

**North Ayrshire Licensing Board
23 June 2014**

Irvine, 23 June 2014 - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

Present

Ronnie McNicol, Tom Marshall, Robert Barr, John Bruce, Ian Clarkson, Catherine McMillan, Alan Munro and Robert Steel.

In Attendance

W O'Brien, Solicitor (Licensing), K Sharkey, Trainee Solicitor, G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer, G Kellas, Senior Clerical Assistant.

Also In Attendance

Convenor

Councillor McNicol.

Apologies for Absence

Donald Reid

1. Minutes

The Board were asked to confirm the Minutes of the Board meeting held on 28 April 2014. The Convenor proposed that the matter be continued to the next scheduled Board meeting on 29 September 2014. Councillor Barr seconded the motion and the Board unanimously agreed to continue the matter to the Board meeting on 29 September 2014.

2. 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 applications or any other applications requiring a Hearing.

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

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

A.1 The Auld Brig, Rivergate Shopping Centre, Irvine

The Board resumed consideration of an application for grant of a Provisional Premises Licence made by J D Wetherspoon (Scot) Ltd for the above premises. The Applicant was represented by Archie McIver, Solicitor, and he was accompanied by Marie Pollock of J D Wetherspoon (Scot) Ltd and Sean McLaughlan, proposed Premises Manager.

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 McIver addressed the Board regarding the application, and in particular the proposed outdoor drinking area. Plans were passed to the Board Members detailing the proposed extent of the outdoor area, including the dimensions of the barrier that the Applicant intends

to erect. Mr McIver explained that Wetherspoons have 50 premises throughout Scotland and the majority operate outdoor drinking areas of the same format as is proposed with this application. In addition to the usual supervision and management procedures, the outdoor area will be stewarded on a Friday and Saturday night.

In response to questions from the Convenor, Mr McIver confirmed that there had been no notable changes to the proposals since the application was initially made in 2012. The outdoor area would be used for meals, smoking would happen at one of the sides of the outdoor area, and the barrier will be a permanent fixture.

Noting that the height of the proposed barrier was significantly less, Councillor Clarkson asked Mr McIver why he had not yet agreed to a barrier of 5ft, which is what the Board advised in correspondence in April 2014.

Mr McIver argued that it was a question of being reasonable. A 5ft barrier would be unattractive and would also be twice the height of any barrier used by Wetherspoons elsewhere in the country.

Councillor Clarkson stressed that this was a unique location and it was not desirable for passers-by to have to witness patrons consuming alcohol within the outdoor area.

The Convenor confirmed that the Board do require the erection of a 1.5 m, permanent barrier in this case.

Councillor Marshall commented that in his opinion a barrier of 1.1 m would be reasonable. Having travelled all over Europe he had never witnessed a barrier of over 1.1 m, so why should Irvine be any different?

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 10.24 am to deliberate in private and re-convened at 10.48 am.

Having considered the terms of the report, and the submissions made, the Convenor moved that the Board decide to continue consideration of the application to a special meeting, to be arranged prior to 15 July 2014. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the application to the special meeting, to be arranged prior to 15 July 2014.

A.2 Premises Licence 0327 The Carrick, 112-114 High Street, Irvine

The Board considered an application for a variation of a Premises Licence made by Greene King Brewing & Retailing Ltd for the above premises. The Licence Holder was represented by Andrew Hunter, Solicitor, and he was accompanied by Mr Richardson of Greene King Brewing & Retailing Ltd and Brian Flanagan, Premises Manager.

The Licence Holder was requesting the following variation:

1. Add 'pavement café'.

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.

An objection to the application had been made by Irvine Community Council. Additionally, a representation was made by the Chief Constable in relation to the application, by way of a report to the Board under Section 22(2A). Mr Hunter confirmed that he had seen a copy of

the objection and representation prior to the Board meeting and copies of the written documents were given to the Board Members. June Niven was present to represent Irvine Community Council. Police Scotland were not represented.

Mr Hunter addressed the Board regarding the application and issues arising. The proposal is for a pavement café / outdoor drinking area, as per the information contained in the Board report. The area would be cleared away each evening and set out again the next day. The outdoor area would be monitored and supervised by staff, and the area would be covered by CCTV. Section 59 Roads consent has been obtained and if the Board were to grant the variation application then the Licence Holder would make the required Planning application.

Regarding the Community Council letter, Mr Hunter said that the area will be for the use of existing customers so there would be no increase in capacity. Furthermore, when the area is not in use it will be cleared away.

Regarding the report submitted by the Chief Constable, Mr Hunter suggested that it was notable that the Police were not in attendance today. It was also notable that the submission had been requested by the Board. Mr Hunter said that the figures were not specific to the Carrick and no conclusions could be drawn that the Carrick is a source of crime and disorder and public nuisance.

Ms Niven then addressed the Board. She said that she was perturbed that Mr Hunter did not appear to know that there was a plaque to Robert Burns located in the vicinity of the proposed pavement café. There is also a very well used bus stop nearby and the pavement is too narrow to accommodate the proposed area. Ms Niven queried why the Licence Holder required the pavement café, given that they already have an outdoor drinking area at the rear of the premises. Ms Niven also highlighted the byelaws against drinking in public places and she suggested that surely there would be a contravention of said byelaws if drinking was to occur in the proposed area.

In response to Ms Niven's comments, Mr Hunter said that there would be no contravention of the byelaws because, if the variation is granted, the pavement café would be incorporated into the existing licensed area. He said that the area was necessary and would provide an additional facility for customers. Mr Hunter said that he was not aware of any issue concerning a plaque to Robert Burns. Regarding to the issue of possible congestion, the Roads Authority have already considered the matter and concluded that there is no cause for concern.

Mr O'Brien clarified that the Police report had not been requested by the Board's Licensing Department, but had been volunteered by the Police Licensing Department. This was acknowledged by Mr Hunter.

Councillor Clarkson noted that it was unusual for the Police to provide such a report and he commented that Ms Niven had presented the case against the application very well. The area in question is a busy area within the centre of Irvine and in Councillor Clarkson's opinion the application should be refused.

Councillor Barr asked if the current outdoor area at the premises is well used. Mr Flanagan said that the current area is well used but mainly for smoking. The new, proposed area would provide something different which is not currently available in Irvine town centre.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 11.04 am to deliberate in private and re-convened at 11.10 am.

Having considered the terms of the reports, and the submissions made, Councillor Clarkson moved that the Board refuse the application, with reference to the Police report and Community Council objection. Councillor Steel seconded the motion. There was no counter-motion and the Board unanimously decided, without dissent or abstention, to refuse the application.

Mr Hunter asked the Board's Solicitor to clarify the reason for refusal. Mr O'Brien confirmed that the granting of the application would be inconsistent with the Licensing Objective 'preventing crime and disorder'.

A.3 News Buster, 1 Ladyha Court, Irvine

The Board considered an application for grant of a Provisional Premises Licence made by Muhammed Anees for the above premises. Mr Anees was present and was represented by Ian Hunter, Solicitor.

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.

Objections to the application had been made by Dr John O'Dowd, Consultant in Public Health Medicine, NHS Ayrshire and Arran, and Irvine Community Council. Mr Hunter confirmed that he had seen a copy of the objections prior to the Board meeting. Copies of the written objections were given to the Board Members. NHS Ayrshire and Arran were not represented. June Niven was present to represent Irvine Community Council and she confirmed that she had nothing further to add to the Community Council's written objection.

Mr Hunter addressed the Board regarding the application and issues arising. He explained that Mr Anees has ran this shop for 8 years now and a licence is being sought in response to demand from his existing customers. The nearest licensed premises is currently a 10 minute walk away. Mr Hunter highlighted that Mr Anees has experience of being a Licence Holder in East Ayrshire, he is a responsible individual who would set a good example to his customers, which in turn could lead to improvements in cultural and health matters in relation to alcohol. Mr Hunter invited the Board to grant.

Councillor Barr said that he did not agree with Mr Hunter's submission and he referred to the Health data provide by the NHS as being a cause for concern.

In response, Mr Hunter said that whilst he acknowledged the health data, he stuck to his point of view that a change in public attitudes and perceptions is required, and this can be achieved by responsible operators of licensed premises, who are in a position to educate the local community.

Councillor Marshall stated that in his opinion, if the application was granted, this would result in overprovision within the locality.

Mr Anees said that the premises served the areas of Lawthorn and Perceton and there are more new houses being built at those locations. From these areas it can take up to 15 minutes to walk to the nearest licensed premises, so there is a strong community demand for his shop to have the facility to sell alcohol.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 11.28 am to deliberate in private and re-convened at 11.35 am.

Having considered the terms of the report, and the submissions made, the Convenor moved that the Board decide to continue consideration of the application to a future meeting, to allow for the provision of detailed overprovision information and for the Board Members to make a site visit to the premises. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the application to a future meeting to allow for the provision of detailed overprovision information and for the Board Members to make a site visit to the premises.

A.4 Deli-licious, 89 Main Road, Fairlie

The Board considered an application for grant of a Provisional Premises Licence made by Mark Maclean for the above premises. Mr Maclean was represented by Ian Hunter, Solicitor.

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.

An objection to the application had been made by Dr John O'Dowd, Consultant in Public Health Medicine, NHS Ayrshire and Arran. Representations in support of the application had been lodged by Fairlie Community Council and Fairlie Parish Church. Mr Hunter confirmed that he had seen a copy of the objection and the representations prior to the Board meeting. Copies of the written objection and representations were given to the Board Members. NHS Ayrshire and Arran were not represented. Fairlie Community Council and Fairlie Parish Church were also not represented.

Mr Hunter addressed the Board regarding the application. He explained that the premises will be a food led operation. The nature of alcohol sold will be fine wines and cask ales and the like. There will be no tonic wines or alcopops. Regarding the issue of hampers, Mr Hunter clarified that all hampers will be paid for and picked up at the premises. The usual age verification checks will be carried out at the point of sale.

Mr Hunter clarified that alcohol display Area 2 is indeed located behind a counter, and therefore inaccessible to the public. Mr Hunter highlighted that Mr MacLean has successfully run the Village Inn for a while now. The proposal before the Board today has wide community support and the application has not attracted any objections. Mr Hunter invited the Board to grant.

Councillor, Marshall, Councillor Bruce and Councillor Barr all commented that they were in support of the application.

Having considered the terms of the report, and the submissions made, the Convenor moved that the application be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A and B.

A.5 Crocodeli, 33 Stuart Street, Millport

The Board considered an application for grant of a Provisional Premises Licence made by Crocodeli Limited for the above premises. The Applicant was represented by Andrew Thompson, Solicitor, and he was accompanied by Catherine Williamson of Crocodeli Limited and Bruce Williamson, proposed Premises Manager.

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 Thompson addressed the Board regarding the application. He explained that the premises opened in April of this year and a licence is being sought so that fine wines and locally sourced ales may be offered for sale to accompany and compliment the wide range of delicatessen products which are already on sale at the premises. The premises are already very popular and well supported with 60% of customers being local people. The aim is that the business will do for Millport what similar businesses have done for Arran. The plan is for 2 full time staff and 2 part time staff to be employed at the premises and all members of the Williamson family will obtain Personal Licences.

Mr Thompson acknowledged that there are already 2 existing off sales premises on the Island, however, he argued with respect that Crocodeli would be very different indeed in terms of the high quality of the products that would be retailed by his Clients. Furthermore, Mr Thompson, on behalf of the Applicant, said that he would be willing to provide an undertaking to limit the product range and availability so as to emphasise that the focus is on high quality products and that a licence is only being applied for to enhance and compliment the other products on offer. To that end there would be no sales of tonic wines, plastic bottles, foreign spirits or RTDs ('ready to drink'). Additionally, the Applicant was also willing to restrict the core hours to 5.00 pm during the off season (to 31st March) and 8.00 pm during the on season (to 31st October), and CCTV will be installed if required by the Board.

Regarding the issue of overprovision, Mr Thompson said that this application was exceptional in a number of ways and he referred to the undertakings which he had offered. He said that in terms of demography Cumbrae is slightly maligned as it is connected to Largs Central. Referring to an Economic Development Report concerning the Regeneration of Millport, Mr Thompson argued that Millport has a older population in comparison to the rest of North Ayrshire and the older clientele predominantly seek quality products.

Regarding the Licensing Objectives, Mr Thompson argued that no reasonable person could possibly take the view that crime and disorder or public nuisance could possibly result from this application. The same applies to securing public safety and in terms of protecting children from harm, Mr Thompson said that it was relevant that children (and young persons) do not make up a notable percentage of the Millport population. Referring to the undertakings already offered, Mr Thompson suggested that this was as good as it gets in terms of the improving public health licensing objective.

Mr Thompson noted that there was flexibility within the Board's Policy. He said that he felt particularly enthusiastic about this application and he invited the Board to grant.

Councillor Marshall congratulated Mr Thompson on his thorough submission although he noted a slight disagreement with regard to Mr Thompson's assertion that Millport was an affluent area.

Councillor Bruce said that he was very supportive of the application.

Councillor Barr commented that he was also supportive of the application, on the basis that the Applicant operated CCTV and maintained a Refusals book.

Having considered the terms of the report, the submissions made and undertakings provided, Councillor Marshall moved that the application be granted. Councillor Barr seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A and B.

The Board noted the undertakings provided by Mr Thompson on behalf of the Applicant. Core hours will end at 5.00 pm from 1st November to 31st March each year, and 8.00 pm from 1st April to 31st October each year.

A.6 39 Ritchie Street, West Kilbride

The Board considered an application for grant of a Provisional Premises Licence made by Paul Sweeney for the above premises. Mr Sweeney was present and was represented by Ian Hunter, Solicitor.

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.

Objections to the application had been made by Dr John O'Dowd, Consultant in Public Health Medicine, NHS Ayrshire and Arran, Mr and Mrs Graver, 41 Ritchie Street, and Mr and Mrs Bennison, 38 Ritchie Street. Mr Hunter confirmed that he had seen a copy of the objections prior to the Board meeting. Copies of the written objections were given to the Board Members. NHS Ayrshire and Arran were not represented. Mr and Mrs Graver were present.

Mr Hunter addressed the Board regarding the background to the application. The proposal is for a restaurant with a delicatessen and food take away section. A licence is being sought so that beer and wine may be sold to accompany and compliment food being purchased and consumed on the premises. Mr Hunter highlighted that, by and large, the community have been supportive of the application and he referred to an on-going local initiative aimed at attracting visitors and new businesses into West Kilbride, whilst keeping existing shops open.

Mr Hunter argued that overprovision was not a concern, pointing to the fact that within the locality 3 restaurants have closed in the last year.

Mr and Mrs Graver then addressed the Board, re-iterating the content of their written objection. They highlighted their concern that each time the premises has changed ownership a little bit more has been added in terms of activity and the proposal for late opening with licensed hours is simply too much. Mr Graver also expressed concerns regarding the proximity of the premises air conditioning unit in relation to their bedroom, and the noise emanating from the unit.

Thereafter Mr Hunter addressed the Board on the issues raised by the objectors and he responded to questions from Councillor Steel and the Convenor. Mr Hunter said that Mr Sweeney has tried to be a good neighbour and has undertaken substantial work to improve the building, including the installation of additional soundproofing between the floors. It will be a small, family run operation, last orders will be at 9.30 pm, and it is not envisaged that there will be any noise nuisance to neighbours. New extraction facilities have been fitted although they have not been tested as yet as they are awaiting a gas connection. Mr Sweeney added that he has been reliably informed that the resulting noise from the new extraction system will be next to nothing.

Councillor Barr said that he knew the area well and previously this premises has been a 'dump'. In his opinion this proposal would enhance the area.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 12.44 pm to deliberate in private and re-convened at 12.53 pm.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the application be granted on the basis that the terminal hour be restricted to 11.00 pm, 7 days per week. Councillor McMillan seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant, restricting the terminal hour to 11.00 pm, 7 days per week. The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A and C.

The Convenor explained to Mr and Mrs Graver that their concerns were relevant to Planning, as opposed to Licensing, which is the remit of the Board.

A.7 Premises Licence 0264 The Commercial, 63 Main Street, Kilbirnie

The Board considered an application for variations of a Premises Licence made by Kilbirnie Commercial Ltd for the above premises. Compton McGill, a Director of Kilbirnie Commercial Ltd, was present.

The Licence Holder was requesting the following variations:

1. Extend Terminal Hours on Thursday, Friday and Saturday.
2. Add 'playing pool'.

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 McGill addressed the Board regarding the application. He explained that the application was in response to local demand and an extension of the core hours would improve the viability of the business. He highlighted that the variations being requested were within the scope of the Board's policies.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the application be granted. Councillor Bruce seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

A.8 Premises Licence 0283 No.0 Social Club, 99 Main Street, Kilwinning

The Board considered an application for a variation of a Premises Licence made by No. 0 Social Club for the above premises. The Licence Holder was not represented.

The Licence Holder was requesting the following variation:

1. Children and Young Persons to be allowed to remain on the Premises for the duration of a private function.

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.

Having considered the terms of the report, the Convenor moved that the application be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

A.9 Premises Licence 0225 Charlie Smith's Bar, 14 Gallowgate Street, Largs

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Colin Grant, for the above premises. Mr Grant was represented by Mr Russell, Solicitor, and he was accompanied by Stuart Grant, Premises Manager.

The Licence Holder was requesting the following variations:

1. Change the name of the Premises from 'Charlie Smith's Bar' to 'The Three Reasons'.
2. Allow children of all ages until 8.00 pm when accompanied by an adult for either (i) a meal or (ii) to watch sport.

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.

An objection to the application had been made by Dr John O'Dowd, Consultant in Public Health Medicine, NHS Ayrshire and Arran. Mr Russell confirmed that he had seen a copy of the objection prior to the Board meeting. Copies of the written objection were given to the Board Members. NHS Ayrshire and Arran were not represented.

Mr Russell addressed the Board regarding the application. In response to the NHS objection, he confirmed that his Client does not, and would not in any circumstance, permit access to intoxicated adults, with or without children. Mr Russell said that baby changing facilities are already installed at the premises and a good quality, HD CCTV system was also in operation. The premises were well run by responsible staff. Mr Russell invited the Board to grant the application.

Councillor Bruce suggested that the word 'responsible' should be added to the Terms under which children would be permitted entry. The Terms would read:

'children of all ages allowed if accompanied by a responsible adult for a meal or to watch sport.'

It was agreed by all Board Members, Mr O'Brien, and Mr Russell that the word 'responsible' should be added, as suggested by Councillor Bruce, and it was also noted that the premises apply the same limitations to young persons of 16-17 as they do to children under 16.

Having considered the terms of the report, and the submission made, Councillor Barr moved that the application be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

A.10 David McLean (Reference NA 1716)

The Board considered an application for a Personal Licence made by the above Applicant. Mr McLean was present.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the Chief Constable's Notice under Section 73(3)(b) of the 2005 Act and summarised issues arising.

Mr McLean was given the opportunity to address the Board. He explained that his employer, Aldi Stores Ltd, had informed him that his application was to be considered by the Board today and that he should be in attendance. He said that he was unaware of why the application was being considered by the Board as he had not been to the Post Office to collect his recorded delivery citation letter.

Mr McLean was then provided with a further copy of the Chief Constable's Notice, made in relation to his application.

The Convenor asked Mr McLean if he would wish the Board to continue the application to a future meeting to allow him to consider whether he should obtain legal representation for his case.

Mr McLean confirmed that he would like the Board to continue the application so that he may consider his options.

Having considered the terms of the report, and the submission made, the Convenor moved that the Board decide to continue consideration of the application to a special meeting in July 2014 (exact date to be confirmed). There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the application to the special meeting in July 2014.

A.11 Gambling Act 2005 Small Society Lottery Registration 118 Dreghorn Parish Loyal Defenders LOL 218

The Board considered a report by the Solicitor (Licensing) regarding the Small Society Lottery Registration held by the above Non Commercial Society. Dreghorn Parish Loyal Defenders LOL 218 were not represented.

Mr O'Brien explained that the Society had recently given Notice of Continuing Registration and in response to a consultation request the Chief Constable had confirmed and detailed convictions in relation to the person applying on behalf of the Society.

Having considered the terms of the report the Convenor moved that the Board revoke the Registration, with immediate effect. There was no counter-motion and the Board unanimously decided, without dissent or abstention, to revoke the Registration, with immediate effect.

3. Personal Licence Refresher Training

The Board considered a report by the Solicitor (Licensing) which provided an update on the current position regarding Personal Licence refresher training.

Mr O'Brien confirmed that as of today's date, 168 North Ayrshire Personal Licence Holders have fully complied with the refresher training requirements. This accounts for just under 20% of the total number who are required to obtain refresher training by 31 August 2014 and present the resulting certificate to the Board by 30 November 2014.

Having considered the report, and Mr O'Brien's update, all of the Board Members noted the current position. The Convenor stated that North Ayrshire Licensing Board strongly urged all affected Personal and Premises Licence Holders to take note of the requirements and take the required action prior to the statutory deadlines. The Convenor added that the Board would also be making a press release to further highlight and publicise this matter.

The meeting ended at 1.15 pm.