement of the building, the Waugh family remained living in the private apartments until late December 2013, when they vacated in anticipation of the settlement of the sale. The fact that the Trustee and RBS permitted occupation does not indicate that the Trustee or RBS authorised Mr. Waugh to continue trading from the Premises.

a.4. The Bankruptcy (Scotland) Act 1985, Section 40 (titled "Power of permanent trustee in relation to the debtor's family home"), effectively gives the spouse of a bankrupt certain rights, in that the Trustee is not able to sell a family home without either the consent of the spouse or a Court order dispensing with that consent. The Clerk understands that Mr. Waugh did give this consent shortly after the 2011 Sequestration, but was permitted by the Trustee to continue living in the building.

a.5. On 29 November 2013 the Board received an email from Mr. Finlayson (then Solicitor for Mr. Waugh) which included:

"The Merrick Hotel ceased trading on 6 March 2013, and has not been open for business since then. The Trustee of Mrs Waugh raised interdict proceedings against Mr Waugh to prevent him removing any assets from the Hotel. ... I do not think it can be said that Mr Waugh has been in occupation since then, let alone with the Trustee's consent, and I would have thought that any Licence held by Mr Waugh will have long since lapsed."

The Court proceedings referred to concerned a dispute about the ownership of assets, and did not relate to the ejection of Mr. Waugh from the building.

a.6. On 9 December 2013 the Trustee's firm emailed the Board. This email included (referring to the time of the Trustee's appointment in July 2011):

"It was agreed that allowing Mr Waugh to trade would increase the marketability of the property considerably and would also have the effect of reducing the costs of holding a vacant property during a marketing period. No formal lease was agreed with Mr Waugh and no rental payments were requested or received. Mr Waugh signed his consent to the marketing and sale of the property as a non-entitled spouse."

a.7. The Board should determine whether the nature of Mr. Waugh's permission related to trading from the Premises, as opposed to simply being permitted to remain in the Premises. Although it appears to be the case that initially Mr. Waugh was suitably authorised, there is a question over whether that authorisation continued after the Premises ceased trading.

(b) "have the Licensed Premises ceased to be used for the sale of Alcohol?"

b.1. Under the 2005 Act, Premises Licences are perpetual, but cease to have effect on the occurrence of any of a number of events. One of these terminating events is where the Licensed Premises cease to be used for the sale of Alcohol. See Section 28:

"28(1) A Premises Licence—

(a) takes effect on such date as the Licensing Board issuing it may determine, and

(b) ceases to have effect on the occurrence of any of the events mentioned in subsection (5). ...

(5) The events referred to in subsection (1)(b) are— ...

(b) the Licensed Premises in respect of which the Licence was issued cease to be used for the sale of Alcohol, ..."

(the other terminating events are where the Licence is Revoked by the Board; the Premises Licence Holder dies, becomes incapacitated, becomes insolvent, or is dissolved; or surrenders the Licence).

b.2. The Board should determine whether or not the event in Section 28(5)(b) has occurred. If it has, there is nothing for the Board to transfer.

b.3. See the email from the Transferor's Solicitor referred to:

"The Merrick Hotel ceased trading on 6 March 2013, and has not been open for business since then."

b.4. On 9 December 2013 the solicitor for the Transferee emailed the Board. This included:

"It is probably within your knowledge that the property has not traded for some time ..."

b.5. This is the first occasion on which the Board has had occasion to consider whether or not a Licence has ceased due to Section 28(5)(b). The Board's staff have proceeded in other cases on the basis that, so long as the owner's purpose was to continue with the use of the Premises as alcohol-selling, that provision did not apply where the Licence Holder continued to pay the Annual Fee which fell due each October.

b.6. For example, where a Public House has closed due to poor trading conditions, and remains closed (perhaps for months) while the owner markets the Premises as a Public House, the Board's staff would treat the Licence as still existing, and so not refer a Transfer Application to a Meeting if the buyer intended to continue using the Premises as a Public House.

b.7. Therefore, had the other issues ((a) and (c)) not arisen, the present case would not have called at a Meeting.

Licensing (Scotland) Act 1976

b.8. In the course of discussion of this issue, an argument based on the 1976 Act has been raised. It would not be necessary for the Board to address this unless it is raised during the Meeting, but this Report discusses it so that parties may be aware of, and can comment on, the legal advice offered to the Board.

b.9. Under the 1976 Act there was caselaw which supported the argument that a particular event did not terminate a Licence but simply had the effect of placing the Licence 'in limbo', so that it might later be revived (the argument was that the Licence was still 'in existence' but - temporarily - not 'in effect'). It is the Solicitor (Licensing)'s view that that caselaw turned on the particular wording of the 1976 Act (which has not been repeated in the 2005 Act), and that the 'in limbo' argument is not available under the 2005 Act.

b.10. Section 28(5) sets out a list of the circumstances in which a Licence ceases to have effect, including the revocation or surrender of a Licence. If a Licence has been revoked or surrendered, it is impossible to say that the Licence nonetheless remains 'in existence' and can be brought back into effect later. Apart from involving a contradiction (both the revoking Board and the surrendering party want the Licence to cease), it would defeat the purpose of Parliament in enacting Section 28(1)(b).

b.11. Section 28(5) lists several events which terminate a Licence. No distinction is expressly drawn between:

- (i) what "ceases to have effect" means when a Licence is revoked or surrendered,
- (ii) what "ceases to have effect" means after any of the other Section 28(5) events.

b.12. When Parliament enacted the 2005 Act, it would have been aware that the 1976 Act and its caselaw supported a distinction between 'in force' and 'in effect'. Had Parliament wanted to continue such a distinction in all circumstances, it could have expressed its intention in the 2005 Act. It has not done so. Instead, what it has done is to allow a Licence to survive some of the Section 28(5) events (although not the 'ceasing to be used' event) for a limited period of 28 days: Section 28(2). If one of those terminating events occurs, the termination does not happen if a transfer application is made within 28 days. If it is not made, then the Licence ceases once that period expires.

b.13. For example, when a company goes into liquidation, its Licence ceases, but the Insolvency Administrator can apply within 28 days to have the Licence transferred into his own name. This commonly happens while the Administrator looks for a buyer of the business, and in the meantime the business continues to trade. When the business is sold, the Licence is again transferred, from the Administrator to the buyer.

b.14. The absence of any express distinction, and fact that the 28 day procedure is available only in some (not all) of the Section 28(5) events, suggests that the Scottish Parliament intended that the phrase "ceasing to have effect" should have the same meaning in all of the terminating circumstances set out in Section 28(5).

(c) "does Mr. Waugh have a right to trade from the Premises at the date of the Board's decision on the Transfer Application?"

c.1. Even supposing that Mr. Waugh had the permission of the Trustee/RBS to trade from the Premises until the settlement of the sale of the building (as opposed merely to continue living in the private apartments), the date of settlement is critical.

c.2. The Applicant should confirm to the Board the date when the sale settled.

c.3. Any right which Mr. Waugh could have would depend on the right of the Trustee/RBS, and would last no longer than their right. Their right would cease when the sale transaction settles. Therefore Mr. Waugh's Licence would cease when the sale transaction settled (assuming it has not ceased months before).

c.4. If the transaction has settled on a date before the Board determines the Transfer Application, there will be nothing for the Board to Transfer.

c.5. It would not be enough for Mr. Waugh to have a right granted by Mr. McCulloch to be on the Premises - Mr. Waugh would have to have a right to trade from the Premises after the settlement, and since Mr. Waugh is not in fact there he is not trading.

4. Conclusion

4.1. Apart from the issues discussed above, there is no reason why the Transfer should not be granted.

4.2. Therefore, if the issues referred to did not require resolution, the Board would be obliged to grant the Transfer Application.

Application for Variation of Premises Licence - Section 29

Applicant	Springside Bowling Club
Premises	Kyle Avenue, Springside, Irvine KA11 3AU
Ref.	410

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 10 January 2014:

1. *Until the Board has a Certificate of Display, it cannot determine the Application.*
2. *no details of comments from third parties are given here. The Board will be told at the Meeting if there are any, and letter(s) will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	<i>Vary arrangements for access by Children</i>
2	<i>Extend outdoor drinking area</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 L.O.s or Board Policy are highlighted.

Variation 1: <i>Vary arrangements for access by Children</i>
Discretionary refusal
Notes:
At present persons aged 12-17 are allowed on the Premises if <ul style="list-style-type: none"> (a) accompanied by a person of 18 or over (b) during the bowling season (c) until 9.00 p.m.
The proposal is to extend access to all ages, although there is no proposal to change the 9.00 p.m. limit.
The Applicant should confirm whether access is to remain limited to the bowling season or is to be possible throughout the year.
The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular L.O. (e): 'protecting Children from

harm'. This L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17).

Variation 2: *Extend outdoor drinking area*

Discretionary refusal

Notes: the Licence already permits drinking on the veranda facing the bowling green. The proposal is to extend the drinking area:

- (a) to the other three sides of the 'top green' (the green closest to the clubhouse),
- (b) to an area to the north of the clubhouse.

The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular L.O. (c): 'preventing public nuisance'.

The Licence is already subject to the Board's Standard Conditions, including:

"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.."

If the Board allows Outdoor Drinking, and is later satisfied that this is inconsistent with any L.O. or that any Licence condition has been breached, it has the right to Vary the Licence so as to limit or remove the permission.

3. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	Rosemount Taverns Ltd.
Premises	"Castlehill Vaults", 2-6 Princes Place, Ardrossan, KA22 8HB
Ref.	242

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 10 January 2014:

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. the statements as to the comments from third parties are therefore incomplete. The Board will be told at the Meeting if there are any other comments, and letter(s) will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	Amend Layout Plan
2	Add 'bar meals'
3	Allow access by under-18s

2. Objections and Representations

Police	No objection
Community Council	No intimation made as not operating
Fire	No objection
Health Board	No response yet
NAC Building Standards	No objection (Note to Applicant: Not a matter for the Board, but an application for a Building Warrant for the formation of the new kitchen and the reformed bar will be required. Applicant should contact NAC Building Standards.)
NAC Planning	No objection
Other Objections or Representations?	None

3. 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 L.O.s or Board Policy are highlighted.

Variation 1: Amend Layout Plan

Mandatory Grant : The request is for a 'Minor Variation'

Notes:

The proposal is to add a kitchen and to re-position the bar counters in both the Lounge and the Public Bar.

The Applicant should confirm that there will be no increase in off-sales display capacity.

Variation 2: *Add 'bar meals'*

Grant (no statutory reason to refuse, and no breach of Board policy)

Notes:

(Note to Applicant: Not a matter for the Board, but re the new kitchen Applicant should contact NAC Environmental Services).

Variation 3: *Allow access by under-18s*

Discretionary refusal

Notes:

At present the Premises do not permit under-18s.

The proposal is to allow Children and Young Persons of all ages (0 to 17 years) until 8.00 p.m., provided that they are accompanied by an adult. There is no requirement that they be taking meals.

The Board should consider whether or not this Application is inconsistent with Licensing Objective (e): 'protecting Children from harm'. This L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17).

4. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	GSK Sports and Social Club
Premises	Clubhouse, Shewalton Road, Irvine KA11 5AP
Ref.	307

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 10 January 2014:

- 1. Until the Board has a Certificate of Display, it cannot determine the Application.*
- 2. no details of comments from third parties are given here. The Board will be told at the Meeting if there are any, and letter(s) will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	Increase on-sales hours
2	Increase off-sales hours
3	Extend non-alcohol activities
4	Grant exemption from '3 guest' rule for clubs

2. Changes to hours**On-Sales**

	Current	Proposed
Monday	18.30 - 23.15	16.00 - 23.15
Tuesday	"	"
Wednesday	"	"
Thursday	"	"
Friday	16.30 - 1.00	16.00 - 1.00
Saturday	18.30 - 1.00	11.00 - 1.00
Sunday	18.30 - 23.15	11.00 - 23.15

Off-sales

	Current	Proposed
Monday	18.30 - 22.00	16.00 - 22.00
Tuesday	"	"
Wednesday	"	"
Thursday	"	"
Friday	16.30 - 22.00	"
Saturday	18.30 - 22.00	11.00 - 22.00
Sunday	"	"

3. 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 L.O.s or Board Policy are highlighted.

Variation 1 : <i>Increase on-sales hours</i>

Grant (no statutory reason to refuse, and no breach of Board policy)
--

Variation 2: <i>Increase off-sales hours</i>

Grant (no statutory reason to refuse, and no breach of Board policy)
--

Variation 3: <i>Extend non-alcohol activities</i>
--

Grant (no statutory reason to refuse, and no breach of Board policy)
--

Notes:

The request is to add: food and functions; children's parties; quiz nights; yoga and fitness classes; chess club; charity night; games night.

If the Board approves this variation, these activities will be noted in OP 5(f) ("any other activities").

Variation 4: <i>Grant exemption from '3 guest' rule for clubs</i>
--

Discretionary refusal

Notes:

All Licences held by Clubs are subject to Part I of the Board's Standard Conditions, including I.2:

"The Club shall have, and while the Premises Licence has effect, shall maintain, a written constitution making the following provisions: ...

(g) That a maximum of 3 visitors per member shall be permitted in the Club premises provided they are signed into the Club by that member into a book kept for that purpose by the Club.

Where the Board determines that either

(i) the primary object of the Club is participation in golf, football, bowling or another sport, or

(ii) that the special circumstances of the Club's operation merit a departure from the 'three visitors' requirement,

and that the supply of alcohol would be merely ancillary to the primary object or special circumstances,

the Board may, on the written Application of the Club, dispense with the limitation to three visitors, but it shall remain the case that all visitors must be signed-in by a Member in a book kept for the purpose. From time to time, on one or more occasions, the Board may reconsider the question of dispensation and may withdraw or vary it."

The Applicant invites the Board to dis-apply that Condition. The aim of that condition is to maintain the character of Clubs, by limiting their use to members and bona fide guests, so that they do not compete unfairly with commercial premises which:

- (a) have higher licence fees,
- (b) require a Premises Manager
- (c) are subject to overprovision, and
- (d) have a different status under the gambling legislation.

The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular L.O. (a): 'preventing crime and disorder'.

4. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	Zulfiqar Ali
Premises	Broomlands Supermarket, 35 Broomlands Gate, Irvine KA11 1HB
Ref.	367

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 10 January 2014:

1. *Until the Board has a Certificate of Display, it cannot determine the Application.*
2. *no details of comments from third parties are given here. The Board will be told at the Meeting if there are any, and letter(s) will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	<i>Increase Off-Sales Terminal Hour Mon - Sat from 8.00 to 9.00 p.m.</i>
2	<i>Increase Off-Sales Terminal Hour Sun from 3.00 to 6.00 p.m.</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 L.O.s or Board Policy are highlighted.

Variation 1: Increase Off-Sales Terminal Hour Mon - Sat from 8.00 to 9.00 p.m.

Grant (no statutory reason to refuse, and no breach of Board policy)

Variation 2: Increase Off-Sales Terminal Hour Sun from 3.00 to 6.00 p.m.

Grant (no statutory reason to refuse, and no breach of Board policy)

3. Licence Conditions

The Licence was granted subject to Edition 3 of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5.

Premises Licence Review Application - Section 36

Premises	Kiss Nightclub, 13 Bridgegate Square, Irvine, KA12 8BJ
Premises Licence Holder	Nicandro Arcaro
Ref.	436

1. Background

By letter of 16 December 2013 the Licensing Standards Officer made a Review Application under Section 36 informing the Board of certain circumstances relating to these Premises. Copies of the letter will be distributed to Members at the Meeting.

That day the Board received a letter from the PLH saying that:

- the Premises Manager was no longer on the Premises
- he had no intention of 'renewing' the Licence
- he had given notice to quit to the owners

2. Ground(s) for Review

The LSO stated that the Annual Fee due by the Premises remained unpaid, despite a reminder warning of Review Procedure and the later service of a Breach of Condition Notice under Section 14.

The 'Grounds for Review' are that the following Licence Condition has been breached:

"Any annual or other recurring fee must be paid if required by the regulations."

(NALB Standard Condition A.7, which repeats one of the Mandatory Conditions: 2005 Act, Schedule 3, Paragraph 10).

3. Additional Powers of inquiry

The Board is entitled by Section 38(5) to

- (a) obtain further information from such persons, and in such manner, as the Board thinks fit, and
- (b) consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Application or Proposal. If the Board proposes to do this, it should inform the Licence Holder of its intention and consider whether an adjournment is appropriate.

4. Board's Powers on Review

The Board must hear the Applicant and the Licence Holder, and decide whether or not a Ground for Review is established.

If so, the Board may take any one or more of the following steps if it considers necessary or appropriate for the purposes of any of the Licensing Objectives:

- (a) issue a Written Warning to the Licence Holder;
- (b) make a Variation of the Licence - either indefinitely or for a specific time. The Variation may relate to any part of the Licence, for example:
 - (i) the operating hours for the Premises (or any part);
 - (ii) the Premises Manager (if any) can be removed;
 - (iii) the activities which may be carried on on the Premises (or any part);
 - (iv) the terms for access by persons under 18 to the Premises (or any part);
 - (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions);
- (c) Suspend the Licence for a specific time; if the Board imposes a Suspension, then it should not have immediate effect unless this is considered necessary in the public interest; most Suspensions should be postponed to give the PLH the opportunity to appeal to the Sheriff Court. Any Board order takes effect immediately, and is not postponed by an appeal, but if appealing the PLH can ask the Sheriff to recall the Suspension pending appeal. The postponement is in the Board's discretion, but 7 days would be reasonable.
- (d) Revoke the Licence. Similar considerations apply to the question, whether or not the Revocation should have immediate effect.

The Board is not obliged to take any of these steps, and it may decide that although a Ground for Review is established, no action is required.

The Board may take these steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure.

5. Further Action

If the Board decides to Vary or Suspend the Licence, the Board is later entitled to revoke its order if the Holder requests this and the Board is satisfied that, by reason of a change of circumstances, the Variation or Suspension is no longer necessary. A decision to issue a Written Warning or to Revoke a Licence cannot later be revoked.

The Board may wish to delegate authority to the Clerk to make a later Revocation decision, where the Board is satisfied that the problem identified by the Board can be remedied and the remedy easily verified. Otherwise, the Application for Revocation would have to call at a Board Meeting.

Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject:	Licensing (Scotland) Act 2005 - Personal Licence Retraining
Purpose:	To update the Board and inform it of an issue that has arisen
Recommendation:	That the Board decide that only original documents are acceptable

1. Background

1.1. NALB has issued over 1,500 Personal Licences. Over 1,000 were issued either before, or within a year after, the new system commenced on 1 September 2009.

1.2. Section 87 obliges the licence holder:

- (a) to retrain every 5 years; and
- (b) to produce evidence to the Board of re-training within 3 months after that period.

Re-training may be offered by external organisations, e.g. AFS (Servewise) and some educational institutions.

1.3. If both those things are not done in time, the Board will have no choice but to revoke the Licence. There is no hearing and no appeal. The Board cannot allow more time.

If someone is late, for example:

- he misses the course due to illness
- the course is oversubscribed and he has to go on a later course
- he fails and needs a re-test

he will lose his Licence.

1.4. The potential consequence of failure are serious, particularly if the person who fails to obtain training is a Premises Manager. If a PM does not hold a Personal Licence, there is a breach of a Mandatory Condition, and the Premises (not just the Manager) cannot sell alcohol (2005 Act, Schedule 3, Paragraph 4(1)(b)).

1.5. The Board has recently issued letters to Premises Licence Holders alerting them to this situation, given that it may affect them or their staff, and given that a large number of people across Scotland will be trying to arrange training in a fairly short period (in the few months before 1 September educational institutions are likely to be closed for the summer recess).

1.6. The training requirement and the serious consequence of failure were summarised in NALB's Licensing Policy Statement 2013-16, adopted on 19 November 2013.

1.7. It is likely that Police Scotland will seek information from Boards after 1 December 2014 (5 years plus 3 months) to identify who has, or has not, obtained retraining, with special emphasis on Premises Managers who are then unlicensed.

2. The Current Position

2.1. A question has arisen as to the type of evidence that the Board should insist on.

2.2. For the purposes of the Civil Evidence (Scotland) Act 1988, the Board is a 'court' and its proceedings are 'civil proceedings'. Section 6(1) of that Act is:

"For the purposes of any Civil Proceedings, a copy of a document, purporting to be authenticated by a person responsible for the making of the copy, shall, unless the Court otherwise directs, be—

(a) deemed a true copy; and

(b) treated for evidential purposes as if it were the document itself."

2.3. This could mean that the person who himself is named in the Certificate could produce the copy, and the Board would have no choice but to accept it. There is the potential for fraud, e.g. a person could scan someone else's certificate onto computer, edit the name and other details, and pass the result off as a 'copy' which the Board would have to accept. The Police are not involved in this part of the licensing process and the Board would be unlikely to detect the forgery.

3. Recommendation:

The Board is asked to decide whether only original Certificates should be accepted, or whether copies may be accepted. The recommendation is that the Board should "otherwise direct" for the purposes of the 1988 Act, so that only original Certificates should be accepted.

For further information please contact William O'Brien, Solicitor (Licensing) on 01294-324345.