

Cunninghame House  
Irvine  
KA12 8EE

24 November 2022

### **North Ayrshire Licensing Board**

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 28 November 2022 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

- 1. Declarations of Interest**
- 2. Minutes**  
Submit Minutes of the Board Meeting held on 31 October 2022.
- 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. Any Other Business**

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## Licensing Board

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Sederunt: Eleanor Collier (Convenor)  
Nairn McDonald (Vice-Convenor)  
John Bell  
Christina Larsen  
Matthew McLean  
Jean McClung  
Donald L Reid  
Ronnie Stalker  
Angela Stephen

Chair:

Apologies:

Meeting Ended:

# AGENDA ITEM 2

## **DRAFT North Ayrshire Licensing Board 31 October 2022**

**Irvine, 31 October 2022** - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

### **Present**

Councillors Eleanor Collier (Convenor), Nairn McDonald, John Bell, Christina Larsen, Matthew McLean, Jean McClung, Donald L Reid, Ronnie Stalker and Angela Stephen.

### **In Attendance**

R Lynch, Clerk, D Grier, Solicitor, G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer and M Champion, Admin Assistant.

### **Also In Attendance**

Sergeant Sheryl Syme (Police Scotland).

### **Convenor**

Councillor Eleanor Collier.

### **Apologies for Absence**

None. Councillor Stephen notified Mr Pollock that she had been delayed and would be late in arriving at the meeting.

### **1. Declarations of Interest**

There were no Declarations of Interest.

### **2. Minutes**

The Board were asked to confirm the Minutes of the Board meeting held on 5 September 2022. The Board unanimously agreed to confirm and adopt the Minutes.

### **4. Chief Constable's Annual Report**

The Board considered the Chief Constable's Annual report for the year 1 April 2021 to 31 March 2022.

Sergeant Syme summarised the contents of the Report. On behalf of Mr Livingstone, Chief Constable, she thanked the Board for working together with the Police to improve licensing standards. She updated the Board on changes to the Senior Officers noted in the Annual report, Chief Inspector Gillian Grant and Inspector Darren McNaught were now in post.

As well as highlighting the Policing Priorities for North Ayrshire Sergeant Syme explained that in the North Ayrshire Board area during this year there was no Premises Licence objections, no Premises Licence Reviews, one objection to a Variation Application, 2 objections to Personal Licence applications, and one Personal Licence Review was submitted by Police Scotland. There were 2 premises subject to intervention and no reports submitted to the Procurator Fiscal for the sale of alcohol to a child or young person.

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For the year ahead, Sergeant Syme advised that the Police will continue to focus on “Keeping People Safe” and she invited the Board to note the report.

Having considered the report, the Convenor, on behalf of the Licensing Board, thanked Sergeant Syme and Police Scotland. The Board unanimously agreed to note the report.

### **3. 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 Premises Licence 0327 The Carrick, 112-114 High Street, Irvine**

The Board resumed consideration of an application for variations of a Premises Licence made by the Licence Holder, Greene King Retailing Ltd, for the above premises. The Premises Licence Holder was represented by Adrian Howlett and he was accompanied by Catherine Blunn, General Manager at The Carrick.

The Licence Holder was requesting the following variations:

1. Extension to rear “Outdoor Drinking Area”
4. Increase capacity to include rear outdoor drinking area (32 persons)

Mr Howlett then addressed the Board, explaining that the application was continued from the previous Board Meeting for a site visit, which took place recently.

Sergeant Syme clarified to the Clerk that on behalf of Police Scotland there was no further objection or complaint.

Ms Cullen, LSO, confirmed that there are no issues with these Premises.

As discussed at the recent site visit, Ms Blunn confirmed to Councillor Stalker that security cameras would be installed in the rear area and the use of the App would not be permitted in the rear area. Ms Blunn also confirmed to Councillor Larsen that CCTV would monitor both the outdoor areas as well as a member of staff monitoring the front area and another member of staff monitoring the rear area.

Regarding the rear access from the car park, Mr Howlett advised the Convenor that there is a rear entrance to the Premises and there is no intention to build a wall. The outdoor area is currently in use, and they do lock this area at night. With regards to the plans for the rear extended area, Mr Howlett advised Councillor Larsen that no plans were available now until funds are available to carry out this work, however, he referred to other Greene King premises which have very well-furnished beer gardens.

Having considered the terms of the case summary, and the submission made, Councillor McDonald proposed that the Board grant the application. Councillor Reid seconded the motion. There was no Amendment.

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The Board unanimously agreed without dissent or abstention to grant. Councillor Stephen arrived at the meeting and Sergeant Syme of Police Scotland departed the meeting.

### **A.2 Premises Licence 0392 Premier Caldon Road, 40/42 Caldon Road, Irvine**

The Board resumed consideration of an application for variation of a Premises Licence made by the Licence Holder, Jujhar Singh Store Ltd, for the above premises. The Premises Licence Holder was represented by Bruce Hunter, Solicitor and he was accompanied by Mr Singh, Premises Licence Holder.

The Licence Holder was requesting the following variations:

1. Amend layout plan following extension, relocating alcohol display
2. Increase alcohol display capacity from 25.61m<sup>2</sup> to 36.415m<sup>2</sup>

The Board considered the terms of the case summary report. The Clerk highlighted the Board Policy in relation to overprovision.

Mr Hunter's written submission, including layout plans, which was received late on Friday 28<sup>th</sup> October, was provided to Board Members. Mr Hunter then addressed the Board. He explained that his Client was seeking to enhance and expand the shop. Although the requested increase in alcohol display capacity is 42%, the overall shop floor area is also extending, therefore the overall percentage of alcohol in relation to the size of the premises will be less than the current percentage. The proposed layout plan will have alcohol displayed in a discreet section of the premises to discourage the targeting of the younger market to this area. Mr Singh has put a lot of investment into the local area and if approved the proposal would lead to an additional 3 full time and 3 part time jobs. Mr Singh and his family are long standing operators of licensed premises of over 30 years of experience without incident.

With regards to overprovision, Mr Hunter explained that the closest premises, Co-op, is a national company whereas Mr Singh is from the local community. Thereafter there are premises in Paterson Avenue and Aldi, which are over a mile away. He explained that there have been several new housing developments including 200 new houses built by Permission at Annick Grange and a proposal to build 60 at Crompton Way. His Client would like to supply an enhanced service to the local community.

Mr Hunter clarified to Councillor McLung the entrance to the premises on the proposed layout plan. He also confirmed to Councillor Larsen that the closest premises, Co-op, is only a few doors away. Councillor Larsen noted that less than a mile away there was also Keystore, Woodlands Avenue and the new housing development at Annick Grange and Crompton Way were quite a distance from the premises with residents likely to frequent more local stores. Councillor Larsen noted in her opinion, these new housing developments should not be taken into account, Crompton Way is in fact 1.2 miles away.

With regards to the proposed Layout Plan, Mr Singh confirmed to the Convenor that although this plan is dated 2011 he has been intending the extension for some time and has dealing with Building Control. The original building was split into 2 but now the intention is for it to be one large premises in order that he could supply hot food.

Councillor Larsen highlighted that there is also an additional premises in James Crescent, only 0.7 miles away, the same distance as Aldi and Paterson Avenue stores. Additionally, she referred to the written summary which said there could be additional employment. Mr Singh

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clarified that with the supply of hot food, there would be a requirement for additional full time staff through the day.

Mr Singh confirmed to Councillor Reid hot food would be available for take-away.

The Clerk updated the Board on the application and confirmed that the Variation was in 2 parts, the first part was to amend the layout plan had no issues and should be granted. With regards to Variation 2, to increase the alcohol capacity, the presumption of refusal is doubly enhanced due to the location and the function type of the premises.

The Board adjourned with the Clerk at 10.35 am to deliberate in private and re-convened at 10.48 am.

Having considered the terms of the case summary, and the submissions made, the Convenor moved that the Board grant Variation 1 (amend layout plan following extension and relocation of alcohol display) and refuse Variation 2 (increase alcohol display capacity from 25.61m<sup>2</sup> to 36.415m<sup>2</sup>) on the grounds that given the number of premises in the area and the availability of alcohol, the grant of the Application would cause Overprovision of Licensed Premises of the same or similar description as the Subject Premises in the Locality.

There was no Amendment. The Board unanimously agreed without dissent or abstention to grant Variation 1 and refuse Variation 2.

The Clerk confirmed to Ms Cullen, LSO that the applicant should be advised to submit an updated layout plan following the Board's decision.

### **A.3 Premises Licence 0103 Auchrannie Hotel, Spa Resort and Country Club, Brodick**

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Auchrannie Leisure Ltd, for the above premises. The Premises Licence Holder was not represented.

The Licence Holder was requesting the following variation:

1. Include self-catering accommodation.

The Board considered the terms of the case summary report. As the Applicant was not represented the Clerk updated the Board on the application. He clarified that Police Scotland had withdrawn their Representation, the Community Council had confirmed they had no issues and there are no reasons to refuse this application.

Having considered the terms of the case summary and the Clerk's update, Councillor Larsen proposed that the Board grant the application. Councillor Reid seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

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### **A.4 Premises Licence 0488 BP Girdle Toll Service Station, Littlestane Road, Long Drive, Irvine**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Motor Fuel Limited, for the above premises. The Premises Licence Holder was represented by Audrey Junner, Solicitor and she was accompanied by Stuart Allan, General Manager, Motor Fuel Limited.

The Licence Holder was requesting the following variations:

1. Amend layout plan following extension, relocating alcohol display
2. Increase alcohol display capacity from 7.42m<sup>2</sup> to 12.525m<sup>2</sup>

The Board considered the terms of the case summary report. The Clerk highlighted the Board Policy in relation to overprovision as reflected in the previous case.

Ms Junner then addressed the Board. She acknowledged and was very mindful of the Board's Policy, ordinarily she would not bring this type of application to the Board however she believes this to be a very particular application. She explained a fridge area had been removed back in 2017 when the Licence was originally granted due to the restriction in the alcohol capacity. As alcohol is not chilled customers are not attracted to the convenience setting. It is a modest overall capacity compared to premises of a similar size, as well as removing the need to restock frequently. The whole premises are being refitted with lots of new product lines being added, not just alcohol products. As well as improving the shop the overall station will be refurbished, including the installation of 14 electric vehicle chargers. These chargers will work similarly to petrol fuelling pumps allowing electric cars to be charged in the same time frame as it would take to fill a petrol type car.

Ms Junner acknowledged the development of new housing estates was taken into consideration when the Licence was originally granted. They do find residents using their facilities with the closest premises being in the Girdle Toll area. She confirmed that pricing is not as attractive as supermarkets and not likely to change however her Client would like to offer a bigger range and provide chilled products.

Ms Cullen, LSO, confirmed to the Clerk that there are no issues with these Premises.

With regards to surrounding premises, Councillor Larsen enquired the distance to Keystore, Girdle Toll and noted that Spar in Lawthorn area was 0.4 miles away. Ms Junner advised Keystore was not that far away but was in another housing estate and Lawthorn is a separate area.

Mr Junner referred to the proposed layout plan, the chilled area will not have doors, only shelves. At present this area is used for soft drinks. She also confirmed the existing alcohol area was about half the size of the proposed large area.

Mr Allan advised Councillor Reid that £458 million was being invested into sites such as this but no confirmed dates are available for when the electric vehicle charging ports will be available, he explained the motor industry still require to come up with the batteries needed to allow for electric cars to take the same time to charge as petrol cars take to fuel.

Having considered the terms of the case summary and the submissions made, Councillor Bell proposed that the Board grant the application. Councillor McDonald seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

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### **A.5 Premises Licence 0299 Beith Bowling Club, Boghead, Beith**

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Beith Bowling Club, for the above premises. The Premises Licence Holder was represented by Alex Wilson, President.

The Licence Holder was requesting the following variation:

1. Amendments for under-18 access

The Board considered the terms of the case summary report.

Mr Wilson then addressed the Board. He explained that currently their children's access only permits under 14s to sit in their back room. The Club would like the ability to have children in their main hall area so that they can view bowling from inside during inclement weather.

Confirmation was provided to the Clerk that no objections had been received in relation to the application and he asked for the LSO's comments. Ms Cullen confirmed this Variation would allow the Club to operate correctly.

Having considered the terms of the case summary and the submissions made, Councillor Stalker proposed that the Board grant the application. Councillor McLean seconded the motion. There was no Amendment.

The Board unanimously agreed without dissent or abstention to grant.

Mr Wilson thanked the LSO MsCullen for all her help this year and the Club appreciated her guidance.

### **A.6 0526 Riviera Coffee, 6 The Promenade, Largs**

The Board considered an application for grant of a Provisional Premises Licence made by Maria Timis for the above premises. Ms Timis was present and was accompanied by Annmarie Scott.

The Board considered the terms of the case summary report. The Clerk updated the Board on the application noting that due to the function type, the presumption of refusal is not enhanced however an issue with the outdoor area barriers should be addressed.

Ms Scott then addressed the Board. She explained the premises did have a Premises Licence in the past which was surrendered. All documentation has now been provided to the Board. She confirmed to the Convenor the premises will supply both on and off-sales, with off-sales only a small part to enhance the business and allow customers to purchase a bottle of wine to take home. Ms Timis confirmed there will not be a display of alcohol only shelving on the wall where normal on-sales alcohol will be stored.

With regards to the outdoor area, Ms Timis advised the Board that in order to bring the building back into use she has had to concentrate on the inside of the building and hopes to be in a position next summer to carry out works on the outside area. She explained the outdoor area will be enclosed but not the same as her premises at Allegria, as this outdoor area is a much smaller area. The Convenor highlighted that this is a very busy footpath. Ms Timis confirmed plans will be made with her architect for this area.



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Referring to breakfast, Ms Timis confirmed the premises will open for breakfasts at 9.00am with no alcohol available until 11.00am, the premises have reopened and are operating with no alcohol although customers have been asking if wine is available.

The Clerk sought clarification of matters raised in the case summary report and for LSO comments. Ms Cullen noted that the premises were trading again and had changed from how they looked previously.

Ms Timis confirmed changes have been made and she now has Certificates from Building Control and Planning. The inside of the premises has now been refurbished and work will commence in the summer on the outdoor area.

Having considered the terms of the case summary and the submission made, the Convenor proposed that the Board grant the Provisional Premises Licence application. There was no amendment. The Board unanimously agreed without dissent or abstention to grant.

The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions) Parts A, B, C and F with Condition C.5.2 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 a.m.'

### **A.7 NA2649 Joseph H Fitzsimmons**

The Clerk clarified that the Licence Holder has since surrendered the Licence so the Review Hearing can no longer proceed.

### **A.8 1934 Club - Application for Occasional Licence Sections 56**

The Clerk sought clarification that the Occasional Licence is to be treated as withdrawn. Mr Pollock confirmed this application has been withdrawn and they now intend to operate within their Club's Premises Licence.

## **5 Any Other Business**

There was no other business to consider.

The meeting ended at 11.13 am.

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## **Agenda Item 3**

**28 November 2022**

### **North Ayrshire Licensing Board**

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<b>Title:</b>	<b>Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.</b>
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<b>Purpose:</b>	To advise the Board of the Law and the factual background.
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<b>Recommendation:</b>	That the Board determines whether or not to grant the Applications listed.
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#### **1. Executive Summary**

- 1.1 The Licensing Board is responsible for determining Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005 (such as Review Hearings involving holders of Premises Licences and Personal Licences).
- 1.2 The Board has approved a Scheme of Delegation whereby certain matters can be delegated to the Clerk and other licensing staff. Matters which cannot be delegated, or where the officers have declined to exercise the delegation, are referred to the Board.

#### **2. Background**

- 2.1 The Applications and other matters before the Board are detailed in the attached appendices. Each appendix contains a Report prepared by licensing staff for each individual case before the Board. These Reports set out the particular factual and legal issues which licensing staff consider arise in each case, and set out the action which the Board would be entitled to take.
- 2.2 Where relevant, the reports have been copied to the Applicants or Licence-Holders. Where objections or representations are competent, these have been copied to the Applicant so that a response might be made at the Board Hearing.

#### **3. Proposals**

- 3.1 In each case, after considering the Application and after hearing any submissions for the Applicant and persons making objections or representations, the Board should determine whether or not to grant the Application or take appropriate action.

#### 4. Implications/Socio-economic Duty

<b>Financial:</b>	There are possible financial implications in relation to any Licensing decision.
<b>Human Resources:</b>	None.
<b>Legal:</b>	There are possible legal implications in relation to any licensing decision. Many Board decisions may be appealed against, but not all, and not all parties to a case have a right of appeal.
<b>Equality/Socio-economic Duty:</b>	<p>Equality Act 2010 imposes duties on the Council: Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council:</p> <p>"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage".</p> <p>Section 149(1) ("Public sector equality duty") the Council:</p> <p>"must, in the exercise of its functions, have due regard to the need to-</p> <ul style="list-style-type: none"> <li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</li> <li>(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;</li> <li>(c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it." <p>The "Relevant Protected Characteristics" are age; disability; gender reassignment, pregnancy and maternity; race; religion or belief; sex; and sexual orientation.</p> <p>The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Board otherwise in a particular case, there are no significant impacts to be considered.</p> </li></ul>

<b>Climate Change and Carbon:</b>	None
<b>Key Priorities:</b>	An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders and the suitability of premises, helps progress towards one Priority Outcome of the draft North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe".
<b>Community Wealth Building:</b>	There are no Community Wealth Building issues.

## 5. Consultation

- 5.1 Consultation has taken place in line with statutory requirements. The requirements vary depending on the particular issue raised, and where appropriate these are detailed in the report for each case.

Raymond Lynch  
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)**, on [licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk).

## Background Papers

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## **APPENDIX A**

### **Premises Licence Applications or any other Applications requiring a Hearing**

<b>Case No.</b>	<b>Licence No.</b>	<b>Applicant/Licence Holder</b>	<b>Premises</b>	<b>Comments</b>
1.	0310	Skelmorlie Golf Club	Skelmorlie Golf Club Beithglass Road Skelmorlie PA17 5ES	Application for Variation of Premises Licence – Sections 29-32
2.	625/22	Signature Works (Scotland) Limited	Pitchers 18 Bank Street Irvine KA12 0AD	Application for Extended Hours – Sections 68-70A
3.	0080	Hillend Enterprises Limited	The Waterside 14 Bath Street Largs KA30 8BL	Application for Variation of Premises Licence - Sections 29-32

**North Ayrshire Licensing Board**  
**Case Summaries**  
**Meeting: Monday 28 November 2022 at 10.00 a.m.**

**Notice to Applicants and Licence-Holders**

'\*\*\*' in the list below means that the case has a detailed report which will be included in the Agenda published on the Board website and which will be copied to the Applicant or Licence-Holder.

Cases which are not marked '\*\*\*' do not have a detailed report, but the Board will have this 'Case Summaries' document which will outline the issues (for example, what the Applicant wants and what the legal considerations are).

As well as any reports or Case Summaries, the Board members will have Background Papers, such as all the letters and emails from anyone commenting on the case, like the Police, Council Departments and members of the public.

Abbreviations:

"PL" : Premises Licence

"PLH": Premises Licence Holder

"DPM": Designated Premises Manager (in a Premises Licence)

# **1. PL 0310 "Skelmorlie Golf Club", Beithglass Road, Skelmorlie, PA17 5ES**

Licence Holder: Skelmorlie Golf Club

Application for Variation of Premises Licence – Sections 29 - 32

<b>No.</b>	<b>Variation</b>
1	Amend layout plan
2	Amend under-18 access

## **V.1: Amend layout plan**

This is unobjectionable and as a 'Minor Variation' must be granted. The only change is to rename the area which is currently labelled on the Layout Plan "Dining Room and Children's Area" as "Ken McLeod Lounge". This area is separate from the main lounge.

## **V2. Amend under-18 access**

The proposal is to amend under-18 access ("Children" aged under 16, and "Young Persons" are 16-17) so that they will be able to access all areas when the Premises are open, for private functions.

In other cases the Board have allowed extended access for under-18s to private functions, with the existing limitations continuing to apply during normal operation of the Premises (i.e. when they are not catering for a private function).

The Clerk will advise the Board on the contents of the Operating Plan for these Premises – Part 6 describes the arrangements for under-18 access. Operating Plans are initially drafted by the Applicant at the time of the original application for Grant (for example, often during the Transitional Period 2008-2009), and approved by the Board at the time, possibly with amendments. There is no standard Operating Plan specified by the legislation, so the Board will have to be advised what the OP here says, but a common arrangement is this:

An Operating Plan will often state that Premises are licensed until 24.00 or later, with a condition that under-18 access is allowed only until (say) 22.00, sometimes with different times

- for "Young People" (aged 16-17)
- for "Children" (under 16)

The Board might remove these restrictions, for example adding to the Operating Plan:

*"... except when the persons under-18 is attending a private function, when they can stay on the Premises until the function ends."*

Another common amendment required by the Board is a requirement that under-18s should not stand within one meter of any bar on the Premises.

## **2. EH 625/22 "Pitchers", 18 Bank Street, Irvine, KA12 0AD**

**Licence Holder: Signature Works (Scotland) Limited**

**Application for Extended Hours – Sections 68-70A**

The proposal is to extend the Licensed hours starting on Monday 26th December 2022 and ending on Tuesday morning to 3:00 a.m..

These premises have 'nightclub' hours so their normal hours during the year are:

Sunday - Wednesday - close 1.00 a.m.

Thursday - Saturday - close 2.30 a.m.

The Application now is for "Extended Hours" – a temporary extension. Applications like this are usually dealt with by Board officers acting under the Scheme of Delegations, and are rarely referred to the Board. They will be referred to the Board if either

- there are Police objections, or
- the proposal is outside Board policy.

In this case there are no Police objections (the Premises apply for Boxing Day every year and there have been no major incidents of disorder in past years). However the proposal is outside Board policy (quoted below) so the Board should hear what the Licence Holder says and then decide whether or not this case can be treated as an exception to policy.

The Board's Licensing Policy Statement is:

### **"What Events can get Extended Hours?"**

*7.15. The Board has approved a list of events which are likely to be accepted as appropriate for a grant of Extended Hours. An event which is not on the list may still be allowed Extended Hours if the Board is satisfied that it falls within the legislation. The list is:*

#### **(a) 'special event or occasion'**

*This includes a birthday, christening or funeral, or the opening night of Licensed Premises which are opening after being closed during construction or renovation (no more than seven consecutive days may be included as 'opening nights').*

#### **(b) 'special event of local or national significance'**

*This includes:*

*(a) Festive Period: each year the Board determines a Policy for Extended Hours for the next Christmas/New Year Period, and may decide to impose a 00.30 curfew, and may make special provision for certain days falling on weekends; the exact Policy is agreed in October or November;*

*(b) Marymass (for Licensed Premises in Irvine only)*

*(c) Public Holidays widely observed in North Ayrshire (e.g. the May Day Holidays and the September Weekend); holidays observed mainly outside Scotland and observed in only a few Licensed Premises in North Ayrshire are not included;*



- (d) *Arran Folk Festival (for Licensed Premises on Arran only)"*
- (e) *Largs Viking Festival or Largs Regatta Week (for Licensed Premises in Largs only)*
- (f) *Millport Country & Western Festival (for Licensed Premises on Cumbrae only)*
- (g) *major sporting events such as the Olympic Games, Commonwealth Games or football World Cup Finals;*
- (h) *Hallowe'en.*

*The Board does not consider that the following are appropriate for Extended Hours:*

- (a) *the Easter weekend;*
- (b) *Local Holidays other than Marymass;*
- (c) *Guy Fawkes Night.*

*Applicants seeking Extended Hours on those days should expect that their Applications will be referred to a Board Meeting."*

### **3. PR 0080 "The Waterside", 14 Bath Street, Largs, KA30 8BL**

**Licence Holder: Hillend Enterprises Limited**

**Application for Variation of Premises Licence – Sections 29 – 32**

\*\*\* See full report on Agenda

**Application for Variation - Sections 29-32**

<b>Premises Licence Holder (here "PLH")</b>	Hillend Enterprises Ltd.
<b>Premises</b>	"The Waterside", 14 Bath Street, Largs, KA30 8BL
<b>Premises Licence ref.</b>	0080
<b>Premises Manager</b>	Brian Purdie

***All statutory references are to the Licensing (Scotland) Act 2005 except where otherwise stated.***

**1. Variation request**

On 20 June 2022 the Board heard the PLH and objectors in relation to the PLH's request for Extended Hours:

<b>Ref.</b>	<b>Day, Date and Period</b>	<b>Purpose</b>	<b>Proposed Terminal Hour and end date</b>
251-22	Friday 24th June, 2022	Largs Live Music Festival	Saturday 25th of June, 2022, 1.00am
	Saturday 25th June, 2022		Sunday 26th of June, 2022, 1.00am
	Sunday 26th June, 2022		Sunday 26th of June, 2022, 12.00 p.m.

The Board refused the request.

The PLH now requests the Board to vary the Premises Licence so that the same hours would apply permanently, with Thursday and Friday having the extended Saturday time also:

Monday	08.00 - 24.00
Tuesday	"
Wednesday	"
Thursday	08.00 - 01.00
Friday	"
Saturday	"
Sunday	11.00 - 24.00

These were the licensed Hours operating before the Board decided on 22 November 2021 to vary the Operating Plan so that the Terminal Hour on each of seven days in the week should be 23.00. The present Hearing follows several previous hearings over the years, all relating to complaints of noised nuisance made by neighbours. See below ("History of Licence").

The Premises are subject to

- (a) the usual conditions which apply throughout North Ayrshire directed to the "Preventing Public Nuisance" Licensing Objective (set out in Paragraph 5 below "Neighbourhood Conditions") and

(b) an additional condition requiring that these Premises employ *SIA-licensed Door Stewards when there is live or amplified sound* (set out in Paragraph 4 ("Variation on 22 November 2021").

### **2. Description of the Premises**

The Premises are a public house with a capacity of 96 patrons and consist of a Lounge Bar and Function Area on the ground floor, with the manager's flat above. The Public House is part of a terrace in the block bounded by Bath Street and on three sides by Fort Street. Bath St. has a mixture of commercial and residential property. The Premises open onto Bath Street and have a rear exit, and a close leads from there towards Fort Street. The Premises have a smoking shelter near the rear exit.

### **3. History of Licence**

#### **(a) Grant: 14 April 2009**

The Premises Licence was granted to Greene King Retailing Ltd during the Transition between the Licensing (Scotland) Act 1976 and the Licensing (Scotland) Act 2005.

#### **(b) Variation: 3 March 2011**

Licence varied: Premises Manager now Brian Purdie (PLH remained Greene King Retailing Ltd).

#### **(c) First Review: 26 June 2012**

The Board considered a Review Application submitted by a neighbour of the Premises, Mr. Paul Castelvechi, Flat H, 18 Main St., Largs. The Application was accompanied by a Petition signed by 16 other residents. The Board had a report from the LSO describing alleged noise disturbances since July 2010. The Board upheld the Application in relation to the Licensing Objectives:

*"(c) preventing public nuisance"*

*"(d) protecting and improving public health"*

and varied the Licence by adding a further condition:

*"Amplified music or noise will cease at 12.30 a.m. on a Friday and Saturday night and 11.30 p.m. on a Sunday night."*

#### **(d) Second Review: 18 December 2012**

The Board subsequently dealt with a second Review Application commenced by the Environmental Health Officer. This called on 22 August 2012, was continued to the meeting of 3 October 2012, and finally to 18 December 2012, pending noise-abatement works and monitoring by the EHO. On 18 December 2012 the Board determined to take

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no further action on the Review Application, considering that the matters raised by the Applicant had now been resolved, as:

- works had been carried out on the Premises with a view to remedying the problem raised by the Review Application, and
- the PLH proposed to cease having live music 30 minutes before the Terminal Hour.

### **(e) Transfer: 12 May 2014**

The Board granted a Transfer Application, from Greene King Retailing Ltd. to Hillend Enterprises Ltd. (the present Premises Licence Holder).

### **(f) First Variation: 11 January 2016**

The Board refused a Variation Application proposing to vary the Premises Licence by increasing on-sale terminal Core Hours on Fridays & Saturdays 2.30 a.m. from 1.00 a.m..

There were several Objections and Representations to this request, including from:

1. Mr. Paul Castelvechi, Flat H, 18 Main Street, Largs
2. Mr. David Findleton, Flat B, 10 Bath Street, Largs

### **(g) Second Variation: 22 February 2016**

The PLH made a second Variation Application:

*"Add dance facilities to the Operating Plan"*

On 22 February 2016 - after a Site Visit by Members - the Board resumed consideration. The Objections and Representations were again before the Board. Having heard from the Licence-Holder and objectors the Board granted the variation application to add dance facilities.

### **(h) Review Hearing on 22 November 2021**

This followed a Premises Licence Review Proposal made by the Board under Section 37.

The meeting was held remotely. After hearing from Mr. Brian Purdie, the Designated Premises Manager, and from residents, and after considering the Report prepared by the Clerk and the written submissions made by many of the parties, the Board retired to deliberate in private. On resuming, the Board decided:

- (1) that both "Grounds for Review" referred to in the Review Proposal were established:

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(A) that the operation of the Premises on the occasions and in the circumstances described had involved breaches of one or more of the Licence conditions;

(B) that the operation of the Premises had not been consistent with the 'preventing public nuisance' and 'protecting and improving public health' Licensing Objectives;

(2) that the variation below was necessary and appropriate for the purposes of those Licensing Objectives and was proportionate in all the circumstances.

### **(i) Extended Hours Hearing: 20 June 2022**

See paragraph 1 above.

### **4. Variation on 22 November 2021**

[a] the Operating Plan should be varied so that the Terminal Hour on each of seven days in the week should be 23.00, from their current position:

Monday	8.00 - 24.00
Tuesday	8.00 - 24.00
Wednesday	8.00 - 24.00
Thursday	8.00 - 01.00
Friday	8.00 - 01.00
Saturday	8.00 - 01.00
Sunday	11.00 - 24.00

[b] The Conditions of the Premises Licence should be varied to add:

*"Throughout the period when live or amplified sound is to occur on the Premises, the Premises shall employ a licensed Door Steward (a person who holds a licence granted under Section 8 of the Private Security Industry Act 2001) who shall take reasonable steps to ensure that:*

*(a) no person who is unfit due to drink, drugs or any other reason may enter the Premises;*

*(b) the Licence Conditions in the Board's Standard Conditions quoted below (heading "Licence conditions referred to") are continuously complied with."*

This condition was additional to the 'neighbourhood conditions' which apply to all Premises Licences in North Ayrshire - these are set out below and are the "Licence conditions referred to" in the Board decision of 22 November 2021.

### **5. Neighbourhood Conditions**

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*"C.4.1 The Licensee shall apply best practicable means to prevent persons outside the Premises or any Outdoor Drinking Area being subjected to nuisance from noise, vibration, smell or otherwise.*

*C.4.2 Signs will be displayed inside the building, near each exit (including any exit leading to an Outdoor Drinking Area), asking customers to respect the local neighbourhood and keep noise levels to a minimum while outside the building or at the entrances to the building. Each sign shall be of at least A4 size, in letters of not less than 12 points in height, and positioned so that is easily readable by customers or drivers.*

*C.4.3 The Licensee shall take reasonable steps to ensure that at all times that the Premises are open to the Public (and for 15 minutes after the Terminal Hour) customers do not cause nuisance to neighbouring occupiers or persons outside the Premises.*

*C.4.4 When any of the activities to which this Condition applies take place on the Premises after 22.00, the following requirements apply:*

*(a) All windows and doors (both external and internal) shall be kept closed, except that door may be opened from time to time to permit the immediate passage of people provided that they are then again closed;*

*(b) Where equipment is used for the amplification, relaying or making of sound, the Premises shall, at the request of an Officer authorised by the Council, use sound limiter equipment set so that the equipment does not operate beyond sound levels agreed.*

*The activities to which this Condition applies are the playing of Recorded Music, karaoke, the giving of Live performances, Dancing, the performance of Theatre, the showing of Films, and the operation of Radio, Television or Jukebox."*

## **6. How the Board should proceed**

The Board must consider:

- A. any written or oral submissions by or behalf of the PLH and the third parties.
- B. the Licensing Objectives:
  - (a) preventing crime and disorder,
  - (b) securing public safety,
  - (c) preventing public nuisance,
  - (d) protecting and improving public health, and
  - (e) protecting children and young persons from harm.
- C. the Licensing Standards Officer's report.

- D. any Notice of Objection given by the Chief Constable.

The PLH's proposal is to restore the Premises' hours only a year after they were restricted by the Board. The Board then considered that that restriction was necessary and appropriate for the purposes of those Licensing Objectives and was proportionate in all the circumstances.

The Board should approach the case on the basis that there is a presumption that the Licence should remain as it is, and that there is an onus on the PLH to persuade the Board that there has been such a major change of circumstances in the interval since November 2021 as to justify removing the restriction as to hours.

The Board require to balance competing rights:

- (a) Regularly exposing neighbours to noise and other nuisances may breach neighbours' human rights - the rights to respect for private life, family life and home under Article 8 of the European Convention on Human Rights.

The Board might see the present request as an invitation to them to permit nuisance (by granting or varying a Licence), so their decision might be the basis of a claim for compensation by the neighbours against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633); but

- (b) There is no precedent for a Board having liability for failing to prevent a nuisance, and Licence Holders have a right to free enjoyment of their possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. The Board are obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

The Standard Conditions (and the additional condition here) are the way that the Board has chosen to balance competing rights - they include conditions designed to minimise nuisance.

### **7. Direction**

If the Board refuse the PLH's application, the PLH can ask for a Direction under Section 32 so that he can re-apply for the same variation within one year without having to establish that there has been a material change of circumstances.

### **8. Consequences and further action**

#### **If the variation request is granted:**

- (a) the additional condition about door stewards will remain;
- (b) it will always be open for to the Board to review that decision, either after a Review Application made by third-parties, or by the Board making a Review Proposal. No variation decision is truly "final".

**If the variation request is refused:**

(a) The PLH will not be entitled to seek the same variation within one year from the date of the refusal (Section 32) unless either:

(A) the Board direct at the time of refusal that the one-year bar should not apply (that decision can be made either by the whole Board or, under the Scheme of Delegations, by the Convenor or whoever is chairing the meeting), or

(B) the Board are satisfied that there has been a material change of circumstances since the earlier refusal.

(b) The PLH will be entitled to appeal to the Sheriff by Summary Application lodged at the Sheriff Court within:

(A) if there is no Statement of Reasons, 21 days of the decision (not 21 days from the notification of the decision), or

(B) 21 days of the issue of the Statement of Reasons.

See Article 9 of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010-0416. The Sheriff has no 'dispensing power' so as to allow late appeals.

The PLH should seek independent legal advice before taking any action.