

**North Ayrshire Licensing Board
19 November 2013**

Irvine, 19 November 2013 - 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, Ruth Maguire, Alan Munro, Donald Reid and Robert Steel.

In Attendance

W O'Brien, Solicitor (Licensing), C Andrew, Senior Manager (Legal Services), G Cullen, Licensing Standards Officer, M Champion, Admin Assistant

Also In Attendance

Chief Inspector Hopkins and Sergeant McIntosh (Police Scotland)

Convenor

Councillor McNicol

Apologies for Absence

None

Declaration of Interest

None

1. Minutes

The Board were asked to confirm the Minutes of the Board Meeting held on 21 August 2013. The Convenor proposed that the Minutes be adopted. The Board unanimously agreed to confirm and adopt the Minutes.

2. Licensing Policy Statement 2013 – 2016

The Board considered a Report by the Solicitor (Licensing) concerning the Draft Licensing Policy Statement 2013-2016 (LPS).

At its Special Meeting on 21 October 2013 the Board considered a Draft of the proposed LPS. The Board continued consideration of the Draft until its Meeting on 19 November 2013. In the interval, the draft had been slightly amended and the revised version was included in the Agenda.

Since the Special Meeting, the Health Board, Police Scotland and Scottish Fire & Rescue Service had provided information and statistics which were contained in the draft LPS.

The revised draft was considered by the Convenor, LSO and the Solicitor (Licensing) and the following suggested alterations were proposed for the consideration of the Board (contained in a document titled "Notes on draft LPS to be considered on 19 Nov 2013").

1. Para. 3.3: Correct the "darts & pool" reference to "3.17-18".

2. Para. 6.3: After the words "After 1.00 am on any night" add "(except where the Premises are only open after 1.00 a.m. due to a grant of Extended Hours)". The effect is that Premises which have a late extension do not need plastic glasses etc. for the extra hour.

3. Para. 6.8: Delete this (as a consequence of change 2).

4. Para. 8.6: the text about Contact Sports is changed so that any O.L. application will be referred to the Convenor (and not delegated), who might apply the 'plastic glass' etc. conditions.

5. Para. 8.23: new text to set out the general rule that O.L.s do NOT require plastic. The date will have to be changed, as the Special Meeting was on 21 Oct.

6. Annex A (Conditions): on p.45 add a sentence to explain that when the mandatory conditions are changed, the Board's conditions are automatically changed. Legally not necessary, but it would help avoid the possibility of confusion if legislation is changed to say something different from Board conditions based on earlier legislation.

7. Annex D (Consultation): amended, as since the earlier draft, Scottish Fire and Rescue Service has responded, so their comment is set out at pp. 55-57.

8. Annex E (Overprovision). Part 3 (pp. 60-64) refers to 7 documents which set out the information which the Board is using to form its policy.

The Board has already seen 5 of these, as documents (a) to (d) were in the earlier draft (details of licence type and location, and health data), and document (g) is Andrew Fraser's presentation to the Special Meeting.

The extra documents have been received since then:

(e) Scottish Fire and Rescue Service (received 2 Nov)

(f) Police Scotland (received 11 Nov)

These documents are analysed on pp. 63-64. The consultation process started in Jan with a request for responses by May, but these responses have only been received recently.

9. Para. 4.2: add text to make clear why the OVP policy applies over all of NA.

10. Para 4.6: add text to set out the evidence the Board would expect if an Applicant seeks to be made an exception under the OVP policy.

11. Para. 4.7: add text to make clear that it does not follow that, if one place closes, another can open.

12. Annex H (Board Business): Page 71, Para a.1 amended to show Cllr. McMillan instead of Cllr. Maguire - the new LPS operates from 30 Nov, when Cllr. Maguire resigns. Cllr. McMillan cannot sit on the Board until she has received the statutory training.

13. Page 75, Para. f.1: typo - add quote mark after "Reviews".

14. Delete the rest of f.1: the Board will accept emails in all circumstances.

15. Page 75, Para. f.2: add text to convey the right balance here. On the one hand, the law is clear that this is the Licensing Board, and has no business enforcing other legislation, e.g. Planning. However, there is a Licensing Objective 'preventing public nuisance', and one of the grounds for refusal of a Premises Licence is that the Premises are 'unsuitable'.

It is possible that a neighbour's complaints might go to several different bodies: the Board, NAC Planning, NAC Roads, NAC Environmental Health and the Police. If there is a complaint about a noisy pub, then the fact that the Environmental Health Officer has served an Abatement Notice under the Environmental Protection Act 1990 is relevant information for the Board when considering its own legislation, but the Board is not 'enforcing' the EPA.

16. Page 76, Para. f.3: delete the sentence "The Board will disregard anonymous representations or complaints (email or letters)". The fact that an anonymous complaint has been made will not itself lead to a Review, but it would lead to some investigation. If that investigation uncovers information which justifies Board action, the Board would be advised if the LSO and other staff cannot resolve the issue. The remaining text, and Para f.4, already explains that the Board can reject a complaint as "frivolous or vexatious".

17. Annex I (General Issues), Para. 3.3: Add "... even if there is a document which appears to be in the acceptable list". The range of acceptable proof-of-age documents has recently been expanded by legislation, so it is possible that staff will see documents which they are not familiar with.

Councillor Maguire entered the meeting during the discussion of this matter.

Councillor Marshall asked where the LPS could be accessed and Solicitor (Licensing) confirmed that it is available on the website in draft form at the moment until it was considered and adopted by the Licensing Board. Once adopted this would also be available on the website.

Councillor Steel asked if all Licensed Premises will be made aware of the revised LPS and Solicitor (Licensing) confirmed that all Licence Holders would be advised in writing as well as the Policy being available on the website.

The Convenor advised that all new Applications and Variations of Premises Licences must be considered on their own merits.

Councillor Marshall commented that the Board now had to take on board the health statistics, and thanked all Officers for their work in preparing the draft LPS, the Health Board for preparing the health statistics, Police Scotland and Scottish Fire & Rescue for providing their data.

Having considered the draft LPS and the suggested changes, the Convenor moved that the LPS be adopted. There was no counter-motion and the Board unanimously agreed to adopt the Licensing Policy Statement.

3. Chief Constable's report to NALB for period to 31/03/2013

The Board considered a report by the Chief Constable, relating to Police performance and activities undertaken in the Board's area in the financial year April 2012 to March 2013.

Chief Inspector Hopkins advised that this has been the first report since the formation of Police Scotland. They hope to continue the partnership of working together to make North Ayrshire a safer place to live.

4. 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.1 Premises Licence 0067 Latrobes, 69-71 Princes Street, Ardrossan

The Convenor (Councillor McNicol) withdrew from the meeting. The Solicitor (Licensing) advised that in that situation there had to be an election. Councillor Marshall (Vice-Convenor) was nominated, and was unanimously agreed, without dissent or counter-motion, that he should act as Convenor for the duration of this case, after which Councillor McNicol would resume the role of Convenor for the rest of the meeting.

The Board considered an application for Transfer of a Premises Licence, under Section 34, made by Marion Small, for the above premises. The holder of the Licence had provided consent to the Board to transfer the Licence. Gary McKenna was present and provided a letter of authorisation from Marion Small to represent her. Mr McKenna confirmed he had received all the documentation being considered.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the Chief Constable's Notice under Section 33(6)(a)(i) of the 2005 Act and summarised issues arising.

Chief Inspection Hopkins advised the Board to have regard to all parts of the Notice and read out the section relating to the relevant offence: Mr McKenna had been convicted under the Section 4(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 and had been imprisoned for 13 years and nine months. He submitted that the reference in the letter to the "Crime Prevention Objective" should be treated as a reference to the "Preventing Crime and Disorder" Licensing Objective. He advised that Police Scotland recommended that for the purposes of that Licensing Objective, the application for transfer should be refused.

Mr McKenna confirmed that Marion Small was to be the Premises Licence Holder as she would be responsible for all front-of-house work including administration and banking. It therefore, he said, made sense that she should hold the Licence, although the lease was actually in his sole name. He said he would not have entered into a lease in the name of his company, Latrobes Ltd.. He said that nothing in the Police letter, apart from the conviction and sentence (which he admitted) was true, and he pointed out that even the Police agreed that he was not a "Connected Person".

Mr McKenna confirmed that refurbishment works were being undertaken on what he described as "a shoestring budget" following a Building Warrant application, and he commented that this was hardly consistent with the implication of organised crime and money-laundering.

He said he had moved to North Ayrshire for a new start with his family. He described his crime as “historic” and said that he had not done anything wrong since 2003. He appreciated that the Police had concerns, and said that he would agree to them checking book-keeping and stock deals whenever they liked. Also, the Board could do spot checks.

He said that if the Licence Transfer was refused, he would still finish the renovation work but he would not trade. He said “It is my one and only chance to put things right”.

Councillor Marshall asked the Inspector if he had any comments, but he did not.

Councillor Marshall asked Mr McKenna where the funds came from in order to carry out the renovations? Mr McKenna advised that he was working on a shoe-string budget with help from family members and that he is carrying out most of the works himself. The Brewery are supplying beer fonts etc. and wines are being supplied on account until the Premises were open. The landlords (Abacus Estates Ltd) had provided a rent-free period and after that a low rent, to compensate for the poor repair of the property.

Councillor Clarkson asked Mr McKenna when he had been released from prison, to which Mr McKenna advised 5 December 2012. Councillor Clarkson also asked if Mr McKenna had worked since being released from prison, to which Mr McKenna advised he had been carrying out consultancy work in England for new companies, namely “Kids’ Kingdom”, a children’s playzone, doing specialised sensory work.

Councillor Munro said to Mr McKenna that he was puzzled, since he said he had limited cash and yet he was taking on Premises which had consistently failed in the past one or two decades. Mr McKenna advised that there was expendible income locally, but only Cecchini’s Restaurant nearby. He was looking at the trade from the Arran and other ferries. There were 750,000 passengers a year. At the moment, people passed through Ardrossan without stopping.

Councillor Maguire asked the Police about the reference to ‘intelligence and information’ – how old was it? The Chief Inspector said that he was unable to reply, as the material was not accessible by an officer of his rank.

Mr. McKenna commented that he was transferred to a Scottish open prison, and the Police could record who he’d been talking to.

Councillor Reid reminded Mr. McKenna that he had said that he would take the Licence himself. Mr. McKenna said that he was being totally transparent and up-front. The Police could check the bookwork.

Councillor Maguire asked the Police if they would usually keep an eye on an open prison. The Chief Inspector advised that some information was “locked-down” and he could not give specifics.

The Board adjourned to Members’ Lounge with the Solicitor (Licensing) at 10.50 am to deliberate in private and re-convened at 11.00 am.

Having considered the terms of the report, and the submissions made, Councillor Reid moved that the Transfer be refused. Councillor Clarkson seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to refuse.

Councillor McNicol re-entered the Council Chambers and re-joined the meeting, resuming his role as Convenor.

A.2 Premises Licence 0448 Alpine Stores, 2 Dalry Road, Ardrossan

The Board considered an application for grant of a Premises Licence made by Dalry Shopsmart Limited for the above premises. The Applicant was represented by Mr Ian Hunter, Solicitor, and he was accompanied by Mr Ahmad, Director of Dalry Shopsmart Limited.

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.

Objections to the application had been made by George C Bunch and Catherine Keyes. Copies of the written objections were given to the Board Members. The objectors were not present or represented.

Mr Hunter addressed the Board on the background to the application. The Premises had previously been licensed for many years, but due to a parting of the ways between business partners, the previous Premises Licence Holder surrendered the Licence. He confirmed that all Section 50 Certificates have been received although there was an issue with the Planning Section 50.

Solicitor (Licensing) confirmed that only one Section 50 from Planning had been received and that referred to 'Alterations to existing shop premises to form flatted accommodation over shop'. This permission does not refer to the shop. Mr Hunter advised that the Planning Department were satisfied with the Certificate as the shop had been there for many years.

The Convenor confirmed that the application should proceed as it stands with no Certificate of Lawfulness.

Councillor Barr noted that all but two of the complaints in the Antisocial Behaviour Report supplied by Police Scotland were in fact made by the premises staff, and not the neighbours. Mr Hunter confirmed that this showed the staff at the Premises are in fact being responsible.

The Convenor asked why delivery vehicles parked behind the Premises and not in the dedicated layby. Mr Ahmad advised that there had been an incident but that had been before he himself owned the Premises. He confirmed that he would ensure responsible parking in the future and that all delivery vehicles would park in the appropriate layby.

Mr Hunter explained that the applicant had recently provided CCTV in the lane at the side of the Premises and that this would prevent people gathering in this area.

Regarding the objection submitted by the neighbours regarding litter, Mr Ahmad confirmed that they did clean up the litter although this did not appear to be a problem.

Regarding the Anti-Social Behaviour report, Chief Inspector Hopkins confirmed that they had no further comment.

Mr Hunter advised that the Premises are a real community shop with very few similar Premises in the area. He added that without the Premises Licence it would affect the liability

of the business. He explained that the Premises had been licensed until recently, and that the need to apply for a Licence had only arisen because there had been a dispute between business partners, and one had surrendered the Licence.

Councillor Reid requested a recess and Councillor Marshall seconded this.

The Board adjourned at 11.01 am and re-convened at 11.28 am.

Having considered the terms of the report, Councillor Reid moved that the application be refused based on overprovision. Councillor Marshall seconded the motion. As an amendment, Councillor Munro moved to Grant and this was seconded by Councillor Barr.

There was then a roll-call vote. Councillors Reid and Marshall voted for the Motion. Councillors McNicol, Barr, Bruce, Clarkson, Maguire, Munro and Steel voted for the amendment. There were no abstentions.

Accordingly the amendment was carried.

The Premises Licence was granted, subject to Standard Conditions (Edition 5) Parts A and B.

The Convenor explained that the application was granted only due to the exceptional circumstances – the Premises being licensed for years until recently, and the previous partner surrendering the Licence.

A.3 Premises Licences 0433 Le Raj, Bank Street, Irvine

The Board considered an application for variations of a Premises Licence made by Davinder Summel for the above premises. The Licence Holder was represented by Ian Hunter, Solicitor and he was accompanied by Mr Summel, Premises Licence Holder.

The Licence Holder was requesting the following variations:

1. Change licensed hours
2. Change name of premises to 'The Original Gulab'

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 Hunter addressed the Board and advised that substantial refurbishment works have been carried out and the Premises intend to re-open this weekend.

Having considered the terms of the report, and the submissions made, the Convenor moved that all variations applied for be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

A.4 Premises Licences 0308 Millport Golf Club, Golf Road, Millport

The Board considered an application for variation of a Premises Licence made by Millport Golf Club for the above premises. William Reid, Secretary was representing the Premises Licence Holder but unfortunately had to leave prior to the consideration of the case.

The Licence Holder was requesting the following variation:

1. Add Outdoor Drinking

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.

Having considered the terms of the report, the Convenor moved that the variation applied for be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

A.5 Premises Licences 0177 Torranyard Tandoori, Kilwinning

The Board considered an application for variations of a Premises Licence made by Torranyard Tandoori Limited for the above premises. The Applicant was not present or represented.

The Licence Holder was requesting the following variations:

1. Increase on-sales hours
2. Increase off-sales hours
3. Change arrangements for access by Young People (aged 16-17 years)
4. Change arrangements for access by Children (under 16 years)
5. Remove Conditions as to the playing of pool and darts in areas admitting Children under 16

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.

Having considered the terms of the report, the Convenor moved that the variations applied for be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

The Board's Standard Conditions Edition 5 will now apply. Standard Conditions C.10.3 (d) and (e) are disapplied.

The meeting ended at 11.35 am.