

Cunninghame House
Irvine
KA12 8EE

1 September 2022

North Ayrshire Licensing Board

You are requested to attend a Meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **Monday 5 September 2022 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Declarations of Interest

2. Minutes

Submit Minutes of the Board Meeting held on 20 June 2022. (copy enclosed)

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. Public Health Report

Submit Report to update the Licensing Board on Alcohol consumption in Scotland (MESAS Monitoring Report 2022) and Review of Minimum Pricing legislation. (copy enclosed)

5. Any Other Business

Licensing Board

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

Chair:

Apologies:

Meeting Ended:

AGENDA ITEM 2

DRAFT North Ayrshire Licensing Board 20 June 2022

Irvine, 20 June 2022 - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

Present

Councillors Eleanor Collier (Convenor), Nairn McDonald, Christina Larsen, Jean McClung and Donald L Reid.

In Attendance

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

Also In Attendance

Chief Inspector Alan Paterson and Sergeant Sheryl Syme (Police Scotland).

Convenor

Councillor Eleanor Collier.

Apologies for Absence

Councillor John Bell.

1. Declarations of Interest

There was no Declarations of Interest.

2. Minutes

The Board were asked to confirm the Minutes of the Board meetings held on 22 November 2021 and 28 March 2022. Councillor Reid proposed that both sets of Minutes be adopted and this was seconded by Councillor McClung. The Minutes were agreed and adopted.

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

The Board considered a report by the Clerk to the Licensing Board on matters under the Licensing (Scotland) Act 2005. The report, on this occasion, contained 1 Appendix;

A. Premises Licence applications or any other applications requiring a Hearing.

The Licensing Board agreed to dispose of the matters as follows;

A. Premises Licence applications or any other applications requiring a Hearing

A.1 Premises Licence 0060 Crofters, Shore Road, Brodick

The Board resumed consideration of an application for variations of a Premises Licence made by the Licence Holder, Crofters Arran Limited, for the above premises. The Premises Licence Holder was represented by Jo Godwin, Administrator.

The Licence Holder was requesting the following variations:

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1. Allow market at the rear of the premises
2. Increase capacity from 46 to 120

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. An extensive email to the Premises Licence Holder from the Solicitor (Licensing) as well as a favourable representation from Arran Community Council and an objection from Mr Raeside, were all contained in their background papers. A copy of the representation and objection were provided to the applicant prior to the initial Board meeting. Neither Mr Raeside nor Arran Community Council were present.

Ms Godwin then addressed the Board. She confirmed the intention to have a market at the rear of the premises would allow them to diversify following the effects on the business from Covid. The market would have 9 table stalls and they would invite local businesses to sell their produce in addition to selling their own products as well as the ability to sell alcohol, made in their onsite distillery, for off-sales. She noted that there was a misunderstanding in relation to the increased capacity and confirmed 120 people would be in the outside area and not inside the building. There is no change to the capacity inside the premises.

The Clerk explained a separate Market Operators Licence would also be required. Ms Godwin explained that due to cashflow this would be applied for if the Variation Application is granted.

The Convenor highlighted that no one other than Crofters could sell alcohol within the market for off-sales and Ms Godwin confirmed other operators would mainly sell food, vegetables, and seasonal produce.

With regards to the marquee, Ms Godwin advised Councillor Reid that this would be open sided and in relation to potential noise issues, they have been in discussions with neighbours on their proposals. They have processes in place and are very aware of noise disturbance on neighbours and keen to maintain a positive relationship. Recent music events taking place have received supportive feedback.

Having considered the terms of the report, and the submission made, Councillor Reid proposed that the Board grant the application. Councillor McDonald seconded the motion. There was no Amendment. The Board unanimously agreed without dissent or abstention to grant.

The following will be added to the Operating Plan Part 5(f) ("Any other activities")

"The conduct of markets where the stall-holders will be third-parties (neither the Premises Licence Holder nor anyone acting on behalf of the PLH) to be conducted under a "Market Operator's Licence" under Section 40 of the Civic Government (Scotland) Act 1982.

The markets will take place between the hours of 11.00am and 9.00pm on the area to the rear of the building and will involve no more than 9 stalls, selling food, vegetables and seasonal produce.

The sales may include off-sales of alcohol by the Premises Licence Holder (and not by anyone else). These sales can only take place within the Licensed hours specified in Part 3 of the Operating Plan.

No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in the area while it is operating as a Market."

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A.2 Premises Licence Allegria, 86 Gallowgate Street, Largs

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Kadir Turbun, for the above premises. The Premises Licence Holder was represented by Maria Timis, Premises Manager.

The Licence Holder was requesting the following variations:

1. Add outdoor drinking
2. Amend Sunday commencement hours for on sales and off sales to 11.00am
3. Add Live Performances, Receptions including weddings, funerals, birthday, retirements etc
4. Amend Children and Young Persons access for functions

The Clerk updated the Board on the application.

Ms Timis then addressed the Board. She explained the current Operating Plan was restrictive for the family friendly restaurant and explained the background to the Variation requests. With regards to the concerns raised by the Convenor on the outdoor drinking area, Ms Timis provided photographs on her mobile phone to the Board. The area would be delineated with solid barriers on wheels with planters on top. Although the layout plan contained a capacity of 42 seats in the outdoor area there would only be 30 seats. If minded to granted, more jobs would be created by the proposal and it would encourage tourism to the area due to its location and views. Ms Timis noted that permission has already been received to use the pavement area from the Roads Authority.

Regarding CCTV, Ms Timis clarified to the Convenor that the area is covered by 2 CCTV cameras. She also confirmed to Councillor Larsen that the smaller side of the doorway would have 2 tables of 5 people and the larger side would accommodate 4 tables of 5, a total capacity of 30 persons outside.

The Clerk clarified the request to amend Sunday commencement hours to 11.00am was within the Board's Policy and confirmed that no loud speakers are permitted in the outdoor area.

Ms Timis confirmed to Councillor Reid the outdoor seating area barriers, which are on wheels, would be removed in wintertime.

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

Part F of the Board's Standard Conditions (Entertainment) was added to the Licence.

A.3 & Premises Licences 0115 Spar, 25 Holehouse Road, Largs &

A.4 0199 Spar Convenience Store, 8/12 Wheatley Road, Saltcoats

The Board considered applications for variations of Premises Licences made by the Licence Holder, C J Lang & Son Ltd, for the above premises. The Premises Licence Holder was represented by Caroline Loudon, Solicitor, and she was accompanied by Carol Wraith, Premises Manager at the Largs store. Ms Loudon asked that both applications be considered together as they are both identical except for one additional request for the Largs store.

The Licence Holder was requesting the following variations:

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1. Amend the text at Q5 to include Recorded music and National Lottery tickets/cards available out with core hours
2. Add Gaming to cover the use of the National Lottery outlet etc.
3. Amend the text at Q5(f) Other Activities to include Food to Go, Click & collect, Home Deliveries, Paypoint payment, National Lottery outlet, External automated cash machine and sampling & promotional activities
4. Increase the alcohol display capacity from 13.01 m2 to 14.13 m2 (Largs store only)

The Clerk updated the Board on the application.

Ms Loudon then addressed the Board. She explained that as part of a Scotland wide update she has been tailoring the chain's Premises Licences so that they all read the same. Following the pandemic, with more people shopping locally and the addition of food to go as well as the Snappy Shopper home delivery app, Operating Plans are being tidied up for 'future proofing'. With regards to the Largs store, the home delivery app is not available yet but will be implemented in the future and an update of the store layout has resulted in the request for an increase in alcohol display capacity. She explained there are 16 CCTV cameras in the Largs store and there is no negative track record of the premises as well as her clients being well respected operators. Ms Loudon explained that she is aware of the Board's overprovision policy, however the increase is for a very small amount which will complement the existing produce already available.

Ms Loudon explained to Councillor Reid that if the increase in capacity request was not granted this would have a substantial impact, the area would be restocked with soft drinks. She advised the existing inaccessible alcohol area is a small basic spirits area, and the additional accessible area would not encourage people to buy more alcohol but provide more choice.

Both the Convenor and Councillor Reid highlighted the Board's Policy and their concerns.

Having considered the submission made, Councillor Reid proposed that the Board grant the Variations 1, 2 and 3 for both Premises and refuse Variation 4 (Increase the capacity from 13.01 m2 to 14.13 m2 (Largs store only)) on grounds of overprovision and inconsistency with the Licensing Objective 'Protecting and Improving Public Health'. The Convenor seconded the motion. There was no Amendment. The Board unanimously agreed without dissent or abstention to grant Variations 1, 2 and 3 for both Premises and refuse Variation 4.

Ms Loudon undertook to provide the Board with an amended Layout Plan for the Largs store.

A.5 0524 Fintry Bay Ltd, Fintry Bay House, West Bay Road, Millport

The Board considered an application for grant of a Premises Licence made by Fintry Bay Ltd Limited for the above premises. Beverley Callaghan, Director of Fintry Bay Ltd was present.

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.

Ms Callaghan then addressed the Board. She took over the Premises 2 and a half years ago and since then has opened the inside restaurant and the outside patio seating area. Since April the Premises have been operating on a BYOB basis. Ms Callaghan confirmed they will only provide table service and confirmed that under 18s will not be permitted to remain within 1 metre of any bar, she also confirmed that baby changing facilities are available in a disabled toilet.

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Ms Callaghan confirmed to the Convenor that she sought an exemption to the Conditions in relation to the outdoor drinking area as there are no neighbours within 3 miles.

Having considered the terms of the reports and the submission made, Councillor McDonald proposed that the Board grant the Premises Licence application. Councillor Larsen 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 with Condition C.5.1 disapplied and Condition C.5.2 amended to read: 'No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 9.00am."

A.6 0525 The Clyde Kitchen, 31-33 Shore Road, Skelmorlie

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

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 Clerk updated the Board on the application.

Mr McKinnon then addressed the Board. After there being 7 owners in the last 10 years, he took ownership of the restaurant in April this year. He said that in order to make the business a success a licence is required to provide alcohol with meals. Until now Mr McKinnon has been operating on a BYOB basis and believes being able to sell alcohol would allow him better control over the consumption of alcohol. The restaurant will be table service only with no bar.

Mr McKinnon confirmed to Councillor McClung that he does receive a lot of enquires asking if alcohol is available with meals as well as customers presuming alcohol is available. He also advised Councillor Larsen that the outdoor drinking area is accessible by ramps and will close at 9.00pm with the last food service at 8.00pm although he would like to offer teas and coffees prior to 11.00am.

Ms Cullen, LSO confirmed to Councillor McDonald that as the Premises has never been licensed no complaints have been received.

With regards to neighbours, Mr McKinnon confirmed that he had a meeting with residents of Strathclyde House and of the 62 flats only 2 neighbours were against his proposals.

Concerning under 18s, Mr McKinnon advised the Convenor that there will be no bar only a counter with a cash till and cake display, all alcohol will be out of sight, and they will provide table service only. Baby changing facilities are available in a disabled toilet.

Having considered the terms of the reports and the submissions made, Councillor McClung proposed that the Board grant the Premises Licence application. Councillor McDonald 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

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A and C with Condition C.5.2 amended to read: "No alcoholic drinks shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 p.m.."

A.7 259/22 Daniel James Stirling - Application for Occasional Licence Sections 56-61, Making Waves Festival, Irvine Beach Park, 24-25 July 2022

The Board considered an application for Occasional Licence made by Daniel James Stirling. Mr Stirling was present and was accompanied by Fiona Anderson NAC Events and Tourism Officer.

The Clerk advised the Board on the application explaining that Occasional Licences are normally granted under Delegated Powers however this request is to disapply a Condition. He referred Members to the written submission by Ms Anderson contained within the Board's background papers.

Ms Anderson then addressed the Board. She explained it is a 2-day event comprising of activities along the harbourside as well as a ticketed event at the beach park on Saturday 23 July, 12 noon until 10.00pm and Sunday 24 July 12 noon until 6.00pm. The capacity is 3000 people, and the bar will be within a fenced ticketed area. The proposal is that alcohol can be consumed everywhere within the fenced area. There will be a total of 40 stewards consisting of a bar supervisor, 4 SIA stewards within the bar area and another 35 security stewards within the ticketed fenced area where alcohol will be consumed. Mr Stirling's staff will provide the alcohol.

Chief Inspector Paterson referred to the concerns from Police Scotland regarding stewarding at the event and confirmed he was satisfied with this undertaking.

Mr Stirling then addressed the Board and confirmed to the Convenor that he has been involved in many major events and ensures all legal requirements are adhered to. Mr Stirling also confirmed that there will be no glass bottles and that all drinks will be decanted into plastic containers.

Concerning first aiders, Ms Anderson confirmed to Councillor Reid there will be 8 first aiders present at all times and free tap water will be available.

Having considered the terms of the reports and the submissions made, the Convenor proposed that the Board grant the Occasional Licence application and disapply Standard Condition H.7. Councillor Reid seconded the motion. There was no amendment. The Board unanimously agreed without dissent or abstention to grant and disapply Standard Condition H.7.

The Occasional Licence is granted subject to the Board's Standard Conditions with Condition H.7 (Temporary Structures) disapplied.

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A.8 204/22 Greene King Retailing Ltd - Application for Occasional Licence Sections 56-61, Pavement Area, The Carrick, 112-114 High Street, Irvine

The Board considered an application for Occasional Licence made by Greene King Ltd. The applicant was represented by Adrian Howlett and was accompanied by Catherine Blunn, General Manager and Premises Manager, The Carrick.

Chief Inspector Paterson read the content of a letter of objection from Police Scotland. If the Board were minded to grant the application, he suggested that the area be suitably cordoned off and the number of tables is limited to 4 with the number of patrons being 16 in total.

Mr Howlett then addressed the Board. He explained the request is for a licensed pavement café with occupant capacity of 26 at full capacity. The area will be protected by café barriers commonly seen throughout Scotland. CCTV cameras will monitor the area from the bar and the area is visible from inside the premises. The S59 pavement area consent has already been granted. As the dates on the application have now passed, he would like the licence to commence from today for 14 days and the ability to submit subsequent applications until such times as the Board determine the Major Variation application submitted for the use of the same area. He explained that the use of Occasional Licences for this area would give them the opportunity to show how successfully the area could be operated.

Acknowledging the objection from Police Scotland, Mr Howlett advised Ms Blunn has many years' of experience in the trade and returned to The Carrick in December 2021. Following the pandemic use of outdoor areas is more common and the pavement area will allow customers more choice to sit outside.

Mr Howlett confirmed that The Carrick currently have an outdoor drinking area at the back of the premises which is also currently being extended by way of Occasional Licences.

Chief Inspector Paterson highlighted that the pavement area is in an extremely busy bus route and barriers would not provide adequate protection.

Referring to the proposal to build amenity flats directly across from the area, Councillor Larsen highlighted the potential noise nuisance from an outdoor area.

Ms Blunn then addressed the Board. She advised that there is ample room on the pavement area for passers-by and noise pollution would be kept under control as it is inside the premises. She advised that tables would be removed from the pavement area at 8.00pm and there will be no standing permitted within the area. A member of staff would be on duty to monitor this area. The covered outdoor area at the back of the building is mainly used for smoking and no neighbour complaints have been received in relation to the use of that area.

During local events such as Marymass when the town is exceptionally busy, Ms Blunn confirmed to Councillor Larsen that the outdoor pavement area would not be used on these days. Tables and chairs will be removed every day and would not be used at Marymass time.

Referring to questions from Councillors Reid and Larsen, Ms Blunn advised that both food and drinks will be consumed in the outdoor pavement area, customers would not be time limited when frequenting the area, the area will be closely monitored and will provide a nice environment for customers to sit in.

The Clerk noted the intended barriers to be used has previously been agreed by the Board. Mr Pollock confirmed the agreement was 780mm high x 1600mm for the canvas banner and 980mm high x 300mm for the post.

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Referring to the capacity, Mr Howlett advised the request for a capacity of 26 would be spread over 2 areas with 12 people on the right hand side of the doorway and 14 people on the left hand side of the doorway. Providing 1m² for each person.

Both the Convenor and Councillor Larsen noted the recommendation from Police Scotland for the maximum capacity to be 16 people.

The Board adjourned with the Clerk at 11.09 am to deliberate in private and re-convened at 11.39 am.

Councillor McDonald asked the LSO if there was any history of complaints for The Carrick. Ms Cullen confirmed there have been no complaints in a very long time.

Ms Blunn clarified to Councillor Larsen that extra staff will be in place and a staff member will be on duty at each section with extra checks in place in the outdoor area as well as it being all seated and subject to the use of plastic containers.

Councillor Reid highlighted the potential concern smoking in the outdoor pavement area could cause, Ms Blunn noted that customers currently use the outdoor area at the back for smoking and Mr Howlett advised they could not enforce no smoking on the pavement outdoor area. Ms Blunn intended the area would attract people on a nice day for food and drinks.

Mr Howlett confirmed to Councillor Reid their preference on the use of the area is from 11.00am until 10.00pm however noted that they would start to wind down at 8.00pm with the weather having a major impact on its use.

Councillor Larsen sought clarification on when tables would be removed. Ms Blunn had earlier advised tables would be removed at 8.00pm but Mr Howlett noted they would wind down from 8.00pm. Ms Blunn confirmed once they stopped supplying food they would intend to bring in the seating from outside so as not to encourage enhanced drinking facilities in this area.

Regarding the days the pavement area would not be used, Ms Blunn confirmed to Councillor Larsen as well as at Marymass time they would not use this area when other parades take place in the vicinity, during high profile football matches or at any time when it would cause an obstruction.

Mr Howlett advised Councillor Larsen they would prefer not to restrict the use of the outdoor pavement area for drinks only supplied with food, the premises are well run, and the Manager would control the outside as she does inside. Ms Blunn confirmed CCTV covers the full area and will be monitored behind the bar with images retained for 28 days.

Having considered the submissions made, the Councillor Larsen proposed that the Board grant the Occasional Licence application from 12noon until 8.00pm, with the capacity of 16 persons as recommended by Police Scotland and the area would not be set out and used during events such as Marymass and other parades, and during high profile football matches. Councillor McDonald seconded the motion. There was no amendment. The Board unanimously agreed without dissent or abstention to grant.

The Clerk acknowledged future Occasional Licence applications that mirror this would not require to be determined by the Licensing Board.

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A.9 Premises Licence 0080, The Waterside, 14 Bath Street, Largs

The Board considered an application for Extended Hours (251/22) made by Hillend Enterprises Limited for the above Premises. The Premises Licence Holder was represented by Brian Purdie, Director and he was accompanied by Ms Mutter.

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 Board also had regard to a report by Grace Cullen, Licensing Standards Officer, a representation from Police Scotland and letters received from neighbours.

Sergeant Syme read the content of the representation from Police Scotland noting that no complaints have been received by Police Scotland following the review of the Premises Licence on 21 November 2021.

Ms Cullen, LSO, read the content of her report.

The Clerk advised that no objectors were present, however the Board must consider the neighbour complaints.

Mr Purdie then addressed the Board. He advised there are 2 main complainers to his business. He confirmed that while bands are taking a break and no music is being played, he does allow the front door to remain open to allow fresh air to come in, the door is closed prior to bands restarting.

Referring to the photographs supplied to the Board, Mr Purdie advised the Convenor these were of band members who were taking a break. He confirmed the band members are young men who do not consume alcohol, he did try to enlarge the photographs, but it is not clear what the person is holding. He noted that at the Board meeting in November he did not have the time to look at these photographs in details. Following the Board's decision to vary his hours, Mr Purdie advised his business is uneconomical to run and he does intend to apply to the Board to have the hours varied. He advised the Board that he has spent £20,000 in sound proofing the premises and music cannot be heard outside his premises when bands are playing. He also advised that the area has over 200 residents.

The Convenor noted that 2 letters of recommendation had also been received and were contained in their background papers.

Ms Cullen, LSO, advised Councillor McClung that since the review, with entertainment now ceasing at 11.00pm, she has not received any complaints nor has Environmental Health or Largs Police. Previously she communicated with Mr Purdie on a regular basis but has not had any cause to recently.

Mr Purdie confirmed that since the review, he still has bands playing from 7.30pm until 10.30pm and if the Extended Hours is granted, they will play until 12.30am.

With regards to stewarding, Mr Purdie confirmed to the Convenor there would be 2 stewards on duty and he would be willing to accept a Condition that the door could not be left opened.

Referring to the sound levels while bands are playing, Mr Purdie advised Councillor Reid that even while 4 or 5 piece bands are playing music is not heard outside his premises due to its soundproofing.

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Ms Cullen asked Mr Purdie to clarify the position regarding door stewards following the Condition by the Board that while live or amplified music is played a door steward (a person who holds a licence granted under Section 8 of the Private Security Industry Act 2001) would be employed. Mr Purdie confirmed this is the case.

Mr Purdie explained that he does have bands playing every week however more people will attend the local festival that he seeks Extended Hours for.

The Board adjourned with the Clerk at 12.11 pm to deliberate in private and re-convened at 12.32 pm.

Councillor McDonald asked Mr Purdie that if required, would he be able to provide the SIA registration number of the proposed door steward at his premises. Mr Purdie confirmed he could supply this.

Having considered the terms of the reports and the submissions made, Councillor Larsen proposed that the Board refuse the Extended Hours application. Councillor McClung seconded the motion. There was no amendment. The Board unanimously agreed without dissent or abstention to refuse.

The Clerk confirmed that the Board, having regard to the Licensing Objectives, decided to refuse the Extended Hours application.

The meeting ended at 12.34 pm.

Agenda Item 3

5 September 2022

North Ayrshire Licensing Board

Title:	Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.
Purpose:	To advise the Board of the Law and the factual background.
Recommendation:	That the Board determines whether or not to grant the Applications listed.

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.	0327	Greene King Retailing Ltd	The Carrick 112-114 High Street Irvine KA12 8AH	Application for Variation of Premises Licence – Section 29
2.	0361	Buzz Holdings Limited	Buzz Bingo 39/43 Townhead Irvine KA12 0BH	Application for Variation of Premises Licence – Section 29
3.	0525	Daniel McKinnon	The Clyde Kitchen 31-33 Shore Road Skelmorlie PA17 5AN	Application for Variation of Premises Licence – Section 29
4.	0231	Tamor Limited	Lemon Tree 91/93 Main Street Kilwinning KA13 6AW	Application for Variation of Premises Licence – Section 29
5.	0337	Jaspreet Bawa	Stevenston Post Office 3 Townhead Street Stevenston KA20 3AF	Application for Variation of Premises Licence – Section 29
6.	0392	Jujhar Singh Store Ltd	Premier Caldon Road 40/42 Caldon Road Irvine KA12 0RF	Application for Variation of Premises Licence – Section 29
7.	450/22	Crofters Arran Limited	Crofters Shore Road Brodick Isle of Arran KA27 8AJ	Applications for Extended Hours – Section 68 Clerk to Report
8.	NA2649	Joseph Henry Fitzsimmons		Personal Licence Review Hearing – Section 84A

North Ayrshire Licensing Board
Case Summaries
Meeting: Monday 5 September 2022 at 10.00 a.m.

Notice to Applicants and Licence-Holders

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

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

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

Abbreviations:

"PL" : Premises Licence

"PLH": Premises Licence Holder

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

1. PL 0327: "The Carrick" 112-114 High Street, Irvine, KA12 8AH

Licence Holder: Greene King Retailing Ltd
Application for Variation of Premises Licence – Section 29

The proposals are:

1. to add an "Outdoor Drinking Area" on the front pavement
2. to amend the description of the premises accordingly, and
3. to increase capacity: 408 persons plus 58 outside.

The Police made a representation by letter of 31 May 2022 but this pre-dates the Board's consideration on 20 June 2022, when the Board agreed in principle to allow the use of Occasional Licences prior to the determination of a Variation Application. Both the letter and the Minutes are below.

The proposed pavement area has in fact been used since on a sequence of Occasional Licence, although following a Police representation the capacity allowed was only **16** persons (not the 26 that the Applicants requested). NAC Roads granted Roads Consent under the Roads (Scotland) Act 1984, Section 59, on the basis that the pavement cafe left at least the recommended 2-metre width free for pedestrians. The pavement at "The Carrick" is wide, whereas other pavements may not allow enough free width.

There is no 'precedent' being set because it remains the case that each proposal would be looked at by the Board on a case-by-case basis, but the resumption would be that:

- if a proposal has Roads Consent,
- it can have a Licence.

(Bapu Properties Ltd. v City of Glasgow Licensing Board, [2012] ScotSC 26, Glasgow Sheriff Court)

If the Police concerns continued after the earlier Board decision and were evidenced by actual incidents of disorder associated with the pavement cafe they could return to the Board at any time with a Review Application, inviting the Board to vary the Licence so as to remove or restrict the pavement cafe.

Police letter of 31 May 2022:

"... The concerns in relation to increasing the outdoor space at the rear of the property, are that the increased capacity, increased noise and the potential increase in foot fall in the busy East Road Carpark could cause disorder in this area.

The variation to the front of the premises consists of a street café: There is the concern that this variation could impact on existing businesses and if successful does set a precedent for the nearby licensed premises being granted similar street café's.

In relation to the proposed street café and footpath location which is afforded no protection from vehicles, it is situated on the side of Irvine's busiest bus routes, in close proximity to Irvine Cross and is adjacent to the Music Room property, where the

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customers are predominately school aged children and could have a potential noise and disorder implications.

In terms of Section 22(1)(b)(ii) and (iii) of the Licensing (Scotland) Act 2005, I am of the opinion that the variation in its current form should be modified so that the street café is removed from this variation and that the concerns raised in this letter are addressed."

NALB Minutes: 20 June

"A.8 204/22 Greene King Retailing Ltd - Application for Occasional Licence Sections 56-61, Pavement Area, The Carrick, 112-114 High Street, Irvine

The Board considered an application for Occasional Licence made by Greene King Ltd. The applicant was represented by Adrian Howlett and was accompanied by Catherine Blunn, General Manager and Premises Manager, The Carrick.

Chief Inspector Paterson read the content of the objection letter from Police Scotland. If the Board were minded to grant the application, he suggested that the area is suitably cordoned off and the number of tables is limited to 4 with number of patron being 16 in total.

Mr Howlett then addressed the Board. He explained the request is for a licensed pavement café with occupant capacity of 26 at full capacity. The area will be protected by café barriers commonly seen throughout Scotland. CCTV cameras will monitor the area from the bar and the area is visible from inside the premises. The S59 pavement area consent has already been granted. As the dates on the application have now passed, he would like the licence to commence from today for 14 days and the ability to submit subsequent applications until such times as the Board determine the Major Variation application submitted for the use of the same area. He explained that the use of Occasional Licences for this area would give them the opportunity to show how successful the area could be operated.

Acknowledging the objection from Police Scotland, Mr Howlett advised Ms Blunn has many years' experience in the trade and returned to The Carrick in December 2021. Following the pandemic outdoor areas are more common and the pavement area will allow their customers more choice to sit outside.

Mr Howlett confirmed that The Carrick currently have an outdoor drinking area at the back of the premises which is also currently being extended by use of Occasional Licences.

Chief Inspector Paterson highlighted that the pavement area is in an extremely busy bus route and barriers would not provide adequate protection.

Referring to the proposal to build amenity flats directly across from the area, Councillor Larsen highlighted the potential noise nuisance from an outdoor area.

Ms Blunn then addressed the Board. She advised that there is ample room on the pavement area for passers-by and noise pollution would be kept under control as it is inside the premises. She advised that tables would be removed from the pavement area at 8.00pm and there will be no standing permitted, only seated. A member of staff would be on duty to monitor this area. The covered outdoor area at the back of the building is mainly used for smoking and no neighbour complaints have been received in the use of that area.

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During local events such as Marymass when the town is exceptionally busy, Ms Blunn confirmed to Councillor Larsen that the outdoor pavement area would not be used on these days. Tables and chairs will be removed every day and would not be used at Marymass time.

Referring to questions from Councillors Reid and Larsen, Ms Blunn advised that both food and drinks will be consumed in the outdoor pavement area customers would not be time limited, the area will be closely monitored and will provide a nice environment for customers to sit in.

The Clerk noted the intended barriers to be used has previously been agreed by the Board. Mr Pollock confirmed the agreement was 780mm high x 1600mm for the canvas banner and 980mm high x 300mm for the post.

Referring to the capacity, Mr Howlett advised the request for a capacity of 26 would be spread over 2 areas with 12 people on the right hand side of the doorway and 14 people on the left hand side of the doorway. Providing 1m² for each person.

Both the Convenor and Councillor Larsen noted the recommendation from Police Scotland for the maximum capacity to be 16 people.

The Board adjourned with the Clerk at 11.09 am to deliberate in private and re-convened at 11.39 am.

Councillor McDonald asked the LSO if there was any history of complaints for The Carrick. Ms Cullen confirmed there have been no complaints in a very long time.

Ms Blunn clarified to Councillor Larsen extra staff will be in place and a staff member will be on duty at each section with extra checks in place in the outdoor area as well as being all seated and the use of plastic containers.

Councillor Reid's highlighted the potential concern smoking in the outdoor pavement area could cause, Ms Blunn noted that customers currently use the outdoor area at the back for smoking and Mr Howlett advised they could not enforce no smoking on the pavement outdoor area. Ms Blunn intended the area would attract people on a nice day for food and drinks.

Mr Howlett confirmed to Councillor Reid their preference on the use of the area is from 11.00am until 10.00pm however noted that they would start to wind down at 8.00pm with the weather having a major impact on its use.

Councillor Larsen sought clarification on when tables would be removed. Ms Blunn had earlier advised tables would be removed at 8.00pm but Mr Howlett noted they would wind down from 8.00pm. Ms Blunn confirmed once they stopped supplying food they would intend to bring in the seating from outside so as not to encourage enhanced drinking facilities in this area.

Regarding the days the pavement area would not be used, Ms Blunn confirmed to Councillor Larsen as well as at Marymass time they would not use this area when other parades take place, during high profile football matches or at any time when it would cause an obstruction.

Mr Howlett advised Councillor Larsen they would prefer not to restrict the use of the outdoor pavement area for drinks only supplied with food, the premises are well run, and

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the Manager would control the outside as she does inside. Ms Blunn confirmed CCTV covers the full area and will be monitored behind the bar with images retained for 28 days.

Having considered the submissions made, the Councillor Larsen proposed that the Board grant the Occasional Licence application from 12noon until 8.00pm, with the capacity of 16 persons as recommended by Police Scotland and the area would not be set out and used during events such as Marymass and other parades, and during high profile football matches. Councillor McDonald seconded the motion. There was no amendment. The Board unanimously agreed without dissent or abstention to grant.

The Clerk acknowledged future Occasional Licence applications that mirror this would not require to be determined by the Licensing Board."

Application for Variation of Premises Licence - Section 29

Applicant	Buzz Holdings Limited
Premises	"Buzz Bingo", 39/43 Townhead, Irvine KA12 0BH
Ref.	0361

A. Preliminary

The Applicant must lodge the Certificate confirming public display of a Site Notice at or near the Premises. Until the Board have a Certificate of Display, they cannot determine the Application. They are entitled to continue the case to a later date.

B. Summary of Variation Request(s)

No.	Variation
1	Add "Adult Entertainment"
2	Amend description of Premises in the Licence
3	Add "Dance Facilities" and "Films"

C. Description of Premises

The current description in the Premises Licence is:

"The premises mainly operate as a bingo club, with facilities for the public at ground floor including main auditorium, slots area, café/diner and bar. There is also a smokers courtyard. No persons under 18 are permitted into the venue at any time. The building is situated in a mixed business / residential area."

The Premises:

- have a capacity of 1,600 people
- have on-sales hours:
Sun - Wed: 10.00 - 24.00
Thu - Sat: 10.00 - 01.00
- are not licensed for off-sales.

D. Issues

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

V. 1: Add "Adult Entertainment"

Advice: The Board should grant this Application.

The proposed description includes "adult entertainment events including dancing by performers".

- What other "adult entertainment" is proposed?
- How often? (there is a need for a second Licence if the Premises offer "Sexual Entertainment" on more than 4 occasions in any period of 12 months (the Section 45A(9) exception) – see below.

The proposed statement in Operating Plan Question 5(f) is:

"ADULT ENTERTAINMENT WILL ONLY BE PROVIDED PERIODICALLY FOR SPECIFIC EVENTS WHICH WILL BE ARRANGED WELL IN ADVANCE OF ANY EVENT. THESE EVENTS WILL INCLUDE "PARTY BINGO" SESSIONS AND THEN ENTERTAINMENT OF AN ADULT NATURE SUCH AS "THE DREAMBOYS" "

The Board cannot refuse an application to permit "Adult Entertainment". As far as the Licensing Board are concerned, it is a lawful activity, and the only consequence in relation to the Premises Licence under the Licensing (Scotland) Act 2005 is that, if the Premises are open after 1.00 a.m., the Licence will have additional Licence conditions (imposed by the Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007, No. 336).

This position - as far as the Board are concerned, is the result of the Court of Session decision in **Brightcrew Ltd. v City of Glasgow Licensing Board**, [2011] CSIH 46 (<http://www.bailii.org/scot/cases/ScotCS/2011/2011CSIH46.html>)

In that case, the Board had refused a Premises Licence application for a nightclub offering "Adult Entertainment" with lap dancers on three grounds:

- [1] the Licensing Objective "protecting and improving public health"
- [2] the Licensing Objective "preventing crime and disorder"
- [3] the Premises were unsuitable for the sale of alcohol

The Board conceded on appeal that [3] did not apply, but maintained that their refusal was still justified by [1] and [2]. The Court did not agree, upheld the appeal, and remitted the case to the Board for re-consideration of the application.

The Court held that the essential function conferred on a Licensing Board by the 2005 Act is that of licensing the sale of alcohol: the objectives in the Act are called "Licensing Objectives".

However:

Separate legislation (passed largely as a result of the Brightcrew case) - the Air Weapons and Licensing (Scotland) Act 2015 - extended the scope of the main non-alcohol licensing statute, the Civic Government (Scotland) Act 1982. The 1982 Act already regulated many other activities, such as Taxis and Private Hire Cars, their drivers, Street Traders, Markets, Public Entertainment, Public Processions and Public Charitable Collections.

The Licensing Committee administer the 1982 Act. On 21 August 2019, after public consultation, the Committee made this Resolution:

"... resolve that from and after Friday 21 August 2020, Schedule 2 of the Civic Government (Scotland) Act 1982 (as modified by Section 76 of the Air Weapons and Licensing (Scotland) Act 2015) is to have effect in the Council area in relation to Sexual Entertainment Venues."

Accordingly from 21 August 2020:

- a Premises Licence under the alcohol-licensing legislation is not enough to permit such activities, and
- the organiser would have to apply for a second Licence ("Sexual Entertainment Venue Licence"), if offering "Sexual Entertainment" on more than 4 occasions in any period of 12 months (the Section 45A(9) exception), and
- the operator would only be entitled to allow the proposed "Sexual Entertainment" if and when that Licence was granted (if the Section 45A(9) exception did not apply)

On the last point, the Board will note particular provisions of the 1982 Act. The Council have a discretion to set the number of SEVs which might be permitted in an area, which might be set at nil. Unlike other Licensing legislation, the SEV legislation permits a Council to decide, in advance of dealing with any Application, that no SEVs will be allowed anywhere in the Council area, or to limit SEVs to certain locations. The basis of this limit is that the Council are entitled to refuse a Licence on a number of grounds, including:

"that the number of SEVs in the Relevant Locality at the time the application is made is equal to or exceeds the number which the Local Authority consider is appropriate for that locality" (1982 Act, Schedule 2; Sub-paragraph 9(5)(c).

The appropriate number may be nil: Sub-paragraph 9(6).

V. 2: Amend description of Premises in the Licence

Advice: the Board are entitled to grant this request as there is no statutory reason to refuse or breach of Board policy.

Note: Apart from the "Adult Entertainment" issue – see V.1 above – there are no issues.

The proposal is to amend the description of the premises to the following:-

“The premises mainly operate as a bingo club, with facilities for the public at ground floor including main auditorium, slots area, café/diner and bar. There is also a smokers courtyard. The premises will also be used for periodic adult entertainment events including dancing by performers. No persons under 18 are permitted into the venue at any time. The building is situated in a mixed business / residential area.”

V. 3: Add "Dance Facilities" and "Films"

Advice: The Board have a discretion to grant or refuse the Application. It is the Clerk's opinion that:

- there is no breach of Board Policy and
- apart from the Licensing Objectives issues raised by the objectors (see below)

there are no statutory reasons to refuse, and that the Application can be granted.

The Board would be entitled but not obliged to defer a decision on V.3 pending a report from the Council's Environmental Health officer.

The Board are obliged to take account of two Licensing Objectives:

- (c): 'preventing public nuisance'
- (d): 'protecting & improving public health'

but may take the view that as there is no current objection from NAC Protective Services it is not appropriate to pursue these at present.

It would be reasonable for the Board to ask the Applicants how they propose to address the objectors' concerns, not only on the issue of sound-proofing, e.g.

- how often do the Licence Holders propose noisy events?

- will these noisy events continue past Licensed Hours?
- is there a contact point which neighbours can call immediately during noisy events so that they can report a current noise problem?
- do the Applicants have a management system which means that neighbours' reports are acted on promptly?
- do the Applicants have or propose a noise limiter which cannot be overridden either by their own staff or by third-party performers?

L.O. (c): 'preventing public nuisance'

If the Board are satisfied that any activities on the Premises are likely to cause nuisance, the Board are entitled to ask the Applicants to vary the proposal, e.g. to alter the times or locations of activities which might lead to noise or other nuisance.

If there is later alleged to be a nuisance, it will be open to anyone (e.g. neighbours)

- to refer the matter to North Ayrshire Council Protective Services under the Environmental Protection Act 1990, Section 80
- to make a Review Application to the Board under 2005 Act, Section 36.

L.O. (d): 'protecting & improving public health'

It is accepted that noise exposure, particularly at night, can be harmful to people exposed to 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), their 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 are obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

If the Operating Plan includes 'Films' this means that no Licence or Consent would be needed under the Cinemas Act 1985, as the Premises Licence would be under a

"Relevant Enactment" (as defined in 1985 Act, Section 19(3(b)).

E. Effect on Licence Conditions (Section 30(6))

No variation of the Conditions is appropriate.

F. Notes for Applicant

The Board's decision is not:

(1) 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 deal with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(2) 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 do not grant this Licence.

(3) A "Sexual Entertainment Venue Licence (see notes on V.1 above).

3. PL 525: "The Clyde Kitchen", 31-33 Shore Road, Skelmorlie, PA17 5AN

Licence Holder: Daniel McKinnon

Application for Variation of Premises Licence – Section 29

No.	Variation
1	Add "Live Performances" and "Group Meetings"
2	Amend terminal hour to 10pm. 7 days a week
3	Amend "Children" and "Young Person" access until terminal hour.

None of these proposals appear objectionable. Before the Grant of a Premises Licence the Premises were the residents' tearoom for the residents of Strathclyde House, Shore Road, Skelmorlie. They were also open to the general public, and continue to be.

Current Premises Licence:

On-sales only 12.00 - 21.00 (seven days)

Capacity = 72 customers

Application for Variation of Premises Licence - Section 29

Applicant	Tamor Limited
Premises	"The Lemon Tree", 91-93 Main Street, Kilwinning
Ref.	0231

A. Preliminary

The Applicant must lodge the Certificate confirming public display of a Site Notice at or near the Premises. Until the Board have a Certificate of Display, they cannot determine the Application. They are entitled to continue the case to a later date.

B. Summary of Variation Request(s)

No.	Variation
1	Extend closing time to 01.00 on Thur-Sat
2	Open from 8.00 for breakfast

C. Issues

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

V. 1: Extend closing time to 01.00 on Thur-Sat

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

Note: The Board Policy closing time for on-sales is
Sun – Wed: 24.00
Thu – Sat: 1.00
Licensing Policy Statement (2018-2023) Para. 7.4.

If the proposed variation is granted the hours would be:
Mon 10:00am - 12 midnight
Tue 10:00am - 12 midnight

Wed	10:00am - 12 midnight
Thu	10:00am - 1:00am
Fri	10:00am - 1:00am
Sat	10:00am - 1:00am
Sun	12:30pm - 12 midnight

V. 2: Open from 8.00 for breakfast

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

Note:

The proposal is to add wording to the Operating Plan (Q. 5(f)):

"The premises will open prior to the commencement of the core licensed hours for the provision of teas, coffees, breakfasts and other non-alcoholic refreshment. The premises will not open prior to 8:00am".

D. Effect on Licence Conditions (Section 30(6))

No variation of the Conditions is appropriate.

E. Notes for Applicant

The Board's decision is not:

(1) 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 deal with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(2) 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"

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- the maker of the programme or recording.

The Licensing Board do not grant this Licence.

5. PL 0337: "Stevenston Post Office", 3 Townhead Street, Stevenston, KA20 3AF

Licence Holder: Jaspreet Bawa

Application for Variation of Premises Licence – Section 29

No.	Variation
1	Amend layout plan following extension, relocating alcohol display
2	Increase alcohol display capacity from 16.875 m2 to 25.78 m2.

V.1 is unobjectionable and on its own would be a 'Minor Variation' – a mandatory grant – but see V.2.

V.2 is inconsistent with the Board's overprovision policy, which creates a presumption of refusal. The presumption is doubly-enhanced because of both:

- (a) the "Locality" – the "Three Towns" (the policy is related to health and social problems) and
- (b) the "Function Type" – off-sales

Overprovision

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

"(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 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. The Board will expect Applicants who are seeking the grant of a new Licence (or the increase in capacity in 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.

4. 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

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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.

5. 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 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 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.

Building Warrant

Scott McLelland (Team Manager - Building Standards) comments that a Building Warrant has yet to be approved for extension to premises. This is not an issue for the Licensing Board. Reports to Boards end with a section "Notes for Applicant" which is:

"The Board's decision is not: (1) permission or certification under other legislation ... and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications. ..."

6. PL 0392: "Premier Caldon Road", 40/42 Caldon Road, Irvine, KA12 0RF

Licence Holder: Jujhar Singh Store Ltd

Application for Variation of Premises Licence – Section 29

No.	Variation
1	Amend layout plan following extension, relocating alcohol display
2	Increase alcohol display capacity from 25.61 m2 to 36.415 m2.

The proposals are similar to case 5 (PL 0337: "Stevenston Post Office") and the notes are similar.

V.1 is unobjectionable and on its own would be a 'Minor Variation' – a mandatory grant – but see V.2.

V.2 is inconsistent with the Board's overprovision policy, which creates a presumption of refusal. The presumption is doubly-enhanced because of both:

- (a) the "Locality" – the presumption of refusal is enhanced in the "Irvine and area" Locality as it is for "Three Towns" (the policy is related to health and social problems) and
- (b) the "Function Type" – off-sales

See heading "Overprovision" in case 5.

7. Extended Hours Applications 450/22: "Crofters", Shore Road, Brodick, Isle of Arran, KA27 8AJ

Licence Holder: Crofters Arran Limited

Applications for Extended Hours – Section 68

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

Personal Licence Review Hearing - Section 84A

Licence Holder	Joseph Henry Fitzsimmons
Ref.	NA2649

1. Introduction

Section 84A entitles the Chief Constable to report to the Board where he considers that any Personal Licence Holder has acted in a manner which is inconsistent with any of the Licensing Objectives.

2. Circumstances

By letter of 30 June 2022 the Chief Constable reported certain circumstances relating to the Personal Licence Holder:

On 18 January 2021 the Licence Holder was convicted of Assault to Severe Injury, permanent disfigurement and impairment. He was sentenced to 3 years imprisonment.

Copies of the letter will be distributed to Members at the Meeting.

The information was not supplied by the Licence Holder within one month after the date of the conviction. Failure to do so without reasonable excuse is an offence under Section 82(5).

The Chief Constable considers that the Licence-Holder has acted in a manner inconsistent with the Licensing Objective "Preventing Crime and Disorder", and therefore requests the Board to revoke the Licence.

3. Hearing Procedure

Under Section 84A(2) the Board must, on receipt of the Report, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

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

4. Board's Powers on Review

The Board must proceed in three stages.

Stage 1

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

If 'yes', proceed to Stage 2.

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

Stage 2

The Board must consider whether or not the Personal Licence Holder's conduct has been inconsistent with any of the Licensing Objectives:

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting 'Children' or 'Young People' from harm (any persons aged under 18),

and answer this question:

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

The statute uses the phrase "having regard to the Licensing Objectives" to direct the Board's attention to the relevance of the offender's conduct to the sale of alcohol. This is not the general 'fit and proper' test which applies in other types of Licensing. It would be possible for a Board to say:

"The offence here has no relevance to the sale of alcohol. The offender has already been dealt with by the Court, so it is inappropriate for the Licensing Board to do more."

What happens next depends on the Board's answer:

If the Board say "yes":

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(meaning "yes, the Licence Holder is not a fit and proper person to be the holder of a Personal Licence, having regard to the Licensing Objectives")

then:

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board **must** revoke the Personal Licence (the Board have no discretion) - the Licence is revoked altogether, rather than simply being suspended for a time (Section 84(7A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

If the Board say "no":

(meaning that they are not prepared to say that the Licence Holder fails that 'fit and proper' test)

then the Board must proceed to Stage 3.

Stage 3

If the Board reach Stage 3, they now have a discretion.

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

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

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

Effect of Endorsement

An Endorsement will be noted in Annex C to the Personal Licence. In addition, if there was a conviction for a 'Relevant or Foreign Offence' (as defined by The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513) then Annex B will be updated: Section 89(4).

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

Appeal

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing by lodging a Summary Application at Kilmarnock Sheriff Court within 21 days of the Board's decision (Rule 3.34 of the Summary Application Rules 1999 No. 929 (as substituted by Article 9 of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010 No. 416).

The Sheriff may order the Licence Holder to pay a deposit of up to 25 times the Court lodging fee (Rule 2.24).

Report to North Ayrshire Licensing Board

Meeting: 5 September 2022

Title:	Update on: (a) Alcohol consumption in Scotland (MESAS Monitoring Report 2022) and (b) Review of Minimum Pricing legislation.
Purpose:	To inform the Board of the current position.
Recommendation:	That the Board note this report.

1. Executive Summary

1.1. This Report to the Board deals with two matters:

- (a) The annual report published by Public Health Scotland ("PHS") as part of the "Monitoring and Evaluating Scotland's Alcohol Strategy" ("MESAS");
- (b) The current review of the Minimum Pricing legislation.

Both matters are relevant to the Board's approach to the Licensing Objective of 'protecting and improving public health' and the question of Overprovision. The Board will consider these when reviewing the Licensing Policy Statement (the deadline for this review is 5 November 2023).

1.2. The Licensing Board's Licensing Policy Statement for the period 2018-23 is published on this webpage:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling-licences/licensing-board.aspx>

under the heading "Licensing Policy Statement". That webpage contains links to the many documents concerning the relationship between alcohol consumption and health, crime and fires in North Ayrshire which the Board considered before adopting the Licensing Policy Statement.

2. Background

(a) MESAS

2.1. As part of the "Monitoring and Evaluating Scotland's Alcohol Strategy" ("MESAS"), each year Public Health Scotland ("PHS") publish a report. This report presents all the latest

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available data on key alcohol indicators in Scotland, e.g. the link between alcohol consumption and health. The report includes many data sets and charts.

The most recent report was published on 21 June 2022. It is published on the PHS website (link below).

2.2. In summary:

In 2021, population-level alcohol consumption – estimated from alcohol retail sales – was maintained at a similar level to 2020, the lowest level seen in Scotland in the available time series (1994 onwards). 9.4 litres of pure alcohol were sold per adult, equivalent to an average consumption of 18.1 units per adult per week and substantially exceeding the low risk weekly drinking guideline of 14 units.

Throughout 2021, COVID-19 restrictions continued to affect alcohol sales through on-trade premises such as pubs, clubs and restaurants. As a result, 85% of all pure alcohol sold in Scotland was through supermarkets and other off-licences; while this was lower than in 2020 (90%) it remains higher than prior to the pandemic (72% in 2019). The volume of pure alcohol sold per adult in Scotland was 4% higher than in England and Wales, the smallest difference seen between the two areas and a reduction from last year.

The average price of alcohol sold in Scottish supermarkets and off-licences rose to 64 pence per unit in 2021, up from 63p in 2020. In England and Wales the average price rose from 59p to 60p per unit over the same timeframe. In 2021, the majority (62%) of pure alcohol sold in Scotland was recorded as being sold at between 50.0p and 64.9p per unit, compared to 32% before Minimum Unit Pricing (MUP) was implemented.

Alcohol continues to be a leading cause of illness and early death. In 2020, 1,190 people in Scotland died due to a cause wholly attributable to alcohol, an average of nearly 23 people per week. Alcohol-specific death rates increased between 2019 and 2020, an increase that was largely driven by deaths amongst men aged 45 years and over. Both rates of alcohol-specific death and alcohol-related hospital stays continue to be at least twice as high for men as women and were highest in the 55–64 year age group.

2.3. Vicki Ponce Hardy, Public Health Intelligence Adviser at Public Health Scotland, said:

"Today's MESAS report shows that population-level alcohol consumption in Scotland has been maintained at a similar level to that seen in 2020, the lowest level observed in the available data. However, it also clearly highlights that significant inequalities persist in both alcohol consumption and the harm it causes."

"The most recent survey data show that almost a quarter (24%) of adults in Scotland still drink more than the recommended low risk weekly drinking guideline. Among those exceeding the guideline, it's those in the lowest income group who are likely to consume the most. In the 10% most deprived areas of Scotland, rates of alcohol-specific death were nearly five times higher, and alcohol-related hospital stays were nearly eight times higher, than in the 10% least deprived areas."

"Like all harm caused by alcohol, this is preventable. Public Health Scotland will continue to monitor and evaluate Scotland's alcohol strategy, to gauge progress and understand what works to reduce the harm alcohol causes."

(b) Minimum Pricing

Minimum Pricing is applied by the Alcohol (Minimum Pricing) (Scotland) Act 2012.

On 1 May 2018 the Scottish Ministers set the "Minimum Price per Unit" ("MPU") at 50p. The legislation provides that the Minimum Pricing Provisions expire at the end of a period of 6 years, counted from that date, unless the Scottish Ministers order that the Minimum Pricing Provisions are to continue in effect (this is sometimes referred to as a "sunset clause"). The legislation requires that the Scottish Ministers must, as soon as practicable after the end of the period of 5 years counted from that date, lay before the Scottish Parliament a report on the operation and effect of the Minimum Pricing Provisions during that period. Accordingly the Scottish Government are currently reviewing what the future arrangements should be, for example, should the MPU remain at 50p, rise to 60p, 70p, 80p or more?

The Minimum Pricing legislation affects Licensing Boards in that one of the Mandatory Conditions which apply to all Premises Licences requires sale prices to be no lower than the Minimum Price. As with any other Licence Condition, a Premises Licence Holder who breaches this legislation faces a Review at the Licensing Board, although in North Ayrshire there have been no Reviews, because breaches are resolved by the Licensing Standards Officer giving advice to the Licence-Holder.

3. Proposals

The Board should note this Report. No action is called for at present.

4. Implications/Socio-economic Duty

4.1. Financial

There are no financial implication arising from this Report, which has only been prepared for the Board's information.

4.2. Human Resources

None.

4.3. Legal

None

4.4. Equality/Socio-economic

None. The Board are not being asked to take any action themselves, and are only noting the position. An "Equality Impact Assessment" is not considered necessary. There are no socio-economic implications of the proposals.

4.5. Climate Change and Carbon

None

4.6. Key Priorities

North Ayrshire Council has priorities for Aspiring Communities in the Council Plan 2019-2024. An effective licensing system, e.g. monitoring the Licensing Objectives and the Licensing Board's Licence Conditions, helps achieve Priority Outcome: "North Ayrshire's residents and communities are safe".

4.7. Community Wealth Building

There are no Community Wealth Building issues.

5. Consultation

No consultations are necessary or appropriate.

Aileen Craig
Head of Democratic Services

For further information please contact William O'Brien, Solicitor (Licensing), on wobrien@north-ayrshire.gov.uk

Background Papers

Links to websites:

<https://publichealthscotland.scot/news/2022/june/latest-information-on-alcohol-consumption-price-and-harms-in-scotland-published>

<https://publichealthscotland.scot/publications/mesas-monitoring-report-2022>