

Cunninghame House
Irvine
KA12 8EE

18 February 2020

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 24 February 2020 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

- 1. Minutes**
Submit Minutes of the Board Meeting held on 16 September 2019.
- 2. 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)
- 3. Any Other Business**

Licensing Board

Sederunt: Ronnie McNicol (Convenor)
Todd Ferguson (Vice-Convenor)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L Reid
Angela Stephen

Chair:

Apologies:

Meeting Ended:

Agenda Item 2

24 February 2020

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>

Children and Young People:	None.
Environmental & Sustainability:	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 Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

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.

Aileen Craig
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)**, on **01294-324305**.

Background Papers

0

APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0158	Aberlour (Bar & Grill) Limited	Aberlour Bar and Grill 45 Jacks Road Saltcoats KA21 5SH	Premises Licence Review Application – Section 36
2.	0507	Isle of Arran Gin Company Limited	Isle of Arran Gin Company Limited Cladach Brodick Isle of Arran KA27 8DE	Application for Grant of Provisional Premises Licence – Section 45
3.	0126	Harpreet Singh	Jaipur Indian Restaurant 51 Glasgow Street Ardrossan KA22 8EP	Application for Variation of Premises Licence – Section 29
4.	0340	BMR (Scotland) Limited	Milton News Food & Wine 13/15 High Street Kilbirnie KA25 7HW	Application for Variation of Premises Licence – Section 29
5.	0075	Sayiad Hamid	Premier 131A Paterson Avenue Irvine KA12 9LP	Application for Variation of Premises Licence – Section 29
6.	0109	John Mather McBride	Tavern Bar 36 Glasgow Street Millport KA28 0DL	Application for Variation of Premises Licence – Section 29
7.	063/20	Bar One (Saltcoats) Ltd	Bar One 55 Vernon Street Saltcoats KA21 5HN	Application for Extended Hours – Section 68 Clerk to Report
8.	057 & 062/20	Signature Works (Scotland) Limited	Pitchers 18 Bank Street Irvine KA12 0AD	Applications for Extended Hours – Section 68 Clerk to Report

CASE 1

Report to North Ayrshire Licensing Board

by

Licensing Standards Officer

Subject	Premises Licence Review Applications in relation to Unpaid Annual Fees (Section 36).
Purpose	To update Members on the current position.
Recommendation	That, in relation to each of the cases described in the attached Schedules, the Board determines the Review Application and decide what steps, if any, should be taken.

1. Background

It is a condition of all Premises Licences that the Holder ("PLH") should pay an Annual Fee in early October (1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday).

In relation to the Premises described in the attached Schedules, this remains unpaid, despite the Board giving advance notice and then the Licensing Standards Officer serving a Breach of Condition Notice on the PLH.

2. Ground for Review

The 'Ground for Review' is that that a mandatory Licence Condition has been breached.

All Premises Licences are subject to the Mandatory Conditions set out in Licensing (Scotland) Act 2005, Schedule 3.

One of these Mandatory Conditions is that an annual or other recurring fee must be paid as required by the Fees Regulations (Paragraph 10, repeated as NALB Standard Condition A.7). The amount of the Annual Fee due is determined by Regulation 8. The Licensing (Fees) (Scotland) Regulations 2007 No. 553. The Board must notify each PLH of the fee payable no later than 30 days before the due date (Regulation 9).

3. Procedure

The Board must hear the PLH, and decide the following questions:

Question (a): "is a Ground for Review established?"

If 'no', the case ends.

CASE 1

If 'yes', the Board must consider the appropriate action (the range of available actions are called "Steps").

Question (b): "what Step (if any) should be taken?"

The Board is not obliged to take any of these Steps, and it may decide that although a Ground for Review is established, no action is required.

With Reviews generally, there are four Steps available, but the Steps most likely to be appropriate to unpaid fees are Suspension and Revocation (Steps C and D).

The Steps are:

(A) Written Warning

If the PLH pays the fee at or shortly before the Board date, the Board might still issue a warning and inform the PLH that the circumstances might be taken into account if there is a future default.

(B) Variation

(C) Suspension

The Suspension must be for a specific time. While the Licence is suspended, Annual Fees continue to be charged (Regulation 7). The Board may consider delegating to the Clerk the power to revoke the Suspension if all unpaid fees due in relation to the Premises are paid in full.

(D) Revocation

The Licence ceases permanently, and the Premises cannot sell alcohol unless and until the Board grants a new Licence. Many premises obtained a Licence under the 'grandfather rights' during the Transitional Period 2008-2009, when Overprovision was not an issue, whereas the Board's Overprovision Policy means that it is likely that new Licences would be refused.

The Board may take these Steps either on the basis of the original Review Procedure, or on the basis of information obtained in the course of the Review Procedure. The Board may take into account any previous default in payment of the Annual Fee or to any other failure to comply with any other requirement of a Licence.

Question (c): "if 'yes', what Licensing Objectives are relevant?"

The Board might consider that:

CASE 1

- (i) the PLH's action in continuing to breach a Mandatory Licence Condition makes a Step appropriate for the purposes of the "preventing crime and disorder" Licensing Objective;
- (ii) the Annual Fee is an essential part of the Licensing system, as only if Boards are properly-funded can they maintain the system of regulation required to ensure that all of the Licensing Objectives are observed.

Question (d): "when should the order take effect?"

A Written Warning or Variation (Steps A and B) have immediate effect.

A Suspension or Revocation (Steps C and D) should not have immediate effect unless the Board consider this is necessary in the public interest. This is not an issue with unpaid fees.

if the Licence is Suspended, further questions arise:

Question (e): "Should the Board delegate to the Clerk the power to revoke any Suspension imposed now or previously, if the arrears of Annual Fee are paid in full (whenever those arrears arose, before or after the Board's decision)"

The Board can revoke a decision to Vary or Suspend if:

- (a) the Holder requests this, and
- (b) the Board is satisfied that, by reason of a change of circumstances, the Variation or Suspension is no longer necessary.

A decision to issue a Written Warning or to Revoke a Licence (Steps A and D) cannot later be revoked.

If revocation is not delegated, the Application for Revocation would have to call at a future Board Meeting and the Variation or Suspension would remain in force meantime, whereas if the decision is delegated the Variation or Suspension could be lifted as soon as the arrears were paid.

Question (f): "if the Licence is Suspended: how long should the order last?"

It is suggested that the order should last 24 months. If the Board has delegated the decision to revoke Suspension, there are at least two possibilities:

1. After the Board date, the PLH pays all fees due. The Clerk could revoke the order, and the Premises could immediately re-start operating without needing to wait until the next Board date.
2. A further Annual Fee will fall due a year later. If that is also unpaid, and the fees due at present remain due, the Board would be likely to consider Revocation.

CASE 1

Annual Fee Schedule

Premises	"Aberlour Bar and Grill", 45 Jacks Road, Saltcoats, KA21 5SH
Ref.	0158
Licence-Holder	Aberlour (Bar and Grill) Ltd.

Fee	£500
Advance reminder letter sent	27 August 2019
Fee due on	1 October 2019
LSO's "Breach of Condition Notice" served	11 October 2019

Application for Grant of Provisional Premises Licence - Section 45

Applicant	Isle of Arran Gin Co. Ltd.
Premises	Distillery, Cladach, Brodick, Isle of Arran KA27 8DE
Ref.	0507

Preliminary

The Applicant should lodge a Certificate confirming Display of Site Notice. Until the Board has it, it cannot determine the Application.

A. Summary of Proposal

The Applicant has applied for the Grant of a Provisional Premises Licence (PPL). The PPL relates to Premises which are to be constructed or converted for use as Licensed Premises, and is valid for a period of four years. During this period, the Applicant can request the Board to Confirm the PPL, or to extend the period.

The proposal is for a gin distillery and visitor centre, with retail area, ancillary cafe and Outdoor Drinking Area. The Premises will produce alcohol and sell it off-sales to the public and also by internet. The Premises will offer tours where visitors can view the production facilities. These tours will include the offer of small samples of alcohol for consumption on the Premises or in the Outdoor Drinking Area.

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

B. Detailed proposal

The Premises have both on-sales & off-sales. Summary of Operating Plan:

- (a) Licensed Hours
- (b) Capacity
- (c) Activities other than the sale of alcohol
- (d) Access for Under-18s

PTO

(a) Licensed Hours

	<i>Proposal</i>	<i>Policy</i>
On-Sales		
Monday	11.00 - 22.00	Within Policy on all 7 days
Tuesday	"	
Wednesday	"	
Thursday	"	
Friday	11.00 - 23.00	
Saturday	"	
Sunday	11.00 - 22.00	
Off-Sales		
The proposal is for 10.00 - 22.00, 7 days a week. This is the maximum permitted by the legislation and is within NALB Policy.		

(b) Capacity

On-Sales (persons)	25
Off-Sales (sq. mtr.s)	24.6

(c) Activities other than the sale of alcohol

	<i>Proposal</i>
Accommodation	
Conference facilities	x*
Restaurant facilities	
Bar meals	x*
Receptions (weddings, funerals, birthdays, retirements, etc.)	x*
Club or other group meetings	x*
Recorded music	x*
Live performances	x*
Dance facilities	
Theatre	
Films	x*
Gaming	
Indoor/Outdoor sports	
Televised sport	
Outdoor Drinking	x*
Adult entertainment	
<i>Other activities</i>	
Meetings and presentations. Education films about gin production.	

Activities marked 'x*' are proposed outside core licensed hours.

(d) Access for Under-18s

Children (aged 5-15) and Young People (16-17) allowed for a tour or pre-planned event or function to 9.00 pm or end of function. Must be with an adult.

C. Issues

Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that, apart from the issues of the Public Nuisance and Public Health Licensing Objectives, and Overprovision mentioned below, there are no statutory reasons to refuse, and there is no breach of Board Policy.

PTO

(a) the Application may be inconsistent with the Licensing Objectives

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

1. The Applicant seeks an 'Outdoor Drinking Area'. The Premises are on the south side of the A841 coast road (leading west towards Brodick and east towards Brodick Castle). The proposed Outdoor Drinking Area is to the south of the building, near the shore, and is screened from the road by the building and vegetation. There are no residential properties nearby. There are light industrial premises nearby.

2. The Board is obliged to take account of two Licensing Objectives:

(c): 'preventing public nuisance'

(d): 'protecting & improving public health'

but the Board may take the view that as the Premises are not currently operating it would be premature to speculate that undue nuisance would be likely. If there is later an alleged nuisance, it will be open to anyone (e.g. neighbours):

- to refer the matter to NAC Protective Services under the Environmental Protection Act 1990, Section 80

- to make a Review Application to the Board under 2005 Act, Section 36.

3. The Licence Standard Conditions include:

"C.5.1 No loudspeakers, televisions, radios or other devices for amplifying sound shall be positioned at any time in Outdoor Drinking Areas."

C.5.2 No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. and later than 10.00 pm."

The Board has allowed early use of such areas in other cases, adding to C.5.2 words such as "except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00.", but this requires a specific request from the Applicant.

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

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

The L.O. expressly states 'improving'. Opinions may differ as to whether the creation of a new facility to sell alcohol (or the expansion of an existing facility):

(i) damages public health, or

(ii) makes no difference,

but the Board might consider that it is unlikely to 'improve' public health.

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

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

(b) Overprovision may result from the grant of the Licence

The particular approach here

Although the Application appears to be against the Overprovision Policy, the Board must consider a request from the Applicant to treat this proposal as an exception.

In its Licensing Policy Statement, Annex D (Overprovision) the Board:

- divides its area into 6 Localities, and
- categorises Premises on the basis of "Function Type" (for example, distinguishing between off-sales and restaurants)

Although there is a presumption of refusal anywhere in North Ayrshire, the Policy (on the basis of health and other data) creates a stronger presumption in most Mainland Localities, as opposed to the "Isle of Arran" and the "North Coast" Localities. The Board accepts that the 6-part categorisation of Function Types might not always be appropriate. Paragraph 2.4 of the LPS is:

"The Board will be open to the suggestion that particular Premises may not fit easily into a single Function Type."

Therefore, while this Board Report is drafted on the basis that the Function Type here is FT1 ("Off-sales Premises"), the Board may consider that the Premises here are unique and should not be treated in the usual way when the Board considers Overprovision.

The usual approach to Overprovision in North Ayrshire

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 application of the Board's Overprovision Policy in a particular case is affected by two issues:

(a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

(b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;

2. Nightclubs (or parts of Premises which operate as nightclubs);

3. Other On-sales Premises (Public Houses);

4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose; 'Meal' means a substantial meal eaten at a table, counter or other structure which serves the purpose of a table, and is available at all times until 45 minutes before the terminal licensed hour;

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;

6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment (the Board calls these 'Part K Clubs').

4. The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

(a) the existing number and capacities of Premises in that 'Locality' and in that 'Function Type' is already sufficient,

(b) Overprovision would result if the Application was to be granted, and

(c) the Application should be refused.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and with certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the 'Additional Factors' relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both 'Additional Factors' occur.

7. Applying the Policy to the present case:

(a) Locality: The Subject Premises are in the "Isle of Arran" Locality (Locality 6);

(b) 'Additional Factor' (Locality): this 'Additional Factor' is not present;

(c) Function Type: The Subject Premises are in Function Type 1 (Off-sales) - **subject to the Board's views on the appropriate treatment of these particular Premises;**

(d) 'Additional Factor' (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality)
-

however, if the Board is satisfied that the Premises should instead be treated as being in Function Type 4 (On-Sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment), the Board is entitled to refuse the Application, but is not bound to do so by its Overprovision Policy.

8. The Board is entitled to refuse the Application on the basis that its Policy applies throughout North Ayrshire and that the Board has stated that all sale and consumption of alcohol has the potential to be inconsistent with the Licensing Objectives.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted. 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.

10. The Licensing Policy Statement includes:

"The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing

Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application." LPS 2018-22, Annex D, Paragraph 3.6.

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

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

Document (b) uses a 'Traffic Light' system 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.

D. Observations

1. Exclusion area around bar: The Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

"No person under 18 will be permitted to remain within 1 metre of any bar."

Reason: the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm".

2. Films

The Operating Plan includes 'Films'. This means that no Licence or Consent is needed under the Cinemas Act 1985, as the Premises Licence will be granted under a "Relevant Enactment" (as defined in 1985 Act, Section 19(3(b))).

E. Summary of issues for Board

The Board should decide:

- (1) whether or not the Premises Licence should be granted.
- (2) if the Applicant requests this - whether or not the Outdoor Drinking Area can be used before 11.00 a.m., and if so, from what time and for what purposes.

F. Licence Conditions

If the Licence is granted, it will be subject to the following parts of the NALB Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions):

A (All Premises)

B (Off-Sales) except Standard Condition B.1 (the Premises include a Visitor Attraction so the 2005 Act itself disapplies one of the statute's Mandatory Conditions, which is reproduced as Standard Condition B.1)

C (On-sale Premises)

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

G. Notes to Applicant

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

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

The Licensing Board does not grant this Licence.

Application for Variation of Premises Licence - Section 29

Applicant	Harpreet Singh
Premises	"Jaipur Indian Restaurant", 51 Glasgow St., Ardrossan, KA22 8EP
Ref.	0126

Preliminary

The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

1. Summary of Variation Request(s)

No.	Variation
1	<i>Permit music (OP 5(c))</i>
2	<i>Amend access conditions for under-18s</i>

2. 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 has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

Variation 1: Permit music (OP 5(c))

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

The Premises are a restaurant and the proposal is to play recorded music in the background, not "Live Performances".

Variation 2: Amend access conditions for under-18s

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

The proposal is to alter the conditions for "Young Persons" (aged 16-17) being on the Premises.

At present, anyone under 18 (whether a "Child" aged under 16, or a "Young Person" aged 16-17) can only be on the Premises if accompanied by an adult.

The proposal is to continue with that restriction for "Children", but to allow "Young Persons" entry without an Adult for the consumption of meals and soft drinks.

If the variation is allowed, the Operating Plan will be amended:

OP 6(b) (terms of access) will read "Children (aged under 16) will be admitted only if accompanied by an Adult (a person aged 18 or over). "Young Persons" (aged 16-17) will be admitted without an Adult for the consumption of meals and soft drinks."

OP 6(c) (times of access) will read "0 to 17 years".

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

The Licence was granted on 11 November 2008 subject to an earlier Edition of the Board's Standard Conditions - before the most recent revision was made on 1 September 2009 (Edition 5). The existing Conditions should be replaced by the current Edition and these will apply, as read with later amendments of the statutory mandatory conditions (this will be noted on any Premises Licence and Summary issued later).

4. Notes to Applicant

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

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

The Licensing Board does not grant this Licence.

Application for Variation of Premises Licence - Section 29

Applicant	BMR (Scotland) Ltd.
Premises	"Milton News Food and Wine", 13/15 High St., Kilbirnie KA25 7HW
Ref.	0340

Preliminary

The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

A. Summary of Variation Request(s)

No.	Variation
1	Increase hours to 9.00 p.m. (all 7 days)
2	Vary Layout Plan
3	Increase alcohol display capacity from 16.0 sq.m. to 17.2 sq.m.

Notes

The background to the Variation applications is that the Premises are to have a 'food to go' facility.

When Variation 2 is granted, the Operating Plan, Paragraph 5(f) will be amended to read:

"The sale of hot food for off-sales consumption."

B. 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 has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

<i>Variation 1: Increase hours to 9.00 p.m. (all 7 days)</i>
Advice: The Board has a discretion to grant or refuse the Application. It is the Clerk's opinion that there are no statutory reasons to refuse, and there is no breach of Board Policy.
Notes The current hours are: Monday - Friday : 10.00 a.m. - 6.00 p.m. Saturday: 10.00 a.m. - 7.30 p.m. Sunday: 10.00 a.m. - 1.00 p.m.

Variation 2: Vary Layout Plan

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

Notes: This variation arises from the reconstruction of the Premises.

Variation 3: Increase alcohol display capacity from 16.0 sq.m. to 17.2 sq.m.

Advice:

The Board has a discretion to grant or refuse this request. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

The Grounds which appear to apply are:

- (a) the Application may be inconsistent with the Licensing Objectives
- (b) Overprovision may result from the grant of the Variation

If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

(a) Licensing Objectives

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

Considerations:

The L.O. expressly states 'improving'. Opinions may differ as to whether the creation of a new facility to sell alcohol (or the expansion of an existing facility):

- (i) damages public health, or
- (ii) makes no difference,

but the Board might consider that it is unlikely to 'improve' public health.

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

The L.O. also refers to 'public' health. The Act directs the Board to look at the effect on wider society. Any supposed health benefits enjoyed by the Licensee or staff (e.g.

gaining profits or wages) cannot outweigh the potential damage caused by alcohol consumption.

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below).

(b) Overprovision

The general approach to Overprovision throughout North Ayrshire

1. Section 30(5) is:

"(5) The Grounds for Refusal are— ...

(d) 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 (taking account of the variation), in the locality."

Section 30(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I. 2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

- (a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

- (b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;

2. Nightclubs (or parts of Premises which operate as nightclubs);

3. Other On-sales Premises (Public Houses);

4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose;

5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;

6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment.

4. The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that 'Locality' and in that 'Function Type' is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the Additional Factors relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both Additional Factors occur.

The Present Case

7. Applying the Policy here:

- (a) The Subject Premises are in the "Garnock Valley" Locality (Auchentiber, Barmill, Beith, Dalry, Glengarnock, Kilbirnie & Lugton) (Locality 5);
- (b) Additional Factor (Locality): The Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);
- (c) The Subject Premises are in Function Type 1 (Off-sales);
- (d) Additional Factor (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).

8. Since both Additional Factors are present here, the presumption of refusal is especially strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

10. The Board has accepted that it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board has done. The Board is satisfied that throughout North Ayrshire there has for many years been a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

11. The LPS, Annex D includes:

"2.4. ... The Board encourages inclusive growth, as long as this promotes the Licensing Objectives. For example, while new premises may bring immediate jobs, in the longer term increased availability of alcohol is likely to have a detrimental impact on alcohol-related harms, and impact on the objective of 'Protecting and Improving Public Health'. The Board is unlikely to accept the suggestion that it is necessary to include an off-sales alcohol sale facility within a convenience store selling general groceries.

3.5. ... the Board:

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and*
- endorses the view that "alcohol is not an ordinary commodity", ...*

3.6. The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application."

12. The fact that the requested increase is relatively small compared with the existing Layout Plan (using the corrected figure) does not oblige the Board to ignore its Overprovision Policy and proceed as if the request is simply for a "Minor Variation".

The request here is not a "Minor Variation". Before the Licensing (Minor Variations) (Scotland) Regulations 2011 No. 151 were made, a draft included as a "Minor Variation":

"A single or cumulative increase in the capacity of the premises which does not result in capacity increasing by more than 10% over any rolling five year period"

However, that part of the draft was not carried forward to the Regulations enacted. Therefore the Board is obliged to consider the Variation request at a Hearing under Section 30(3), and thus consider the Overprovision Policy. Since the request is not for a "Minor Variation", grant is not automatic.

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

No variation of the Conditions is appropriate.

D. Notes to 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 deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(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 does not grant this Licence.

Application for Variation of Premises Licence - Section 29

Applicant	Sayiad Hamid
Premises	"Premier" (mini-supermarket), 131a Paterson Avenue, Irvine, KA12 9LP
Ref.	0075

Preliminary

The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

1. Summary of Variation Request(s)

No.	Variation
1	Increase capacity from 13.6 sq.m. to 14.05 sq.m. (Note 1)
2	Vary Layout Plan

Notes

1. The background to the Variation applications is that the Premises are currently being extended and modernised. The Layout Plan prepared by the previous Solicitors for the Premises Licence-Holder (PLH) gives the dimensions of the display and shows the total capacity as 3.11 sq.m., but the figures supplied actually total 13.6 sq.m., so that figure is used in this Report instead.

2. When the PLH's current Solicitors lodged the Variation Application in January 2020 they stated that the "Premises Manager" was Sayaid Hamid (the PLH). Board staff pointed out that this was incorrect, as the Premises Licence continued to name Robert Chalmers as "Premises Manager", even after the Licence itself was transferred with effect from 4 October 2018 from Mr. Chalmers to the current PLH. The Board explained that an 'immediate effect' variation was possible, but the PLH did not apply for this until Monday 3 February 2020, after the Premises were visited that day by the Licensing Standards Officer and the Police. The LSO contacted Mr. Chalmers to discover that he had not worked at the Premises for some months. The Police gave the PLH until 4.00 p.m. that day to lodge such a Variation Application, and an application was lodged.

In general, it is a condition of a Premises Licence that there be a "Premises Manager". Where the named "Premises Manager" ceases to work on the Premises, the PLH must do two things to avoid prosecution for operating in breach of a Licence:

(a) notify the Board within 7 days of the "Premises Manager" ceasing to work on the Premises: Section 54(3); and

CASE 5

(b) apply for a Variation to nominate a new Premises Manager within 6 weeks (counted from the date the "Premises Manager" ceased to work on the Premises) : Section 54(4)(b).

The PLH here did neither and only remedied the situation on being warned that the sale of alcohol would be stopped unless he did. It appears that there was a period of time while the Premises were operating without an effective "Premises Manager", in breach of the Licence.

The Board is entitled:

(a) to expect the PLH to explain how this situation came about and to assure the Board that this will not recur; and

(b) to make a Review Proposal under Section 37, with the potential that the Licence might be revoked or suspended.

3. The Board may comment on the fact that the PLH proceeded with the works without first seeking the Board's consent.

2. 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 has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

Variation 1: Increase capacity from 13.6 sq.m. to 14.05 sq.m.

Advice:

The Board has a discretion to grant or refuse this request. In all Applications, whether or not there are third-party objections, the Board must consider whether or not any Ground for Refusal exists.

The Grounds which appear to apply are:

(a) the Application may be inconsistent with the Licensing Objectives

(b) Overprovision may result from the grant of the Variation

If any Ground for Refusal applies, the Board must refuse. If no Ground for Refusal applies, the Board must grant.

(a) Licensing Objectives

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

Considerations:

The L.O. expressly states 'improving'. Opinions may differ as to whether the creation of a new facility to sell alcohol (or the expansion of an existing facility):

- (i) damages public health, or
- (ii) makes no difference,

but the Board might consider that it is unlikely to 'improve' public health.

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

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

The factors relevant to this L.O. overlap with the issue of 'Overprovision' (see below).

(b) Overprovision

The general approach to Overprovision throughout North Ayrshire

1. Section 30(5) is:

"(5) The Grounds for Refusal are— ...

(d) 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 (taking account of the variation), in the locality."

Section 30(5) was amended by the Air Weapons and Licensing (Scotland) Act 2015, Section 55(3) with effect from 30 September 2016 (Commencement Order 4, S.S.I. 2016-132).

2. There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2018-22, Annex D). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

3. The application of the Board's Overprovision Policy in a particular case is affected by two issues:

(a) the 'Locality' of the Premises (The Board has determined that there are 6 'Localities' in their area, coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

(b) the 'Function Type' of the Premises (there are 6):

1. Off-sales Premises;
2. Nightclubs (or parts of Premises which operate as nightclubs);
3. Other On-sales Premises (Public Houses);
4. Hotels, Restaurants and other On-sales Premises whose principal function is the provision of accommodation, meals or non-alcoholic refreshment and the supply of alcohol for consumption is only ancillary to that purpose;
5. Members' Clubs which are entitled to the Special Treatment allowed by Section 125;
6. Members' Clubs which have chosen to give up their entitlement to that Special Treatment.

4. The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that 'Locality' and in that 'Function Type' is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

5. The starting-point of any consideration of an Application for a new Licence (or for an increase in capacity in an existing Licence) is that there is a presumption of refusal. This presumption applies anywhere in North Ayrshire, regardless of the type of licensed Premises, but the presumption becomes stronger in certain parts of North Ayrshire and certain types of Premises.

6. While there is a presumption of refusal of all Applications, the presumption in a particular case is strengthened if one of the Additional Factors relating to 'Locality' or 'Function Type' is present. The presumption of refusal is further strengthened if both Additional Factors occur.

The Present Case

7. Applying the Policy here:

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

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

(c) The Subject Premises are in Function Type 1 (Off-sales);

(d) Additional Factor (Function Type): any Application for Premises in FT 1 (Off-sales) is especially unlikely to be granted (regardless of the Locality).

8. Since both Additional Factors are present here, the presumption of refusal is especially strong.

9. The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

10. The Board has accepted that it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board has done. The Board is satisfied that throughout North Ayrshire there has for many years been a significant negative causal link between alcohol provision and Public Health. This leads to a presumption of refusal against any grant of either a new Licence or the increase in capacity in an existing Licence.

11. The LPS, Annex D includes:

"2.4. ... The Board encourages inclusive growth, as long as this promotes the Licensing Objectives. For example, while new premises may bring immediate jobs, in the longer term increased availability of alcohol is likely to have a detrimental impact on alcohol-related harms, and impact on the objective of 'Protecting and Improving Public Health'. The Board is unlikely to accept the suggestion that it is necessary to include an off-sales alcohol sale facility within a convenience store selling general groceries.

3.5. ... the Board:

- accepts that the consumption of alcohol in any circumstances has the potential to injure health, and

- endorses the view that "alcohol is not an ordinary commodity", ...

3.6. The Board will expect Applicants who are seeking the grant of a new Premises Licence or a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application."

12. The fact that the requested increase is relatively small compared with the existing Layout Plan (using the corrected figure) does not oblige the Board to ignore its Overprovision Policy and proceed as if the request is simply for a "Minor Variation".

The request here is not a "Minor Variation". Before the Licensing (Minor Variations) (Scotland) Regulations 2011 No. 151 were made, a draft included as a "Minor Variation":

"A single or cumulative increase in the capacity of the premises which does not result in capacity increasing by more than 10% over any rolling five year period"

However, that part of the draft was not carried forward to the Regulations enacted. Therefore the Board is obliged to consider the Variation request at a Hearing under Section 30(3), and thus consider the Overprovision Policy. Since the request is not for a "Minor Variation", grant is not automatic.

Variation 2: Vary Layout Plan

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

Notes: This variation arises from the reconstruction of the Premises.

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

No variation of the Conditions is appropriate.

4. Notes to Applicant

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff (by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

CASE 5

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

The Licensing Board does not grant this Licence.

Application for Variation of Premises Licence - Section 29

Applicant	John Mather McBride
Premises	"Tavern Bar", 36 Glasgow St., Millport, KA28 0DL
Ref.	0109

Preliminary

The Applicant must lodge the Certificate confirming public display of a Site Notice. Until the Board has a Certificate of Display, it cannot determine the Application.

A. Summary of Variation Request(s)

No.	Variation
1	Change PLH's address details
2	Minor Variations of layout, relocation of stage, installation of Velux windows
3	Extend Closing Hours of existing Outdoor Drinking Area from 8.00 p.m. to 10.00 p.m
4	Allow under-18s in Lounge and Outdoor Drinking Area

B. 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 has a discretion whether to grant or refuse the request. Possible issues with Licensing Objectives or Board Policy are highlighted.

Variation 1:***Change PLH's address details***

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

Variation 2:***Minor Variations of layout, relocation of stage, installation of Velux windows***

Advice: the Board is legally obliged to grant this request (as this is a 'Minor Variation').

Notes: The Board does not deal with the installation of Velux windows - this is a matter for the Planning Authority.

Variation 3:

Extend Closing Hours of existing Outdoor Drinking Area from 8.00 p.m. to 10.00 p.m

Advice: Discretionary refusal

Notes:

The Board has already varied its Standard Conditions in order to balance the competing rights set out below. The Board is entitled to approach the variation application to extend the operating hours with the presumption that it should be refused. The PLH should seek to persuade the Board that circumstances have changed sufficiently since 2012 so that a different balance is justified.

The PLH proposes to extend the closing time of the existing Outdoor Drinking Area from 8.00 p.m. to 10.00 p.m..

This time was set by the Board on 16 April 2012, when the Board authorised the creation of the Outdoor Drinking Area. The Board varied Standard Condition C.5.2 (which relates to Outdoor Drinking Areas) so as to read:

"No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 a.m. or later than 8.00 p.m."

This followed representations from the occupiers of neighbouring dwelling-houses about the possibility of nuisance.

The Licence-Holder gave an undertaking to the Board that a 6-foot barrier (a wall or fence) should be erected between the Outdoor Drinking Area and the neighbouring gardens within 2 weeks.

At the time the Licence was held by Robert Clark. It was transferred to the present PLH with effect from 1 April 2019.

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

The Premises are licensed for drinking inside the building:

11.00 a.m. to midnight (Monday - Wednesday)
11.00 a.m. to 1.00 a.m. (Thursday - Saturday)
12.30 a.m. to midnight (Sunday)

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

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

Neither right is absolute. There is no precedent for a Board having liability for failing to prevent a nuisance. The Board is obliged to have regard to the Licensing Objectives, but the duty is solely to 'have regard' to them. The Licensing Objectives are not conclusive, and do not oblige the Board to close Premises or to impose such a substantial variation that Premises become uneconomic.

Variation 4:

Allow under-18s in Lounge and Outdoor Drinking Area

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

At present the Premises do not allow persons under 18. The proposal is to allow access to the Lounge and the Outdoor Drinking Area to everyone under 18 if accompanied by an adult, until 8.00 p.m..

Applicant should confirm to the Board that the area intended is the one shown as "Function Suite" on the Layout Plan - the part of the Premises at the rear, as opposed to the "Public Bar" at the front.

Because of the way that the legislation distinguishes between children aged under 5, and older children and young people, the Board's consideration is in two parts.

(a) children aged under 5

If the Premises are to admit children under 5, the Mandatory Condition requiring Baby-Changing Facilities accessible by both genders applies (Sch. 3, Para. 12, S.C. C.3). Since the condition is mandatory by statute, the Board has no power to vary it or dispense with compliance.

The Applicant should:

- (a) state where such facilities will be (e.g. in a 'disabled toilet', or in both the ladies' and gents' toilets), or
- (b) amend the Operating Plan to exclude children under 5; or
- (c) give Board an undertaking that the Premises will not allow under 5s until necessary facilities are available to the public.

Without such facilities, or without children under 5 being excluded, the Board may consider that reasons to refuse exist:

(a) inconsistency with Licensing Objective (d) ("protecting and improving public health");

(b) inconsistency with Licensing Objective (e) ("protecting children and young persons from harm");

(c) unsuitability for use for the sale of alcohol, given that their use will involve a breach of a mandatory licence condition.

(b) older children and young people

The Board should consider whether or not this Application is inconsistent with Licensing Objective (e): 'protecting Children and Young Persons from harm' but in the Clerk's view there are no reasons to refuse.

The Applicant should confirm that these words can be added to the Operating Plan (OP 6(e)):

"No person under 18 will be permitted to remain within 1 metre of any bar."

This is due to the Licensing Objectives "preventing crime and disorder" and "protecting children and young persons from harm".

(Note to Applicant: the Applicant's proposed Operating Plan says "11 am til 8 pm" but the Premises are only licensed to open at 11 am 6 days a week)

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

If the Board allows opening of the ODA after 8.00 p.m., Condition C.5.2 should be varied as agreed.

D. Notes to Applicant

The Board's decision is not:

(a) permission or certification under other legislation (the Board's decision is not, for example, a Building Warrant, Completion Certificate, Roads Consent, Planning Permission, variation of Planning conditions, or Consent under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations). The Licensing Board only deals with licensing legislation, and it is the Applicant's responsibility to check with other regulators that the Premises have all necessary permissions or certifications.

(b) a Licence granted by the copyright holder of television, video or music. If video or live or recorded music is ever played on the Premises for customers or staff

CASE 6

(by radio, TV, CD, DVD, MP3 or computer speakers; including a TV screen in a public area) this is a 'public performance' and may need a Licence from:

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

The Licensing Board does not grant this Licence.