

**North Ayrshire Licensing Board
3 March 2014**

Irvine, 3 March 2014 - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

Present

Ronnie McNicol, Tom Marshall, Robert Barr, John Bruce, Ian Clarkson, Catherine McMillan and Robert Steel.

In Attendance

W O'Brien, Solicitor (Licensing), K Sharkey, Trainee Solicitor, G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer,

Also In Attendance

Chief Inspector Hopkins and Sergeant McIntosh (Police Scotland).

Convenor

Councillor McNicol.

Apologies for Absence

Donald Reid and Alan Munro.

1. Minutes

The Board were asked to confirm the Minutes of the Board meeting held on 20 January 2014. The Convenor proposed that the matter be continued to the next Board meeting on 28 April 2014. Councillor Barr seconded the motion and the Board unanimously agreed to continue the matter to the Board meeting on 28 April 2014.

2. 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 0035 The George, 17/19 Main Street, Largs

On the basis of information initially received from the Licence Holder's agent, and subsequently confirmed by the Chief Constable, The George (Largs) Limited were cited to attend the Board under a Section 37 Review Proposal. The Licence Holder was not represented.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the Chief Constable's Notice and summarised the issues arising. The Board also had regard to a report supplied by Grace Cullen, Licensing Standards Officer.

Chief Inspector Hopkins then reiterated the content of the Police Notice.

Councillor Barr commented that although this case involved a 'Relevant Offence', it did not appear to be particularly relevant to the Board's role which is to licence and regulate the sale of alcohol.

Having considered the terms of both reports, Councillor Marshall moved that the conviction should be noted but no further action be taken. There was no counter-motion and the Board unanimously agreed without dissent or abstention to note the conviction and take no further action against the Licence Holder.

A.2 Premises Licence 0190 Redburn Stores, 1 Redburn Place, Irvine

The Board considered a Review Application under Section 36 made by the Chief Constable relating to the above premises. The Licence Holder, Manjit Kaur Dhaliwal, was present, and was represented by Ian Hunter, Solicitor.

The Review Application was made by the Chief Constable by a letter to the Board, dated 17 February 2014. Copies of the letter were given to Board Members and the content of the letter was summarised by Chief Inspector Hopkins.

The Chief Inspector stated that it was the view of the Police that the Licence Holder had failed in their duty to prevent crime and disorder and protect children from harm.

The Board then considered the terms of a report by the Solicitor (Licensing) which set out the background to the Section 36 Review Application and summarised the issues arising. The Board also had regard to a report supplied by Grace Cullen, Licensing Standards Officer.

Thereafter Mr Hunter addressed the Board on the issues arising.

As a preliminary matter, Mr Hunter moved that the Board should continue consideration of the case on the basis that there were pending criminal proceedings. The Convenor told Mr Hunter that the Board were not obliged to continue consideration, and without counter motion or dissent, the Board unanimously agreed to proceed and hear the case today.

Mr Hunter said that the premises were well run. Dalvinder Dhaliwal, the son of the Licence Holder, had only been there to close the shop up. The till had already been cashed-up. The girls came into the shop and he sold them lemonade. Dalvinder denies selling them alcohol and will plead 'not guilty' when the case comes to Court. He is now living and working in Birmingham.

Mr Hunter explained that at the time of the incident the CCTV recorder had been damaged by water, and although a repair had been requested, it had not yet been done. He added that a subsequent test purchase was passed, the staff are being trained regularly, and all Notices were displayed.

Mr Hunter also highlighted that the premises participate in the bottle marking scheme, which had not been mentioned by the Police.

Chief Inspector Hopkins then responded to questions from the Convenor, Councillor Marshall, Councillor Barr, Councillor McMillan and Councillor Clarkson. The Chief Inspector highlighted that the three female youths were interviewed separately at their respective homes and had not had a chance to collaborate. All three gave the same account to the Police, which was that a male within the shop sold two of them alcohol. Dalvinder Dhaliwal was the only person working at the premises at that time.

Chief Inspector Hopkins added that the bottle marking scheme is voluntary and there was no mention in the Police report of the bottles being checked by Officers.

Sergeant McIntosh reminded all who were present, including the press, that a criminal case was ongoing so all reporting is subject to the laws of sub judice.

Mr Hunter then responded to questions from Councillor Marshall and Councillor Clarkson. He highlighted that the alcohol was found in the girls' handbags and not in a shopping bag from the premises, whereas lemonade was found in a shopping bag.

Mrs Dhaliwal clarified that although the 2 internal CCTV cameras were not working at the time of the incident, the 2 external cameras were working.

Councillor Steel asked Ms Cullen, Licensing Standards Officer, if it was correct that as of 18 February 2014, there were 6 non conformities at the premises. Ms Cullen stated that was correct.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 10.25 am to deliberate in private and re-convened at 10.43 am.

Councillor Barr proposed that the Grounds for Review be upheld. There was no counter proposal and the Board unanimously agreed to uphold the Grounds for Review.

Having considered the terms of the report, information supplied by the Licensing Standards Officer, and the submissions made, Councillor Barr moved that it was appropriate to suspend the Premises Licence under Section 39(2)(c) of the 2005 Act for the purpose of Licensing Objectives (a) preventing crime and disorder, and (e) protecting children from harm, for the period of four weeks, with effect from 10 March 2014. The period of suspension will be from 10 March 2014 to 7 April 2014. Councillor Steel seconded the motion. There was no counter-motion and the Board unanimously decided, without dissent or abstention, to suspend the Premises Licence for the period of four weeks, with effect from 10 March 2014.

The Board did not consider that any action under Section 84 should be taken in relation to any Personal Licence held.

The Convenor reminded Mrs Dhaliwal of her obligation to comply with the Board's Standard Condition regarding the provision of working CCTV.

Mr Hunter requested a Statement of Reasons, which was acknowledged by the Convenor.

A.3 The Metro Nightclub, 2 Hamilton Street, Saltcoats

The Board resumed consideration of an application for grant of a Provisional Premises Licence made by Jagir Singh for the above premises. Mr Singh was present and was accompanied by his Agent, John Rodgers.

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 O'Brien updated the Board on progress made against the observations set out in the report.

Mr Rodgers addressed the Board regarding the application. He highlighted that, if the Licence were granted, customer safety would be paramount. All alcohol would be served in plastic containers, including bottled beer. A professional nightclub manager and stewarding company are lined up for the premises, should the licence be given the go ahead.

Mr Rodgers then responded to questions from the Convenor and Councillor Marshall. He gave an undertaking, on behalf of Mr Singh, that the CCTV system installed at the premises would have far more than 3 CCTV cameras and would definitely cover all aspects of the premises, including the rear of the building. The professional stewarding company that will operate at the premises will act accordingly and appropriately to prevent drugs and weapons being brought onto the premises. Mr Rodgers said that they would be hoping to establish a smoking area at the premises and as the premises will be over 21s only, strict age verification procedures will be in operation. Mr Rodgers added that, based upon professional advice which has been obtained, it is envisaged that a budget of between £100,000 and £125,000 will be required to complete all exterior and interior renovations.

Mr Rodgers confirmed that Mr Singh would agree to, and comply with, all of the applicable Standard Conditions.

Having considered the terms of the report, and the submissions made, the Councillor Barr moved that the application be granted. Councillor McMillan seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A, C, D, E, F and X.1.

A.4 Si Café, Bar and Restaurant, 18 Kilwinning Road, Irvine

The Board considered an application for variations of a Premises Licence made by Simpsinns Ltd for the above premises. The Licence Holder was represented by Andrew Hunter, Solicitor, and he was accompanied by Irene Leslie of Simpsinns Ltd.

The Licence Holder was requesting the following variations:

1. Add outdoor drinking area on ground floor.
2. Permit use of that outdoor area before core hours for hot drinks / soft drinks.
3. Increase occupant capacity from 310 to 358 people.
4. Extend under 18 access to that outdoor area.

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 O'Brien updated the Board on progress made against the observations set out in the report.

In total, 9 objections had been lodged with the Licensing Section in relation to the application. Mr Hunter confirmed that he had seen a copy of the objections prior to the Board meeting. Copies of the written objections were given to Board Members. Objectors Ian Turnbull, Wilson Smith and William Young were present.

Mr Hunter addressed the Board regarding the application. He confirmed that variation 3 (Increase occupant capacity from 310 to 358) is withdrawn from the application. Regarding variation 1, Mr Hunter explained that the proposed outdoor drinking area would be an additional facility for patrons frequenting the interior of the premises. The area being requested is far more restrictive than the outdoor drinking area that was requested within the original Premises Licence application in 2013. The Licence Holders are aware that even if the Board were to grant variation 1, they would still be required to apply to vary Planning Permission in relation to the proposed external drinking area. Mr Hunter highlighted that the upper terrace has been used as an outdoor drinking area since the premises were opened and has not attracted any complaints. He also confirmed that the Licence Holder is fully aware that any outdoor drinking area can only be used to 10.00 pm.

The request to extend the access for children and young persons is within the terms of the Board's own Policy and is a reflection of the access permissions which already exist within the premises.

Mr Hunter said that Simpsinns Ltd are good operators, are fully aware of the Board's Standard Conditions, and he invited the Board to grant the application.

Regarding the objections submitted, Mr Hunter said that the vast majority refer to parking issues and these are matters for the Planning Department, not the Licensing Board. Objections made to a Licensing Board should detail matters concerning the sale of alcohol.

Mr Turnbull, Mr Smith, and Mr Young then addressed the Board in turn. Each made a submission based on the content of their written objections. Mr Turnbull said that although he did not wish to say too much about the parking issues, he did not agree that they were not relevant to the licensing application as they are a cause of public nuisance. He added that he would continue to take the parking issues up with Planning. Mr Turnbull informed the Board that since the premises opened there have been several instances of crime and disorder. At least one incident has been reported in the local press and fights have spilled out into the area being applied for at variation 1. Despite all of the promises and assurances at the time of initial grant, the Licence Holder has done nothing to address the concerns of local residents and neighbours, and Mr Turnbull respectfully requested that the Board refuse the application.

Mr Smith highlighted that the layout plan that accompanied the variation application contains an area of 12 parking spaces which do not exist. This is misleading and disrespectful. The Planning Permission, including the 12 parking spaces was granted last August, yet no work has been done to create the parking spaces. If the work was done it would address the majority of objections.

Mr Young explained that he lived on Kilwinning Road and he struggles to get out of his property due to the cars constantly parking outside his property all day long.

The Convenor confirmed that the Licensing Board cannot comment on Planning matters. He added that last week the Board made a site visit to the premises with a view to their consideration of this case.

Thereafter Mr Hunter re-addressed the Board on the issues raised by the objectors. He re-stated that Planning matters, such as parking, are not the remit of a Licensing Board, and he quoted the case of Brightcrew Ltd v City of Glasgow Licensing Board. Mr Hunter said that he did not accept that these premises are a source or cause of crime and disorder and public nuisance. He is not aware of Police Scotland having any concerns with the premises.

Mr Hunter requested that the Board grant the application, and if the Licence Holder were to operate the premises badly then they fully accept that they would be back in front of the Licensing Board for a Review.

Mr Hunter then responded to questions from Mr Smith and Councillor Marshall. Mr Hunter confirmed that he did not have instructions regarding the parking issues but he would take the concerns and comments back to his Client, Mr Simpson of Simpsinns Ltd. Mr Simpson is engaging with the Planning Department with regard to these matters.

The Convenor asked Mr Hunter if patrons would have to pass through the proposed external drinking area to access the smoking area. Mr Hunter confirmed that this would be the case and the 2 areas would be separated by a planter.

The Convenor advised that perhaps the Licence Holder should consider delineating the pathway, with barriers such as those used at Wetherspoons premises, along the lines of the wooden pillars. This would mean that patrons could access the smoking area without having to pass through the proposed outdoor drinking area, and it would prevent people from spilling out of the external drinking area onto the remainder of the front of the premises.

Mr Hunter confirmed that the Licence Holder would undertake to make such a delineation if the Board so instructed.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 11.30 am to deliberate in private and re-convened at 11.40 am.

Having considered the terms of the report, and the submissions made, the Convenor moved that the Board decide to continue consideration of the application to the meeting on 28 April 2014 to allow for the provision of fresh layout plans by the Licence Holder, showing the delineation of the proposed external areas, as per the discussion prior to the adjournment. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the application to the meeting on 28 April 2014.

The Convenor informed Mr Hunter that the fresh layout plans should include the height of the barrier / divider being used to separate the external areas.

A.5 Premises Licence 0367 Broomlands Supermarket, 35 Broomlands Gate, Broomlands, Irvine

The Board resumed consideration of an application for variations of a Premises Licence made by Zulfiqar Ali for the above premises. Mr Ali was present.

The Licence Holder was requesting the following variations:

1. Increase off sales terminal hours to 10.00 – 22.00, 7 days.
2. Increase off sales capacity from 10.9 sq.m to 20.9 sq.m.

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 O'Brien updated the Board on progress made against the observations set out in the report.

Mr Ali explained that unfortunately his Agent could not be present today and he requested that the Board continue consideration of this application to the next meeting.

The Convenor moved that the Board decide to continue consideration of the application to the meeting on 28 April 2014. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the application to the meeting on 28 April 2014.

A.6 Anayas, 13 Bridgend, Kilbirnie

The Board considered an application for grant of a Premises Licence made by Shahid Hanif for the above premises. Mr Hanif was present and was represented by Mr Dunlop, Solicitor.

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 O'Brien updated the Board on progress made against the observations set out in the report.

Mr Dunlop addressed the Board regarding the application. He detailed the licensing history of the premises and explained that Mr Hanif is currently refitting the premises to operate as an Indian restaurant. The premises will employ 7 full time staff and the application is for on sales only within a controlled restaurant environment.

Referring to the Board report, Mr Dunlop then addressed the potential grounds for refusal.

Regarding 'protecting children from harm', Mr Dunlop said that Mr Hanif would amend the access if required, however, the premises will be a family friendly, controlled restaurant environment, so they do not envisage any problems or issues with children being at the premises.

Regarding 'preventing crime and disorder', Mr Dunlop explained the background to Mr Hanif's conviction. He said that Mr Hanif was duped by someone using someone else's identification. Mr Hanif had acted in good faith but unfortunately at the Justice of the Peace Court the ruling went against him by 2 to 1. Mr Dunlop highlighted that the Police had not made a recommendation for refusal.

Regarding overprovision, Mr Dunlop argued that it is not an issue given that there are only 4 other premises of a similar type within the locality, which is geographically a large area with a large population. Mr Dunlop suggested that this premises, if granted, would be a welcome addition and facility to the town of Kilbirnie.

The Convenor confirmed that the Board would be not be requesting an Antisocial Behaviour report from the Police.

In response to a question from Councillor Barr, Mr Dunlop confirmed that the premises would not be providing a take away facility.

Having considered the terms of the report, and the submissions made, Councillor Marshall moved that the application be granted. Councillor Barr seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. The Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A, C and F.

A.7 Premises Licence 0264 Garnock Community Social Club, 63 Main Street, Kilbirnie

The Board considered an application for transfer, under Section 33, and variation of a Premises Licence, made by the Licence Holder, Garnock Community Social Club, for the above premises. The Licence Holder was represented by Ian Hunter, Solicitor, and he was accompanied by Mark Asbury, Club Secretary. Compton McGill, a Director of the Transferee Company, Kilbirnie Commercial Ltd, was also present.

The Licence Holder was requesting the following variations:

1. To change the name to 'The Commercial'.
2. To appoint a Premises Manager.

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 O'Brien updated the Board on progress made against the observations set out in the report. He explained that the although the variation requests are both minor variations, within the statute, the intended effect of what the Applicant wishes is a non-minor variation, so as to surrender the Special Status that the premises currently operates under, and operate as a

public house. Therefore the application has been processed as a non-minor variation. Mr O'Brien also highlighted to the Board that the Applicant has stated that the transfer element of the application is contingent on the grant of the variation element of the application.

In total, 3 objections and a petition had been lodged with the Licensing Section in relation to the application. Mr Hunter confirmed that he had seen a copy of the objections prior to the Board meeting. Copies of the written objections were given to Board Members. None of the objectors were present.

Mr Hunter addressed the Board regarding the application. He explained that the application has arisen out of necessity as the Club has been experiencing financial difficulties. The proposal is to lease the premises to Mr McGill's company and the resultant income will be used to refurbish the premises and pay outstanding redundancy payments which staff members are due. The proposal was put to members of the Club at an EGM last year and was unanimously agreed.

Mr McGill explained that the premises would have to be run as a normal public house type operation in order to prevent a conflict with the Club's charitable status. He added that his fellow Director of Kilbirnie Commercial Ltd, Robert Jackson, has licensing experience.

Councillor Barr commented that there is currently only 1 public house in the centre of Kilbirnie.

Mr O'Brien highlighted the objections which make allegations that dispute the legality of the application in terms of whether the Committee is competent and properly constituted, and entitled to make the application.

Mr Hunter said that he had analysed the Club's constitution and the installation of the current office bearers was perfectly competent.

Mr Asbury said that he believed the issues and allegations relate to, and arise from the situation over the last few months at the Club's other premises at Loadingbank Road. The situation involved the appointment, and subsequent removal, of an operating company. Some individuals involved with the Club are supporters of that operating company. Mr Asbury said that as far as he was aware he was elected Club Secretary fully in accordance with the constitution. He added that perhaps only a legal challenge would resolve the question once and for all.

The Convenor asked Mr Asbury if he had permission to sign and authorise the transfer application on behalf of the Club. The Convenor subsequently referred Board Members to a copy of the minutes from a Club meeting on 21 January 2014, which instructed Mr Asbury and Mr Kilpatrick to proceed with the proposal and application which is before the Board today.

Councillor Clarkson asked Mr Asbury how many were present at the meeting on 21 January 2014, and was the occurrence of the meeting publicised to Members in advance.

Mr Asbury said that there were 7 Committee members present at the meeting, which was a quorum, and the meeting was fully advertised to members in advance. Notifications of the meeting were even delivered to Members' houses.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 12.13 pm to deliberate in private and re-convened at 12.20 pm.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the application be granted. Councillor McMillan seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. The Premises Licence is now subject to Standard Conditions (Edition 5) Parts A, B, C and F and the Club's exemption from the '3 guest rule' is deleted from the Licence.

A.8 Premises Licence 0288 Garnock Community Social Club, Loadingbank Road, Kilbirnie

The Board considered a Review Proposal under Section 37, made in relation to the above premises. The Licence Holder, Garnock Community Social Club, was represented by Ian Hunter, Solicitor, and he was accompanied by Mark Asbury, Club Secretary.

The Board then considered the terms of a report by the Solicitor (Licensing) which set out the background to the Section 37 Review Proposal and summarised the issues arising.

Thereafter Mr Asbury addressed the Board on the issues arising.

Regarding the Heads of Terms referred to in Mr O'Brien's report, Mr Asbury explained that he had only just started on the Club Committee when these were agreed. It soon transpired that the Heads of Terms were completely different to those initially proposed by JNS and the Club quickly realised that the arrangement between themselves and JNS could not continue. At that point JNS commenced a campaign to undermine and attempt to remove the Club Committee.

Mr Asbury explained that the last few months have been spent trying to remove JNS from the premises and he was pleased to say that he now had the keys to the premises back. The intention is now to move forward and re-open the premises and make it a facility which can be used by the local community again. The Club now has paid up Members again, some old, some new. Mr Asbury added that he had recently spoke with Ian Walker and Sharon Robertson, both of whom were on the opposite faction during the dispute, and both are now on side with his proposals going forward.

Referring to the Licensing concerns detailed in Mr O'Brien's report, Mr Asbury admitted that the Club Committee did lose control of the Licence as a result of the JNS arrangement but they had now regained control of the situation.

The Convenor proposed that the Grounds for Review be upheld. There was no counter proposal and the Board unanimously agreed to uphold the Grounds for Review.

Having considered the terms of the report and the submissions made the Convenor moved that the Board decide to continue consideration of the Review Proposal for 6 months. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the Review Proposal for 6 months.

The Convenor reminded Mr Asbury that whilst the Board appreciated his honesty, breaches of the licence conditions would not be tolerated. The Club now have an opportunity to sort matters out and move forward, and the Board will Review the situation again in 6 months.

3. Scheme of Delegations for (Licensing) Act 2005 and Gambling Act 2005

The Board considered a report by the Solicitor (Licensing), recommending that the Board consider and adopt revised, consolidated, draft Schemes of Delegations for the Licensing (Scotland) Act 2005 and the Gambling Act 2005.

Having considered the report, and the draft document, the Board unanimously decided to adopt the revised, consolidated, Schemes of Delegations for the Licensing (Scotland) Act 2005 and the Gambling Act 2005.

The meeting ended at 12.35 pm.