

**North Ayrshire Licensing Board
5 September 2022**

Irvine, 5 September 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, Jean McClung, Donald L Reid and Ronnie Stalker.

In Attendance

W O'Brien, Solicitor (Licensing), 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

Councillor Angela Stephen.

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 20 June 2022. The Board unanimously agreed to confirm and adopt the Minutes.

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 considered an application for variation 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"
2. Add an "Outdoor Drinking Area" on the front pavement
3. Amend the description of the premises accordingly
4. Increase capacity: 408 persons plus 58 outside

The Board considered the terms of the case summary report by the Solicitor (Licensing).

Mr Howlett then addressed the Board. The proposal is to extend the existing outdoor drinking area at the rear of the building, add a pavement café area at the front on the High Street and increase capacity as well as amending the Premises description. Following the decision at the previous Licensing Board Meeting, these areas have been operating successfully under Occasional Licences. The Board restricted the Occasional Licence in operation at the front pavement area from 12 noon until 8.00pm, however they would like to be able to use this area from 10am until 10pm. The capacity on the pavement area was restricted to 16 persons but they are seeking a capacity of 26 persons in this area. It is hoped that the recent use of the area under Occasional Licences has proven to the Board that this area has operated successfully.

Ms Cullen confirmed to the Board that there has been no issues or complaints arising from the use of the pavement area.

Mr O'Brien advised the Board that Mr Howlett's request to now Vary the Standard Condition to operate the outdoor area before 11am would require a separate Major Variation as this was not included in the current application that has been advertised and is now before the Board.

Sergeant Syme read the contents of the Police representation letter dated 31 May 2022. As this letter predates the decision from the previous Board meeting Sergeant Syme confirmed to the Convenor that the Police did not have any further objections or representations.

Referring to the rear outdoor area, Mr Howlett advised Councillor Larsen that they did not have photographs available for the proposed extended area at the rear. Ms Blunn confirmed that the rear area is currently used as a smoking area which has 3 tables and a capacity for 9 people, the proposed rear area included a section towards the East Road car park. Councillor Larsen noted that it would be beneficial to have photographs of the rear area as being the local member she is aware it is in a residential area. Mr Howlett clarified that the proposed breakdown in capacity for the outdoor areas was 26 on the front pavement area and 32 at the rear. Ms Blunn highlighted the rear extended area was not currently in use, the area is still to be prepared but the hope is to have approximately 10 tables in the rear area. Mr Howlett confirmed there would be a total of 32 chairs in the rear area possibly with 8 or 9 tables and was unaware of any issues with the rear area.

Councillor McClung highlighted her concerns at the front pavement area as this is beside a main bus stop. Mr Howlett provided photographs to the Board showing the area in use and the actual location of the bus stop. Ms Blunn advised that they benefit from the widest section of the pavement area and had no issues in the use of this when operating under the Occasional Licences. She considers the use of the pavement enhances this section of the town, looks good and adds to the appearance of the area.

Mr Howlett confirmed the front area, as shown on the photograph, was the total area and although previously restricted to 16 persons the same area would have a larger capacity of 26 persons.

The Convenor explained the options available to the Board.

Councillor Reid noted his concerns regarding the front pavement area, Mr Howlett advised the barriers are contained in the photographs supplied. Ms Blunn noted that the photographs did not show the true width of the pavement area, she explained that a van parked on the pavement area opposite their tables and chairs and still left adequate space for pedestrians to pass.

Councillor Stalker confirmed the area at the front is on the widest part of the pavement.

Referring to the rear outdoor area, Mr Howlett advised Councillor Reid the capacity was calculated using Building Control's method. He explained that the capacity of 32 would be a maximum capacity and very rarely would this be fully occupied.

Regarding the times that the front outdoor area could be used, Mr Howlett advised Councillor McDonald that he would like the restriction on the use of the outdoor area from 12 noon removed to allow for teas and coffees with breakfasts. He explained that the premises can open and trade from 9am and understood the Board's concerns when granting the Occasional Licences for the use of this new area. As the Variation has not yet been determined he would like to operate the outdoor area earlier than 12 noon.

Councillor Larsen confirmed to the Convenor that it would be beneficial to make a site visit to look at the proposed areas as photograph would not do this justice.

Having considered the terms of the reports and the submissions made, Councillor Larsen proposed that the Board grant Variations 2 (Add an "Outdoor Drinking Area" on the front pavement), 3 (Amend the description of the premises accordingly) in part Variation 4 (Increase capacity: 408 persons plus 26 in outside front pavement area) and continue consideration of Variation 1 (Extension to rear "Outdoor Drinking Area") and part of Variation 4 (Increase capacity in rear outdoor area to 32 person) in order for a site visit to take place. Councillor Stalker seconded the motion. There was no amendment. The Board unanimously agreed without dissent or abstention to grant Variations 2, 3 and partly 4 and continue consideration of Variation 1 and part of Variation 4.

Ms Cullen asked the Board to clarify the terminal hour for the outdoor drinking areas. The Convenor confirmed that the terminal hour for the outdoor areas should be 10pm and a site visit will be arranged for the rear area.

A.2 Premises Licence 0361 Buzz Bingo, 39/43 Townhead, Irvine

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Buzz Holdings Limited, for the above premises. The Premises Licence Holder was represented by Audrey Junner, Solicitor, and she was accompanied by Gillian Baird, Premises Manager.

The Licence Holder was requesting the following variations:

1. Add 'Adult Entertainment'
2. Amend description of Premises in the Licence
3. Add 'Dance Facilities' and 'Films'

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising.

Objections to the application were received from J Murray and Norman Wilson. Copies of both were contained in the Board Members background papers and copies were provided to the Applicant. The objectors were not present.

Ms Junner then addressed the Board. She explained the premises have operated as a bingo hall for many years formerly trading as the Beachcomber then as Gala Bingo, renamed Buzz Bingo 5 years ago. It is located within the town centre as opposed to in retail estates like other bingo premises and her clients' are aware of the extra sensitivities and mindful of their operation. The Variation application is a result of the need to diversify from the traditional bingo hall. They are permitted to have live entertainment and have been holding events since the pandemic helping to attract more customers. She explained that the request for Adult Entertainment is for a one type of event, in particular The Dreamboys, a modern-day version of the 1990's The Chippendales dance group. Modern celebrities make up The Dreamboys costing £10,000 per night. The intention would be to hold this as a one-off event annually with Dance Facilities as part of this type of event. This entertainment has been offered in other venues.

Referring to the objections from neighbours, Ms Junner advised that her client was surprised and unaware of the issues they raised. They have not received any complaints from neighbours although she did confirm that Environmental Health alerted them to an issue last month. Regular checks are now carried out to monitor noise issues and Environmental Health have been satisfied with this. An event did take place at the weekend and there was no disturbance resulting from this. Mr Junner also highlighted that a new venue has recently opened in Kilmarnock and they hoped to be competitive with customers remaining in Irvine, securing the jobs of 30 staff.

Ms Junner confirmed to the Convenor the intention is to have 4-6 live entertainment events per year and this is already permitted within the Operating Plan. The Adult Entertainment event may only be once per year, this was previously planned and advertised but was cancelled when their own solicitor advised it was not permitted within their current licence and required a Variation application.

Referring to the noise issues, Ms Baird advised the Convenor there is a courtyard where only mini bingo takes place. There are speakers in this area however they are not turned on. The Convenor highlighted the Condition that no speakers are permitted in an outdoor area.

Councillor McClung expressed her concerns that if granted other forms of Adult Entertainment would be permitted. Mr O'Brien updated the Board on the legal position referring to the Brightcrew Ltd case and confirmed a separate type of licence, depending on the frequency of these events, may also be required as explained within the Report. Ms Junner confirmed that her client would be happy to accept a Condition to restrict this type of entertainment.

Confirmation was provided to Councillor Larsen that both objectors had received intimation to the Board meeting. Referring to the age and use of the building, Ms Baird advised Councillor Larsen that a £250,000 internal refurbishment has been carried out and they are very aware of their surroundings. Ms Junner advised that to her knowledge the refurbishment did not include insulation to the building.

Referring to access for children and young persons, Ms Junner confirmed to Councillor Reid that the premises was for over 18s only. She explained the premises provide Entertainment and the sale of alcohol is not the main purpose for customers.

Ms Junner confirmed to Councillor Larsen, Adult Entertainment would be once per year due to costs and previous ticket sales.

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

The Board unanimously agreed without dissent or abstention to grant.

The Convenor highlighted the requirement to ensure doors and windows remain closed and to be mindful of noise nuisance.

A.3 Premises Licence 0525 The Clyde Kitchen, 31-33 Shore Road, Skelmorlie

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Daniel McKinnon, for the above premises. Mr McKinnon was present.

The Licence Holder was requesting the following variations:

1. Add 'Live Performances' and 'Group Meetings'
2. Amend terminal hour to 10pm, 7 days a week
3. Amend Children and Young Person access until terminal hour

The Board considered the terms of the case summary report by the Solicitor (Licensing).

Mr McKinnon then addressed the Board. He explained his current licence, granted recently, had a terminal hour of 9pm with under 18s permitted access until 8pm, the Variation is to permit opening until 10pm with under 18s permitted until the terminal hour. With regards to Live Performances, Mr McKinnon explained to the Convenor this would include afternoon sing songs, hot supper dinners or folk music, it was not intended for rock bands. He advised that he had advertised a Freddie Mercury tribute night, but this was cancelled once the LSO highlighted live performances was not included in his Operating Plan. The event was sold out and he contacted everyone, only 2 people cancelled, the remaining rebooked pending his application. He advised he intends to hold 2 live performance events in October.

Since his Premises Licence was granted, Mr McKinnon advised the Convenor that he has been very busy and has employed a further 3 members of staff.

Having considered the terms of the report, and the submission made, Councillor Larsen 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.

Standard Condition Part F (Entertainment) was added to the Licence.

A.4 Premises Licence 0231 The Lemon Tree, 91/93 Main Street, Kilwinning

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Tamor Limited, for the above premises. The Premises Licence Holder was represented by Archie MacIver, Solicitor.

The Licence Holder was requesting the following variations:

1. Extend closing time to 01.00am on Thursday to Saturday
2. Open from 8.00am for breakfast

The Board considered the terms of the report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising

Mr MacIver then addressed the Board. He explained that a new tenant took over the premises about a month ago and has invested heavily. The application is a tidy up of the licence with the terminal hour requested being in line with the Board's Policy. The premises has recently re-opened, following £100,000 refurbishment, offering fine dining upstairs and pub food downstairs and is proving a success.

Having considered the terms of the report, and the submission made, 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.

A.5 Premises Licence 0337 Stevenston Post Office, 3 Townhead Street, Stevenston

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Jaspreet Bawa, for the above premises. Ms Bawa was present and was accompanied by her husband Manpreet Bawa, who is the Premises Manager.

The Licence Holder was requesting the following variations:

1. Amend layout plan following extension, relocating alcohol display
2. Increase alcohol display capacity from 16.875m² to 25.78m²

The Board considered the terms of the case summary report by the Solicitor (Licensing).

Mrs Bawa then addressed the Board. She explained that following an extension to the store they would like to change the location of alcohol and increase the alcohol display capacity. Mr Bawa then addressed the Board. He explained the building was built in 1939 and when they took over in 2010 they applied for the Premises Licence. Over the years they reduced the alcohol display capacity. Originally it was 23.52m² and that was reduced to 17.45m² in 2015 and further reduced to 16.875m² in 2016. Over the last few years, with people shopping more locally, they have seen a need to extend the building. The overall shop floor is doubling in size from 85m² to 174m², however the proposed alcohol display capacity equates to 11.2% of the total shop sales area. As more customers are shopping locally, Mr Bawa said he would like the ability to expand the products on offer. The largest increase will be for wine, with some customers looking to purchase wine for cooking.

Regarding the proposed location of the alcohol area, Mr Bawa advised it will be a separate area which young people would not require to access, and therefore would not be exposed to the alcohol products which are aesthetically pleasing to the eye. Mrs Bawa also highlighted this area would have better visibility from their counter.

Mr Bawa advised the Convenor the breakdown of the proposed alcohol area is 4.88m² for spirits inaccessible to the public and as existing, 9.37m² for wine and 11.52m² for beer.

The Convenor highlighted the issue of overprovision as well as the health statistics in the Three Towns area. The increase in alcohol display capacity of 8.9m² is a 53% increase although the shop area is doubling in size.

Councillor McClung observed that the premises are very well run and is popular in the community.

Mr Bawa confirmed to Councillor McDonald that the increase in alcohol, although around 50%, would mainly consist of wine and beer. He noted that since lockdown lots of people now

having beer gardens with their own beer pumps. The beer kegs take up a lot of space within the alcohol display area.

Recognising Mr Bawa's presentation, Councillor Reid highlighted the issue is the Board's overprovision Policy.

Mr Bawa explained to the Convenor the effects it would have if the Board were minded to refuse the application. They would not be able to employ the additional 8 staff they have planned, would not be able to achieve the same area for alcohol which will discourage impulse purchasing of alcohol, and the alcohol display area would not be in proportion to the size of the store. He also advised the expansion would benefit the local community. Mr Bawa advised Councillor Reid that the extension would still go ahead if the application was refused but they would not be able to offer customers what they are looking for, therefore less staff may be required.

The Board adjourned with the Clerk at 11.08 am to deliberate in private and re-convened at 11.29 am.

Having considered the terms of the report, and the submission made, Councillor Stalker 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.

The Convenor acknowledged the consensus of the Board was the impressive presentation as well as the community mindfulness of responsible licence holders. With regards to overprovision, the Board recognised the shop floor area is doubling in size, alcohol will be displayed in a separate area and impressed that they no longer sold high alcohol volume beer products. Mr Bawa confirmed he would hope to open later this week. Mrs Bawa advised the construction work was complete, although the premises are currently closed.

The Convenor advised the LSO would arrange to inspect the alcohol display area.

A.6 Premises Licence 0392 Premier Caldon Road, 40/42 Caldon Road, Irvine

The Board considered 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.

The Licence Holder was requesting the following variations:

1. Amend layout plan following extension, relocating alcohol display
2. Increase alcohol display capacity from 25.61m² to 36.415m²

The Board considered the terms of the case summary report by the Solicitor (Licensing).

Mr Hunter then addressed the Board. He advised the proposal was the same as the previous case. The existing premises was being extended by knocking through to increase the shop floor area. His client, investing in the local community, proposes a 42% increase in alcohol display. The renovations, costing £50,000, would create an additional 2 to 3 jobs once completed. Mr Hunter advised his client was not in attendance as he was attending a wedding in America.

Mr Hunter confirmed to Councillor Larsen that he could not provide the existing size of the shop floor. He advised Councillor Reid that the father was in America attending a wedding

and the son is in the country. Mr Hunter was unable to provide information on the current layout plan to the Convenor.

Regarding the extension, Mr Hunter advised Councillor Reid a stud wall was to be removed which will result in an extended shop floor area.

Councillor Larsen, noting her disappointment that the licence holder was not present, explained to Mr Hunter he should have been prepared with the full information to allow the Board to consider the application. Councillor Larsen moved that the Board continue consideration of the application to a future meeting. The Board unanimously agreed without dissent or abstention to continue consideration to the future meeting on 31 October.

A.7 Extended Hours Applications 450/22 Crofters, Shore Road, Brodick

The applicant has withdrawn these applications, so the case no longer requires to be considered by the Board.

A.8 Personal Licence NA2649 Joseph Henry Fitzsimmons

The Board considered a Personal Licence Review Hearing in relation to Joseph Henry Fitzsimmons. The Review Hearing was convened by the Board on receipt of a report by the Chief Constable under Section 84(A), made in a letter dated 30 June 2022. Mr Fitzsimmons was present.

Mr Fitzsimmons addressed the Board, requesting if the matter could be continued to the next Licensing Board Meeting in order that he can secure legal representation.

The Board unanimously agreed without dissent or abstention to continue consideration to the future meeting on 31 October.

4. Public Health Report

The Board considered a report by the Solicitor (Licensing) on the most recent MESAS Report (Monitoring and Evaluating Scotland's Alcohol Strategy): Monitoring Report 2022 and review of Minimum Pricing legislation. Mr O'Brien briefed the Board on the report explaining that every 4/5 years the Board prepare their Licensing Policy Statement including overprovision although the Board do keep overprovision under review. The MESAS report provides facts and figures on alcohol consumption and health data. Additionally, the report refers to Minimum Unit Pricing of alcohol. This legislation operates for 5 years and is currently under review by the Scottish Government. He explained MUP is monitored by Ms Cullen and the Police. There has been no MUP Review applications brought to the Board as Ms Cullen works with licence holders to resolve any issues. Mr O'Brien recommended the Board note the position.

Mr O'Brien advised the Convenor the Review would be completed sometime next year and would then be laid before Parliament.

Having considered the report, the Board unanimously agreed without dissent or abstention to note the new information and take it into account when next reviewing their Licensing Policy Statement.

The meeting ended at 11.48 pm.