

Cunninghame House,
Irvine.

23 May 2013

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 **THURSDAY 30 MAY 2013** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. 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)

Licensing Board

Sederunt: Ronnie McNicol (Chair)
 Tom Marshall (Vice-Chair)
 Robert Barr
 John Bruce
 Ian Clarkson
 Ruth Maguire
 Alex McLean
 Alan Munro
 Donald Reid
 Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Agenda Item 1

30 May 2013

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 Strathclyde Police 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 No.	Applicant/Licence Holder	Premises	Comments
1.	0444	Jing Luo 1F, 40 Eglinton Street Beith KA15 1AQ	China Palace 132 Main Street Kilwinning KA13 6AA	Application for Grant of Premises Licence - Section 20. Continued from 22/05/2013.
2.	0388	Ronald McConnachie 48 Ardrossan Road Seamill West Kilbride KA23 9LT	Jack's Corner 2-4 Young Street Ardrossan KA22 8JZ	Application for Variation of Premises Licence - Section 29.
3.	0441	SHYA (Trading) Limited 7 Glebe Crescent Stirling FK8 2JA	Lochranza Youth Hostel Isle of Arran KA27 8HL	Application for Grant of Premises Licence - Section 20.

Application for Grant of Premises Licence - Section 20

Applicant	Ms. Jing Luo
Premises	"China Palace", 132 Main St., Kilwinning KA13 6AA
Ref.	444

CONTINUED FROM 22/05/2013

Preliminary

The Applicant should lodge the following Certificates. Until the Board has all these documents, it cannot determine the Application:

- 1. Display of Site Notice*
- 2. Building Control*
- 3. Food Hygiene*

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 10 May 2013.

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 Proposal

The Applicant has applied for the Grant of a Premises Licence.

The proposal is to operate a Chinese Restaurant on the first floor of a building in Kilwinning Main St.. The Premises were previously licensed as the "Orchid Garden", but that Licence was surrendered on 10 March 2012.

The Board decision on the Licence relates only to licensing legislation, and does not act as permission or certification under other legislation, such as Planning or Building Control.

2. Objections and Representations

Police	No objection
Community Council	No response yet
Fire	No objection
Health Board	No response yet
NAC Building Standards	No response yet
NAC Planning	No objection
Others	None

3. Detailed proposal**(a) Licensed Hours**

The request is for 11.00 - 23.00, 7 days a week. This is within NALB Policy.

(b) Capacity

On-Sales (persons)	57
Standing / Seated	15 / 42

(c) Activities other than the sale of alcohol

Accommodation	
Conference facilities	
Restaurant facilities	X
Bar meals	X
Receptions (including 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	
Other activities	
None	

(d) Access for Under-18s

Terms (OP 6(b))	Must be with adult.
Times (OP 6(d))	for all Core Hours
Parts (OP 6(e))	All parts of Premises but 'Not at bar front'.

4. Issues

The Board has a discretion to grant or refuse the Application.

It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

5. Observations

(a) The restaurant is on the first floor of a building which has a flat roof. To clarify, the Licence requested does not include Outdoor Drinking and only the inside of the building is to be licensed.

(b) 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 facilities in the female toilets only.

Applicant should:

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

(c) Applicant should confirm that 'not at bar front' means 'not within 1 metre of the bar', and that the OP can be amended accordingly.

6. 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	Ronald McConnachie
Premises	"Jack's Corner", 2-4 Young St., Ardrossan KA22 8JZ
Ref.	388

Preliminary

This Report has been prepared provisionally. The Applicant's original variation request included an Outdoor Drinking Area as well as three alterations of licensed hours. The Applicant has withdrawn the ODA request, and has displayed a Site Notice referring only to the hours changes.

1. *Until the Board has a Certificate of Display, it cannot determine the Application.*

1. Summary of Variation Request(s)

No.	Variation
1	<i>Vary Sunday on-sales opening from 12.30 p.m. to 11.00 a.m.</i>
2	<i>Vary Sunday off-sales opening from 12.30 p.m. to 11.00 a.m.</i>
3	<i>Vary Monday on-sales closing from 24.00 p.m. to 1.00 a.m.</i>

2. Objections and Representations

Police	No objection
Community Council	Disbanded
Fire	No objection
Health Board	Letter will be handed to Members
Building Standards	No objection
Other Objections or Representations?	See below

Name	Address	Date Received	Late or OK
J Telfer	12 Caledonia Road	1 May	OK
Thomas Low	1A Caledonia Road	3 May	OK
Mrs J Milligan	3 Caledonia Road	7 May	OK
David Atkins	5 Caledonia Road	7 May	OK
Wilma McCallum	1B Caledonia Road	8 May	OK
Charles & Brenda Iley	7 Caledonia Road	9 May	OK
E O'Neill	10 Caledonia Road	16 May	OK

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: Vary Sunday on-sales opening from 12.30 p.m. to 11.00 a.m.
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Grant (no statutory reason to refuse, and no breach of Board policy)
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Notes:

<p>The Premises already open at 11.00 a.m. 6 days (Mon - Sat). The Premises have 12.30 p.m. on Sunday because it was a requirement of the 'Grandfather Rights' legislation at Transition that Premises applied for the same hours as they already had under the 1976 Act. The 'Permitted Hours' under the 1976 Act included 12.30 p.m. opening on Sunday. There are no 'Permitted Hours' under the 2005 Act and it is a matter of policy for the individual Board.</p>
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NALB policy allows 11.00 a.m. opening, 7 days a week.

<p>However, the Board may wish to review that policy, since it might be said that the Application is not consistent with Licensing Objective (d) ("protecting & improving public health"). The L.O. expressly states 'improving'. Opinions may differ as to whether an increase in the ability to sell and consume alcohol damages public health, or makes no difference, but it is unlikely to improve it.</p>

Variation 2: Vary Sunday off-sales opening from 12.30 p.m. to 11.00 a.m.

Grant (no statutory reason to refuse, and no breach of Board policy)
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Notes: see Variation 1, as similar comments apply here
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Variation 3: Vary Monday on-sales closing from 24.00 p.m. to 1.00 a.m.

Discretionary refusal

Notes:

<p>This is against NALB policy on on-sales hours, and the Board may consider that the Application is not consistent with the following Licensing Objectives:</p>
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<u>L.O. (a): 'preventing crime and disorder'</u>
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<p>The Policy was adopted many years ago and takes into account representations from the Police. It operates throughout North Ayrshire. In general, only nightclubs open after midnight (Sun-Wed) or 1.00 a.m. (Thur-Fri). The Subject Premises are a public house in a residential area. If the Board was to depart from its Policy here, it might receive similar requests from all over NA.</p>
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L.O. (c): 'preventing public nuisance'

The Applicant could get an extra hour by applying for an Occasional Extension ("Extended Hours") as and when he needs it: these decisions are normally delegated, and there is no scope for neighbour objection, but he is here asking for a permanent extension. The neighbours objected to the ODA proposal, and some complained about the general nuisance caused by the Premises.

L.O. (d): 'protecting & improving public health'

The L.O. expressly states 'improving'. Opinions may differ as to whether an increase in the ability to sell and consume alcohol damages public health, or makes no difference, but it is unlikely to improve it.

4. Licence Conditions

No variation of the Conditions is appropriate.

Application for Grant of Premises Licence - Section 20

Applicant	S.Y.H.A. (Trading) Ltd.
Premises	Lochranza Youth Hostel, Isle of Arran, KA27 8HL
Ref.	441

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 19 April 2013.

Since the period has not expired, only the objections received to date are noted here. The Board will be told at the Meeting if there are any others, and all letters will be handed to Members.

Several objectors refer to lack of notice. All statutory notification procedures were carried out. In addition to display of a notice on NAC's public website and intimation to the Community Council, the regulations require notification to neighbours within 4 metres. There are two such neighbours (the Post Office and the Community Hall, both delivered on 29 March).

1. Summary of Proposal

The Applicant has applied for the Grant of a Premises Licence.

According to the Application Form, the proposal is to cater for both travellers and tourists, so it appears that the sale of alcohol is not limited to residents of the Youth Hostel.

The Layout Plan does not show a servery and states "No bar, alcohol kept in Managers Office".

2. Objections and Representations

Police	No objection
Community Council	No objection (although there is a response from Steph Hill, a Member)
Fire	No response yet
Health Board	No objection
NAC Building Standards	No objection
NAC Planning	No objection
Other Objections or Representations	See below

See Notes following the table, referenced [1] etc..

	Name	Address	Date Received	Late or OK
1	Mrs. Abigail Kerr [1]	'Knochanvioch', Lochranza	17/04/13	OK
2	Tony Baboolal	Chairman of Lochranza and Catacol Village Hall	17/04/13	OK
3	Kate Hartley	Vice-chair of Lochranza and Catacol Village Hall	17/04/13	OK
4	Ian Buchanan	'Creag Ghreanach', Lochranza	17/04/13	OK
5	Anita Ford	'Homelea', Lochranza	17/04/13	OK
6	Jenny Warren OBE	'Ladeside', Lochranza	17/04/13	OK
7	Nigel Wells, Kathryn Mawson	Lochranza Caravan & Campsite	17/04/13	OK
8	Mr. C.D. & Mrs. C.A. Siddle	'Fyneview', Lochranza	17/04/13	OK
9	Steph Hill	Community Councillor	17/04/13	OK
10	Mr. A. Mitchell	'Hillside', Lochranza	17/04/13	OK
11	Chris Traill	Lochranza & Catacol Community Association	17/04/13	OK
12	Wren Gentleman [3]	Congregational Treasurer, Lochranza & Pirnmill Church of Scotland	18/04/13	OK
13	Lorna Hallyburton	'Ar-Fearann', Lochranza	18/04/13	OK
14	Mrs. Marion Gentleman	'Larkspur', Lochranza	18/04/13	OK
15	G.M. Stewart	Lochranza Hotel	19/4/13	OK
16	Margaret McGivern	'Rainbow's End', Lochranza	19/4/13	OK
17	Andy Wilkinson	Kincardine Lodge, Lochranza	22/4/13	Late [2]
18	Jean Wilkinson	Kincardine Lodge, Lochranza	22/4/13	Late [2]
19	Mr. D.P. Treble	"St. Leonard's", Lochranza	22/4/13	Late [2]
20	Wren Gentleman [3]		22/4/13	Late [2]
21	Robert Cumming [4]	'Kiloran', Lochranza	15.4/13	OK
22	Secretary	Arran Community Council	23/4/13	Late [5]

Notes

1. This letter enquires why the writer did not receive notice of the application. Apart from saying that is an objection, this letter makes no comment on the proposal itself. The Board is entitled to reject it as "frivolous or vexatious" (Section 22(3),(4)).

2. These objections were sent by email at or after 5 pm on Friday 19 April, so were not received by the Board until it re-opened after the weekend.

3. Mr. Gentleman sent the Board an objection which was received on 18 April. He also sent the Arran Banner newspaper an email, copied to the Board, which was received on 22 April.

4. Mr. Cumming sent an email but not a signed letter.

5. Arran C.C. state they replied on 10 April.

3. Detailed proposal**(a) Licensed Hours****On-Sales**

	<i>Proposal</i>	<i>Policy</i>
Monday	11.00 - 24.00	
Tuesday	"	
Wednesday	"	OK on all 7 days
Thursday	"	
Friday	11.00 - 1.00	
Saturday	"	
Sunday	11.00 - 24.00	

Off-sales

	<i>Proposal</i>	<i>Policy</i>
Monday	10.00 - 22.00	
Tuesday	"	
Wednesday	"	OK on all 7 days
Thursday	"	
Friday	"	
Saturday	"	
Sunday	"	

(b) Activities other than the sale of alcohol

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

Other activities	
DJs; karaoke; magicians; face painters; yoga/keep fit classes; auctions; themed events; quiz nights; bands; disco nights; cabaret; charity and/or fundraising events; fashion shows/exhibitions; displays and exhibitions; staff training; meeting/training/study rooms; internet and WI-FI; SYHA meetings both national and international	

(c) Access for Under-18s

Terms (OP 6(b))	No requirement that person is either resident or taking a meal on the Premises. Under-16s must be with adult, 16-17 may be unaccompanied.
Times (OP 6(d))	Children of all ages allowed 24 hours a day, 7 days a week.
Parts (OP 6(e))	All parts of Premises

(d) Capacity

On-Sales (persons)	55
Off-Sales (sq. mtr.s)	Not stated. Applicant should confirm whether or not Premises have a servery. If there are no areas for the display of alcohol for off-sale, the requirement to give measurements does not apply (The Premises Licence (Scotland) Regulations 2007 No. 452, Reg. 5(5)).

4. Issues

The Board has a discretion to grant or refuse the Application.

However, the Board is obliged to grant the Application if the Applicant accepts a suitable modification to the Operating Plan or Layout Plan (or both), where that modification deals with any potential grounds for refusal: Section 23(7).

Applicant should advise Board

(1) Extent of Licence

i.e. whether or not sale and consumption will be limited to residents or will be open to the public at large.

If the former, possible wording for the Licence would be:

"Alcohol whether for on-sale or off-sale consumption may only be purchased by a resident (meaning 'having sleeping accommodation on the Premises booked for the same day');

Alcohol sold for on-sale consumption may only be consumed by residents, and only in

(a) Common Rooms 1 and 2, and the Dining Room and Annexe;

(b) the hatched area shown on the 1:100 scale Layout Plan denoted "outside licensed area";

(c) Sleeping accommodation;

at these times (in those areas respectively):

(a) Within those rooms: only within Core Hours;

(b) In the "outside licensed area": only in the period 11.00 until 22.00.;

(c) In sleeping accommodation: 24 hours a day, 7 days a week."

(2) Outdoor Drinking

The plans submitted by the Applicant are not consistent:

(a) The 1:100 Layout Plan shows a hatched area ('outdoors licensed area') immediately outside the north-facing entrance;

(b) The 1:1250 Location Plan shows a different and larger area, to the south of the building.

Area (a) is about 30m. from the Post Office/Village Hall. Area (b) is about 100m. from the nearest house.

Applicant should confirm which is meant, and if (b) provide a 1:100 Plan showing the exact area.

In all Applications, whether or not there are third-party objections, the Board must consider whether or not the Application is inconsistent with any of the Licensing Objectives.

In addition, the Board must consider two other potential grounds of refusal:

(a) unsuitable premises, and

(b) overprovision,

and decide whether or not these apply.

The Board should consider all the potential Grounds of Refusal set out below. If any apply, the Board must refuse. If none apply, the Board must grant: Section 23(4)-(5).

The Application appears to raise the following potential Grounds of Refusal:

1 - L.O. (a): 'preventing crime and disorder'

The Board may consider that the absence of adult supervision of under-18s increases the risk of under-age drinking. The Board may wish to be satisfied that the arrangements for the supply of alcohol make this risk negligible.

2. - L.O. (c): 'preventing public nuisance'

The Board is entitled to ask the Applicant to vary the proposal, e.g. to alter the times or locations of activities which might lead to noise or other nuisance.

The Board's Standard Conditions include:

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

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

If the Board wishes to prohibit all use of the Area (e.g. even for smoking), it may choose to attach Condition X.4.

3 - L.O. (d): 'protecting & improving public health'

The L.O. expressly states 'improving'. An increase in the ability to sell and/or consume alcohol cannot be said to improve public health. Opinions may differ as to whether it damages public health, or makes no difference, but it is unlikely to improve it.

4 - Overprovision may result if the Application is granted

The position depends upon the general nature of the Premises, as this determines which 'Function Type' the Premises are in (the NALB Licensing Policy Statement treats Premises differently):

FT 3 - (similar to public houses); or

FT 4 - (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment.

Having regard to the description of the Premises, it appears that they are in FT 3. It would be for the Board to decide, having heard from the Applicant and having considered the Application, which FT applies.

That decision determines which Board overprovision policy applies:

FT 3 - there is a presumption of refusal due to:

(a) Scottish Government guidance, and

(b) the Board's own Licensing Policy Statement.

(Board's Licensing Policy Statement 2010, Annex E, especially Paragraph 2.1).

It is for the Applicant to persuade the Board that Overprovision would not result if the Application was granted.

FT 4 - if the principal activity of the Premises is the provision of accommodation etc.,

the presumption of refusal which would otherwise apply to new or varied Premises does not apply (Paragraph 2.4(b)).

5. Observations

1. Seasonal Variations

OP4 indicates intentions. Functions or social events at particular times of the year (e.g. Christmas/New Year period) are not covered by the Premises Licence now being applied for, but will require later application for Extended Hours.

2. OP5 - 'Theatre' and 'Films'

What is intended? (Applicant may require Licences under the Theatres Act 1968 and Cinema Act 1985).

3. OP 5(f) Auctions

Are these to sell alcohol?

4. OP 6(b) Under-18 access

There is no requirement that the under-18 is either resident or taking a meal on the Premises. Board might consider a requirement that they be resident (meaning 'having sleeping accommodation on the Premises booked for the same day').

5. Baby-Changing Facilities

Since the Premises are to admit children under 5, the Mandatory Condition requiring BCF accessible by both genders applies (Sch. 3, Para. 12, SC C.3). Applicant should advise where these facilities would be. Unless the premises are restricted to residents, the presence of BCF in accommodation is not sufficient.

6. Licence Conditions

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

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

Board should also consider:

1. whether additional Conditions should be applied, e.g. X.4 (No use at all of Outdoor Drinking Area);
2. whether it is necessary to attach an additional specially-worded condition to the Licence.