

Cunninghame House,
Irvine.

1 September 2016

North Ayrshire Licensing Board

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Cunninghame House, Irvine on **MONDAY 5 SEPTEMBER 2016** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Election of Convenor - Licensing (Scotland) Act 2005, Schedule 1, Paragraph 6(2)

Submit report to the Licensing Board to advise as to the resignation of the Board Convenor and to seek the appointment of a New Convenor (copy enclosed)

2. Minutes

Confirm the Minutes of the Board Meeting held on 7 July 2016 (copy enclosed)

3. 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)

4. Private Members Clubs

Submit report by Licensing Standards Officer regarding Private Members Clubs (copy enclosed)

5. Junior Football and Occasional Licences

Submit report to the Licensing Board in order to further consider and adopt a Policy in relation to alcohol licensing at Junior Football games (copy enclosed)

6. Scheme of Delegations for Premises Licence Review Applications

Submit report to the Licensing Board to add to the Scheme of Delegations for preliminary consideration of Premises Licence Review Applications (copy enclosed)

Licensing Board

Sederunt: Vacancy (Convenor)
Tom Marshall (Vice-Convenor)
Robert Barr
John Bruce
John Easdale
Grace McLean
Catherine McMillan
Ronnie McNicol
Alan Munro
Donald Reid

Chair:

Attending:

Apologies:

Meeting Ended:

Meeting Date: 5 September 2016

Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject	Election of Convenor
Purpose	To inform the Board of the legal procedure
Recommendation	That the Board elect a new Convenor

1. As the Board currently have no Convenor, they should not transact any business until they elect one. The Solicitor (Licensing) has the temporary role of advising Members on the statutory procedure.

2. The Licensing (Scotland) Act 2005, Schedule 1 provides for the establishment and conduct of Licensing Boards. This Schedule includes provisions on:

- (a) the election by the Council of a new Member to the Board (Paragraph 2),
- (b) the election by the Board of a Convenor (Paragraph 6).

3. At the Special Meeting of North Ayrshire Council on Tuesday 30 August 2016 the Council will be informed of changes in the Council's administration [Agenda Item 6]. This Report for the Board was prepared before that Special Meeting, but the proposals in the Report to Council [Paragraph 3.1] were that four things are to happen:

- (a) Councillor Ian Clarkson is to resign as Board Convenor;
- (b) Councillor Ian Clarkson is to resign from the Board itself;
- (c) Councillor Alan Munro is to be elected by the Council to the Board;
- (d) Councillor Alan Munro is to be elected by the Board as their Convenor.

Events (a) and (b) are expected to happen shortly before the Special Meeting. Event (c) is expected to happen during the Special Meeting, as Paragraph 2(4) will apply:

"Where there is a vacancy in the membership of a Licensing Board, the Relevant Council must, at their first meeting after the vacancy arises, hold an election to fill the vacancy."

4. Event (d) will be a matter for the Board on 5 September 2016. The usual procedure is that, at the First Statutory Meeting of the Council after a Local Election, the Council elect the Board under Paragraph 2(1), so that afterwards the Board must elect a Convenor.

Paragraph 6(1):

AGENDA ITEM 1

"6(1) A Licensing Board must, at their first meeting after each election of members of the Board held in accordance with paragraph 2(1), (2) or (3), elect one of their members as Convenor of the Board."

Paragraph 2(1) refers to the situation where the Council initially elects the whole Board. Paragraphs 2(2) and 2(3) have no relevance to NAC because they relate to situations where a Council decide to divide their area into separate Board Divisions.

5. The Solicitor (Licensing) will therefore ask Members
 - (a) if there are any Motions as to the identity of the new Convenor,
 - (b) to second those Motions.

What happens next depends on Members' responses:

- (i) If there is only one Motion, and there is no seconded counter-motion, the Motion will be held as carried [any dissent or abstention being recorded].
- (ii) If there are two or more seconded Motions, there should be a vote. As there will at that stage be no Convenor, the casting vote rule in Paragraph 6(6) will not apply.

Whichever of (i) or (ii) applies, the Convenor will be held to be duly elected and the rest of the Meeting will continue as normal.

**North Ayrshire Licensing Board
7 July 2016**

Irvine, 7 July 2016 - At a meeting of the North Ayrshire Licensing Board at 11.00 am in the Garnock Committee Room, Cunninghame House, Irvine.

Present

Ian Clarkson, John Bruce, Grace McLean, Catherine McMillan and Donald Reid.

In Attendance

W. O'Brien, Solicitor (Licensing), G. Cullen, Licensing Standards Officer, K. Sharkey, Solicitor (Contracts & Licensing), and M. Champion, Administration Assistant.

Convenor

Councillor Clarkson

Declarations of Interest

None.

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

The Board considered a report by the Clerk to the Licensing Board on matters under the Licensing (Scotland) Act 2005. The report, on this occasion, contained 1 Appendix;

A. Premises Licence application or any other application requiring a Hearing

The Licensing Board agreed to dispose of the matter as follows;

A.1 Premises Licence 0121 Stag & Hound, 13 Howgate, Kilwinning

This Application for variations of a Premises Licence made by the Licence Holder, Buzzworks Inns Limited had called on the Agenda for the scheduled Board Meeting on 13 June 2016. The Applicants were not then present or represented, and the Board had continued the case until their next Scheduled Meeting in September. The Applicants had contacted the Board shortly after, advising that the non-appearance was caused by human error and that they were hoping to re-open the Premises in August. The Convenor agreed that a Special Meeting, during the Council Recess, should be held.

On 7 July 2016 the Board resumed consideration of the Application. The Licence Holder was represented by Mr. Brian Dunlop, Solicitor, and he was accompanied by Mr. Colin Blair and Ms. Nicola Watt.

The Licence Holder was requesting the following variations:

1. New Layout Plan
2. Change Name of Premises to 'Cornerhouse'
3. Increase Capacity to 150
4. Amend Sunday on-sale operating hours
5. Extension during Festive Season
6. To allow restaurant facilities outwith Licensed Hours for breakfast & soft drinks
7. Amend terms of access for Children and Young Persons
8. Amend OP: allow Films inside & outside Licensed Hours
9. Amend OP: allow Outdoor Drinking Area to be used inside & outside Licensed Hours

10. Amend Description of Premises

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr. O'Brien updated the Board on progress made against the observations set out in the report.

Mr. Dunlop apologised for non-attendance at the previous meeting and thanked the Board for convening this Special Meeting. Mr. Blair also thanked the Board for convening this meeting.

Mr. Dunlop then addressed the Board. He explained that the proposal was to create 'Cornerhouse' within the town centre of Kilwinning. Mr. Dunlop provided another copy of the Layout Plan outlining the restaurant areas in red, and the bar area in green. The proposal was to create 4 dining areas. He stressed that this was not an attempt to create a "super pub". These Premises would be run similarly to the other Buzzworks' Premises in Ayrshire.

Referring to issues raised in the Report:

Variation 5, 'Extension during Festive Season'

The Report raised the issue of the competency of this request, and Mr. Dunlop confirmed he was prepared to delete it.

Variation 3, 'Increase Capacity from 110 to 150'

He advised that this request arose from the expansion of the building.

Mr. Dunlop referred to Overprovision contained in the Board's Policy Statement with regards to 'Locality' and 'Function Type'. He emphasised that the statute invites comparison between the Subject Premises and other Premises of 'the same or similar description'. In his view, there were no comparable Premises in Kilwinning. In his view the Report's description of 'Function Type' did not do justice to the Subject Premises. He referred to the Board's Overprovision Assessment and discussed the data for the Intermediate Zones in the near area. He said that the present proposal would only add 40 more on-sales customers, which he said was only a 2% increase.

He acknowledged that there was a presumption of refusal, but suggested that this had been overcome here, and that the Premises could be treated as an exception to Policy.

He suggested that the Subject Premises, as varied, would actually be a benefit to Kilwinning. With regard to the Licensing Objectives, Mr. Dunlop confirmed that all the Licensing Objectives would be complied with. In particular, in relation to the "Public Health" Licensing Objective, he said that the main problem in society was with alcohol purchased from off-sales. In his view, it was better to have a drink with a meal in the regulated environment of on-sales.

He confirmed these would be high quality Premises with staff being well-trained. The Premises would be operated in a similar way to his clients' other 9 Premises in Ayrshire. The development involved an investment of over £1,000,000 and would create 35 new jobs.

Variation 9, 'allow Outdoor Drinking Area to be used inside & outside Licensed Hours'

Mr. Dunlop noted that there were no residential objections. He advised that the area would be fully supervised by trained staff and that his client will comply with the Board's Conditions in relation to the outdoor drinking area. This area would also be used for breakfasts and he accepted the proposed variation of the condition set out in the Report, adding to Condition C.5.2 words:

"except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."

Members asked questions.

Councillor Bruce asked for the emergency exits to be pointed out and sought clarification of the capacity of the outdoor drinking area. Mr. Blair highlighted 3 emergency exits on the layout plan and confirmed that there would be 16 covers in the outdoor drinking area. Mr. Blair advised the Board that the courtyard was in an effort to keep people wishing to smoke away from the front door area. Councillor McLean noted that this was similar to their Premises in Largs.

Mr. Blair then advised the Board that the Premises as varied were based on one of their existing style Premises in Stewarton which has a restaurant and a traditional style pub.

Responding to questions from the Convenor and Councillor Bruce, Mr. Blair confirmed that customers would enter the courtyard from the pub area and would use the outdoor area/courtyard, primarily for smoking. He thought it was better to have smokers in an internal court-yard than standing in the street in front of the Premises. He clarified that this area would be professionally managed and alcohol served in a controlled environment. He showed the Board a photograph of the door leading from inside and described it as "a glazed screen".

Cllr. Bruce asked Mr. Blair "was the Outdoor Drinking Area a 'beer garden'?". Mr. Blair replied that people could have a smoke and a coffee there.

Mr. Blair explained that the Applicants wished to co-exist with neighbours and referred to circumstances within other areas where they had worked with neighbours to resolve issues. He gave the example that the Applicants had paid for a neighbour's triple-glazing in Ayr.

He said that the position here was as he had described it to the other Ayrshire Boards: if there were problems with the outdoor area, the Applicants would close it themselves.

Councillor Reid noted that the proposal for the courtyard would be preferable to having customers smoking in the street at the front of the Premises.

The Convenor enquired of Members if there was any Motion. Councillor Reid moved that, with the removal of Variation 5, the Application should be granted. Councillor McLean seconded the Motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

The Convenor highlighted that tea/coffee and soft drinks could be served in the outdoor drinking area, with breakfasts, from 10 a.m. and all Members of the Board confirmed that Standard Condition C.5.2 (which relates to Outdoor Drinking Areas) should be amended to read:

"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., except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."

The meeting ended at 11.25 am.

Agenda Item 3

5 September 2016

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 : WO'B/MC

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 No.	Applicant/Licence Holder	Premises	Comments
1.	0482	The Chefs Eye Limited Registered Office Simmers & Co Albany Chambers Albany Street Oban PA34 4AL	The Chefs Eye Limited 33-35 Nelson Street Largs KA30 8LN	Application for Grant of Provisional Premises Licence - Section 45
2.	0189	Iceland Foods Limited Second Avenue Deeside Industrial Park Deeside Flintshire CH5 2NW	Iceland Foods Limited 90/106 High Street Irvine KA12 0AX	Application for Variation of Premises Licence - Section 29
3.	0224	J D Wetherspoon (Scot) Limited Registered Office c/o Brunton Miller 22 Herbert Street Glasgow G20 6NB	The Paddle Steamer The Promenade Largs KA30 8BG	Application for Variation of Premises Licence - Section 29
4.	0310	Skelmorlie Golf Club Beithglass Road Skelmorlie PA17 5ES	Skelmorlie Golf Club Beithglass Road Skelmorlie PA17 5ES	Application for Variation of Premises Licence - Section 29
5.	0296	Irvine Park Bowling Club Woodlands Avenue Irvine KA12 0PZ	Irvine Park Bowling Club Woodlands Avenue Irvine KA12 0PZ	Application for Variation of Premises Licence - Section 29

Application for Grant of Provisional Premises Licence - Section 45

Applicant	The Chefs Eye Ltd.
Premises	33-35 Nelson Street, Largs KA30 8LN
Ref.	482

Preliminary

The Board are 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 they do, they must defer further consideration until the Report is produced.

1. Summary of Proposal

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

The proposal is for a Restaurant specialising in 'fusion' cuisine from around the world, in a residential area. The proposal for on-sales 11.00 - 24.00, 7 days a week.

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 construction or 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.

Note to Applicant: This will not prevent the Licensing Board from granting the Licence as applied for, but the current Planning Permission restricts the use of the Premises to 8.00 a.m. to 8.00 p.m.. The Licensing Board cannot vary the Planning Permission. Unless and until the Planning Permission is varied, the Premises would have to close at 8.00 p.m. even if the Licensing Board have granted a Licence for greater hours. The Applicant should contact NAC Planning.

2. Objections and Representations

Police	No objection
Community Council	No response
Fire	No objection
Health Board	No response
NAC Building Standards	No objection
NAC Planning	No objection [but PP condition]
Others	See below

Name	Address	Rec'd	Late/OK
Occupier	37 Nelson Street, G/L	4 Aug 2016	OK

3. Detailed proposal

(a) Licensed Hours

The Premises sell on-sales only. The proposal is shown in the table below. Either the proposal is within NALB Policy on licensed hours, and is shown 'OK', or the Policy is shown.

	<i>Proposal</i>	<i>Policy</i>
Monday	11.00 - 24.00	
Tuesday	7 days a	All OK
Wednesday	week	
Thursday		
Friday		
Saturday		
Sunday		

(b) Capacity

On-Sales (persons)	40 (all seated)
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(c) Activities other than the sale of alcohol

	<i>Proposed</i>
Accommodation	
Conference facilities	X *
Restaurant facilities	X *
Bar meals	
Receptions (weddings, funerals, birthdays, retirements, etc.)	X
Club or other group meetings	X
Recorded music	X *
Live performances	

Dance facilities	
Theatre	
Films	
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	
Adult entertainment	

* Details of activities outside core licensed hours
Facilities available before 11.00 a.m. for breakfast, tea and coffee

	Other activities
Proposed	Charity fundraising, e.g. raffles, 'bake-offs'

(d) Access for Under-18s

Terms (OP 6(b) & (c))	Must be with adult. Adult is only allowed one drink. Under-18s not allowed to drink at all.
Times (OP 6(d))	'Children' (under 16): until 21.00. 'Young Persons' (16-17): until 22.00
Parts (OP 6(e))	Only restaurant and toilets.

4. Procedure

The Board should hear from the Applicant and all parties making comments on the Application, in relation to the 'issues' set out below.

The Board should ask themselves two questions in relating to a third-party comment:

1. Should it be rejected as "frivolous or vexatious" ?
2. If the comment is not rejected, what weight should be put on it?

1. Should it be rejected as "frivolous or vexatious" ?

2005 Act, Section 22(4) is:

"A Licensing Board may reject a notice of Objection or Representation received by the Board under subsection (1) if the Board considers the Objection or Representation is frivolous or vexatious."

The Board may therefore disregard any third-party comment which:

- does not raise any of the statutory "grounds for refusal" (listed in Section 23(5)); and/or
- does not give the Applicant fair notice, by specifying the comment.

2. If the comment is not rejected, what **weight** should be put on it?

If the Board choose not to reject the comment, they should take it into account in deciding on the Application, but they are not obliged to follow the comment (for example, they do not have to refuse the Application).

They may

- treat the comment as having little weight, as against the other issues before the Board
- consider that there are other avenues open to the party, such as a complaint to another Authority
- consider that the concerns underlying the comment are already addressed by the Licence Conditions
- consider that extra Licence Conditions should be specially-written for this case

The representation from the occupier of 37 Nelson Street, G/L

This raises two issues:

- (a) Noise
- (b) Parking

(a) Noise

The party refers to soundproofing and the noise caused by the previous tenant. The Board are obliged to take account of two Licensing Objectives:

- (c): 'preventing public nuisance'
- (d): 'protecting & improving public health'

but may take the view that as there is no current objection from Building Standards it is not appropriate to pursue these.

If there is later a substantial noise problem, it will be open to the complainer

- to refer the matter to NAC Building Standards under the Environmental Protection Act 1990, Section 80
- to make a Review Application to the Board under 2005 Act, Section 36.

As the Premises are not currently operating it is premature to speculate that undue nuisance would be likely.

(b) Parking

The Board are not entitled to determine matters which are regulated by other legislation. 2005 Act, Section 27(7) is:

"A Licensing Board may not impose a condition under subsection (6) which— ...

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

Parking is a matter for the Police (under the Road Traffic legislation) and the NAC

Roads Dept. under the Roads (Scotland) Act 1984.
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5. Issues

The Board have 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.

Overprovision

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2018, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

However, the Board's Overprovision Policy distinguishes Premises by 'Function Types', so that the presumption of refusal is stronger or weaker depending on the 'Function Type' of the Premises. The Premises here are in 'Function Type 4' (On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment).

Accordingly, while the Board are entitled to refuse the Application due to Overprovision, they are not bound to do so, so the present Report omits the usual details about the Policy. If the Board consider that this is an issue which should be investigated, the case should be continued and the Clerk will prepare a supplementary Report.

6. Observations

The proposal to hold raffles may require other licences. If the raffle is entitled to be described as an 'Incidental Non-Commercial Lottery', no Permission is required, but the Applicant should ask the Board for advice about whether or not a 'Small Society Lottery' Registration is needed.

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)
- C (On-sale Premises)

Application for Variation of Premises Licence - Section 29

Applicant	Iceland Foods Limited
Premises	Iceland Foods, 90/106 High Street, Irvine, KA12 0AX
Ref.	0189

1. Summary of Variation Request(s)

No.	Variation
1	Allow Offsales on Sunday from 10.00 a.m.
2	Increase Offsales Terminal Hour to 21.00 (all 7 days)
3	Amend Seasonal Demand
4	Add home delivery

2. Objections and Representations

Police	No objection
Community Council	No response
Fire	No objection
Health Board	No response
NAC Building Standards	No objection
NAC Planning	No objection
Other Objections or Representations?	None

3. Changes

	Current	Proposed
Monday	10.00 – 20.00	10.00 – 21.00
Tuesday	10.00 – 20.00	10.00 – 21.00
Wednesday	10.00 – 20.00	10.00 – 21.00
Thursday	10.00 – 20.00	10.00 – 21.00
Friday	10.00 – 20.00	10.00 – 21.00
Saturday	10.00 – 20.00	10.00 – 21.00
Sunday	12.30 – 20.00	10.00 – 21.00

4. 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.

(i) Variation of terminal hours (Monday – Saturday)

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

(ii) Variation of Sunday terminal hours

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

1. Allow Offsales on Sunday from 10.00 a.m.

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

On Sunday the hours currently commence at 12.30. This arrangement coincides with the "Permitted Hours" under the 1976 Act. When the Premises applied for a Licence under the 2005 Act, the rules governing the Transition required Premises to keep their 1976 Act hours if they wished to retain so-called "grandfather rights". Many Premises which were affected by this have applied to vary their hours in the years following the commencement of the 2005 Act in 2009, and provided that the request was within NALB Policy (which the current request is) the variation was granted.

2. Increase Offsales Terminal Hour to 21.00 (all 7 days)

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

3. Amend Seasonal Demand

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

The Operating Plan requires Premises to state if the Applicant intends to operate according to seasonal demand. In the present case the Applicant states that the shop is normally open to 6.30 p.m. Monday-Saturday, and to 5.00 p.m. on Sunday, but may be open later on Christmas Eve. In any case, no alcohol will be sold outside Licensed Hours.

4. Add home delivery

Discretionary refusal

The Applicant's attention is drawn to LPS 2.23 ("Home Delivery"), and comments are invited. The Board have previously refused a home delivery service where the business was solely selling alcohol over the internet.

5. Licence Conditions

No variation of the Conditions is appropriate.

Application for Variation of Premises Licence - Section 29

Applicant	JD Wetherspoon (Scot) Limited
Premises	The Paddle Steamer, 1 The Promenade, Largs, KA30 8BG
Ref.	0224

1. Summary of Variation Request(s)

No.	Variation
1	<i>Amend Operating Plan to permit outdoor drinking where activities on the premises are to be provided outwith the core licensed hours.</i>
2	<i>Amend Standard Condition C.5.2 to permit consumption of non-alcoholic drinks in the outdoor drinking area out with the core licensed hours.</i>

2. Objections and Representations

Police	No objection
Community Council	No response
Fire	No objection
Health Board	No response
NAC Building Standards	No objection
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.

Variations 1 and 2
Discretionary Refusal
The Premises are already permitted to have 'outdoor drinking' (on the raised area facing the Promenade), but they are limited to the on-sales Licensed Hours starting at 11.00 a.m..
Standard Condition C.5.2 prohibits the consumption of all drinks (alcoholic or not) in the outdoor drinking area prior to 11.00 a.m. and after 10.00 p.m..
The purpose of both of Variations sought is to permit the use of that area <u>outwith</u> the core licensed hours for the consumption of non-alcoholic drinks and the service of food.

The Applicant is proposing that the Licence Condition be amended to read:

"No alcoholic drinks shall be taken into or consumed in such [outdoor drinking] areas earlier than 11.00 a.m. and later than 10.00 p.m.."

The Variations are sought to allow the use of the outdoor drinking area outside Licensed Hours for non-alcoholic drinks and food.

The Board should be satisfied that granting the Variations will not be inconsistent with any of the Licensing Objectives, in particular Objective (c) "preventing public nuisance". The area is monitored by CCTV and supervised by staff.

If the Board grant the Variations and are subsequently satisfied that use of the outdoor drinking area outwith the core licensed hours is inconsistent with any of the Licensing Objectives, they have the right to further vary the Licence conditions so as to prevent the proposed use of the area before 11.00 a.m..

4. Licence Conditions

If Variation 2 is granted Standard Condition C.5.2 should be replaced with:

"No alcoholic drinks shall be taken into or consumed in the outdoor drinking area facing the Promenade earlier than 11.00 a.m. or later than 10.00 p.m.."

Application for Variation of Premises Licence - Section 29

Applicant	Skelmorlie Golf Club
Premises	Skelmorlie Golf Club, Beithglass Road, Skelmorlie, PA17 5ES
Ref.	0310

1. Summary of Variation Request(s)

No.	Variation
1	<i>Permit live music performances</i>
2	<i>Increase terminal hour on Saturday from 23.00 to 24.00 hours</i>
3	<i>Dis-apply standard condition C.10.3 (d) & (e)</i>

2. Objections and Representations

Police	No objection
Community Council	No response
Fire	No objection
Health Board	No response
NAC Building Standards	No objection
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: Permit live music performances

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

Variation 2: Increase terminal hour on Saturday from 23.00 to 24.00 hours

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

Variation 3: Remove Conditions as to the playing of pool and darts in areas admitting Children under 16

Discretionary refusal

Notes:

The applicant is requesting this this restriction is varied to permit children to play

pool and snooker. The applicant has advised that children will not be permitted to play darts.

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

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.

4. Licence Conditions

If Variation 3 is granted Conditions C.10.3 (d) and (e) should be replaced by the above wording.

Application for Variation of Premises Licence - Section 29

Applicant	Irvine Park Bowling Club
Premises	Irvine Park Bowling Club, 2 Woodlands Avenue, Irvine, KA12 0PZ
Ref.	0296

Preliminary

This Report has been prepared provisionally before the Applicant has lodged the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

1. Summary of Variation Request(s)

No.	Variation
1	Surrender special status as a 'Section 125 Club'
2	Appoint new Premises' Manager

2. Objections and Representations

Police	No objection
Community Council	No response
Fire	No objection
Health Board	No response
NAC Building Standards	No objection
NAC Planning	No objection
Other Objections or Representations?	None

3. Issues

Variation 1: Surrender 'Special Status' as a 'Section 125 Club'
Discretionary refusal - Possible reason: The Variation may create Overprovision
Notes:
<u>(a) Summary</u>
Variation 2 follows from Variation 1: if Variation 1 is refused, Variation 2 will be unnecessary, but if Variation 1 is granted, Variation 2 is essential.
- The purpose of the present Variation is to surrender the Special Status while maintaining the character of the Club as a "Members' Club"
- The Club has agreed to special Licence Conditions which limit access by non-Members

- *The Board should not determine either Variation until satisfied that the proposed Premises Manager holds a Personal Licence.*

(b) The present position

The Club has the 'Special Status' given to Clubs by Section 125 of the Act. This means the Club

- has lower Licensing fees than commercial Premises
- does not require to have a Premises Manager
- does not require to have Baby-Changing Facilities, and
- the Club is not taken into account in any consideration of Overprovision.

A consequence of having the 'Special Status' is that the Club can have no more than 12 Occasional Licences per year (whereas ordinary Premises have no limit).

Since the Board are aware that that limit on the number of Occasional Licences caused some Clubs difficulty, the Board gave Clubs the option of choosing to surrender the 'Special Status'. The Club would no longer have to be concerned with getting Occasional Licences, as catering for functions would be dealt with as part of its Operating Plan.

(c) The Club's choice

The Club has agreed to adopt special Licence Conditions (known as 'Part K of the Board's Standard Conditions'). This means that the Club will not normally be open to the general public but limited public access is allowed:

Entry to the Premises, the use of facilities and the consumption of alcohol will be limited to Members and their bona fide and signed-in guests except where the Premises are used for a bona fide pre-booked function (such as a wedding reception or birthday party).

Non-Members attending those functions can:

- (a) enter the Premises,*
- (b) use the facilities of the part of the Premises where the function is taking place, and*
- (c) buy or consume alcohol in that part.*

(d) Consequences

The Club will have to:

- pay higher licensing fees: the Annual Fee will be higher, and based on

Rateable Value (as fees for commercial Premises are)

- have a Premises Manager (who must have a "Personal Licence")
- have Baby-Changing Facilities if the Premises allow under-5s
- be included by the Board in any consideration of Overprovision.

The proposed variation only affects the Club's status under the Alcohol Licensing legislation. Separate legislation for Gambling (the Gambling Act 2005) covers Gambling (e.g. poker) and the use of Gambling Machines. This legislation also distinguishes between Clubs and non-Clubs, and the Applicant Club will continue to be treated as a "Club" for Gambling purposes.

(e) Issues for the Board

The Board require to decide whether the proposed Variation is desirable, in that it introduces into the Locality an extra set of Licensed Premises which are subject to any Overprovision Assessment.

There is a presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement. If the Board are minded to refuse for this reason, they should continue consideration of the Application to a later Meeting, when a detailed statement of the Board's policy, with information as to the population and capacity of other Premises in the Locality, will be prepared.

(f) Children

The Premises permit children of all ages. The Board will also require to be satisfied that the Club provides Baby Changing Facilities accessible by persons of either gender. At present, as a 'Special Status Club', the Premises do not need to fulfil the relevant mandatory condition, but if the variation is granted, they would.

Variation 2: Appoint a Premises Manager

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

Notes: This variation is needed if the Premises cease to be treated as a 'Section 125 Club'.

The PM is to be Warren Brown, who has Personal Licence NA/2087 issued on 3rd March 2016.

5. Licence Conditions

If Variation 1 is granted Part K of the Board's Standard Conditions should be applied to the Licence.

Report to North Ayrshire Licensing Board

From

Grace Cullen, Licensing Standards Officer

5th September, 2016

Subject:	Private Members Clubs
Purpose:	To advise the Board of how these Clubs operate
Recommendation:	That the Board have regard to the information provided in reaching its decision

Introduction:

Under the 1976 Licensing Act, Clubs were registered with the Sheriff Court. Under The Licensing Scotland Act 2005, Clubs are licensed under the Local Authority.

There are 68 Clubs within North Ayrshire. 51 section 125 Clubs with Part I conditions and 17 Clubs with Part K conditions.

Clubs with Part I Conditions:

The use of these Clubs are for members and their guests who are accompanied by that member. A member of another (125) Club can also be permitted entry.

When an Occasional Licence has effect then persons other than members etc can enter and use the facilities. The Club can have 12 occasional licences within a year.

These types of Clubs can apply for occasional licences to hire out their facilities for events like birthday parties, weddings, funerals, anniversaries etc and can also apply to have fun days, open days, charity events organised by the Club when everyone is welcome.

Clubs with Part K Conditions:

For Clubs with Part I conditions who were struggling with the limitations of 12 occasional licences a year, the Board agreed that they could have as many pre booked functions as they wished without the need to apply for an occasional licence. This meant that they had to surrender their special status under section 125.

AGENDA ITEM 4

Instead, new conditions were applied under Part K:

A.2 requirement to have a Premises Manager

A.3 requirement that sales of alcohol should be authorised by the Premises Manager or another person who holds a Personal Licence

C.3 requirement that the Premises should have Baby Changing facilities accessible to both genders if children under the age of 5 are to be admitted to the Premises

The Premises Licence Holder acknowledges that it is no longer entitled to the Special treatment allowed to such "Section 125" Clubs (for example, lower fees, exemption from the requirement to have a Premises Manager, the ability to apply for Occasional Licences for the Premises).

The Premises Licence Holder will continue to operate as a Club, subject to a Constitution or Management Rules, and will observe the Conditions in Part K of the Board's Standards Conditions. Entry to the Premises, the use of the facilities and the consumption of alcohol will be limited to Members except:

Where the Premises are used for a bona fide pre-booked function such as a wedding reception or birthday party, when persons other than Members can:

- (a) Enter the premises
- (b) Use the facilities of the part of the premises where the function is taking place, and
- (c) Buy or consume alcohol in that part

In other words, unless a club has an occasional licence in place or has a bona fide pre-booked function, the ONLY persons permitted entry are:

- (a) **Members**
- (b) **Guests of members accompanied by that member**
- (c) **Members of another "125 Club"**

Current Position:

The situation in North Ayrshire is that several Clubs are in fact having events on their premises either without applying for an occasional licence where appropriate or in the case of Part K Clubs, having events which are outwith the scope of their licence.

These events are: open days, fetes, charity events, fun days and similar types of events open to everyone.

These events are not permitted under their licence as they are not members/guests only events and are not a bona fide pre-booked function.

Conclusion:

The Board should decide whether or not these types of events are permitted under the existing Part K licence.

Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject	Junior Football and Alcohol Licensing
Purpose	To give Members background information
Recommendation	That Members consider the situation and adopt a Policy

CONTINUED FROM 18/04/2016

Background

1. This is an issue which has been discussed by the Board and was raised by the Local Licensing Forum at their Joint Meeting with the Board on 11 January 2016. Following that meeting the Clerk contacted:

Scottish Junior Football Association (West Region)
All NA clubs
Police
Health Board

The Forum may also wish to contribute to the formulation of Policy.

Because the issue is of wider interest, the Clerks of East Ayrshire Licensing Board and South Ayrshire Licensing Board were told of the process, although no decision of NALB could affect those Boards and it would be for them to decide how they deal with the situation.

2. The Board are often asked to grant temporary 'Occasional Licences' ('OLs') for Football Clubs. If the Clubs sell alcohol without an OL they may be prosecuted for illegally trafficking in alcohol.

3. Most OLs for football are requested by or on behalf of Football Clubs. These are 'voluntary organisations', which means that they are limited by Law to the number and duration of OLs they can have (see Licensing (Scotland) Act 2005, Section 56(6)): put shortly, there is a limit of 12 OLs in a calendar year. These limits are created by the Law, and are not something the Board can change.

4. In the particular case of Junior Football there is a problem, because the arrangement of the fixture list sometimes prevents the Board from following the procedures laid down by Law. The results of one weekend's games may determine the fixtures for next weekend. This shortness of time causes problems.

5. When a person applies for an OL, the Board have to do three things:
- (a) Advise the Police
 - (b) Advise the LSO
 - (c) Advertise the application on the public website, so that third parties (e.g. neighbours) might object.

The usual period for advertisement is set by Law at 7 days. However, the Board are allowed to shorten the periods to a minimum of 24 hours if satisfied that the application requires to be dealt with quickly. The NALB Convenor has delegated authority to decide if an Application needs the "quick" treatment, and to determine the Application himself (i.e. without a Hearing), although if there are adverse reports (e.g. from the Police or objections from a neighbour the Applicant must be told and allowed 72 hours to make written or email comments within 72 hours.

6. Because of the usual 7 day rule, NALB has a practice commonly known as "three strikes and you're out", which means that we insist on at least 14 days' notice of an OL Application, but we ask for 28 days. If someone applies after 28 days, but before 14 days, we will treat him as 'late'. This means that if the same Applicant has been late twice or more in the past two years, the Application will be rejected. The Clerk is authorised to waive this rule in "exceptional circumstances", but since the issues with football might arise frequently, it would be better that the Board give a general instruction as to how short-notice football OLs should be dealt with, rather than repeatedly using an exceptional power.

7. Possible issues for consideration

- (a) Should the duration of the OL be limited, e.g. to an hour before and an hour after the match?

Although the 'overprovision' policy cannot apply to OLs, the Licensing Objectives do:

- (a) preventing crime and disorder,*
- (b) securing public safety,*
- (c) preventing public nuisance,*
- (d) protecting and improving public health, and*
- (e) protecting children from harm. ('children' under 16)*

- (b) Should the sale of alcohol be prohibited during the match?

The Police might have views about the Licensing Objectives, e.g. "preventing crime and disorder". The reason the Licence is asked for might be sale to 'spectators', so is it necessary to allow sale during the match?

- (c) Should children be allowed in the bar area?

8. Possible way of proceeding

The Board might approve the following approach: if the OL application states that the reason for it is to cater for a football match, staff can proceed on the basis that:

- (a) the Application requires the 'quick' procedure
- (b) the Notice Period has been reduced from the usual 7 days to 48 hours.

This means that to obtain an OL for next Saturday, this is the likely sequence of events:

Monday: the Applicant lodges the OL Application.

Tuesday: the Board must advertise and give notice to the Police and LSO.

Thursday: the 48 hour period expires. What happens next depends on whether or not there are any adverse issues (e.g. there is no Police objection):

(a) if there are no adverse issues, the OL is granted under Delegated Powers..

(b) if there are adverse issues (e.g. an objection), the Board's staff contact the Applicant by email or telephone to inform him and seek his comments. The case is referred to the Convenor for a decision.

Friday: if the OL was granted, it is issued, and the Police are told.

Meeting Date: 5 September 2016

Report to North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject	Preliminary consideration of Premises Licence Review Applications
Purpose	To inform the Board of the legal procedure
Recommendation	That the Board add to the Scheme of Delegations

1. Section 36 of the Licensing (Scotland) Act 2005 provides for "Premises Licence Review Applications". These Applications are the main way in which the Board can consider a complaint about Licensed Premises. Any person may make one. They are often made by the Police or other statutory bodies, but sometimes they are made by members of the public, e.g. neighbours complaining of nuisance.

2. A Review Application usually leads to a public Hearing, to which the Licence Holder and the complainer are invited. If the Board upholds the Review Application, the Board may Revoke, Suspend or Vary the Premises Licence, issue a Written Warning to the Licence Holder, or take no action.

3. Although a Review Application usually leads to a public Hearing, it does not have to, because Section 36(6) is:

"The Licensing Board may reject a Premises Licence Review Application if the Board considers the Application—

(a) is vexatious or frivolous, or

(b) does not disclose any matter relevant to any Ground for Review. "

4. Accordingly, when a Hearing takes place, the Board considers a preliminary question, and only if that question is decided in favour of the complainer does the Board go on to consider the substance of the complaint. The Board have occasionally in the past rejected Applications as "vexatious or frivolous", but not often.

5. The way that the Board deals with Review Application involves a risk that Licence Holders will be exposed publicly to complaints which have no prospect of success. If a Meeting takes place:

- it must be in public (2005 Act, Schedule 1, Paragraph 12(2)), and

- cannot be delegated (Paragraph 10(2)(g))

but the preliminary question (whether or not the Application should be rejected) does not need a public hearing and can be delegated.

AGENDA ITEM 6

6. Therefore the Board are entitled to extend the existing Scheme of Delegations by adding at the appropriate place:

"Where a Premises Licence Review Application is made by a person who is not

- the Chief Constable*
- the Licensing Standards Officer*
- another Council officer, or*
- an officer of any statutory body,*

the Convenor, failing whom the Vice-Convenor, failing whom any Member of the Board may, after discussion with the Clerk or any Solicitor with delegated functions including Licensing, decide that a Premises Licence Review Application should be rejected under Section 36(6) of the Licensing (Scotland) Act 2005."

7. Even where the Convenor etc. has decided not to reject a Review Application, so that a Hearing would happen in the normal way, it would still be open to the Licence Holder to invite the Board to reject the Review Application under Section 36(6).