

Cunninghame House
Irvine
KA12 8EE

20 June 2023

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 26 June 2023 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 27 March 2023.
- 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. Licensing Policy Statement 2023-2027**
Clerk to report.
- 5. Any Other Business**

Licensing Board

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

Chair:

Apologies:

Meeting Ended:

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DRAFT North Ayrshire Licensing Board 27 March 2023

Irvine, 27 March 2023 - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

Present

Councillors John Bell, Cameron Inglis, Christina Larsen, Matthew McLean, Jean McClung, Donald L Reid, Ronnie Stalker and Angela Stephen.

In Attendance

R Lynch, Clerk, W O'Brien, Solicitor Licensing, D Grier, Solicitor, G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer, M Champion, Admin Assistant and A Toal Admin Assistant.

Convenor

In terms of Schedule 1 paragraph 6(5) of the Licensing (Scotland) Act 2005, Mr O'Brien invited Motions from the Board for an Acting Convenor as Councillor Collier had noted her apologies for this meeting. Councillor Stalker proposed Councillor Inglis as Convenor. Councillor Reid seconded the motion. There was no Amendment. The Board unanimously agreed without dissent or abstention to nominate Councillor Inglis as Acting Convenor.

Apologies for Absence

Councillors Eleanor Collier and Nairn McDonald.

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 28 November 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 0527 Costcutter, 1 Ladyha Court, Girdle Toll, Irvine

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

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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.

One objection to the application had been made by Mrs Alexis Lynch. A copy of the written objection was given to the Board Members. Mrs Lynch was not present. Mr Hunter confirmed that he had seen a copy of the objection prior to the Board meeting.

Mr Hunter then addressed the Board. He read the contents of his written submission provided to Board Members. He explained that the premises benefited from a licence in the past however it had been surrendered many years ago. As outlined in the Report, Mr Anees has submitted 5 Provisional Premises Licence applications between 2014 and 2018 which have all been refused. Mr Anees is an experienced operator and has operated licensed premises for over 10 years and currently operates News Stand in Saltcoats. Since the original applications, Mr Anees has operated this store as a convenience store but believes he is disadvantaged as he cannot sell alcohol. His customers have advised that they prefer to do their shopping in one place and as he cannot supply a full range of products, including alcohol, and as a result he is losing customers.

Referring to the objection, Mr Hunter advised that Mr Anees is not aware of customers being harassed by teenagers outside the store and points raised in the objection are out with his client's control.

Mr Hunter advised the premises is in a large and growing community, since the last application in 2018, there are 200 new houses built at Annick Gardens and a new development for a further 90 houses is due to commence at Lawthorn Primary School, with evidence of further developments in the future. In the last 3 years, due to the Covid pandemic, society is much more community orientated with shopping habits changing and increasing numbers choosing to shop locally or remotely. Local shops have an important role in the community and provide a place for social interaction, create a sense of community, and increase local populations' wellbeing. Mr Hunter noted that while waiting for this meeting he saw that this is also contained within the Council's Aims.

Mr Hunter explained that if the licence is granted the store will be fully modernised at a cost of approximately £60,000 and would create employment for 2 full time and 2 part time members of staff. It is evident from the applications previously submitted that it is necessary to provide a complete shopping experience for the local community as well as the sustainability of his Client's business.

In summing up his submission, Mr Hunter referred to 2 premises contained in the objection letter, the Gulab and BP Garage. He was aware that the Gulab in the past lost their licence as the Licence Holder was bankrupt and the premises now have a new licence. Additionally, as also contained in the report, the Board for many years had a Policy on garage forecourts being refused a Premises Licence, the BP Garage was granted a Premises Licence then granted an increase in capacity recently. Mr Hunter believes his client has been treated unfairly and moved that the Board exercise their discretion and decide that the benefits in granting this application overcome the overprovision presumption.

The Convenor asked if the Board had any questions for the applicant.

Councillor Larsen referred to the objection letter, although Mr Hunter addressed the 2 premises, he did not address the issue of teenagers intimidating people. Mr Hunter confirmed that no reports have been received of any intimidation. Mr Anees advised Councillor Larsen that he has been running the shop since 2006 and has never had any problems or experience of teenagers harassing anyone. This could have been a problem for the previous owner, however, he will have CCTV and the premises would be well looked after. Mr Anees has lived

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in the local area for 13-14 years, he knows the local people and families personally. Referring to the submission, Councillor Larsen asked Mr Hunter what benefits a convenience store, selling alcohol, would have on the health and well-being of the local community. Mr Hunter explained a benefit to a community shop is the social interaction it provides not just the sale of alcohol. People will shop locally if a full range of products are available. Mr Hunter advised Councillor Larsen that people prefer to shop in one place in the local community and if granted his client would open for more hours, from 7am to 10pm, allowing more people to come out of their homes and interact. He suggested that if someone wanted a bottle of wine with dinner, usually they would also pick up makings of the dinner as well as wine but as they were unable to sell alcohol, his client is losing custom.

Following questions for Councillor Reid, Mr Anees advised that trouble could take place in any Premises and highlighted that staff would contact the Police if any incident took place. Additionally, CCTV would record any incidents. He also confirmed that he would minimise the risk of this by stopping teenagers from gathering outside his shop. He does know local teenagers well as they have come to his shop for many years with their family. Mr Anees confirmed that currently his shop closes at 6pm however if granted he would open until 10pm which would require more staff, possibly 4/5 more jobs. The local community were also in support of his application, he is a local resident and personally knows everyone in the local area.

The Board adjourned with the Clerk and Licensing Solicitor at 10.24 am to deliberate in private and re-convened at 10.37 am.

Having considered the terms of the reports and the submission made, Councillor Reid proposed that the Board grant the Provisional Premises Licence application. Councillor McClung seconded the motion. Councillor Larsen moved, as an amendment, that the application be refused. Councillor Bell seconded the amendment.

There was then a roll-call vote. The Convenor and Councillors McLean, Reid, Stalker and McClung voted for the motion. Councillors Larsen and Bell voted for the amendment.

With 5 votes in favour and 2 votes against, the motion was accordingly carried, and the Provisional Premises Licence application granted.

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 and B.

The Convenor welcomed Councillor Stephen to the meeting and noted Apologies had been received from Councillors Collier and McDonald.

A.2 0528 The Boathouse at Dougarie, Dougarie Estate, Machrie, Isle of Arran

The Board considered an application for grant of a Premises Licence made by Jamie Gibbs for the above premises. The Applicant was represented by Malin Stewart, Events Co-ordinator.

The Board considered the terms of the Case Summary report.

A Representation was received from Building Standards in relation to the capacity.

Ms Stewart then addressed the Board. She confirmed that the Case Summary report had been received prior to the meeting and clarified the capacity is 60 due to the sanitary provision,

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however for the building the capacity could be 120. She confirmed that within their Terms and Conditions clients must provide portable toilets if their capacity is over 60. As this is a listed building they could not add more toilets but are looking at building external toilets within the car park.

Ms Stewart clarified to Councillor Larsen that clients who hire the hall that have a capacity of 120 require to hire additional portable toilets.

Mr O'Brien referred to the capacity suggestion contained in the Case Summary report which could be added to the Operating Plan: *"60 (or whatever higher figure is from time to time temporarily approved by North Ayrshire Council's Protective Services Department, with the capacity returning to 60 after that temporary approval has ended)."*

The Convenor confirmed the application considered today was for a capacity of 60 persons. Councillor Billings, being the local member on Arran but had made no objection or representation to this application, noted that hiring additional toilets to increase a capacity was achievable on the island.

Mr O'Brien clarified to Councillor Bell that the application today is for a new Premises Licence, they are not already licensed however they have been operating under a series of Occasional Licences.

The Convenor clarified the application should be considered with a capacity of 60 however if granted then in the future a Variation could be submitted to increase this to 120.

Having considered the terms of the case summary and the submissions made, Councillor Reid proposed that the Board grant the Premises Licence application. Councillor McLean seconded the motion. There was no amendment. The Board unanimously agreed without dissent or abstention to grant.

The 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, C and F.

A.3 Premises Licence 0376 The Salt Cot, 7 Hamilton Street, Saltcoats

The Board considered an application for variation of a Premises Licence made by the Licence Holder, J D Wetherspoon (Scot) Limited, for the above premises. The Premises Licence Holder was represented by Archie MacIver, Solicitor, and was accompanied by Billy Thornton, Premises Manager.

The Licence Holder was requesting the following variations:

1. To allow Community Events
2. To allow Quiz Nights
3. To allow Bingo Nights
4. To allow Craft Fayres with local businesses
5. To allow psychic nights and tarot reading nights
6. To add Indoor/Outdoor Sports

The Board considered the terms of the Case Summary report.

Mr MacIver then addressed the Board. He explained that the application was a tidy up exercise to include community events which had taken place on the premises for some years,

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however, the LSO had recently highlighted these were not contained within the Licence. The application seeks to regularise this position. The events are mainly charity fundraising events.

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

The Board unanimously agreed without dissent or abstention to grant.

The Operating Plan (OP 5(f)) will have the following words added:

"The Premises may also be used:

V1 To allow Community Events

V2 To allow Quiz Nights

V3 To allow Bingo Nights

V4 To allow Craft Fayres with local businesses

V5 To allow psychic nights and tarot reading nights

In relation to V3 (Bingo):

The rules under the Gambling Act 2005 as to stakes, prizes and participants' ages will also apply and the Licence-Holder should seek advice from the Gambling Commission.

In relation to V4 (Craft Fayres):

*In addition to the permission under the **Alcohol** Licence, the organiser of a Fayre will still need a **Market Operator's Licence** under the Civic Government (Scotland) Act 1982, Section 40. The Licensing Board does not grant this Licence, so the organiser will need to apply to the Licensing Committee."*

A.4 Premises Licence 0220 Spar Convenience Store, 15/19 Baird Avenue, Kilwinning

The Board considered an application for variation of a Premises Licence made by the Licence Holder, C J Lang and Son Limited, for the above premises. The Premises Licence Holder was represented by Lynn Simpson, Solicitor.

The Licence Holder was requesting the following variations:

1. To add Gaming such as the National Lottery
2. To allow home delivery and make other changes

The Board considered the terms of the Case Summary report.

Ms Simpson then addressed the Board. She explained that following a tidy up of the whole CJ Lang estate, licences are being updated to include Gaming for the National Lottery and to include background music both within and prior to core hours. Additionally, home deliveries and click and collect are to be added to the Operating Plan. She confirmed her client does have policies and protocols in place surrounding home deliveries of alcohol.

Ms Simpson confirmed to Councillor McClung that her client would like the ability to include alcohol in deliveries.

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

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The Board unanimously agreed without dissent or abstention to grant.

A.5 Premises Licence 0053 Riverside Lodge Hotel, Roseholm, 46 Annick Road, Irvine

The Board considered an application for variation of a Premises Licence made by the Licence Holder, HF Irvine Hotel Limited, for the above premises. The Premises Licence Holder was represented by Carol Brownlie, Sales and Marketing Manager.

The Licence Holder was requesting the following variation:

1. To allow craft Fayres
2. To allow outdoor drinking

The Board considered the terms of the Case Summary report.

Ms Brownlie then addressed the Board. She explained the application was to permit craft fayres as well as to permit food and drinks to be consumed in the garden area when not in use for weddings. This area would only be used between 11am and 10pm.

Having considered the terms of the case summary and the submissions made, Councillor Larsen 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 following was added to the Operating Plan (OP 5(f):

"The Premises may also be used to host Craft Fayres. In addition to the permission under the **Alcohol** Licence, the organiser of a Fayre will still need a **Market Operator's Licence** under the Civic Government (Scotland) Act 1982, Section 40. The Licensing Board does not grant this Licence, so the organiser will need to apply to the Licensing Committee."

A.6 Premises Licence 0051 Elms Bar, 21 Raise Street, Saltcoats

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Trust Pubs Limited, for the above premises. Joseph Fitzpatrick, Director of Trust Pubs Limited was present.

The Licence Holder was requesting the following variation:

1. Permit use of the Outdoor Drinking Area Monday - Friday from 1.00pm to 10.00pm

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

Mr Fitzpatrick then addressed the Board. He acknowledged receipt of the report and the representation submitted by Paul Brennan, Specialist Environmental Health Officer. Mr Fitzpatrick explained the Variation is to allow use of the outdoor drinking area from 1.00pm to 10.00pm Monday to Friday, currently this area is only permitted from 6.00pm to 10.00pm.

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Referring to the previous Variation Application which received an objection from the neighbouring Health Centre, Councillor McClung made Mr Fitzpatrick aware that if this application is granted any future complaints could result in being brought back to the Licensing Board. Mr Fitzpatrick confirmed that he is aware this is the case, he noted that it has now been confirmed that no consultation rooms are at the side of the outdoor area, these rooms are only used for filing. He also confirmed the area would be monitored on an ongoing basis.

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

The Board unanimously agreed without dissent or abstention to grant.

On granting the application, the Board amended the following wording within the Operating Plan:

“On 27 March 2023 the Board granted the variation to allow the Outdoor Drinking Area on condition that the Outdoor Drinking Area shall not operate outside these hours:

Monday to Sunday: 13.00 to 22.00,

where 'operate' means the use by patrons:

- for the consumption of any drink (alcoholic or not) or food*
- for smoking*
- for any other activity*

and accordingly Condition C.5.2 of the Board's Standard Conditions does not apply.

For the Licence-Holder's information

This is not a condition of the Licensing Board's decision: the Outdoor Drinking Area cannot be used unless that use is also consistent with the Planning Permission granted by North Ayrshire Council as the Planning Authority."

A.7 Premises Licence 0144 The Station Inn, 4/6 Main Street, Glengarnock, Beith

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Susan Williamson, for the above premises. Mrs Williamson was present and was accompanied by her husband, John Williamson.

The Licence Holder was requesting the following variation:

1. Add Outdoor Drinking Area at the rear of the building

The Board considered the terms of the Case Summary report.

Mrs Williamson then addressed the Board. She confirmed receipt of the Case Summary Report and explained local customers have asked for an outdoor drinking area, this would only be used between 12noon and 9.00pm.

Having considered the terms of the case summary and the submissions made, Councillor Stalker 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.

The Convenor then suggested that case 9 on the Agenda be heard before case 8 and the running order was changed accordingly.

A.9 Extended Hours Application 0243 Pitchers, 18 Bank Street, Irvine

The Board considered an application for Extended Hours (87/23) made by Signature Works (Scotland) Ltd for the above premises. The application is for an extension of core hours starting on Sunday 9 April and ending at 3.00am on Monday 10 April 2023. The Premises Licence Holder was represented by John Duncan, Director, and he was accompanied by Rachel Robertson, Premises Manager.

The Board also had regard to a report by Grace Cullen, Licensing Standards Officer.

Ms Robertson then addressed the Board. She explained that Easter Sunday was the busiest night of the year in Irvine. Due to the current economic effect on the trade, they would really appreciate having the additional hours. The Premises have benefited from the same Extended Hours in previous years.

Having considered the submissions made, Councillor Larsen moved that the application be granted. Councillor McLean seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant the Extended Hours application.

A.8 Premises Licence 0352 The Brodick Bar, Alma Road, Brodick, Isle of Arran

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Brodick Brasserie Limited, for the above premises. The Premises Licence Holder was represented by Graeme McKinnon, Director and he was accompanied by his wife Lily McKinnon, Director.

Five objections/representations were submitted in relation to the application from Councillor Timothy Billings, Peter and Sue Johnston, Terry Raeside, Caroline Logan and Bill Calderwood on behalf of Arran Community Council. Copies of the objections/representations were provided to Mr McKinnon prior to the Board meeting and copies were given to the Board Members. Councillor Billings, Mr Raeside and Ms Logan were present.

The Licence Holder was requesting the following variations:

1. Rebrand the Premises without amending Operating Plan
2. Vary the Operating Plan to include televised sports
3. Vary the Layout Plan to include a service kitchen

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.

The Convenor advised that Mr McKinnon should first address the Board on his application then each objector would have an opportunity to address the Board.

Mr McKinnon then addressed the Board. He explained the background to the application, brought about by difficulties in trading over the last few years as well as the ferry crisis, with less people visiting the island. He advised that the family run business consisted of the chef,

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his young talented grandson, who has received prestigious awards and attracted Michelin to contact them. His wife, a retired Church of Scotland Minister, now works as a pastry chef and himself a retired teacher in North Ayrshire and East Renfrewshire.

The Restaurant is now more upmarket, with meals still available in the bar area. Issues arose with only one kitchen therefore the proposal is to convert a store area to a service kitchen. Food is available from lunch time until 8.00pm. The name change is to confirm the identity of both parts of the business. Regarding Televised Sports, Mr McKinnon apologised for his oversight, he did show Televised Sports without this being in his licence as he did not understand that this was the case.

Referring to the complaints the application has received, Mr McKinnon explained these are not specifically in relation to what he is applying for, these are in relation to noise. He understood that recording devices had been provided by NAC and received confirmation that no noise issues were detected. He referred to one incident that the Police attended but also confirmed no excessive noise was found. He did take this seriously and indeed tried to monitor noise himself with no excessive noise found, in fact the most noise generated was from a passing van which recorded 65 decibels. He is aware that the premises do face challenges, however he deals with these accordingly.

Mr McKinnon noted his distress to the allegation of underage drinking on his premises and felt his need to address this. He believes his premises are a happy and safe environment and he himself is on the look out for spiked drinks and drugs on the premises as well as monitoring the door, he also promotes the 'Ask for Angela' campaign. At the end of the night, he reminds customers to be considerate to neighbours as they leave. The bar area is not very big, with capacity checks not exceeding 35 persons.

Referring to the previous Major Variation application when adding the outdoor drinking area 2 years ago, Mr McKinnon confirmed that no disruption or complaints have been received, he believes the objections are a personal attack on his business.

To reduce noise nuisance Mr McKinnon had planted conifers and erected fencing as well as replaced an extractor fan all at considerable expense and feels he has done everything he can to eliminate problems. He also explained that neighbours had asked him for a meeting which he agreed to however this did not go ahead. He believes the allegations are unfair as his premises are well run and managed.

The objectors present introduced themselves, Councillor Billings the local Councillor on Arran, Caroline Logan who lives next door to the Premises and Terry Raeside who lives opposite the bar end of the Premises.

Ms Logan then addressed the Board. She confirmed her house is very close to the Premises, her front door is about 2 metres from the restaurant. She has lived in the house for over 30 years and also lets out part of her home and in the process of applying for a Short Term Let Licence. In that time the Premises has always been a bar and restaurant. Over the years many functions have taken place and had never any cause for complaint. However, towards the end of 2022 there has been regular events in the bar area, a Friday karaoke night and Saturday club vibe night. Mainly on a Saturday night from around 9.30pm to 1am it is extremely noisy with the beat of the music able to be heard in her home. The Premises are not very large and customers often spill out onto the street and get noisier as the night goes on. She has witnessed bad language, excessive noise when doors open and close and empty glasses left at her kitchen window. Ms Logan expressed her concern to the showing of televised sports, she believes this could make the current issues worse. The Premises have in the past operated successfully and she hoped that the noise issues can be sorted out so as not to impact her guests.

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Mr Raeside then address the Board. He confirmed that he lives directly opposite the bar. He noted the information in the Board Report and in addition to Ms Logan's submission he confirmed that on Friday and Saturday nights when events are taking place, music is very loud in the bar area with a large gathering of people in the street at 1am and beyond. This affects his ability to sleep with his wife having to sleep at the back of the house at the weekends, this being totally unacceptable. In the last 3 weekends he has had to walk past vomit on the pavement and indeed challenged Mr McKinnon at the weekend in this regard. Mr Raeside confirmed he is not a serial complainer, he has lived on the island for 20 years, 13 of which was beside another licensed Premises, the Ormidale Hotel. During this time, he did not have any complaints. In the 3 years since residing next to the Brodick Bar he had no complaints until this winter when the club/vibe nights commenced on a Saturday night. The base of the music can be felt inside his house. Mr Raeside referred to section 4.2 of the Board's Licensing Policy Statement, as licence holders should be aware of noise nuisance on neighbours, he advised the previous licence holder managed to adhere to this for over 30 years. He believes Mr McKinnon is in denial that there is an issue with noise however all immediate neighbours are having problems with the operation of the bar. Mr Raeside referred to a petition on social media which said, 'Save the Brodick Bar', he believes this to be aggressive and gives the impression that the bar faces closure. He confirmed that no-one wants to see the bar closed. He asked that the Board did not allow televised sport until the current problems are resolved.

Councillor Billings then addressed the Board. He clarified that he did not have first hand experience of the issues raised, he is representing 2 neighbours who have spoken to him of their experience. In additional to other neighbours' concerns, he raised the issue of anti-social behaviour in the street. One neighbour advised him of people urinating in the street, finding someone in their doorway as well as crowds congregating in the street at closing time. Being a licence holder in the past, Councillor Billings noted that managing clientele can be challenging but not impossible. He referred to Mr Raeside living beside the Ormidale Hotel, in the past this was a popular venue for young people and demonstrates that music and noise can be managed without issue. Councillor Billings believed that showing televised sport would attract a younger crowd which has a potential to exasperate issues. He suggested that the Licensing Board consider this not appropriate until proper investigation took place and issues addressed in order that all 5 of the Licensing Objectives are complied with, particularly the Preventing Public Nuisance and Preventing Crime and Disorder Objectives.

The Convenor asked for the LSO's comments. Ms Cullen advised that following the complaints she had contacted Sergeant Blackley on Arran for confirmation of any Police complaints of noise nuisance from the Premises. She confirmed that 4 complaints had been made to the Police regarding loud noise. On 25 September 2022 a noise complaint was received of loud music playing and persons causing disturbance on the street. On arrival, the Police established that approx. 70 people were attending a private function. Large groups of people were congregating in the street upon departure but dispersed quickly without issue. On 27 November 2022 there was an incident of loud noise, on Police arrival there was no excessive noise heard by officers. On 11 February 2023 there was a complaint of loud noise, on this occasion Police did not attend due to another incident but they called the Premises and there was no answer. On 25 February 2023 a complaint of excessive noise and persons congregating in the street was reported, Police attended and noted a private function with DJ was taking place with approx. 30 people attending and a friendly atmosphere. Mr McKinnon instructed the DJ to lower the volume of the music while Police were in attendance and advised smokers outside to keep noise to a minimum. Police called the reporter after attending the Premises who were satisfied with the Police action.

In summing up, Mr McKinnon advised his Premises are well run and a lot of the issues raised have been based on hearsay. With regards to the online petition, this was not raised on social media by himself, but by a member of staff who was concerned for their job. The petition

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raised over 500 messages in support of the well-run bar. Mr McKinnon explained the outdoor area is only permitted until 10pm and he does enforce this, in the past he has removed drinks from people outside after 10pm. There have only been 2 events this year and other than that only music with no base has been played at which he himself used the noise app and no music could be detected at Ms Logan's doorway. With a capacity of 30 persons inside there would only be 5 or 6 people in the smoking area at one time. Additionally, he personally asks customers to be considerate of neighbours as they leave his Premises.

Mrs McKinnon then addressed the Board. She advised that in relation to glasses left in the street, these glasses did not come from their Premises as they do not sell these particular drinks, these must be taken from other Premises in the area. Additionally, they themselves have collected cans of drinks from the street, again they do not sell cans.

With regards to the noise app, Mr McKinnon confirmed to Councillor McClung that Environmental Health have issued the noise app to complainers and was in receipt of an email from Paul Brennan advising that there have been no issues found. Mr Raeside confirmed he also had the noise app however had been advised that the app can only be used for noise within the building and for noise in the street this should be reported to the Police, he was not prepared to call the Police every time there was an incident. Referring to incidents of fights at the Premises, Mr McKinnon advised Councillor McClung this was incorrect and did not happen.

Referring to football matches, Mr McKinnon confirmed to Councillor McLean that in the past both teams' supporters have been in the bar, on previous occasions there has never been any issues. With regards to door staff, this is difficult on Arran as door stewards require to be registered and licensed. He explained in the past he had a premises in Glasgow and is extremely alert to issues during football matches however on Arran both sets of supporters are good natured, and he happily welcomes all supporters. In the 5 years that he has ran the bar there has only been one violent incident which was in February this year. This incident involved a couple who, after a few drinks got into a taxi when the incident occurred. Police attended this incident but did not attend at the bar. With regards to the alleged fighting in the street, Mr McKinnon believed this was seriously exaggerated. Mr McKinnon confirmed to the Board he did not wish to have this type of relationship with his neighbours.

As amplified music is a key issue to the noise complaints, Mr McKinnon confirmed to Councillor Reid that he himself monitors noise levels and turns this down if he feels it is too loud and has tried to stop the base sound. Staff ensure the doors always remained closed, however it appears some sound escapes when the doors open. Regarding the capacity Mr McKinnon confirmed to Councillor Reid that on no occasion was there 35 people inside the bar and 70 outside.

To try and alleviate noises issues on neighbours, Mrs McKinnon advised Councillor Reid that since taking over the bar they have replaced a noisy extraction fan, which was there for many years prior to them taking over, at a substantial cost as well as planting conifers and erecting a thick wooden fence around the outdoor drinking area. She explained the outdoor area is mainly used by families and dog walkers and the area is well monitored. She also noted that her reputation has been harmed by the remarks from Councillor Billings, at no point did he approach them. Their family have also been accosted in the street as well as on the boat on way to this meeting.

Councillor Larsen explained the duty of a Councillor, noting that Councillor Billings had been approached by local constituents, he did not have a duty to approach the Premises. Ms Cullen clarified to Councillor Larsen that the noise incident she referred to, there were 70 persons attending a private function inside the venue with a large group of people outside.

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With regards to the Facebook petition, Councillor Larsen highlighted that it was misrepresented and appeared the bar was at a risk of closure, it is Mr McKinnon's responsibility to ensure posts on social media are correct. Mr McKinnon confirmed he did not ask his staff member to remove the post on social media.

Councillor Larsen also confirmed that Mr McKinnon could have involved Councillor Billings as a Councillor's role does not allow them to take one side or another. Mr McKinnon explained the allegation of underage drinking on his premises was very distressful, almost slanderous. Councillor Larsen noted the social media post would also be distressing.

Mr Raeside clarified to Councillor McClung the main issue is people gathering outside regularly at weekends and the base sound causing issues on occasion.

Ms Logan also referred to the base sound issue, this can be heard in her home as well as in her attached neighbour's house. She had confronted Mr McKinnon previously, the noise was reduced for a few weeks but now on a Friday and Saturday night it is a major problem. Ms Logan confirmed to the Convenor that soundproofing has been made to her house over the last few years, not due to the noise issues, and is surprised that noise is still heard in her property. Mr McKinnon also confirmed both the bar and restaurant have had the roofs insulated as well as the gents' toilets which are next to Ms Logan's house.

Following Councillor Reid's suggestion of turning music down after 11pm and the possibility of having doormen controlling smokers outside, Mr McKinnon confirmed that karaoke does end at 11pm and he personally looks after the door and regularly advises customers outside to be aware of noise nuisance on neighbours.

With regards to the smoking area, Councillor Larsen queried if it was possible for smoking to take place in the rear beer garden area as this area is surrounded by trees and fencing which could eliminate noise. Mr McKinnon confirmed he had considered this however the door that leads to this area could cause noise issues for Mr Raeside.

In summarising the application request, Mr McKinnon noted the issues are distressing for everyone although the application applied for would not change noise levels, however he does wish to resolve any problems. Mr McKinnon confirmed to Mr Raeside there are currently 2 doors to enter the bar.

Councillor Billings thanked Councillor Larsen for explaining the role of a Councillor and confirmed he was ensuring the issues raised by local constituents were provided to the Licensing Board.

The Board adjourned with the Clerk and Solicitor Licensing at 12.05 pm to deliberate in private and re-convened at 12.17 pm.

Having considered the terms of the reports and the submissions made, Councillor Reid moved that the application be granted. Councillor McClung seconded the motion. There was no amendment.

The Board unanimously agreed without dissent or abstention to grant.

The Convenor confirmed the application was granted as applied for, however he advised that future noise complaints could result in the Board holding a Review Hearing.

Councillor McClung left the meeting at 12.20 pm.

AGENDA ITEM 2

4. Coronation of King Charles III on Saturday 6 May 2023 – Extended Hours and Occasional Licences

The Board considered a report by the Solicitor (Licensing) regarding Extended Hours and Occasional Licences for the Kings Coronation. Referring to the Report, Mr O'Brien explained this was a one-off Policy covering the Coronation on 6 May 2023. Questions for the Board are contained in part 8 of the report with a suggested Policy at part 9 of the report.

Mr O'Brien advised that no comment had been received from Police Scotland however the Health Board had raised some observations. He explained the Government have decided the Policy in England should covers 3 days, Friday to Sunday, however in Scotland it is up to each Local Authority to decide their Policy. The Health Board have suggested the Policy be for Saturday 6 May only, additionally Premises that open before 11am should not benefit from extra time at the end of the day. Mr O'Brien has queried this suggestion with the Health Board as Premises would be penalised for providing food with customers leaving one Premises to go to another.

Referring to the questions in Part 8 of the Report, the Board agreed that:

1. Yes - The Coronation should be treated as an exceptional event for which Extended Hours or an Occasional Licence may be sought for Coronation Day (Saturday 6 May 2023).
2. Yes - The Coronation should be treated as an exceptional event for which Extended Hours or an Occasional Licence may be requested for any periods wholly within the period Friday 5 May to Monday 8 May 2023.
3. No - Extended Hours should not be allowed to on-sales before the usual opening time.

Following discussion regarding Occasional Licences for Street Parties the Board decided to adopt a Policy, the exact wording of which would be prepared and confirmed by Mr O'Brien.

Once prepared, it was agreed that the Policy will be on the Board's web page and Communications will be asked to highlight it on the Council's social media.

Councillor Reid highlighted that any road closure for a Street Party required permission from the Roads Department.

4. Any Other Business

There was no other business to consider.

The meeting ended at 12.32 pm.

Agenda Item 3

26 June 2023

North Ayrshire Licensing Board

Title:	Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.
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Purpose:	To advise the Board of the Law and the factual background.
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Recommendation:	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

Financial:	There are possible financial implications in relation to any Licensing decision.
Human Resources:	None.
Legal:	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.
Equality/Socio-economic Duty:	<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">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];(b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;(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>

Climate Change and Carbon:	None
Key Priorities:	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".
Community Wealth Building:	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.

Background Papers

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APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0529	Highland Fuels Limited	Ravenspark Service Station 50 Kilwinning Road Irvine KA12 8RY	Application for Grant of Provisional Premises Licence – Section 45
2.	0144	Susan Margaret Williamson	The Station Inn 4/6 Main Street Glengarnock Beith KA14 3AT	Application for Variation of Premises Licence – Section 29
3.	0293	Irvine Winton Bowling Club	Irvine Winton Bowling Club 108 East Road Irvine KA12 0AA	Application for Variation of Premises Licence – Section 29
4.	0077	Partnership of Binning Stores	Binning Stores 39 Sharon Street Dalry KA24 5DT	Application for Variation of Premises Licence – Section 29
5.	0519	N&S Properties Limited	Curry on the Corner 45 Jack's Road Saltcoats KA21 5SH	Application for Variation of Premises Licence – Section 29
6.	0204	C J Lang & Son Limited	Spar Convenience Store 2/3 Cardow Crescent Girdle Toll Irvine KA11 2DH	Application for Variation of Premises Licence – Section 29
7.	325/23	Veronica Michaluk	Ormidale Park Brodict Isle of Arran KA27 8BQ	Application for Occasional Licence – Section 56
8.	339/23	Yvonne Henderson	Dundonald Links Ayr Road Troon KA11 5BF	Application for Occasional Licence – Section 56

**North Ayrshire Licensing Board
Case Summaries
Meeting: Monday 26 June 2023 at 10.00 a.m.
Council Chambers, Cunninghame House, Irvine**

Notice to Applicants and Licence-Holders

Cases marked ' * ' in the list below**

This 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 ' * '**

These cases 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).

In either case:

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

Legislation

All references are to the Licensing (Scotland) Act 2005 or its associated regulations unless otherwise specified.

Abbreviations

"PL": Premises Licence
"PPL": Provisional Premises Licence
"PLH": Premises Licence Holder
"DPM": Designated Premises Manager (in a Premises Licence)

1. "Ravenspark Service Station", 50 Kilwinning Road, Irvine [529]

Application for Provisional Premises Licence

***** See detailed report (page 31)**

2. "The Station Inn", 4 Main St., Glengarnock [144]

Application for Variation of Premises Licence

The request(s):

1	To allow Children and Young Persons aged 0-17
2	Delete permission for pool and darts

Advice

The Board should consider whether or not Request [1] is consistent with the 'Protecting Children and Young People from harm' Licensing Objective.

Apart from that, the Clerk's opinion is that there are no grounds of refusal. The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

Request [1] (Children and Young People)

The proposal is to allow under-18s of all ages (with baby-changing facilities available to both genders) on the Premises on these conditions:

- only between the hours on 12.30 to 19.30 each day
- only while food is being served
- only in:
 - the dining area (not at the bar area) or
 - outdoor drinking area
- only if accompanied by a responsible adult

Request [2] (pool and darts)

This change will be reflected by an appropriate amendment of the Operating Plan (Question 5(f)).

This request must be considered by the Board although there appears no reason to refuse it. It is technically a 'Major Variation' because when the 'Minor Variation' Regulations were revised in 2011 a provision which would have covered this was omitted.

3. "Irvine Winton Bowling Club", 108 East Road, Irvine [293]

Application for Variation of Premises Licence

The request(s):

1	To extend the Outdoor Drinking Area already permitted
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Outdoor Drinking is already permitted in the area in front of the Clubhouse. The proposal is to expand the area where alcohol can be consumed to include the area in front of the Clubhouse and the seating areas around the bowling green. There are no structural alterations proposed or a proposal to increase the number of users of the club.

Applicant should clarify what is requested:

The proposed Layout Plan shows the proposal as red dotted lines:

- along 3 sides of the bowling green and also
- the patio beside the Club House

Advice

The Clerk's opinion is that subject to the Board's views on the consistency of Request [1] with the 'Preventing Public Nuisance' Licensing Objective, there are no grounds of refusal. The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

If the Board grants a Variation but is later satisfied (for example, after complainers make a Review Application) that there is an inconsistency with the Licensing Objectives, the Board may review the earlier variation and alter it or revoke it altogether.

4. "Binning Stores", 39 Sharon Street, Dalry [77]

Application for Variation of Premises Licence

There are third-party representations and these will be in the Background Papers.

The request(s):

1	Add "Recorded Music"
2	Amend 'other activities' description in Operating Plan
3	Allow Home Delivery
4	Increase alcohol capacity from 11.39 to 23.38 sq.m.

There is no issue with proposals [1] or [2], which only amend the Licence to reflect a typical "Convenience Store":

"ADD RECORDED MUSIC AS A PERMITTED ACTIVITY, BOTH DURING AND OUTWITH LICENSED HOURS.

ADD THE FOLLOWING TEXT TO Q5 –

"The premises may open for general trade prior to the commencement of core hours. Recorded music may be played prior to and during core hours. This is background level only. National Lottery tickets/cards can be purchased prior to core hours."

ADD THE FOLLOWING TEXT TO Q5(f) -

"The premises operates as a general convenience store, selling a range of products including groceries, confectionery, bread & cakes, crisps/snacks, non-foods, toiletries, frozen & chilled foods, fruit/vegetables/flowers, news & magazines, toys, tobacco & cigarettes, beers/wines/spirits and other alcoholic products, and non-alcoholic drinks. The premises also provides other services consistent with the operation as a general convenience store, including charity collection point, Food to Go, Paypoint payment, National Lottery outlet, ATM."

Advice: Requests [1] and [2]

The Clerk's opinion is that there are no grounds of refusal and that these requests should be granted. The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

Any Operating Plan should list all the activities that can happen on the Premises. There are 17 categories of activity and each Operating Plan has 17 yes/no responses. At present the response for "Gaming" is "no". The proposal is to amend this to "yes". The proposal is not to have games such as poker and bingo in the shop, but instead to have a "National Lottery" terminal. The Gambling Act 2005 regulates gaming, betting and lotteries but in general does not apply to the "National Lottery" (2005 Act, Section 15). Instead the rules about stakes, prizes and the ages of participants are set by the Gambling Commission (which succeeded the National Lottery Commission) under the National Lottery etc. Act 1993. The National Lottery does not depend on Licences granted by individual Licensing Boards.

A request such as "add gaming as an activity during and outwith core hours (to cover the use of the National Lottery outlet etc)" is unobjectionable. The phrase "during and outwith core hours" is to allow the activity outside the times when alcohol may be sold, which by Law cannot be outside 10.00 a.m. to 10.00 p.m..

Advice: Request [3] (home delivery)

The Applicant should describe the proposed arrangements for delivery of alcohol to show that they are consistent with Sections 108, 119 and 120

The Board could ask the Applicant to show the Board training documents and example delivery records.

The Board might ask:

- how old will the delivery workers be?
- what training will they have?
- what precautions will be taken to prevent under-18s taking delivery of alcohol?
- what records will be kept? - information to be recorded:
 - quantity of the alcohol sold
 - description
 - price, and
 - name and address of the person to whom the alcohol is to be delivered

The NALB Licensing Policy Statement (2018-23) states:

"Home Delivery

2.20. *Where alcohol (whether with or without food or any other goods or services) is supplied by delivery away from Licensed Premises (e.g. if a customer orders it by telephone) then: ...*

(c) *the Board is likely to regard a delivery operation as being inconsistent with both the 'crime and disorder' and 'protecting children and young people from harm' Licensing Objectives if alcohol is supplied unless:*

(i) the supplier on arrival at the delivery address first carries out the same checks about the recipient's age as would be appropriate to a sale (see Section 102);

(ii) the supplier refuses delivery unless and until such evidence of age is produced."

Advice: Request [4] (increase capacity)

The Board's Overprovision Policy creates an enhanced presumption of refusal:

(a) a proposal for a new off-sales or expansion of an existing Licence anywhere in North Ayrshire faces a presumption of refusal

(b) a proposal in certain areas of North Ayrshire has an enhanced presumption of refusal. These areas include 'Garnock Valley'.

These are only presumptions. The Board must allow the Applicant to make a case for an exception to the policy. The Board must approach each case on its individual merits and consider whether or not an exception is justified.

5. "Curry on the Corner", 45 Jack's Road, Saltcoats [519]

Application for Variation of Premises Licence

***** See detailed report (page 42)**

6. "Spar", 2/3 Cardow Crescent, Girdle Toll, Irvine [204]

Application for Variation of Premises Licence

The request(s):

1	Various changes to the Operating Plan
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The proposals

The proposals are to make the Operating Plan with the operation of a typical "Convenience Store":

"Q5 – add gaming as an activity during and outwith core hours

Q5 - amend and add the following wording - The premises may open for general trade prior to the commencement of core hours. Recorded music may be played, such as Spar Radio prior to the commencement of core hours. This is background level only. National Lottery tickets/cards can be purchased prior to core hours.

Q(5f) amend and add the following wording - The primary activity undertaken in the premises is the general retail sale of the following: Groceries; confectionery, bread & cakes, crisps/snacks, non-foods, toiletries, frozen & chilled foods, fruit/vegetables/flowers, news & magazines, toys, tobacco & cigarettes, beers/wines/spirits and other alcoholic products, non-alcoholic drinks. Charity collection point and charitable events take place. Food to Go. Click & collect. Home Deliveries. Paypoint payment. National Lottery outlet. External automated cash machine. Sampling & promotional activities."

Advice

The Clerk's opinion is that there are no grounds of refusal. The Board must grant a variation request unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

Observations

- 1 It is assumed that 'gaming' means the 'National Lottery'.
2. Collection cans on shop counters do not need separate permissions from the Council as 'Public Charitable Collections' under Civic Government (Scotland) 1982, Section 119 as Section 119(2) is:

*"Subsection (1) above does not apply to a collection which takes place in the course of a public meeting or to a collection which takes place **by means of an unattended receptacle kept in a fixed position in a Public Place.**" [emphasis added]*

7. Veronika Michaluk (for Brodick Highland Games) [325/23]

Occasional Licence Application for Brodick Highland Games on Saturday 5 August 2023.

Objections and Representations

There are no Objections and Representations. The Board's papers will include a report from the Licensing Standards Officer.

Applicant holds Personal Licence NA-1538.

Description of Premises

Application Form: "Beer Stand on a paid entry sports park in Brodick where the Brodick Highland Games will be taking place"

Licensed Hours requested (to be clarified)

Requested duration of licence (Part 5 of form): 10.00 - 18.00

but

"6.4 Times of sale of alcohol for consumption ON the Premises" - 11.00 to 18.00, and the under-18 access part of the form also states 11.00 to 18.00.

Covering letter from Applicant of 1 June 2023

"Please find attached our application for an Occasional Licence for the Brodick Highland Games 2023.

As the previous years during this event we will only have a small stall which will consist of a racking system for the casks, a bar from which to serve and a small gazebo covering

the racking and bar in case of rain. We will rope off the bar area so that no underage individuals have access. However, seeing as the whole of the gazebo-bar area is minimal (approx. 3x3m) we would like to ask if it would be possible for H.7.2.(a) to not be applied for this occasion. The reason for this being that half the floor space would only be 1.5 x 1.5m and therefore make it practically impossible for people to drink comfortably and in a relaxed way. As the area in which this event is taking place will be enclosed (due to people having to pay to gain access to this event) there should be no problem in keeping the people with drinks in the park.

As we are asking for an occasional license for ourselves only, the park (which for this event would be enclosed as nobody can freely enter said park) would probably not be considered licensed premises so H.10 (b) may need to be modified slightly in order for people to be able to drink in the park premises but not outside this area.

Drinks will be served in UKCA marked compostable plastic pints and ½ pints and therefore should cause no problems towards public safety.

We would appreciate if these issues could be looked at as we feel that modification of these, on this occasion, would not be detrimental towards complying with the licensing objectives. Thank you for your time and help.

*Kind Regards,
Veronica Michaluk
Isle of Arran Brewery"*

The Standard Conditions the Applicant wishes dis-applied

H.7.2.(a)

"H.7 Temporary Structures

...

H.7.2 Where a temporary structure is used:

(a) Alcohol must only be consumed within

(1) the temporary structure or

(2) a roped area beside it reserved exclusively for this purpose;

(these two areas are together the licensed area). The roped area shall not exceed in size the equivalent of one-half the floor area of the temporary structure itself.

..."

H.10 (b)

"H.10 Conduct

The following conditions shall apply:

(a) Children under 14 years must be excluded from the bar area;

(b) *no alcohol is to leave the licensed area;"*

Advice

[a] On the decision to grant or refuse the Occasional Licence

The Clerk's opinion is that there are no "Grounds for Refusal". Under Section 59(3) the Board must grant an Occasional Licence unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

[b] on the decision to dis-apply or modify the Licence conditions

The conditions referred to:

- are not mandatory (obligatory under statute) but are
- discretionary (attached because of local Board Policy)

so the Board has a discretion on a case-by-case basis to dis-apply or modify them. Since the object of both conditions is the prevention of disorder associated with unsupervised drinking the Board might be satisfied that exceptions might be allowed. This is a regular event, so if there are disorder problems on this occasion then the Police might state objections or representations next time.

8. Yvonne Henderson (for Dundonald Links) [339/23]

Occasional Licence Application for Professional women's golf tournament Wednesday 2nd August 2023 to Monday 7th August 2023

Objections and Representations

There are no Objections and Representations. The Board's papers will include a report from the Licensing Standards Officer.

Applicant holds Personal Licence SL/CLY/984

Description of Premises

Dundonald Links, Ayr Road, Irvine. Application Form:

"Alcohol will be sold from the mobile bars, which will be located at the back of the clubhouse overlooking the 9th & 18th greens (please refer to the site plan at the bottom of this form)."

Licensed Hours requested

Wednesday 2nd August 2023 to Monday 7th August 2023, 10.00 - 22.00 on each day:

"Opening and closing hours

- Wednesday 2nd August – 06:30-19:00
- Thursday 3rd August – 05:30-21:00
- Friday 4th August – 05:30-21:00
- Saturday 5th August – 90 minutes before tee times (approx. 07:30)-19:00
- Sunday 6th August – 90 minutes before tee times (approx. 07:30)-16:00

Other catering operations will be on site"

Times at which Children and Young Persons permitted entry:

"Opening and closing times:

- Wednesday 2nd August – 06:30-19:00
- Thursday 3rd August – 05:30-21:00
- Friday 4th August – 05:30-21:00
- Saturday 5th August – 90 minutes before tee times (approx. 07:30)-19:00
- Sunday 6th August – 90 minutes before tee times (approx. 07:30)-16:00"

Policy: against 10 a.m. opening; alteration of Licence Conditions

The Applicant does not address these. Board policy is that generally Outdoor Drinking is not allowed before 11.00, although this condition is intended primarily to minimise nuisance experienced by neighbours of a public house's beer garden. It is not a statutory limit, so if the Board is satisfied that there is no issue then the Board is free to grant a Licence for any period other than:

on-sales - mandatory refusal of 24-hour Licence in the absence of exceptional circumstances (Sections 59(6)(b) and 64(2))

off-sales - mandatory refusal of Off-sales Application before 10 a.m. and/or after 10 p.m. (Sections 59(6)(b) and 65(3)).

The Applicant may seek an exception from Conditions referred to in the previous case:

- H.7(a) (need for Outdoor Drinking Area to be limited etc.)
- H.10 (b) (no alcohol is to leave the licensed area)

Advice

[a] On the decision to grant or refuse the Occasional Licence

The Clerk's opinion is that there are no "Grounds for Refusal". Under Section 59(3) the Board must grant an Occasional Licence unless it considers that there is a reason to justify refusal, for example an inconsistency with the Licensing Objectives.

[b] on the decision to dis-apply or modify the Licence conditions

The conditions referred to:

- are not mandatory (obligatory under statute) but are
- discretionary (attached because of local Board Policy)

so the Board has a discretion on a case-by-case basis to dis-apply or modify them. Since the object of both conditions is the prevention of disorder associated with unsupervised drinking the Board might be satisfied that exceptions might be allowed. This is a regular event, so if there are disorder problems on this occasion then the Police might state objections or representations next time.

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Highland Fuels Limited, 6th Floor, Union Plaza, 1 Union Wynd, Aberdeen, AB10 1DQ (Registered Company SC032343)
Premises	Ravenspark Service Station, 50 Kilwinning Road, Irvine, KA12 8RY
Ref.	0529

1. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence ("PPL").

The PPL would be valid for a period of four years. During this period, the Applicant can request the Board to Confirm the PPL, or to extend the period.

The proposal is for an off-sales convenience store on the same site as the petrol filling station on the A737 Irvine to Kilwinning Road in a residential area. The alcohol hours requested are 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy. The proposed display capacity is 20.6 square metres. The Premises here have been operating for many months as a "Convenience Store" (they replaced an onsite shop which was demolished). The proposal is that, in addition to selling groceries, the Premises should have an off-sales facility.

The Premises cannot sell alcohol until the PPL is Confirmed. The Licence-Holder will apply to the Board for Confirmation once the conversion is complete, and will then have to give the Board both a "Building Control Certificate" and a "Food Hygiene Certificate". A "Food Hygiene Certificate" is needed because there will be a "Food Business" within the Food Safety Act 1990. This Certificate is needed for a shop which sells tinned or packaged food, as well as for a restaurant or any Premises serving prepared food. Confirmation is usually done by the Clerk or other officers under the Scheme of Delegations.

2. General approach

This is an application for an off-sales shop associated with a petrol station. As with any other proposal for new Premises, the Board's policy on

- the "Public Health Licensing Objective" (section 23(5)(c)), and
- "Overprovision" (Section 23(5)(e))

is relevant.

In addition, in the case of petrol stations there is a preliminary question of whether or not the Premises are "Excluded Premises" under Section 123(5).

The Board's decision on this question can determine the Application:

[a] If the Board consider that the Premises are "Excluded Premises" then it must refuse the Application (it is not necessary to continue to consider other potential reasons for refusal, such as the "Licensing Objectives" or "Overprovision") but

[b] If the Board consider that the Premises are not "Excluded Premises" then it must (as with any other Premises Licence application) consider those other potential reasons for refusal.

3. Previous licensing history

This is the second Application for these Premises. On 28 March 2022 (NALB Case No. 523) the Board refused a similar Application. While the Board was then satisfied that the Premises were not "Excluded Premises", the Board refused on the other two grounds:

- the "Public Health Licensing Objective", and
- "Overprovision"

The present Application is competent because the rule limiting repeat applications no longer applies. The rule prevents a further application within the period of one year (in the absence of a material change of circumstances or a Board Direction permitting an earlier repeat application) - Section 25.

A Statement of Reasons was issued after the first decision and this is attached. The same Applicant made similar Applications for two different Premises, in Irvine and Kilbirnie. The Board refused both Applications, and the Statement of Reasons deals with both. In 2023 there is no Kilbirnie Application.

4. Advice

The Board has a discretion to grant or refuse the Application. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any of the potential Ground(s) for Refusal set out below exist, and then decide:

If any Ground for Refusal applies, the Board must refuse.

If no Ground for Refusal applies, the Board must grant: Section 23(4)-(5).

The Board is obliged to grant the Application if the Applicant accepts a suitable modification to the Operating Plan or Layout Plan (or both), where that modification deals with the potential Ground for Refusal: Section 23(7). If the Applicant proposes modifications to address the issue(s) raised below, the Board should consider those proposals.

The potential Ground(s) for Refusal which may exist are:

- (a) the Premises may be "Excluded Premises"
- (b) the Application may be inconsistent with the Licensing Objectives
- (c) Overprovision may result from the grant of the Licence

(a) "Excluded Premises"

The 2005 Act requires that "Excluded Premises" should be refused a Premises Licence.

This term is defined so that motorway service stations and some garages are prevented from having Premises Licences (Sections 23(5)(a), 123(2)).

It does not prevent all garages from selling alcohol, due to Section 123(5):

"Despite subsection (2)(b) [the general exclusion of 'garages']], Premises used for the sale by retail of petrol or derv or which form part of Premises so used are not Excluded Premises if persons resident in the locality in which the Premises are situated are, or are likely to become, reliant to a significant extent on the Premises as the principal source of—

(a) petrol or derv, or

(b) groceries (where the Premises are, or are to be, used also for the sale by retail of groceries)."

An example of the use of this exception is to allow for garages selling alcohol and groceries in rural areas where the Application Premises are the only shop for miles, but this is not the only possible use of the exception, and a Board may accept that it applies to Premises in urban areas.

The statutory question should be addressed as follows:

1. What parts of Section 123(5) apply?

The Applicant should advise the Board which one (or both) of the branches of Section 123(5) is said to apply:

(a) petrol or derv

(b) groceries

This Report is prepared on the assumption that both apply - (b) applies here because the Application Premises are used also for the sale by retail of groceries.

2. The Board should determine "Locality"

The Board should determine the "Locality" to be considered for the purpose of the "Excluded Premises" question. This is different from the "Locality" used in the Overprovision question - the Locality there is already set by Board Policy.

The Board should invite the Applicant's views on the question of the "Locality" to be considered for the purpose of the "Excluded Premises" question.

This Report is prepared on the assumption that the Locality should be within a radius of one mile (about 1,600 metres) from the Application Premises. In the first Application the Board directed that that should be the Locality.

Within that radius, the other premises within (a) and (b) of Section 123(5) are as follows (* the distances from the Subject Premises is approximate):

(a) petrol or derv outlets

There are no premises which are only in type (a) within that radius. The nearest premises which include type (a) are:

1. **Sainsbury's Petrol Station** - Ayr Road [2.33 km, 1.45 miles *] (105 hours per week: 07.00 - 22.00, seven days)
2. **BP Annick Road**, Dreghorn, Irvine KA11 4HJ [2.84 km, 1.76 miles *] (168 hours per week: 24 hours, 7 days)
3. **ESSO**, Old Glasgow Rd, Kilwinning KA13 7JB [3.29 km, 2.05 miles *] (105 hours per week: 07.00 - 22.00, seven days)
4. **Howie's (Gulf)**, 4 Stevenston Road, Kilwinning [4.06 km, 2.53 miles *] (hours not stated on website)
5. **Morrison's Petrol Station**, Kilwinning Road, Stevenston [4.57 km, 2.84 miles *] (103 Hours per week: 06.00-21.00 Mon-Sat; 08.00-21.00 Sun)

(b) grocery outlets

To Irvine Cross (High Street/Bank Street junction): 1.22 km (about $\frac{3}{4}$ mile).

1. **"Day Today" (Nisa) Mini Market**, 26 Fleming Terrace, Irvine KA12 0XE [252 metres *] (104 Hours per week: 07.00-22.00 Mon-Sat; 08.00-22.00 Sun)
2. **"Co-op Food"**, 46 Caldon Rd, Irvine KA12 0RH [500 metres *] (105 hours per week: 07.00 - 22.00, seven days)
3. **"Keystore" Convenience Store**, 1 James Cres, Irvine KA12 0UL [503 metres *] (103 Hours per week: 07.00-22.00 Mon-Sat; 08.00-21.00 Sun)

4. **Paterson Premier "Go Grocer"**, 131A Paterson Ave, Irvine KA12 9LP [1,070 metres *] (87 Hours per week: 07.00-20.00 Mon-Sat; 09.00-18.00 Sun)

5. **"ALDI" Supermarket**, East Rd, Irvine KA12 0AF [1,130 metres *] (95 Hours per week: 08.00-22.00 Mon-Sat; 09.00-20.00 Sun)

6. **"Shop Local" Convenience Store**, 135 High St, Irvine KA12 8AA [1,210 metres *] (66 Hours per week: 07.00-18.00 Mon-Sat; closed Sun)

7. **"Iceland" Supermarket**, Caledonian House, 80-106 High St, Irvine KA12 0AX [1,280 metres *] (72 Hours per week: 08.00-19.00 Mon-Sat; 11.00-17.00 Sun)

8. **"ASDA" Superstore**, Rivergate Shopping Centre, Irvine KA12 8EH [1,540 metres *] (98 hours per week: 08.00 - 22.00, seven days)

Outside a one-mile radius

9. **"M & S Simply Food"**, Riverway Retail Park, 2a New Street Roundabout, Irvine KA12 8AG [1,630 metres *] (78 Hours per week: 08.00-20.00 Mon-Fri; 08.00-18.00 Sat; 10.00-18.00 Sun)

10. **"Food Warehouse"**, Retail Park Riverway, Irvine KA12 8DT [1,880 metres *] (hours not stated on website)

11. **"TESCO EXTRA" Superstore**, Retail Park Riverway, 15-16 Riverway, Irvine KA12 8AY [2,090 metres *] (126 hours per week: 06.00 - 24.00, seven days)

12. **"Sainsbury's" supermarket**, Ayr Rd, Irvine KA12 8BH [2,200 metres *] (97 Hours per week: 08.00-22.00 Mon-Fri; 07.00-22.00 Sat; 08.00-20.00 Sun)

3. The Board should have regard to the statutory guidance

Under Section 142 Scottish Ministers may issue guidance, and a Licensing Board must have regard to that. 'Having regard' does not mean that the Board must always follow the Guidance. The Board must instead prefer the statute and advice from the Courts and must form their own views on the circumstances of the particular case.

There is now no useful guidance on the "Excluded Premises" issue, as the 2007 Guidance was revised in 2023 and is now Paragraphs 14.3 – 14.6. The 2023 Guidance just directs to the 2011 Court case discussed below.

4. The Board should follow Court guidance

The Court of Session has stated that the appropriate approach to the question "are the Application Premises not 'Excluded Premises' ?":

*"is that there be **a recognisable number of persons** in the **locality**, not necessarily constituted as a group, who as a matter of their purchasing **habits** see and treat the shop premises in question as the **principal** source from which they may in ordinary course obtain either groceries or fuel and who would properly consider themselves **materially disadvantaged or inconvenienced** were that shop not to provide those retail facilities. In judging that matter, evidence of alternative retail outlets for groceries or motor fuel (or the local knowledge of the licensing board to that effect) is plainly not excluded; but the existence of some alternative facilities within the locality will **not** in itself prevent the giving of a positive answer to the question. ..." (BP Oil (UK) Ltd. v the Licensing Boards of Edinburgh and Glasgow ([2011] CSIH 29, 2011 SLT 491, Paragraph 51) (emphasis added **thus**)*

The Board can assess those issues by considering:

- (i) their local knowledge;
- (ii) whether there are alternative retail outlets for groceries or motor fuel (but the existence of such alternative facilities in the locality does not automatically mean that the Application Premises must be regarded as 'Excluded Premises');
- (iii) information supplied by the Applicant as to the number or percentage of persons resident in the locality who use (or are likely to use) the Application Premises as their principal source of petrol/derv or groceries. Commonly Applicants seek to address the Excluded Premises issue by producing customer data. In the present case the Applicants have submitted a "Customer Profiling Research Report" by TMK, based on a survey of customers in April 2023. This will be in Members' Background Papers. The Board should bear in mind that a survey is a snapshot of the customers over a short time and may not survey the opinions of everyone who used the Premises in that time. The fact that a survey may only record a few people does not mean that the results of the survey can be disregarded as representing only a "mere 'handful' " since it might be accepted as indicating the ratio of "reliant" residents using the Premises.

'Reliant' does not mean 'totally dependent'. In reversing a Board which had held that Premises failed to establish 'reliance' the Sheriff Principal said:

"The question of whether premises are relied on to a significant extent by a group of persons is not one which can be decided by asking an individual if he or she is reliant on the premises "to a significant extent". Moreover, whatever "reliance" means, for the purpose of this section, it cannot mean total dependence; anyone in Scotland who lives within range of a Tesco home delivery service is not totally dependent on a garage shop for groceries. It follows that the mere existence of alternative facilities cannot exclude the operation of section 123(5); it is all a question of degree." (ROC UK Ltd. v City of Edinburgh Licensing Board [2010] ScotSC 21, Paragraph 17).

(b) Licensing Objectives

The relevant L.O. is "protecting and improving public health".

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below). The Board's views on this L.O. are set out in Paragraph 2.13 of the Licensing Policy Statement 2018-2022:

"2.13. It is widely accepted that there is a clear link between the availability of alcohol and alcohol-related health harms. North Ayrshire figures also demonstrate a clear link between alcohol related harm and deprivation. The greater the availability of alcohol, the greater the expected harm, particularly in more deprived communities. The Board wishes to see Licensed Premises thriving in the area, but this cannot be at the expense of the health and wellbeing of patrons or the wider community. ..."

and in Paragraph 3.5, after stating that the Overprovision policy which otherwise applies to off-sales, public houses etc. might not be applied against premises such as restaurants, the LPS goes on:

"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. ..."

The L.O. expressly states **"improving"**. Opinions may differ as to whether the creation of a new facility to sell alcohol (or the expansion of an existing facility) has any effect on public health, but the Board might consider that it is unlikely to 'improve' public health.

In other cases, the Board has heard the submission that "it makes no difference", the argument being that adding a facility here does not increase the overall amount of alcohol consumed in society, because the free market will operate so as to re-distribute existing business. The Board has not accepted such submissions.

The L.O. also refers to 'public' health. The Act directs the Board to look at the effect on wider society. Any supposed health benefits enjoyed by the Licensee or staff (e.g. gaining profits or wages) cannot outweigh the potential damage to public health caused by alcohol consumption.

(c) Overprovision

1. Section 23(5)(e) is:

"23(5) The Grounds for Refusal are— ..."

(e) 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, in the Locality."

Section 23(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; '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;

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 (the Board calls these 'Part K Clubs').

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 with 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.

7. Applying the Policy to the present case:

(a) **Locality:** The Subject Premises are in the "Irvine and Area" Locality (Irvine, Bourtreehill, Cunninghamhead, Dreghorn, Gateside, Girdle Toll, Springside & Torranside) (Locality 4);

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

(c) **Function Type:** 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 Licensing Policy Statement includes:

"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." LPS 2018-22, Annex D, Paragraph 3.6.

11. The Licensing Board's Licensing Policy Statement 2018-22 is on the Board's website, with the documents which the Board considers supports its Overprovision Policy:

- (a) Alcohol Facts and figures
- (b) Traffic Light Chart
- (c) Monitoring Report 2018 (Alcohol-specific Deaths)
- (d) Alcohol Related Harm in Scotland 2016
- (e) Alcohol Information - North Ayrshire
- (f) Alcohol Outlet and Harm
- (g) Licensing Indicators
- (h) Alcohol Statistics (Scotland and NA)
- (i) Alcohol-related crimes in NA (Police)
- (j) Fires and Alcohol-related incidents
- (k) Premises Licences in North Ayrshire

Document (b) uses a 'Traffic Light' system to show how three health indicators in North Ayrshire compare with the Scottish average:

The health indicators are:

- Life expectancy: males
- Life expectancy: females
- Alcohol-related hospital stays

The colour system is:

- red : Statistically significantly 'worse' than Scottish average
- amber : Statistically not significantly different from Scottish average
- green : Statistically significantly 'better' than Scottish average

Over each of the 6 **Localities** in North Ayrshire:

	red	amber	green
1. North Coast	1	11	6
2. Three Towns	15	9	3
3. Kilwinning	4	5	3
4. Irvine etc.	8	27	1
5. Garnock Valley	3	14	1
6. Arran	0	1	0

(The totals are different because the Localities have different numbers of Intermediate Zones)

In the Board's view the 'Additional Factor' related to **Locality** should apply in **Localities** 2, 3, 4 and 5, but not in **Localities** 1 or 6.

5. 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)

If the Board agreed to vary or remove any of the conditions, the Premises Licence will reflect this.

6. 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 television, 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; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

- "PRS for Music" (formerly the "Performing Rights Society"),
- "Motion Picture Licensing Company Ltd"
- the maker of the programme or recording.

The Licensing Board does not grant this Licence.

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

Applicant	N&S Properties Limited
Premises	"Curry on the Corner", 45 Jack's Road, Saltcoats, KA21 5SH
Ref.	0519

A. Preliminary

The Board papers will include:

1. an Objection from a neighbour, and
2. two photographs from "Google Maps" (taken in April 2018 and August 2021) showing the Premises (with their former name "The Corran Inn"):

https://www.google.com/maps/@55.6432462,-4.7865756,3a,75y,157.46h,82.42t/data=!3m6!1e1!3m4!1sfu_H62nlq_bR87K7zPradw!2e0!7i16384!8i8192?entry=ttu

<https://www.google.com/maps/@55.6431568,-4.7857764,3a,75y,202.45h,81.33t/data=!3m6!1e1!3m4!1sypASaZmovgu894yKYnCTQ!2e0!7i16384!8i8192?entry=ttu>

B. The request(s):

1	Allow on and off sales from 11am on Sunday.
2	Add outdoor drinking DURING core hours.
3	Add outdoor drinking OUTWITH core hours.

C. Description of Premises

The Premises are a restaurant at the corner of Jack's Road (which runs approximately north-south) and High Road, Saltcoats (which runs approximately east-west).

The present Premises Licence was granted by the Board on 22 November 2021. Variation requests [2] and [3] relate to a proposal to create an Outdoor Drinking Area. The Board's Background Papers will include a neighbour's objection.

The Report for the Board meeting on 22 November 2021 included:

"The proposal is for a Public House/Restaurant using the building at the corner of High Road and Jack's Road, Saltcoats. The building was previously used as "The Aberlour (Bar & Grill)" and "Corran Inn" before

that, with an Outdoor Drinking Area ("beer garden"). The Premises have not traded for over 2 years. In that time new houses have been built on previously open ground, so that there are now houses immediately adjacent to the boundary wall of the ODA."

D. Advice

Variation 1: Allow on and off sales from 11am on Sunday.

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, as the proposal is simply to extend the Licensed Hours to Board Policy.

Note:

The Policy is:

On-sales 11.00 a.m. (7 days)

Off-sales 10.00 a.m. (7 days)

The current On-Sales Licensed Hours are:

Monday to Wednesday 11.00 – 24.00

Thursday to Saturday: 11.00 – 1.00

Sunday: 12.30 – 24.00

Variation 2: Add Outdoor Drinking DURING core hours

Advice: the Board has a discretion to grant or refuse this request and should make a decision after hearing the Applicant and any objectors, and taking into account the considerations set out below.

Notes:

The proposal is to create an Outdoor Drinking Area ('beer garden') at the front of the Premises with 19 x 4-seat tables.

Since about 2007 the site has had a 'beer garden' at the rear of the Premises:

The Planning Permission granted in 2007 (07/00034/PP) for "Floyds Bar 45 Jacks Road Saltcoats Ayrshire KA21 5SH" was for "Formation of beer garden incorporating decking, 4 fixed jumbrellas, canopy and boundary fence to side and retractable awning to rear of public house."

The Premises do not currently have any Outdoor Drinking Area. The ODA referred to in the 2021 Report:

- was the area on the east of the building, between the building and the 2023 Objector's house, and

- was removed from the Provisional Premises Licence Application during the Board Meeting on 22 November 2021 by the Licence Applicant's then Solicitor.

Accordingly the Board in 2021 was only dealing with a proposal to license the inside of the Premises.

The 2023 proposal for an 'Outdoor Drinking Area' relates to a different position from the 'beer garden' proposed and used previously. The 2023 site is on the other side of the Premises from the boundary with the Objector's property and there is probably no line-of-sight. The 2023 proposal is for the front of the Premises - the entrance at the street corner is to have 19 x 4-seat tables. This proposal has Planning Permission granted on 5 January 2023 (22/00806/PP): "Erection of in-fill extension on northern elevation and new gated access with accessible entrance ramp to side".

There are no objections from the Police, Scottish Fire and Rescue, or Council Departments.

The Board would have to be satisfied that the proposals were not inconsistent with any of the Licensing Objectives, and in particular L.O. (c): 'preventing public nuisance'.

The Board may consider that their Standard Conditions are sufficient:

"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 opening hour of 11.00 a.m. and the terminal hour of 10.00 p.m. apply even if the Licensed Hours inside the building are greater.

The reason for the phrase "alcoholic or not" is that the Board are unlikely to know that a container contained Alcohol, e.g. if the Board received a complaint, all that the complainer might be able to say was "I saw a customer drinking from a container" - without being able to say that there was Alcohol in it.

The Board require 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 Article 8 of the European Convention on Human Rights. If the Board were being asked to permit nuisance (by granting or varying a Licence), its decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633);

(b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.

Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board is obliged to have regard to 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.

Future action

If the Board allow Outdoor Drinking and is later satisfied that this is inconsistent with any Licensing Objective or that any Licence condition has been breached, it can hold a Review Hearing which might conclude with a decision to Vary the Licence so as to limit or remove the permission.

That action would normally follow a Review Application commenced by a third-party, rather than the Review being commenced by the Board.

Variation 3: Add outdoor drinking OUTWITH core hours

Advice: the Board has a discretion to grant or refuse this request and should make a decision after hearing the Applicant and any objectors, and taking into account the considerations set out below.

The Board should approach Variation 3 with the presumption that it should be refused as not consistent with Board Policy.

As the presumption arises from a Policy and is not a statutory obligation, the Board is obliged to allow the Applicant to make submissions designed to persuade the Board that there is a special reason which justifies an exception being made. The Applicant has not so far suggested that there might be such a justification.

Board Policy, as reflected in Condition C.5.2, is that Outdoor Drinking Areas should not be used before 11.00 a.m. or after 10.00 p.m. – **regardless** of the fact that the inside of Premises will have Board Policy Core Hours so are likely to be open later (24.00 midnight or 1.00 a.m. depending on the day of the week).

That limitation exists because of the Board's views on the 'preventing public nuisance' Licensing Objective and the balance of the competing rights referred to in the note on the previous Variation. The Board should consider not only the position of the single Objector, but generally the residents of all houses in the vicinity. While those residents might have no objection in principle to an 'Outdoor Drinking Area' as requested in Variation 2, they might expect that the Board would maintain the 10.00 p.m. policy. Although on a case-by-case basis the Board has sometimes allowed use of an ODA before 11.00 a.m. for the service of breakfasts, the Board has never allowed the use of an ODA after 10.00 pm.

E. Notes for Applicant

The Board's decision is not:

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(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 television, 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; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

- "PRS for Music" (formerly the "Performing Rights Society"),
- "Motion Picture Licensing Company Ltd"
- the maker of the programme or recording.

The Licensing Board does not grant this Licence.