

Cunninghame House,
Irvine.

13 December 2012

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 **TUESDAY 18 DECEMBER 2012** at **10.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Minutes

Confirm the Minutes of the Board Meeting held on 3 October 2012

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

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

3. Consideration of the Board's draft Statement of Principles 2013-2016 Gambling Act 2005, Section 349)

Submit report to the Licensing Board for Consideration of the Board's draft Statement of Principles 2013-2016 (Gambling Act 2005, Section 349) (report 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 2

18 December 2012

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 : WO'B/MC

For further information please contact William O'Brien, Licensing Solicitor , 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	0080	Greene King Retailing Ltd c/o Belhaven Pubs Atrium House 6 Back Walk Stirling FK8 2QA	The Waterside 14 Bath Street Largs KA30 8BL	Review Application - Section 36 Continued from 22/08/12 & 21/11/12
2	0157	A C Currie Ltd 33 Bentick Crescent Troon KA10 6JN	Keystore 67/71 Ashgrove Road Ardrossan KA22 7HS	Application for Variation of Premises Licence - Section 29 Continued from 21/11/12
3	884/12, 885/12, 886/12	Brian John Purdie 37 Greenock Road Largs KA30 8PJ	The Waterside 14 Bath Street Largs KA30 8BL	Application for Extended Hours - Section 68 Continued from 21/11/12 Clerk to report
4	1134/12	Daljit Kaur Sangha 27 Coll Gardens Dreghorn Irvine KA11 1HB	Bothan Bar Broomlands Gate Bourtreehill Irvine KA11 1HB	Application for Extended Hours - Section 68 Clerk to report
5	1123/12	William Woods 60 Stanley Road Ardrossan KA22 8EL	Charlie's Bar 18 Glasgow Street Ardrossan KA22 8EL	Application for Extended Hours - Section 68 Clerk to report

Review Application - Licensing (Scotland) Act 2005, Section 36

Premises	"The Waterside", 14 Bath Street, Largs
Premises Licence Holder	Greene King Retailing Ltd. (t/a Belhaven Pubs)
Ref.	0080

CONTINUED FROM 22/08/12 & 21/11/12

1. Background

By letter of 7 August 2012 Paul Brennan, NAC Specialist Environmental Health Officer (Noise) made a Review Application under Section 36 informing the Board of certain circumstances relating to these Premises. Copies of the letter will be distributed to Members at the Meeting.

On 26 June 2012 the Board considered and upheld a Review Application made by Paul Castelvechi, Flat H, The Moorings, 18 Main St., Largs. This was based on noise complaints. The Board then varied the Licence by directing that the playing of amplified music should cease at 00.30 on Friday and Saturday, and at 23.30 on Sunday.

The Board did not then take any action in relation to Personal Licence of the Premises Manager Brian Purdie (NA 1190).

2. Basis of Review

The 'Grounds for Review' are:

1. the operation of the Premises is inconsistent with the "preventing public nuisance" and "protecting and improving public health" Licensing Objectives; and
2. conditions of the Premises Licence have been breached (specified in the Application).

3. Licensed Hours

The Premises are Licensed for both on-sales and off-sales. The operating hours are:

On-sales:

Mon	8.00	24.00
Tue	"	24.00
Wed	"	24.00
Thur	"	1.00
Fri	"	1.00
Sat	"	1.00
Sun	11.00	24.00

Off-Sales:

Mon	10.00	22.00
Tue	"	"
Wed	"	"
Thur	«	«
Fri	«	«
Sat	«	«
Sun	11.00	22.00

4. Capacity etc.

The Premises have a capacity of 96 customers, and an off-sales display capacity of 11 square metres.

Activities other than the sale of alcohol:

- (a) Generally: Bar Meals, Receptions, Club or other group meetings.
- (b) Entertainment: Recorded Music, Live Performances, Gaming, Indoor/outdoor Sports, Televised Sport, and quiz nights, dominoes and charity nights.
- (c) The Premises do not have Outdoor Drinking Facilities.
- (d) The Premises allow under-18s of all ages if accompanied by adult either:
 - (i) until 21.30, or
 - (ii) until the end of a meal or function.

5. Procedure

Under Sections 36(6)-(8), the Board may reject a Review Application if the Board considers the Application—

- (a) is vexatious or frivolous, or
- (b) does not disclose any matter relevant to any of the statutory "Grounds for Review".

If the Board rejects the Application it must give notice of the decision, and the reasons for it, to the Applicant.

The Board is entitled (but not obliged) to order that the Applicant should pay the Board's expenses. If it does so, it should specify the sum due.

Having received an Application and not rejected it, the Board must hold a Review Hearing (Section 38).

The Licensing Standards Officer must, before the Review Hearing, prepare and submit to the Licensing Board a Report on the Application.

The Hearing, and the supporting papers:

- (a) this Report,
- (b) the communication from the Applicant, and
- (c) the LSO's Report,

have been intimated to the Premises Licence Holder, with the date, time and place of the Hearing.

6. Additional Powers of Inquiry

The Board may (but does not require to) take any one or more of these actions under Section 38(5)-(6):

- (a) it may obtain further information as it thinks fit;
- (b) it may request the attendance at the Review Hearing of any person for the purpose of providing information;
- (c) it may request the production of documents;
- (d) it may consider any possible Ground for Review even though it is not relevant to any circumstances alleged in the original Review Application. If the Board proposes to do this then it should inform the Licence Holder of its intention and consider whether an adjournment is appropriate.

7. Board's Powers on Review

The Board must take account:

- (a) the information contained in the Review,
- (b) any Report from the LSO,
- (c) any additional information obtained by the Board,
- (d) the comments by the Licence Holder.

If the Board is satisfied that a Ground for Review is established, the Board may take any one or more of the following steps if it considers necessary or appropriate for the purposes of any of the Licensing Objectives:

- (a) issue a Written Warning to the Licence Holder;

(b) make a Variation of the Licence - either indefinitely or for a specific time. The Variation may relate to any part of the Licence, for example:

- (i) the operating hours for the Premises (or any part);
 - (ii) the Premises Manager (if any) can be removed;
 - (iii) the activities which may be carried on on the Premises (or any part);
 - (iv) the terms for access by persons under 18 to the Premises (or any part);
 - (v) the Licence Conditions (the Variation cannot alter the statutory Mandatory Conditions);
- (c) Suspend the Licence for a specific time;
- (d) Revoke the Licence.

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

The Board may take these steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure (Section 38(5) & (6)).

8. Personal Licence

Whether or not the Board takes any action in relation to a Premises Licence, the Board may consider that any Personal Licence Holder who is or was working in the Licensed Premises concerned acted in a manner which was inconsistent with any of the Licensing Objectives.

If so, then under Section 84 the Board may review that Personal Licence

If the Licence Holder has had the opportunity to be heard, the Board Meeting which considers the present Premises Licence Review can consider that further Review at the same time as the Hearing relating to the Premises Licence.

The Board may, if it considers it necessary for any of the Licensing Objectives:

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

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

9. Human Rights

The Board requires to balance competing rights:

- (a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights to respect for private life, family life and home under ECHR Article 8. If the Board was being asked to permit nuisance (by granting or varying a Licence), its decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633).
- (b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board is obliged to have regard to Licensing Objective (d): 'protecting & improving public health', but the duty is solely to 'have regard' to it. It is not conclusive, and does not oblige the Board to close the Premises or to impose such a substantial variation that the Premises become uneconomic.

Where the Board takes a Review action (e.g. suspension), that decision may be appealed against on the grounds that it is 'disproportionate in all the circumstances', but this appeal ground does not exist if the Board fails to take such action (Section 131(3)(b)).

10. Implications

Both the Premises Licence Holder and the Applicant can appeal to the Sheriff Principal against any decision taken at a Review Hearing.

Any Board decision takes effect immediately, but in the case of Suspension and Revocation of a Premises Licence (not Variation, Written Warning or any decision about a Personal Licence) the Court can be asked to recall the Board's decision pending appeal.

Application for Variation of Premises Licence - Section 29

Applicant	A C Currie Ltd
Premises	"Keystore", 67/71 Ashgrove Road, Ardrossan, KA22 7HS
Ref.	0157

CONTINUED FROM 21/11/12

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 9 November 2012:

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

1. Summary of Variation Request

No.	Variation
1	<i>Increase off-sales capacity from 20.0 sq.m. to 28.2 sq.m.</i>

2. Issues

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

Variation 1: Increase off-sales capacity from 20.0 sq.m. to 28.2 sq.m.
Discretionary refusal
Notes:
The Premises are a Convenience Store with an off-sales facility, and they seek to increase the existing capacity by 41%.
There are two issues.
(a) Overprovision: There is a presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement. If the Board is minded to refuse for this reason, it 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 similar Premises in the locality, will be prepared.
(b) Licensing Objective (d): The Board may consider that the Application is not consistent with 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.

3. Licence Conditions

No variation of the Conditions is appropriate.

Report

to

North Ayrshire Licensing Board

by

Solicitor (Licensing)

Subject:	Gambling Act 2005 - Statement of Principles
Recommendation:	That the Board should adopt a Statement for 2013-2016

1. The Board is the 'Licensing Authority' for the purposes of the Gambling Act 2005.

2. Licensing Authorities are required by Section 349 to publish a Statement of the Principles which they propose to apply when exercising their functions. This Statement must be published at least every three years. The next Statement must be adopted by 31 January 2013.

3. A draft Statement has been prepared by the Solicitor (Licensing) and published on the Board's website, and attached to this Report. Notices have been published in local newspapers, inviting representations. Notices have been sent to the 'Responsible Authorities' listed in Annex 1 of the draft Statement, and to the persons and bodies listed in Annex 2 ('Consultee List').

4. Any representations received will be copied to Members at the Meeting on 18 December 2012. The Board should consider the draft Statement and any representations, and then adopt a final Statement. This will then be published on the Board's website.

5. The meeting on 18 December 2012 is the last available meeting before 31 January 2013 (the next scheduled meeting of the Board is on 6 February 2013). The relevant Regulations oblige the Board to

(a) publish the Statement its website; and

(b) make the Statement publicly available,

for a period of at least four weeks immediately prior to the date on which the Statement will come into effect.

