

Cunninghame House  
Irvine  
KA12 8EE

13 November 2019

### **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 18 November 2019 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

**1. Minutes**

Submit Minutes of the Board Meeting held on 3 June 2019.

**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)

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**Licensing Board**

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Sederunt: Ronnie McNicol (Convenor)  
Todd Ferguson (Vice-Convenor)  
Robert Barr  
John Easdale  
Scott Gallacher  
Jean McClung  
Davina McTiernan  
Donald L Reid  
Angela Stephen

Chair:

Apologies:

Meeting Ended:

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## **Agenda Item 2**

**18 November 2019**

### **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."</li></ul> <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>

<b>Children and Young People:</b>	None.
<b>Environmental &amp; Sustainability:</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 Benefits:</b>	Not applicable, as the Report does not relate to tendering or procurement exercises.

## 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.

Aileen Craig  
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)**, on **01294-324305**.

## 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.	0506	Arran Gift Box Company Ltd	Arran Gift Box Ardshonas Lamlash KA27 8JY	Application for Grant of a Premises Licence – Section 20
2.	768/19 – 770/19	Arran Gift Box Company Ltd	Arran Gift Box Ardshonas Lamlash KA27 8JY	Applications for Occasional Licences. Clerk to Report.
3.	0494	J N S Hotels Ltd	Roebank Hotel Roebank Road Beith KA15 2DY	Application for Variation of Premises Licence – Section 29
4.	0250	Frankie & Benny's	18 Riverway Riverway Retail Park Irvine KA12 8AY	Application for Variation and Transfer of Premises Licence – Sections 34 & 35
5.	029	Messrs Reid and Mochan	Crosskeys Bar 1 Fullerton Place Stevenston KA20 3EH	Application for Variation of Premises Licence – Section 29
6.	0232	Steven Quinn	Westend Dairy 100 Townfoot Dreghorn KA11 4EZ	Application for Variation of Premises Licence – Section 29
7.	NA/0546	Shahid Ramzan		Application for renewal of Personal Licence Section 78
8.	NA/0847	Hardeep Singh Binning		Personal Licence Review Hearing Section 83(7)
9.	NA/1363	Stephen Branningan		Personal Licence Review Hearing Section 83(7)

10. NA/2680 Kelly Paterson

Application for grant of  
Personal Licence  
Section 74

**Application for Grant of Premises Licence - Section 20**

Applicant	The Arran Gift Box Company Ltd.
Premises	Ardshonas, Lamblash, Isle of Arran, KA27 8JY
Ref.	0506

**Preliminary**

1	<p><i>This Report was prepared provisionally before the end of the Site Notice display period, which ends on 1 November 2019.</i></p> <p><i>No information about any objections or representations is noted here. If there are any, these will be copied to the Applicant, and all letters will be given to Members.</i></p>
2	<p><i>The Applicant should lodge the following documents. Until the Board has <u>all</u> of them, it cannot determine the Application:</i></p> <ol style="list-style-type: none"> <li><i>1. Certificate confirming display of Site Notice</i></li> <li><i>2. Building Control Certificate</i></li> </ol>

**1. Summary of Proposal**

The Applicant has applied for the Grant of a Premises Licence. The proposal is for a mail-order distribution service of gift hampers to be ordered online or by telephone. There will be no on-site sales or public access. The Premises request the full Licensed Hours permitted by Board Policy (10.00 a.m. to 10.00 p.m., 7 days a week).

**2. Issues**

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy - the Policy on Overprovision has not been considered, on the assumption that the Board will not wish to apply it to Premises with nil capacity.

**3. Summary of issues for Board**

The Board should consider whether or not the Premises Licence should be granted.

If the Applicant chooses to downgrade the Application to a 'Provisional Premises Licence', the Board should determine whether or not the Premises can operate immediately, on the basis of Occasional Licences:

OL/770: 18 November - 1 December 2019  
OL/769: 2-15 December 2019



OL/768: 16-29 December 2019

If the PPL is Confirmed within the OL period, the OLs will be held to have been surrendered. If the PPL is not confirmed within the OL period, the Premises will be unlicensed until Confirmation.

#### **4. Licence Conditions**

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

- A (All Premises)
- B (Off-Sales)

#### **5. Notes to Applicant**

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.

### Application for Variation of Premises Licence - Section 29

Applicant	JNS Hotels Ltd.
Premises	The Roebank Hotel and Wedding Venue, Roebank Road, Beith, KA15 2DY
Ref.	494

#### **1. Background**

The Board granted a Provisional Premises Licence under the Licensing (Scotland) Act 2005 on 30 October 2017, and that was confirmed on 6 December 2018.

The Hearing on 18 November 2019 is the third date that the Variation Application is to be considered by the Board:

It was first considered on Monday 3 June 2019. At that time an issue arose under the Planning legislation, and accordingly the Board deferred further consideration while this was resolved. The Council as Planning Authority later determined that issue (on 28 August 2019, see Paragraph 9(b) below), and the Board was now in a position to determine the Application.

It was considered again on 16 September 2019, when the Board decided to carry out a site visit before determining the Application. This took place on Monday 28 October 2019, when Councillors Ronnie McNicol (Convenor), Davina McTiernan, Jean McClung, Robert Barr and Donald Lees Reid attended. The Licence-Holder and some Objectors were also present.

#### **2. The Applicant's Proposal**

The building is the former Trinity Church. It is situated in a residential area and is bounded on the south side by Trinity Crescent and on the west side by Roebank Road. There are houses on the other side of each street.

When the Licence was granted, as well as the building itself, the Board approved a small outdoor drinking area on the north side of the building - that is, on the opposite side of the building from nearby houses.

In the present Application the Licence-Holder seeks the Board's authority to extend the Licence to the whole of the ground to the south of the building. Patrons using this ground would be in the line-of-sight of those houses.

On the proposed layout plan, both areas are coloured pink:

- the north area (already licensed) is marked "External drinking/smoking area".
- the south area (proposed) is marked "Area 1", "Area 2" and "Area 3".

#### **3. Existing Licence Conditions**

Throughout North Ayrshire, Premises Licences are subject to the Board's Standard Conditions, including:

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

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

The Applicant requested that Condition C.5.2 should not apply at all, but the Board kept it with an amendment, so that it 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 teas, coffees and other soft drinks may be taken into or consumed in the Outdoor Drinking Area adjacent to the building on its north side prior to 11.00 am."*

In addition, the Licence contained the condition:

*"No Fireworks may be used on the Premises."*

#### **4. Procedure**

The Board should hear from the Applicant and any person making objections or representations, and consider any written comments.

The Board should consider whether or not either of two "Grounds for Refusal" exist. If one or more exist, the Application must be refused. If neither exists, the Application must be granted.

There are two possible "Grounds for Refusal", set out in Section 30(5):

*"(b) that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives,*

*(c) that, having regard to—*

*(i) the nature of the activities carried on or proposed to be carried on in the Subject Premises,*

*(ii) the location, character and condition of the Premises, and*

*(iii) the persons likely to frequent the Premises,*

*the Board considers that the Premises are unsuitable for use for the sale of Alcohol in accordance with the proposed Variation,"*

#### **5. Ground for Refusal: Inconsistency with a Licensing Objective (Section 30(5)(b))**

Whenever the Board considers a proposal to grant or extend an Outdoor Drinking Area, it should consider the Licensing Objective 'preventing public nuisance'. The Board should consider whether or not the proposal is consistent with that L.O.,

considering the location and the distance from dwelling-houses. The Board is entitled to ask the Applicant to vary the proposal (for example, to alter the times or locations of activities which might lead to noise or other nuisance). The Board may also apply Conditions to the Licence (possible Conditions are set out below (see "Possible Licence Conditions").

**6. Ground for Refusal: the Variation may make the Premises Unsuitable for the sale of alcohol (Section 30(5)(c))**

The Board may wish to inspect the Premises or have a LSO report before determining this Application.

The Board is not entitled to determine matters such as Planning and Parking which are regulated by other legislation. Section 27(7) is:

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

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

Planning is a matter for North Ayrshire Council under the Town and Country Planning (Scotland) Act 1997. Parking is a matter for the Police (under the Road Traffic legislation) and the NAC Roads Dept. under the Roads (Scotland) Act 1984.

**7. 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 European Convention on Human Rights, 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); but

(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. The Board is obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. None of the considerations (Licensing Objective, "unsuitable premises", or Human Rights) are conclusive. They do not oblige the Board to impose such a substantial restriction that the Premises become uneconomic.

**8. Other legislation**

Even if the Board grants the variation requested, this would only apply as far as the position under the Licensing (Scotland) Act 2005 was concerned not entitle the Applicant to disregard the requirements of other legislation and the Board's decision would not act as permission or certification under other legislation (the Board's decision is not, for example, Planning Permission, Building Warrant, Roads Consent or Consent

under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations).

For example, with an Outdoor Drinking Area the Board applies a condition requiring drinking to stop by 10.00 p.m., but there might be a condition of Planning Permission requiring that the area not be used after 8.00 p.m. or 9.00 p.m.. In that case, the use of the area would have to stop at the earlier time. If the Licence-Holder was then prosecuted for breaching the Planning Permission, it would be no defence to say that the Board could have permitted the use till 10.00 p.m..

## **9. Planning Permission**

### **(a) Original 2017 decision**

Planning Permission under the Town and Country Planning (Scotland) Act 1997 was granted by North Ayrshire Council on 16 August 2017 for "Change of use and alterations to church buildings to form hotel and wedding venue" (N/17/00518/PP).

The Decision Notice expressly excluded the proposed south area. Condition 6 was:

*"That outdoor drinking, smoking and dining shall take place only on the designated area as illustrated on the plans hereby approved."*

The "designated area" on the plan in question identified the small area to the north of the building as "External drinking/smoking area." The land which is the subject of the present Variation Application is shown divided into three areas marked on the proposed Layout Plan and marks the south area as "Area 1", "Area 2" and "Area 3".

### **(b) 2019 Variation Decision**

On 28 August 2019 North Ayrshire Council varied condition 6 of the 2017 Planning Permission by decision N/19/00518/PP. The plan referred to is similar to the proposed Layout Plan, and the variation is as follows:

*"That the additional areas for outdoor smoking, drinking or dining as illustrated on site plan L(01)010 are hereby permitted to operate between the following hours:*

*Area 1 - (for dining and drinking only): 0900 to 2000 hours or sunset, whichever is the sooner;*

*Area 2 - (for dining and drinking to west of footpath adjacent to holly tree, with incidental smoking): 0900 to 2000 hours or sunset, whichever is the sooner;*

*Area 3 - (for dining, drinking and smoking): 0900 to 2100 hours or sunset, whichever is the sooner.*

*For the purposes of this condition, 'sunset' shall be taken to mean the published daily sunset time for Beith, North Ayrshire, as defined by the Met Office.*

*Prior to Area 3 coming into use, a timber fence as per the approved drawings L(01)010 and (01)012 shall be erected and retained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.*

*For the avoidance of doubt, Areas 1, 2 and 3 shall not be used for outdoor smoking, drinking or dining purposes during hours of darkness and shall not be illuminated (other than for the purposes of safety of persons entering and leaving the premises)."*

## **10. Possible Licence Conditions**

The Board is entitled to vary the conditions (Section 30(6)), no variation of the Condition C.5.1 (loudspeakers etc.) is necessary.

In relation to Condition C.5.2 (times of drinking), the condition could be replaced by:

*"C.5.2 These conditions apply to the use of the four Outdoor Drinking Areas shown on Layout Plan (01)005 Revision D.*

(a) *Definitions:*

*"The North Area" - the small area immediately adjacent to the north side of the building;*

*"Area 1", "Area 2", "Area 3" - areas to the south of the site and so marked on the Layout Plan ("the South Areas");*

*"Incidental Smoking" - smoking by persons passing through from one outdoor area to another, or persons entering/leaving the premises.*

*"Designated Smoking Area" - an area where persons staying there for dining and/or drinking may smoke.*

*"Sunset" - the published daily sunset time for Beith, North Ayrshire, as defined by the Met Office.*

*"Premises" includes any of the four Outdoor Drinking Areas.*

(b) *In all four areas: no drinks (alcoholic or not) shall be taken into or consumed in these areas earlier than 11.00 a.m. and later than 10.00 pm., **except** that teas, coffees and other non-alcoholic drinks may be taken into or consumed in any of those four areas from 09.00 a.m.*

(c) *In the South Areas:*

*Area 1 may only be used for dining and/or drinking (but not smoking) between 09.00 to 20.00 hours or Sunset, whichever is the sooner;*

*Area 2 may only be used for for dining and/or drinking and/or Incidental Smoking between 09.00 to 20.00 hours or Sunset, whichever is the sooner;*

*Area 3 may only be used for dining and/or drinking and/or as a "Designated Smoking Area" between 09.00 to 21.00 hours or Sunset, whichever is the sooner. Area 3 shall not be used without a timber fence erected and retained to the satisfaction of North Ayrshire Council as Planning Authority.*

(d) *the South Areas shall not be used at all after Sunset other than for the purposes of entering and leaving the Premises;*

(e) *the South Areas shall not be illuminated after Sunset other than for the purposes of safety of persons entering and leaving the Premises.*

(f) *No Fireworks may be used on the Premises."*

**11. Further action**

Even if the Board permits the Outdoor Drinking Areas in the South Areas initially, it may review that decision later if satisfied that the operation of that Area is not consistent with the L.O. on Review Application by any resident under Section 36.

**Application for Variation and Transfer of Premises Licence - Sections 34 & 35**

Licence-Holder	The Restaurant Group (UK) Ltd.
Transferee	OMOA Ltd.
Premises	18 Riverway, Riverway Retail Park, Irvine KA12 8AY
Ref.	250

**Preliminary**

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

**1. Background**

This is a combined Application under Section 35 for

- (a) Transfer of a Premises Licence, and
- (b) Variation

The Application relates to the Premises formerly occupied by "Frankie and Benny's", and the Transferee trades under the name "Toni Macaroni". The Application is made by the Transferee with the written consent of the Licence-Holder. The proposed variation changes the Licence in various ways to reflect the Transferee's business model.

Since the Applicant has intimated to the Licensing Board that the Application for Transfer is not contingent on the grant of the Application for Variation, Section 35(5) applies:

- (a) the Board must first determine the Transfer Application, and
- (b) if the Board refuses that, the Variation Application falls.

**(a) Transfer****a.1. Procedure**

The Application has been intimated to the Chief Constable, who is obliged to respond to the Board with a Notice stating either that:

- (a) neither the Transferee nor any Connected Person has been convicted of any Relevant Offence or Foreign Offence, or
- (b) that there are such convictions.

In either case, the Chief Constable may recommend that the Board should refuse the Transfer Application, if he considers that it is necessary for the purposes of any of the Licensing Objectives (Sections 33(7) - (9) as substituted by Criminal Justice and Licensing (Scotland) Act 2010).



There is no other consultation, and no display of a Site Notice, for the Transfer part of the Application. For the Variation part, there is the same consultation, Site Notice and scope for objections and representations as applies in other cases involving a Major Variation or the grant of a Premises Licence.

## **a.2. The Board's Decision on the Transfer Application**

The Chief Constable has advised that there are no relevant convictions and that refusal is not recommended refusal, so the Board is obliged to grant the Transfer Application.

### **(b) Variation**

#### **b.1. Summary of Variation Requests**

<b>No.</b>	<b>Variation</b>
1	Change name of Premises to "Toni Macaroni"
2	Amend description of Premises
3	Add off-sales (7 days, 10am - 10pm)
4	Add Home deliveries
5	Add 'seasonal variation' description
6	Add Premises Manager

#### **b.2. Variation: 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: Change name of Premises to "Toni Macaroni"***

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

#### ***Variation 2: Amend description of Premises***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

The proposed change is to:

"The restaurant comprises of one level, including restaurant area with ancillary bar, kitchen, stores and ancillary offices. It will also have an external terrace which is for the use of diners only."

### ***Variation 3: Add off-sales (7 days, 10am - 10pm)***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and that (with one exception) there is no breach of Board Policy.

The exception is the Overprovision Policy (Licensing Policy Statement 2018-22, Annex D). The addition of an off-sales facility is new; the Premises already have an on-sales facility and accordingly have received the special treatment the Board gives to restaurants and hotels (what the Policy refers to as 'Function Type 4').

Paragraph 3.5(d) is:

"(d) Function Type 4:

*Where the Premises are in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board may regard the grant of a new Licence (or Variation of an existing one) as not calling for refusal, on the view that such Premises may not be a significant contributor to overall disorder.*

*However, since the Board:*

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*
- endorses the view that "alcohol is not an ordinary commodity",*

*it may refuse the Application here also. 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour."*

The Board's Policy is that there is a presumption of refusal of new alcohol facilities, everywhere in North Ayrshire. The presumption is particularly strong in some parts of the area, including Irvine.

The Board should consider whether or not the present proposal can be treated as an exception to the Policy, given that the additional volume of alcohol to be sold may be relatively small. The Applicant also proposes to include off-sales with home delivery (Variation 4).

### ***Variation 4: Add Home deliveries***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and that (with one exception) there is no breach of Board Policy.

The exception is the Overprovision Policy - see note to Variation 3.

### ***Variation 5: Add 'seasonal variation' description***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and that there is no breach of Board Policy.

The changed description simply refers to the Board's Policy.

### ***Variation 6: Add Premises Manager***

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

## **b.3. Licence Conditions on Variation (Section 30(6))**

If Variation 3 is granted, the Conditions for Off-Sales (Part B) should be added

No other variation of the Conditions is appropriate.

## **Notes to Applicant**

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Food Safety Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.



**Application for Variation of Premises Licence - Section 29**

Applicant	Messrs. Reid and Mochan
Premises	"Cross Keys Bar", 1 Fullerton Place, Stevenston, KA20 3EH
Ref.	029

**Preliminary**

*The Board cannot deal with the case on 18 November 2019 unless the Applicant has produced a Certificate confirming display of the public Site Notice.*

*This Application was first considered by the Board on 16 September 2019, when the Applicant was absent and the Board did not have a Certificate of display.*

*The Board therefore continued the case. The Application originally contained two variation requests (numbers 1 and 2 below), but after the continuation the Applicant added another (number 3) so the Applicant was told to display an amended Site Notice.*

**1. Summary of Variation Request(s)**

<b>No.</b>	<b>Variation</b>
1	<i>On-Sales to start at 10.00 a.m. on Sunday</i>
2	<i>Add sale of hot food in on-sales</i>
3	<i>Allow 5-17 to wait for buses to football matches</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 Licensing Objectives or Board Policy are highlighted.

***Variation 1: On-Sales to start at 10.00 a.m. on Sunday***

The Premises already open at 10.00 a.m. 6 days a week, but at 12.30 p.m. on Sundays. Following an earlier Variation granted in June 2019, the Premises exclude under-18s (although for short periods they will be on the Premises - see Variation 3).

The Chief Constable has no objection to the proposal to open at 10.00 a.m. on Sunday.

***Variation 2: Add sale of hot food in on-sales***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

The Council's Environmental Health officers have no objection to this proposal.

### ***Variation 3: Allow 5-17 to wait for buses to football matches***

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.

The Premises were reconstructed: previously they were divided into a bar and a lounge, with separate entrances. Persons aged 5-17 years were allowed in the lounge.

The dividing wall was then removed. Under-18s were excluded from the whole Premises.

The proposal is to allow Children and Young People aged 5-17 years to wait in the lounge area, far from the bar, for up to an hour in the period 11.00 a.m. to 6.00 p.m. before buses leave the Premises to attend football matches.

## **3. Effect on Licence Conditions (Section 30(6))**

The Licence was granted subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision. The existing Conditions should be replaced by the current Edition 5 and these will apply as read with later amendments of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

## **4. Notes to Applicant**

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Food Safety Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or

the maker of the programme or recording. The Licensing Board does not deal with this.

## Application for Variation of Premises Licence - Section 29

Applicant	Steven Quinn
Premises	Shop, 100 Townfoot, Dreghorn, IRVINE KA11 4EZ
Ref.	0232

**Preliminary**

*The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.*

**1. Summary of Variation Request(s)**

No.	Variation
1	Add to off-sale display, increasing capacity from 11.452 to 13.852 sq.m. (about 20%)
2	Change name to 'West End Stores'

**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 Licensing Objectives or Board Policy are highlighted.

***Variation 1: Add to off-sale display, increasing capacity from 11.452 to 13.852 sq.m. (about 20%)***

Advice:

The Board has a discretion to grant or refuse this request. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

**The Ground which appears to apply is:**

**- Overprovision may result from the grant of the Variation**

If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

**The general approach to Overprovision throughout North Ayrshire**

1. Section 30(5) is:



*"(5) The Grounds for Refusal are— ...*

*(d) that the Board considers that, if the Application were to be granted, there would, as a result, be Overprovision of Licensed Premises, or Licensed Premises of the same or similar description as the subject premises (taking account of the variation), in the locality."*

Section 30(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I. 2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

(a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

(b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;

2. Nightclubs (or parts of Premises which operate as nightclubs);

3. Other On-sales Premises (Public Houses);

4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose;

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;

6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment.

4. The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

(a) the existing number and capacities of Premises in that 'Locality' and in that 'Function Type' is already sufficient,

(b) Overprovision would result if the Application was to be granted, and

- (c) the Application should be refused.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the Additional Factors relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both Additional Factors occur.

### **The Present Case**

7. Applying the Policy here:

(a) The Subject Premises are in the "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton) (Locality 5);

(b) Additional Factor (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);

(c) The Subject Premises are in Function Type 1 (Off-sales);

(d) Additional Factor (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).

8. Since both Additional Factors are present here, the presumption of refusal is especially strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

10. The Board has accepted that it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board has done. The Board is satisfied that throughout North Ayrshire there has for many years been a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

11. The LPS, Annex D includes:

*"2.4. ... The Board encourages inclusive growth, as long as this promotes the Licensing Objectives. For example, while new premises may bring*

*immediate jobs, in the longer term increased availability of alcohol is likely to have a detrimental impact on alcohol-related harms, and impact on the objective of 'Protecting and Improving Public Health'. The Board is unlikely to accept the suggestion that it is necessary to include an off-sales alcohol sale facility within a convenience store selling general groceries.*

3.5. ... the Board:

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and
- endorses the view that "alcohol is not an ordinary commodity", ...

3.6. The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application."

## ***Variation 2: Change name to 'West End Stores'***

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

### **3. Effect on Licence Conditions (Section 30(6))**

No variation of the Conditions is appropriate.

### **4. Notes to Applicant**

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Food Safety Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers) this is a 'public performance' and may need a Licence from "PRS for Music" (formerly the "Performing Rights Society") or the maker of the programme or recording. The Licensing Board does not deal with this.

**Application for Renewal of Personal Licence - Licensing (Scotland) Act  
2005, Section 78**

Applicant	Shahid Ramzan
Ref.	NA-0546

## **1. Summary**

The Applicant has applied for renewal of a Personal Licence. The Application is not advertised and the only consultation involves:

- (a) the Chief Constable - He must give the Board a Notice confirming whether or not the Applicant has been convicted of "relevant or foreign offences". The Chief Constable may also recommend refusal and/or give the Board any information he considers may be relevant (Sections 73(3) to 73(5), as applied to Renewal Procedure by Section 78(5));
- (b) Licensing Standards Officer - the LSO may provide the Board with any information that she considers may be relevant (Section 73A(2)).

## **2. Reason for Hearing**

If there is a Notice confirming a "relevant or foreign offence", and/or an Information Report, the Board must hold a Hearing.

## **3. Chief Constable's Notice**

The Chief Constable has reported that the Applicant has been convicted of one or more such offences. The information was not supplied by the Applicant, who signed a declaration "The contents of this application are true to the best of my knowledge and belief". It is an offence to make a false statement in connection with an Application under the Act (Section 134A & Criminal Law Consolidation (Scotland) Act 1995, Section 44(2)(b)).

## **4. Police Recommendation**

If the Chief Constable considers that it is necessary for the purposes of any of the Licensing Objectives that the Application should be refused, he may recommend this under Section 73(4). He has not done so.

## **5. Information from Licensing Standards Officer**

The LSO has no information that she considers may be relevant to this Application.

## **6. Procedure**

Copies of the Police Notice, any LSO Information Report, and this Report have been sent to the Applicant, together with Intimation of the Board Hearing. The Members will have copies.

At the Hearing, the Board must have regard to

- (a) the Police Notice
- (b) any Information Reports
- (c) any comments made by the Applicant.

## **7. Board's Powers**

If the Board is satisfied:

- (a) that having regard to the Licensing Objectives, the Applicant is not a fit and proper person to be the holder of a Personal Licence; and/or
- (b) that it is otherwise necessary to refuse the Application for the purposes of any of the Licensing Objectives,

the Board must refuse the Application.

Otherwise, it must grant the Application if the Applicant holds an appropriate Licensing Qualification.

## **8. Licensing Qualification**

The Applicant holds an appropriate "Licensing Qualification".

## **9. After the Board's decision**

The Applicant can appeal to the Sheriff if the Application is refused. The Chief Constable cannot appeal if the Application is granted.

After a decision to grant, if any of these occur:

- (a) the Holder is convicted of an offence, or
- (b) the Board, while dealing with a Premises Licence Review, makes a finding that the Personal Licence Holder has acted in a manner which was inconsistent with any of the Licensing Objectives, or
- (c) the Chief Constable or the LSO considers that the Holder has acted in a manner which is inconsistent with any of the Licensing Objectives,

the Board will be entitled to hold a Hearing which may lead to the Revocation, Suspension for up to 6 months, or the Endorsement of the Licence.

If three Endorsements are imposed within a 5-year period, the Board may Suspend or Revoke the Licence.

All Personal Licences are valid for 10 years, and can be renewed indefinitely at 10 year intervals. The Board cannot limit the length of the grant or attach conditions.

The Holder must obtain a "Refresher" Licensing Qualification every 5 years, failing which the Licence is automatically revoked, without a Hearing at the Board or the possibility of Appeal to the Sheriff (Section 87).

**Personal Licence Review Hearing - Section 83(7)**

Licence Holder	Hardeep Singh Binning
Ref.	NA-0847

**1. Background**

The Board has received confirmation from the Chief Constable that the Personal Licence Holder has been convicted of a 'relevant or foreign offence'. Copies of the letter will be distributed to Members at the Meeting.

The information was also supplied by the Holder within one month after the date of the conviction. The Chief Constable is entitled to make a Recommendation that the Personal Licence should be Revoked, Suspended or Endorsed, but has not done so.

The Licence has not previously been either Suspended or Endorsed.

**2. Hearing Procedure**

Under Section 83(7) the Board must, on receipt of the confirmation from the Police, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

- (a) the conviction
- (b) any comments made by the Personal Licence Holder,
- (c) any comments made by the Chief Constable.

**3. Board's Powers on Review**

The Board must proceed in three stages.

**Stage 1**

The Board should consider the question "Has the Review been established?"

If 'yes', proceed to Stage 2.

If 'no', there is no further action, and the Review is ended.

**Stage 2**

The Board must consider whether or not the Personal Licence Holder's conduct has been inconsistent with any of 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' or 'Young People' from harm (any persons aged under 18),

and answer this question:

*"Is the Licence Holder not a fit and proper person to be the holder of a Personal Licence, having regard to the Licensing Objectives?"*

If 'yes':

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board must revoke the Personal Licence - the Licence is revoked altogether, rather than simply being suspended for a time (Section 84(7A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

If 'no', proceed to Stage 3.

### **Stage 3**

If the Board does not consider that the Holder is 'not a fit and proper person', the Board has a discretion.

If the Board considers it is necessary for any of the Licensing Objectives, the Board may:

- (a) Revoke the Personal Licence, or
- (b) Suspend the Personal Licence for up to 6 months, or
- (c) Endorse the Personal Licence.

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

### **Effect of Endorsement**

An Endorsement will be noted in Annex C to the Personal Licence. In addition, if there was a conviction for a 'Relevant or Foreign Offence' (as defined by The Licensing



(Relevant Offences) (Scotland) Regulations 2007 No. 513) then Annex B will be updated: Section 89(4).

An Endorsement lasts 5 years. If a Licence-Holder gets 3 Endorsements in a 5 year period, then there is a further Hearing, at which the Licence might be Suspended (for up to 6 months) or Revoked.

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.

**Personal Licence Review Hearing - Section 83(7)**

Licence Holder	Stephen Anthony Brannigan
Ref.	NA-1363

**1. Background**

The Board has received confirmation from the Chief Constable that the Personal Licence Holder has been convicted of a 'relevant or foreign offence'. Copies of the letter will be distributed to Members at the Meeting.

The information was also supplied by the Holder within one month after the date of the conviction. The Chief Constable is entitled to make a Recommendation that the Personal Licence should be Revoked, Suspended or Endorsed, but has not done so.

The Licence has not previously been either Suspended or Endorsed.

**2. Hearing Procedure**

Under Section 83(7) the Board must, on receipt of the confirmation from the Police, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

- (a) the conviction
- (b) any comments made by the Personal Licence Holder,
- (c) any comments made by the Chief Constable.

**3. Board's Powers on Review**

The Board must proceed in three stages.

**Stage 1**

The Board should consider the question "Has the Review been established?"

If 'yes', proceed to Stage 2.

If 'no', there is no further action, and the Review is ended.

**Stage 2**

The Board must consider whether or not the Personal Licence Holder's conduct has been inconsistent with any of 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' or 'Young People' from harm (any persons aged under 18),

and answer this question:

*"Is the Licence Holder not a fit and proper person to be the holder of a Personal Licence, having regard to the Licensing Objectives?"*

If 'yes':

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board must revoke the Personal Licence - the Licence is revoked altogether, rather than simply being suspended for a time (Section 84(7A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

If 'no', proceed to Stage 3.

### **Stage 3**

If the Board does not consider that the Holder is 'not a fit and proper person', the Board has a discretion.

If the Board considers it is necessary for any of the Licensing Objectives, the Board may:

- (a) Revoke the Personal Licence, or
- (b) Suspend the Personal Licence for up to 6 months, or
- (c) Endorse the Personal Licence.

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

### **Effect of Endorsement**

An Endorsement will be noted in Annex C to the Personal Licence. In addition, if there was a conviction for a 'Relevant or Foreign Offence' (as defined by The

Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513) then Annex B will be updated: Section 89(4).

An Endorsement lasts 5 years. If a Licence-Holder gets 3 Endorsements in a 5 year period, then there is a further Hearing, at which the Licence might be Suspended (for up to 6 months) or Revoked.

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.

**Application for Grant of Personal Licence - Licensing (Scotland) Act  
2005, Section 74**

Applicant	Kelly Paterson
Ref.	NA-2680

## **1. Summary**

The Applicant has applied for the grant of a new Personal Licence. The Application is not advertised and the only consultation involves:

- (a) the Chief Constable - He must give the Board a Notice confirming whether or not the Applicant has been convicted of "relevant or foreign offences". The Chief Constable may also recommend refusal and/or give the Board any information he considers may be relevant (Sections 73(3) to 73(5));
- (b) Licensing Standards Officer - the LSO may provide the Board with any information that she considers may be relevant (Section 73A(2)).

## **2. Reason for Hearing**

If there is a Notice confirming a "relevant or foreign offence", and/or an Information Report, the Board must hold a Hearing.

## **3. Chief Constable's Notice**

The Chief Constable has reported that the Applicant has been convicted of one or more such offences. The information was not supplied by the Applicant, who signed a declaration "The contents of this application are true to the best of my knowledge and belief". It is an offence to make a false statement in connection with an Application under the Act (Section 134A & Criminal Law Consolidation (Scotland) Act 1995, Section 44(2)(b)).

## **4. Police Recommendation**

If the Chief Constable considers that it is necessary for the purposes of any of the Licensing Objectives that the Application should be refused, he may recommend this under Section 73(4). He has not done so.

## **5. Information from Licensing Standards Officer**

The LSO has no information that she considers may be relevant to this Application.

## **6. Procedure**

Copies of the Police Notice, any LSO Information Report, and this Report have been sent to the Applicant, together with Intimation of the Board Hearing. The Members will have copies.

At the Hearing, the Board must have regard to

- (a) the Police Notice
- (b) any Information Reports
- (c) any comments made by the Applicant.

## **7. Board's Powers**

If the Board is satisfied:

- (a) that having regard to the Licensing Objectives, the Applicant is not a fit and proper person to be the holder of a Personal Licence; and/or
- (b) that it is otherwise necessary to refuse the Application for the purposes of any of the Licensing Objectives,

the Board must refuse the Application.

Otherwise, it must grant the Application if the Applicant holds an appropriate Licensing Qualification.

## **8. Licensing Qualification**

The Applicant holds an appropriate "Licensing Qualification".

## **9. After the Board's decision**

The Applicant can appeal to the Sheriff if the Application is refused. The Chief Constable cannot appeal if the Application is granted.

After a decision to grant, if any of these occur:

- (a) the Holder is convicted of an offence, or
- (b) the Board, while dealing with a Premises Licence Review, makes a finding that the Personal Licence Holder has acted in a manner which was inconsistent with any of the Licensing Objectives, or
- (c) the Chief Constable or the LSO considers that the Holder has acted in a manner which is inconsistent with any of the Licensing Objectives,

the Board will be entitled to hold a Hearing which may lead to the Revocation, Suspension for up to 6 months, or the Endorsement of the Licence.

If three Endorsements are imposed within a 5-year period, the Board may Suspend or Revoke the Licence.

All Personal Licences are valid for 10 years, and can be renewed indefinitely at 10 year intervals. The Board cannot limit the length of the grant or attach conditions.

The Holder must obtain a "Refresher" Licensing Qualification every 5 years, failing which the Licence is automatically revoked, without a Hearing at the Board or the possibility of Appeal to the Sheriff (Section 87).