

**North Ayrshire Licensing Board  
22 May 2013**

**Irvine, 22 May 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, Alex McLean, Alan Munro, Donald Reid and Robert Steel.

**In Attendance**

C Andrew, Senior Manager (Legal Services), W O'Brien, Solicitor (Licensing), G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer, J Armstrong, Senior Clerical Assistant.

**Also In Attendance**

Chief Inspector Mateer and Sergeant McIntosh (Police Scotland).

**Chair**

Councillor McNicol in the Chair.

**Apologies for Absence**

None.

**1. Minutes**

The Board were asked to confirm the Minutes of the Board Meetings held on 6 February 2013 and 20 March 2013. Councillor Marshall proposed that the Minutes be adopted and this was seconded by Councillor Barr. The Board unanimously agreed to confirm and adopt the Minutes.

**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 Licences 0361 Gala Leisure Limited**

On the basis of information initially received from the Licence Holder's agent, and subsequently confirmed by the Chief Constable, Gala Leisure Ltd were cited to attend the Board for 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.

Having considered the terms of both reports, the Chair moved that no action be taken. There was no counter-motion and the Board unanimously agreed without dissent or abstention to take no action against the Licence Holder.

**A.2 Home Bargains, Unit 5A, Riverway Retail Park, Irvine**

The Board considered an application for grant of a Provisional Premises Licence made by T J Morris Ltd for the above premises. The Applicant was represented by Euan McSherrie, Solicitor, and he was accompanied by Danielle Tremato, Area 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.

An objection to the application had been made by Irvine Community Council. Copies of the written objection were given to the Board Members. Mr O'Brien informed the Board that apologies had been submitted by the Secretary of the Community Council, with an explanation that unfortunately no-one was available to attend the meeting.

Thereafter Mr McSherrie addressed the Board on the issues arising and he responded to questions from the Chair and Councillor Reid. Mr McSherrie explained that the application was being made in response to customer demand, and that the sale of alcohol would be ancillary to the primary purpose of the premises, which is a general grocery store. Should the licence be granted, Mr McSherrie stated that the company would fully comply with all of the national and local requirements such as Challenge 25 and the operation of an adequate CCTV system.

Regarding the objection lodged by the Community Council, Mr McSherrie said that it appeared to be a general objection, which was not specific to this premises, as Home Bargains could not be regarded as being part of the local night time economy. He added and highlighted that no other interested party had objected to the application.

Regarding Mr O'Brien's reference to possible overprovision in the Board report, Mr McSherrie highlighted that the premises had previously been licensed when the unit was occupied by Lidl. At that time Lidl were licensed for an alcohol display capacity of 44 sq mtrs. The application which is before the Board today is seeking a display capacity of 25.44 sq mtrs, which is a reduction of nearly 50%, compared to what was previously permitted. Mr McSherrie submitted that, as the application is for a relatively modest off sales area, within premises which previously had a licence, then there is no overprovision in this case.

Mr O'Brien then provided some clarification regarding the issue of 'continuous opening'. He explained to the Board that core hours (for the sale of alcohol) do not necessarily need to reflect or replicate the opening hours of a premises.

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

**A.3 China Palace, 132 Main Street, Kilwinning**

The Board considered an application for grant of a Premises Licence made by Ms Jing Luo for the above premises. The Applicant was not present or represented.

Mr O'Brien informed the Board that the Applicant did not yet have a Section 50 Building Standards Certificate, and as such consideration of the application would have to be continued to a future Meeting.

**A.4 Premises Licence 0083 Macaulays, 85-87 Main Street, Largs**

The Board considered an application for variations of a Premises Licence made by Greene King Retailing Ltd for the above premises. The Licence Holder was represented by Stephen McGowan, Solicitor, and he was accompanied by David Gibson (Tenant and Operator of the premises).

The Licence Holder was requesting the following variations:

1. Vary on sales hours from 11 to 9 (Mon – Sat) and 10 (Sun).
2. Vary off sales hours from 11 to 10 – 7 days a week.

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.

An objection to the application had been made by Dr Maggie Watts, Consultant in Public Health Medicine, NHS Ayrshire and Arran. Mr McGowan confirmed that he had seen a copy of the objection prior to the Board Meeting. Copies of the written objection were given to the Board Members. Ruth Shepherd of NHS Ayrshire and Arran was present.

Mr McGowan addressed the Board on the issues arising. He acknowledged that variation 1 was outside the Board's policy. However, Mr McGowan explained that the variation was being sought as other premises in Largs already had early opening hours, and Mr Gibson was simply seeking a 'level playing field'. He added, that if granted, the premises would offer hot rolls, teas, coffees and pastries prior to 11.00 am. Mr McGowan also cited the demographics of Largs, and the proximity of the premises to the town's transport hub as reasons why these earlier core hours should be granted. Mr McGowan highlighted that there was no Police objection and he added that Mr Gibson had experience of operating other premises in Largs which had early hours.

Ms Shepherd then addressed the Board, re-iterating the content of Dr Watts's objection. Ms Shepherd explained that their main concern was with the patterns of alcohol consumption. Price and availability are factors in relation to increased alcohol consumption. In this case, where permission is being sought to provide an increase in availability, the NHS would suggest that if the increased (early) hours are granted, then the premises should reduce their hours by an equal amount at another time of the day.

Thereafter Mr McGowan re-addressed the Board with his response to the issues raised by the NHS. He then responded to questions and comments from the Chair, and Councillors McLean, Marshall and Munro.

## **AGENDA ITEM 1**

Mr McGowan suggested that the Board may consider granting variation 1 for a trial period of perhaps 3 months. Thereafter a review could be conducted in relation to the concerns being raised.

The Board adjourned at 10.35 am and re-convened at 11.03 am.

Having considered the terms of the report, and the submissions made, Councillor McLean moved that variation 1 should be refused and variation 2 should be granted as requested. Councillor Marshall seconded the motion. Councillor Reid moved as an amendment that variation 1 should be granted to the extent of 10.00 am, Monday to Saturday, with a condition of food provision, and variation 2 should be granted as requested. Councillor Clarkson seconded the amendment.

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

The motion was accordingly carried. Variation 1 was refused and variation 2 was granted.

Mr McGowan requested a Section 32 direction from the Board. The Chair confirmed that the Board directed that subsection 32(2) would not apply in relation to any subsequent Application made within one year, from 22 May 2013.

### **A.5 Premises Licence 0273 Ardrossan Bowling Club, Kilmeny Terrace, Ardrossan**

The Board considered an application for variations of a Premises Licence made by Ardrossan Bowling Club for the above premises. The Licence Holder was represented by Kenny Brown (Secretary, Ardrossan Bowling Club).

The Licence Holder was requesting the following variations:

1. Surrender special status as a 'Section 125 Club'.
2. Appoint a Premises Manager.
3. Vary access times for under-18s.

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.

An objection to the application had been made by Mr Murray Wallace, 4 Verona Place, Ardrossan. Mr Brown confirmed that he had seen a copy of the objection prior to the Board Meeting. Copies of the written objection were given to the Board Members. Mr Wallace was present.

Mr Brown addressed the Board regarding the background to the application. He explained that the limitation on occasional licences, which the Club was currently subject to, was an issue for the Club as it was hampering their ability to generate income from hiring the premises out to non-members for private functions. Mr Brown added that if the variations were granted, the Club would undertake to install baby changing facilities.

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Mr Wallace then addressed the Board, re-iterating the content of his written objection. He also provided the Board with photographs, showing the proximity of his property to the Club and the access lane to the Club. Mr Wallace then responded to questions from Councillors Barr, Munro, Clarkson and the Chair. He highlighted that the nuisance problems which he experiences all stem from people using the access lane to and from the Club. Mr Wallace suggested a compromise solution involving the opening of the entrance gate at the top end of the Bowling Club. If this gate was opened up, patrons of the Club would not require to use the lane which borders his property, and this would solve Mr Wallace's problem.

Thereafter Mr Brown addressed the Board on the issues raised by Mr Wallace and he responded to questions and comments from Councillors Barr, Marshall and the Maguire. Mr Hamilton stated that the entrance gate at the top end of the Bowling Club is not used, in order to prevent people from walking across the bowling green. Mr Brown suggested that the Club could place appropriate signage outside at the lane, and have a Committee Member on the door when people are leaving the Club, to ensure that noise and disturbance does not occur, in order to prevent nuisance for neighbouring properties.

Councillor Munro suggested that the application could be granted for a trial period, in order to monitor the situation.

Councillor Reid suggested that the application could be granted and Mr Wallace could bring a Review Application to the Board at any time in the future, if required.

Councillors Maguire and Marshall both stated concern in terms of people using the lane to access and exit the Club, when there is alternative gate, which if used would alleviate any nuisance issues.

Mr Brown stated that he did not think the Club could comply with a policy of using the gate at the top end of the Bowling Club.

The Board adjourned at 11.22 am and re-convened at 11.30 am.

Having considered the terms of the report, and the submissions made, the Chair moved that the application be granted. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. Part I of the Board's Standard Conditions is replaced by Part K.

The Chair stated that although the Board had agreed to grant the application in full, the Club should have consideration for their neighbours. As such, the Club should implement sufficient measures and procedures to ensure that their neighbours are not subjected to any form of nuisance or disturbance. The Chair also informed Mr Wallace that he was free to bring a Review Application to the Board at any time in the future, if required.

### **A.6 Personal Licence NA0529 Pavita Singh Shergill**

On the basis of information provided by another Local Authority, and subsequently confirmed by the Chief Constable, Mr Shergill was cited to attend the Board for a Personal Licence Review Hearing. The information pertained to the Licence Holder being convicted of a relevant offence on 18 January 2013 at Kilmarnock Sheriff Court. Mr Shergill was not present or represented.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the Chief Constable's Notice under Section 83(4)(b) of the 2005 Act and summarised issues arising.

Mr O'Brien informed the Board that Mr Shergill's Solicitor, Mr Gordon Robertson, had requested a continuation of the Review Hearing until the August Board Meeting. This was due to a long standing holiday commitment.

Having considered the terms of the report, and the information provided by Mr O'Brien, the Chair moved that the Board decide to continue consideration of the Review Hearing to the Meeting on 21 August 2013. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the Review Hearing to the Meeting on 21 August 2013.

**A.7 Premises Licence 0005 Hayocks Post Office, 134 Hayocks Road, Stevenston**

The Board considered a Review Application under Section 36 made by the Chief Constable relating to the above premises. The Licence Holder, Gwen Lusk, was present.

The Review Application was made by the Chief Constable by a letter to the Board, dated 5 March 2013. Copies of the letter were given to Board Members and the content of the letter was summarised by Chief Inspector Mateer.

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. In response to a request by the Chair, the Chief Inspector then provided an update on the outcome and disposal of the convictions which resulted from the failed test purchases.

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

Thereafter Mrs Lusk addressed the Board on the issues arising and she responded to questions and comments from Councillors Reid, Clarkson, Barr and the Chair. Mrs Lusk apologised and said that there were no excuses for what had happened. She highlighted to the Board that there is a Challenge 25 Policy in place at the premises, and all staff have been briefed and re-briefed regarding it. The staff member involved in the first failed test purchase, Stephen McGregor, is now only working shifts out with the core hours permitted for the sale of alcohol. Mrs Lusk informed the Board that Simon Lusk, the staff member involved in the second failed test purchase, is her husband, and he had been given a 'tongue lashing' for his part in the events of 23 February 2013. Additionally, Mrs Lusk said that she is now working at the shop 7 days a week, in order to ensure that there is no repeat of the issues which have been detailed by the Police.

Councillor Barr asked the Police if they had any intelligence or information to indicate whether the premises had improved since the failed test purchases.

Sergeant McIntosh said that the Police had not been able to analyse the appropriate data yet, so were unable to provide a definitive answer to Councillor Barr's question. However, Sergeant McIntosh did add that the Police had conducted a further test purchase since 23 February, and on that occasion the procedure was passed.

The Board adjourned at 11.51 am and re-convened at 11.58 am.

The Chair 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 Munro moved that it was appropriate to suspend the Premises Licence under Section 39(2)(c) of the 2005 Act for the purpose of Licensing Objective (a) (preventing crime and disorder), for the period of four weeks, with immediate effect. The period of suspension will be 22 May 2013 to 19 June 2013, inclusive of both dates. The Chair seconded the motion. There was no counter-motion and the Board unanimously decided, by means of a roll call vote, with no abstentions, to suspend the Premises Licence for the period of four weeks, with immediate effect.

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

**A.8 BP Girdle Toll Connect, Littlestane Row, Long Drive, Irvine**

The Board considered an application for grant of a Provisional Premises Licence made by BP Oil UK Ltd for the above premises. The Applicant was represented by Andrew Hunter, Solicitor and he was accompanied by Mr Hay from the Premises.

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.

An objection to the application had been made by Dr Maggie Watts, Consultant in Public Health Medicine, NHS Ayrshire and Arran. Mr Hunter confirmed that he had seen a copy of the objection prior to the Board Meeting. Copies of the written objection were given to the Board Members. Ruth Shepherd of NHS Ayrshire and Arran was present.

Mr Hunter addressed the Board on the issues arising. He referred to an information pack, which was submitted to the Board's Solicitor just prior to the Meeting. The pack contained market research information and other data, which, in Mr Hunter's submission, should be sufficient to satisfy the Board, in terms of Section 123 of the Act, that the premises are not excluded premises. Mr Hunter acknowledged that there was a lot of information and data within the pack, however, he wished to draw the Board's attention to the fact that 84% of people questioned during the survey said that they would be disadvantaged or significantly inconvenienced (in terms of their reliance on the premises for the purchase of petrol or derv, or groceries) if the premises were not there. Mr Hunter argued that this percentage was more than sufficient to satisfy and pass the statutory tests when determining if the premises are not excluded. Mr Hunter said that as additional, anecdotal evidence, signature sheets were provided at the counter for customers to sign and provide their postcode. Although, as expected, some signatories were not local people, the majority were in fact people who live in the local area.

Mr O'Brien informed Mr Hunter that although the Board Members had seen the Board report in advance of the today's Meeting, they had only just been provided with his information pack, and as such would require some time to consider the content.

## AGENDA ITEM 1

Mr Hunter agreed that the Board should take some time to read the information that he had submitted and he would be happy to answer any resulting questions thereafter.

The Board considered the information pack. Mr Hunter then responded to questions and comments from the Chair, and Councillors Barr, McLean, Maguire and Reid. Mr Hunter highlighted to the Board that the statutory test used to determine whether a premises is excluded or not makes no reference to whether a premises is relied upon as a source of alcohol.

Ms Shepherd then addressed the Board, re-iterating the content of Dr Watts's objection. Ms Shepherd confirmed that the NHS has no concerns regarding drink – driving. Their main concern was regarding the nature of the subject premises. Customers of such a convenience store will purchase what they intend to consume on that day. If the subject premises were granted a licence then this would add to the overall availability and consumption of alcohol.

Thereafter Mr Hunter re-addressed the Board with his response to the issues raised by the NHS. He then responded to questions and comments from the Chair and Councillor Marshall. Mr Hunter urged the Board to be cautious when considering Ms Shepherd's statement that, if the premises were granted a licence, there would be an increase in alcohol consumption. He argued that there was no evidence to back up this claim.

Mr Hunter concluded by commending the application to the Board. He also highlighted the licensed BP premises at Monkton, South Ayrshire, as being on North Ayrshire's 'doorstep', and as being a premises which operate perfectly well within the same business model being proposed at the Girdle Toll filling station.

The Board adjourned at 12.45 pm and re-convened at 1.08 pm.

Having considered the terms of the report, and the submissions made, Councillor Steel moved that the Board decide to continue consideration of the application to the Meeting on 21 August 2013, to allow for the provision of detailed overprovision information and for additional information to be provided by NHS Ayrshire & Arran. Councillor Clarkson seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue consideration of the application to the Meeting on 21 August 2013.

The Chair asked Mr Hunter if he had any submission to make regarding the extent of the locality, which the Board will need to decide upon when considering the issue of overprovision. Mr Hunter said that he was happy to await direction from the Board regarding this matter, although he observed that as the intention is for people to drive to the premises, the locality could potentially be very big.

Councillor Clarkson suggested that when overprovision is considered at the Meeting in August, the Board should consider setting the locality at a distance of 1 ½ - 2 miles from the subject premises.

Referring to the additional information to be submitted by the NHS, Mr Hunter asked what precisely this information would be. Mr O'Brien explained that it would be NHS information on health and social indicators, provided for the intermediate zones which are deemed relevant in relation to the consideration of overprovision.



Mr Hunter asked if the Board had reached a decision on the issue of excluded premises. The Chair confirmed that the Board were satisfied that the statutory tests had been passed and that the premises were not excluded premises.

**A.9 Premises Licence 0432 Gulab Brasserie, 2A Stanecastle Road, Irvine**

The Board considered an application for variations of a Premises Licence made by Summel & Summel Ltd for the above premises. The Licence Holder was represented by Ian Hunter, Solicitor, and he was accompanied by Rajinder Summel (Premises Manager).

The Licence Holder was requesting the following variations:

1. Creation of Outdoor Drinking Area to west of building.
2. Extension of building so as to construct a children's play area adjoining south-east side.

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, 5 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 Hugh Kennedy, Keith Robinson and Kenneth Crombie were present.

Mr Hunter addressed the Board regarding the background to the application. He provided the Board Members with a pack of information regarding the application. Referring to the Board's decision on the 20 March 2013 to refuse a previous application for an outdoor drinking area at the premises, Mr Hunter explained that the Licence Holder had taken on board comments made by the Board and the objectors at that Meeting. He confirmed that his clients would accept the amendment to the Operating Plan, suggested by Mr O'Brien in Section 3 of the Board report. The area would be supervised and screened to above head height, and the Licence Holder would also be willing to accept a 'curfew' of 7.00 pm, or even 6.00 pm. Mr Hunter highlighted that his clients are simply trying to raise the standard of the premises.

Regarding variation 2, Mr Hunter explained that the Licence Holder had originally contemplated an outside area. However, in response to earlier concerns expressed by the Board and neighbours the proposal is now for a conservatory which would contain a soft seating area for parents and their children.

Mr Hunter confirmed that he was aware of the Planning matters detailed by Mr O'Brien in the Board report. If the Board were minded to grant the application today, then the appropriate applications would be made to the Planning Department as soon as possible.

Mr Kennedy, Mr Crombie, and Mr Robinson then addressed the Board, re-iterating the content of their written objections. Mr Kennedy responded to a comment from Councillor Munro.

Thereafter Mr Hunter addressed the Board on the issues raised by the objectors. He then responded to questions and comments from Councillors Barr, Marshall and Clarkson.

Mr Hunter concluded by commending both variations to the Board, stating that they would not detract from the amenity of the local area.

The Board adjourned at 1.50 pm and re-convened at 2.00 pm.

Having considered the terms of the report, and the submissions made, Councillor Clarkson moved that variation 1 should be refused, and variation 2 should be granted as requested. Councillor Maguire seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to refuse variation 1 and grant variation 2.

In relation to variation 1, the Board considered that the following ground for refusal applied:

That the granting of the application would be inconsistent with one or more of the Licensing Objectives, in particular Licensing Objective (c) preventing public nuisance.

The Chair reminded Mr Hunter that the conservatory would require Planning Permission.

Mr Hunter requested a Statement of Reasons for the decision regarding variation 1.

**A.10 Premises Licence 0327 The Carrick, 112-114 High Street, Irvine**

The Chair confirmed that, as a result of updated information provided by Police Scotland, no further action would be taken by the Board in relation to the Section 36 Review Application, which was initially made by the Chief Constable by a letter to the Board, dated 25 April 2012. The Licence Holder was not represented on this occasion.

**A.11 Personal Licence PK0504 Brian Flanagan**

The Chair confirmed that, as a result of updated information provided by Police Scotland, no further action would be taken by the Board in relation to a report under Section 84A, which was initially made by the Chief Constable by a letter to the Board, dated 25 April 2012. Mr Flanagan was not present or represented on this occasion.

**3. NALB Scheme of Delegations**

The Board considered a report by the Solicitor (Licensing), recommending that the Board consider whether or not the existing Standard Conditions should be varied, and the Scheme of Delegations amended. The issues detailed in the report concerned the existing Standard Conditions C.10.3 (d) and (e).

Having considered the report, the Board agreed to address the situation by implementing, in full, the suggested action as detailed by Mr O'Brien in Section 3 of the report.

The meeting ended at 2.04 pm.