

Cunninghame House  
Irvine  
KA12 8EE

7 December 2023

### **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 11 December 2023 at 10.00 A.M.** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

- 1. Declarations of Interest**
- 2. Minutes**  
Submit Minutes of the Board Meeting held on 18 September 2023.
- 3. Licences and Applications under the Licensing (Scotland) Act 2005**  
Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005. (copy enclosed)
- 4. Annual Functions Report under Section 9A of the Licensing (Scotland) Act 2005 for the financial year 2022/2023**
- 5. Any Other Business**

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## Licensing Board

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

Chair:

Apologies:

Meeting Ended:

# AGENDA ITEM 2

**DRAFT**  
**North Ayrshire Licensing Board**  
**18 September 2023**

**Irvine, 18 September 2023** - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

**Present**

Councillors Eleanor Collier (Convenor), Nairn McDonald, John Bell, Christina Larsen, Jean McClung, Ronnie Stalker and Angela Stephen.

**In Attendance**

R Lynch, Clerk, W O'Brien, Solicitor Licensing, G Cullen, Licensing Standards Officer and C Pollock, Licensing Administration Officer,

**Convenor**

Councillor Eleanor Collier.

**Apologies for Absence**

Councillors Cameron Inglis, Matthew McLean and Donald L Reid.

**1. Declarations of Interest**

There were no Declarations of Interest.

**2. Minutes**

The Board were asked to confirm the Minutes of the Board meeting held on 26 June 2023. The Board unanimously agreed to confirm and adopt the Minutes.

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

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

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

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

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

**A.1 0530 Annick Service Station, Annick Drive, Dreghorn, Irvine**

The Board considered an Application for the grant of a Provisional Premises Licence made by Motor Fuel Limited. The Applicant was represented by Andrew Hunter, Solicitor and he was accompanied by Stuart Allan, Area Manager, Motor Fuel Limited.

The Board considered:

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- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Applicants Agent, Mr Hunter,

and retired to consider the case.

Councillor McDonald moved as a Motion that the Board should Grant the Provisional Premises Licence subject to Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions) Parts A and B.

Councillor Stalker seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.2 0531 USave, 15 Dickson Way, Irvine**

The Board considered an Application for the grant of a Provisional Premises Licence made by Mrs Navneet Kaur Sandhu. Mrs Sandhu was present and was represented by Jenny Merry, Solicitor.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Applicants Agent, Ms Merry, and
- submissions from objectors,

and decided that there was no need to retire to consider the case.

Councillor Collier moved as a Motion that the Board should continue consideration of the case to the next scheduled meeting of the Licensing Board, and that the Applicant be directed to carry out the Site Notice display requirement again and ensure that the prescribed procedure is conducted fully in compliance with the Regulations.

Councillor McDonald seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.3 0532 Shop 2A, The Grange Business Centre, Stevenston**

The Board considered an Application for the grant of a Provisional Premises Licence made by Microtech Business Intelligence Ltd. The Applicant was represented by Chris McMail and Caitlin McMail, Directors of Microtech Business Intelligence Ltd.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from Mr McMail, and

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- submissions from an objector,

and decided that there was no need to retire to consider the case.

Councillor McClung moved as a Motion that the Board should Grant the Provisional Premises Licence subject to Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions) Parts A and B.

Councillor Collier seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.4 0533 Edgewater, Shore Road, Brodick, Isle of Arran**

The Board considered an Application for the grant of a Provisional Premises Licence made by The Partnership of Sahal Sahiri and Kim Sahiri. Mr and Mrs Sahiri were present and were represented by Robin Morton, Solicitor.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from the Applicants Agent, Mr Morton,

and decided that there was no need to retire to consider the case.

Councillor McDonald moved as a Motion that the Board should Grant the Provisional Premises Licence subject to Standard Conditions (Edition 5, made on 1 September 2009, as read with later amendments of the statutory mandatory conditions) Parts A, B and C.

Councillor Bell seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.5 Premises Licence 0014 Greenbank Inn, 97 New Street, Dalry**

The Board considered an Application for the grant of Variations of a Premises Licence made by the Licence Holder, Glencloy Drinks Co Ltd. The Licence Holder was not represented.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;

and decided that there was no need to retire to consider the case.

Councillor Stalker moved as a Motion that the Board should grant the Variation Application.

Councillor Larsen seconded this Motion.

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The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.6 Premises Licence 0334 Spar, 51 Skelmorlie Castle Road, Skelmorlie**

The Board considered an Application for the grant of Variations of a Premises Licence made by the Licence Holder, Francis O'Neill. Mr O'Neill was not present or represented.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- written submissions from Mr O'Neill,

and decided that there was no need to retire to consider the case.

Councillor McDonald moved as a Motion that the Board should grant the Variation Application.

Councillor McClung seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.7 Premises Licence 0310 Skelmorlie Golf Club, Beithglass Road, Skelmorlie**

The Board considered an Application for the grant of a Variation of a Premises Licence made by the Licence Holder, Skelmorlie Golf Club. The Licence Holder was represented by Kevin Flack, Chairman.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- submissions from Mr Flack,

and decided that there was no need to retire to consider the case.

Councillor McDonald moved as a Motion that the Board should Grant the Variation Application.

Councillor Larsen seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.8 Premises Licence 0129 Millport Pier Hotel, 1 Quay Head, Millport**

The Board considered an Application for the grant of a Variation of a Premises Licence made by the Licence Holder, Firthport Limited. The Licence Holder was represented by Niall Hazard, Solicitor, and he was accompanied by Charmaine Murray, Premises Manager.

The Board considered:

## AGENDA ITEM 2

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;

- submissions from the Licence Holder's Agent, Mr Hazard

and decided that there was no need to retire to consider the case.

Councillor Bell moved as a Motion that the Board should Grant the Variation Application.

Councillor McClung seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.9 Personal Licence 2784 Sheila Bannatyne**

The Board held a Review Hearing relating to a Personal Licence. The Licence Holder, Shiela Bannatyne, was present.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;

- submissions from Police Scotland,

- submissions from Ms Bannatyne

and retired to consider the case.

Councillor Larsen moved as a Motion that the Board should Endorse the Personal Licence.

Councillor McDonald seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.10 Personal Licence 2602 Margaret Pollock**

The Board held a Review Hearing relating to a Personal Licence. The Licence Holder, Margaret Pollock, was not present or represented.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;

- submissions from Police Scotland,

- written submissions from Ms Pollock

and decided that there was no need to retire to consider the case.

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Councillor Collier moved as a Motion that the Board should continue consideration of the case to the next scheduled meeting of the Licensing Board and re-cite the Licence Holder to attend.

Councillor McDonald seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **A.11 Occasional Licence Applications 526/23 – 528/23 Thomas McGarrigle, The Arran Gift Box**

The Board considered applications for Occasional Licences which were outside North Ayrshire Licensing Board policy. The applicant, Thomas McGarrigle, was represented by Robin Morton, Agent.

The Board considered:

- the Report prepared by the Solicitor (Licensing) which is published on the Council website;
- the Report prepared by the LSO
- submissions from the Applicant's Agent, Mr Morton

and decided that there was no need to retire to consider the case.

Councillor Collier moved as a Motion that the Board should make an exception to their policy in this case, grant Occasional Licence Application 526/23 and authorise the Clerk to determine the remaining Applications.

Councillor McDonald seconded this Motion.

The Convenor inquired of the Board if there was any Amendment or expression of dissent.

As there was neither, the Motion was held as carried unanimously.

### **4. Licensing Policy Statement 2023-2027**

Apologies were received from Sally Amor of NHS Ayrshire & Arran who was due to deliver a Public Health Presentation to the Licensing Board as part of the Board's review of their Licensing Policy Statement.

The Clerk suggested that this matter be continued to a special meeting of the Licensing Board to be arranged for Monday 23 October 2023. This will give the NHS a further opportunity to deliver their Presentation and for the Board to consider their draft Policy Statement thereafter.

The Board agreed to continue the matter to a special meeting of the Licensing Board to be arranged for Monday 23 October 2023.

### **5. Any Other Business**

There was no other business to consider.



## **AGENDA ITEM 2**

The meeting ended at 12.16 pm

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## Agenda Item 3

December 2023

### North Ayrshire Licensing Board

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**Title:** Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005.

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**Purpose:** To advise the Board of the Law and the factual background.

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**Recommendation:** That the Board determines whether or not to grant the Applications listed.

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#### 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

<b>Financial:</b>	<p>There are possible financial implications in relation to any Licensing decision.</p>
<b>Human Resources:</b>	<p>None.</p>
<b>Legal:</b>	<p>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.</p>
<b>Equality/Socio-economic Duty:</b>	<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"> <li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];</li> <li>(b) advance equality of opportunity between persons who share a “Relevant Protected Characteristic” and persons who do not share it;</li> <li>(c) foster good relations between persons who share a “Relevant Protected Characteristic” and persons who do not share it.”</li> </ul> <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>

<b>Climate Change and Carbon:</b>	None
<b>Key Priorities:</b>	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".
<b>Community Wealth Building:</b>	There are no Community Wealth Building issues.

## 5. Consultation

5.1 Consultation has taken place in line with statutory requirements. The requirements vary depending on the particular issue raised, and where appropriate these are detailed in the report for each case.

Raymond Lynch  
Clerk

For further information please contact **William O'Brien, Solicitor (Licensing)**, on [licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk).

## Background Papers

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**North Ayrshire Licensing Board  
Case Summaries  
Meeting: Monday 11 December 2023 at 10.00 a.m.**

**Notice to Applicants and Licence-Holders**

**Cases marked ' \*\*\* ' in the list below**

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

**Cases which are NOT marked ' \*\*\* '**

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

**In either case:**

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

Abbreviations:

"PL" : Premises Licence

"PLH": Premises Licence Holder

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

**List of Cases**

Applications for Licences and other matters arising under the Licensing (Scotland) Act 2005; APPENDIX A ("Premises Licence Applications or any other Applications requiring a Hearing")

## APPENDIX A

### Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	0531	Navneet Kaur Sandhu	USave 15 Dickson Way Irvine KA12 9JD	Application for Grant of Provisional Premises Licence – Section 45 Continued from 18/9/23
2.	0534	Gordon Craig	82 Gallowgate Street Largs KA30 8LZ	Application for Grant of Provisional Premises Licence – Section 45
3.	0119	Punch Partnerships (PTL) Limited	J G Sharps 34/36 Nelson Street Largs KA30 8LW	Application for Variation of Premises Licence – Section 29
4.	0241	Revels Main Street Limited	Revels 53-59 Main Street Kilwinning KA13 6AN	Review Application by LSO – Section 36
5.	0326	Italgelat Limited	Albert's 84 Gallowgate Street Largs KA30 8LZ	Review Application by LSO – Section 36
6.	NA2602	Margaret Pollock		Personal Licence Review Hearing – Section 83 Continued from 18/9/23

## Cases 1-2: Applications for "Premises Licences" / "Provisional Premises Licences"

### 1. "Usave", 15 Dickson Way, Irvine [531]

Application for Provisional Premises Licence

#### Applicant

Mrs. Navneet Kaur Sandhu

#### \*\* Preliminary

This case first called at the previous Board meeting, on 18 September 2023. The Board continued consideration of the Licence Application for 2 reasons. Both have now been addressed. The reasons were:

1. For the Applicant to comply with the rules about "Site Notices"
2. For the Applicant to obtain a Provisional Planning Certificate

#### 1. Site Notice not displayed

The Board directed the Applicant to repeat the display, under this rule:

*"Where a Board considers that a notice required by paragraph (2) has for any reason not been in place for the whole of the period specified in paragraph (3) or has been damaged during that period, it may require the applicant to display the notice for a further 21-day period."* (The Licensing (Procedure) (Scotland) Regulations 2007 No. 453, Reg. 7(4)).

The Applicant has since lodged a Certificate signed by the Applicant dated 18 October 2023 confirming display in the period 23 September to 14 October 2023.

#### 2. No "Provisional Planning Certificate"

The Applicant has now given the Board a "Provisional Planning Certificate" from North Ayrshire Council dated 28th July 2023.

#### Application

Proposal for off-sales facility in existing convenience store.

Licensed Hours conform to Board Policy: Off-sales: 10.00 - 22.00 (all days)

Capacity: off-sales = 15.6 sq.m. (the 2023 request was originally 21.2 sq.m. and was reduced to 15.6 sq.m. by a new Layout Plan sent on 5 December 2023 (this new LP will be in Members' Background Papers).

# CASE 1

The PPL does not allow the Premises to sell alcohol. The Applicant will later apply to the Board for Confirmation of the PPL, producing necessary statutory certificates. The Premises will be inspected by a Board officer to confirm that they have been completed in line with the Board's approval. Confirmation decisions are usually done by the Clerk using Delegated Powers and the case is unlikely to return to a Board Agenda. Once Confirmation is granted the Premises can start trading in alcohol.

There are objections and representations. There will be in Members' Background Papers:

[a] Irvine Community Council

[b] TLT Solicitor, for Dynamic Retail Group Limited (trading as "Scotfresh"), whose Premises at 110-114 Dickson Way are immediate neighbours of the Subject Premises and already have a Premises Licence.

[c] several representations in favour of the Application.

## Advice:

***The Board should start from the position that the Licence Application should be refused, as being inconsistent with the Board's Overprovision Policy, but the Board should listen to representations from the Applicant and the other parties as to whether or not the present case can be treated as an exception to the Policy.***

***It is the Clerk's opinion that, apart from overprovision, there are no reasons to refuse the Application, so it should be granted with the appropriate national and local licence conditions.***

## Notes

### [1] Community Council objection

This includes:

*"4 There is also already a high amount of alcohol related anti social behaviour around the area another location for buying alcohol is not required.*

*5 The youths hang around this shop for cigarette "jump in's" and this happens already at the current off licence premises."*

All applications are copied to the Police. They have made no objection. The Licence is subject to the 'challenge 25' condition intended to reduce under-age sale of alcohol. The premises will be subject to the same laws against 'agency purchases' (the situation where an underage person asks an adult to buy drink) as any other shop. If the Board later is satisfied that the operation of the Licence in these Premises is inconsistent with any of the Licensing Objectives it might suspend or even revoke the Licence.

The issue of the overprovision of alcohol is already addressed by Board policy. The Police were invited to comment on the recent draft.



## [2] Previous refusal

In Application Form (Q4) Mrs. Sandhu says that on 24 May 2021 the Board refused a similar application for the Premises. On that day after a roll-call vote the Board unanimously refused her PPL application, having the opinions:

- (a) that it was inconsistent with the Licensing Objective 'protecting and improving public health', and
- (b) that the grant of the Application would cause Overprovision of Licensed Premises of the same or similar description as the Subject Premises in the Locality. The proposal then was for a capacity of 17.6 sq.m. whereas the 2023 request was originally 21.2 sq.m. and was reduced to 15.6 sq.m. by a new Layout Plan sent on 5 December 2023 (this new LP will be in Members' Background Papers).

The Board had regard to the Petitions both for and against the Application but attached no weight to them.

The Board consisted of Councillors Ronnie McNicol (Convenor), Todd Ferguson (Vice-Convenor), Robert Barr, John Easdale, Jean McClung, Davina McTiernan and Donald L Reid.

## [3] Overprovision Policy

On 23 October 2023 following public consultation and after a presentation from the Health Board and the Board adopted a draft Licensing Policy Statement 2023 – 2027. The LPS as adopted differed slightly from the previous LPS but the part of it which dealt with Overprovision was substantially the same as it had been in the previous LPS.

There is a presumption of refusal applying to any:

- proposal for a new Premises Licence, or
- a proposal to increase capacity in an existing Licence.

That presumption is affected by two factors:

- where the Premises are (the 'Locality factor')
- what sort of Premises they are (the 'Function Type factor')

If one factor is present, the presumption of refusal is enhanced. If both factors are present, the presumption of refusal is further enhanced.

In the present case the presumption is doubly enhanced:

- Locality Factor – Irvine and area
- Function Type Factor – off-sales

## [4] Applicant's views on amending Operating Plan?

Q5 of the Operating Plan (the activities other than the sale of alcohol) has not been completed. On the basis of the description of the Premises elsewhere in the application papers

# CASE 1

(convenience store with off-sales Licence 10.00 - 22.00, 7 days) the Clerk has assumed that the Applicant intends the following, but the Applicant should tell the Board if this is correct:

[a] All 16 questions about the activities in Columns 2 and 3 are "no" except that "Recorded Music" is "yes". If the premises deal with the National Lottery, the answer for "Gaming" is also "yes";

[b] In Column 4, all questions are to be "Not applicable" except that "Recorded Music" is "yes" (also "Gaming" is "yes" if the National Lottery is there);

[c] The box on the Form for further details will be:

*"Recorded music may be played to customers. The shop is a convenience store and will be open for non-alcohol sales outside the Licensed Hours. All necessary consents from the 'Performing Rights Society' and other copyright managers will be obtained."*

[d] If appropriate, add "National Lottery services will also be provided."

[e] Q5(f) ("any other activities") will be blank.

[f] Q5(g) ("Late night premises opening after 1.00 a.m.") will be blank.

### **2. Restaurant, 82 Gallowgate Street, Largs [534]**

The Premises are a restaurant on the ground floor of a building on Largs seafront. The premises formerly operated as the 'Helter Skelter' youth cafe and have been unoccupied for several years. The proposal is to have a restaurant with a seating capacity of 50 people, with a bar-serverly with both an on-sale and off-sale facility.

The proposed hours are all consistent with NALB Policy:

It is also proposed to have an Outdoor Drinking Area consisting of 2 no. 2-seat tables.

#### **Advice:**

***It is the Clerk's opinion that there are no reasons to refuse the Application, so it should be granted with the appropriate national and local licence conditions, although the Board should consider the additional request for pavement drinking. If the Board allows that:***

***[a] the Board should consider what barriers should be in place to separate the drinking area from the public pavement;***

***[b] the Board should consider whether or not opening before 11.00 a.m. is appropriate.***

***[c] Applicant should undertake not to use the proposed pavement area without first obtaining a Roads Authority Consent as well.***

#### **Notes**

The Board can deal with the request for Outdoor Drinking but:

1. the area cannot be used unless and until the 'Roads Authority' has granted Consent under the Roads (Scotland) Act 1984, Section 59. See Licence Condition C.5.3 below. The pavement adjoins the A78 Trunk Road, and the 'Roads Authority' is not North Ayrshire Council but Transport Scotland/Amey.

2. the area cannot be used after 10.00 p.m. (although the inside of the Premises is to be licensed for longer.

3. The Layout Plan does not show any barrier demarcating the area where alcohol will be consumed from the public area. Due to the byelaws against drinking in public, customers who were drinking outside the building would be liable to prosecution by the Police unless it was clear that they were on Licensed Premises: the Applicant should tell the Board what demarcation will be used, e.g. planters or tensa-barriers, giving the Board photographs or drawings of what is required, including the barriers' height, and amend the Layout Plan accordingly.

4. In relation to the request for an Outdoor Drinking Area, the Board may consider that its Standard Conditions are sufficient:

## CASE 2

*"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."*

5. The Board's Standard Conditions C.5.2 limit the use of an Outdoor Drinking Area to the period 11.00 a.m. to 10.00 p.m.. On a case-by-case basis the Board had permitted the earlier use of an area, for breakfasts. If the Applicant wants the Board to allow an exception, this should be requested. The Board has allowed early use of such areas in other cases, adding to condition C.5.2 words such as

*"except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."*

6. Even if the Board permits the Outdoor Drinking Area initially, and/or alter the Licence Conditions, it may review that decision later if satisfied that the operation is not consistent with any of the Licensing Objectives, for example after complaints from the Police.

### **Licence Condition C.5.3:**

*"Where an Outdoor Drinking Area is situated on a public footway to which Section 59 of the Roads (Scotland) Act 1984 applies:*

- (a) the Licensee shall hold a Consent granted by the Roads Authority under that Section;*
- (b) the Licensee shall comply with the conditions attached to that Consent;*
- (c) the Outdoor Drinking Area shall be separated from the public footpath by a physical barrier so that the Area may be entered only by customers and staff of the Premises;*
- (d) alcohol shall be consumed only by persons seated in the Outdoor Drinking Area - no 'vertical drinking' shall take place on a public footway."*

## **Case 3-6: Application for Variations and other matters**

### **3. "J. G. Sharps", Largs [119]**

Application for Variation of Premises Licence

**\*\*\* See detailed report in Agenda**

**Application for Variation of Premises Licence - Section 29**

Applicant	Punch Partnerships PTL Ltd
Premises	"J G Sharps", 34/36 Nelson Street, Largs KA30 8LW
Ref.	0119

**A. Preliminary**

*There are several written objections and a report from the Licensing Standards Officer. These will be in Members' Background Papers.*

**B. Summary of Variation Request(s)**

1	Add covered area in rear 'beer garden', with barbecue and bar
2	Amend description of premises
3	Extend times of under-18 access to terminal hour

In the Clerk's opinion there are no issues with V2 or V3 and there is no reason to refuse them. The issues raised by the Objectors relate to V1.

**C. Issues**

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

**V1: Add covered area in rear 'beer garden', with barbecue and bar**

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.

The proposal is:

*"We seek to amend the layout plan for the premises to add into the red lined licensable area an external covered area at the end of the beer garden, which will have a BBQ and grill facility to serve food to customers, as well as a wet dispense for the sale of alcoholic beverages."*

The proposal is to extend the use of the Outdoor Drinking Area already licensed at the rear of the public house.

The Premises are in a residential area. There are dwellings nearby. In the past there were complaints of noise nuisance from residents. This has led to intervention by the Licensing Standards Officer and the Council's Environmental Health Officer

### **Background**

Before even lodging a variation application the Premises had started construction work.

The Designated Premises Manager (Mr. Nicholas Veitch) took over in March 2022. On 12 March 2023 he emailed the Licensing Standards Officer advising that he wished to build a BBQ area and install a portable beer keg machine in the existing 'Beer Garden', and asked if that was OK. The LSO advised him that given the history of neighbour nuisance complaints, the request should be a 'Major Variation' and would have to go before the Licensing Board (rather than be delegated as a 'Minor Variation').

The LSO visited the premises on 9 May 2023 with a Police Constable and found that building work was well underway although there was still no application lodged with the Licensing Board (it was not lodged till 19 July 2023).

The LSO advised Mr. Veitch:

- that work shouldn't have started as no application had been submitted and approved by the Board, and
- the Board could refuse the application and he would require to revert back as per his current Premises Licence.

The LSO suggested that he cease the build and that he should check with the Council's Planning and Environmental Health Departments.

The PLH seem to have assumed that the Variations will be granted. No PLH can ever make that assumption, but particularly not here: the Premises have a history of noise complaints already, so the PLH could not regard the decision as a foregone conclusion.

On Wednesday 9 August 2023 the Solicitor (Licensing) emailed the PLH's Solicitors to pass on the Convenor's instruction that they should stop the construction work in the 'Beer Garden'. On Friday 18 August they confirmed that they had informed the Premises that they needed to stop work immediately.

### Considerations

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 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 were 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); but

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

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

The Board may consider that its Standard Conditions are sufficient:

*"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 opening hour of 11.00 a.m. and the terminal hour of 10.00 p.m. apply even if the Licensed Hours inside the building are greater.

### Future action

If the Board allow the proposed extension and is later satisfied that this is inconsistent with any Licensing Objective or that any Licence condition has been breached, it can hold a Review Hearing which might conclude with a decision to Vary the Licence so as to limit or remove the permission.

That action would normally follow a Review Application commenced by a third-party, such as a neighbour, rather than the Review being commenced by the Board.



## **V2: Amend description of premises**

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:

*"Amend the description of the premises as follows:*

*'Family friendly community premises with food and drinks offering with beer garden to the rear located in town centre near sea front with one story of flats above premises.'* "

## **V3: Extend times of under-18 access to terminal hour**

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:

*"Amend Q6(d) (TIMES of access to on-sales Premises by 'Children' and 'Young Persons') of the operating plan to read as follows:*

*'From opening until midnight Sunday to Wednesday or opening until 01.00am Thursday to Saturday.'* "

These are the normal opening hours of the Premises.

The Board should consider whether or not this Application is inconsistent with Licensing Objectives, especially:

- (a) preventing crime and disorder,
- (e) 'protecting Children and Young Persons from harm'.

The Board usually considers that if the Operating Plan makes adult accompaniment a condition of under-18 access, this is consistent with all Licensing Objectives.

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

No variation of the Conditions is appropriate except that if the Licence has not yet had applied to it Edition 5 of the Board's Standard Conditions (revised on 1 September 2009, when the Licensing (Scotland) Act 2005 commenced fully) then 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).

### **E. Notes for Applicant**

The Board's decision is not:

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

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

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

The Licensing Board does not grant this Licence.

## CASES 4 & 5

### **4. “Revels Limited”, Main Street, 53-59 Main Street, Kilwinning KA13 6AN [0241]**

Review Application by LSO – Section 36 (Unpaid Annual Fees)

**\*\*\* See detailed report in Agenda**

### **5. “Albert’s” Italgelat Limited, 84 Gallowgate Street, Largs, KA30 8LZ [0326]**

Review Application by LSO – Section 36 (Unpaid Annual Fees)

**\*\*\* See detailed report in Agenda**

## North Ayrshire Licensing Board

### **Review Applications by Licensing Standards Officer**

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

## **1. Introduction**

The Licensing Standards Officer ("LSO") makes Review Applications in relation to each of the Premises Licences listed in the Appendix. Each Application follows a Breach of Condition Notice under Section 14 served by the LSO on the Premises Licence Holder concerned ("PLH"). The details in each case:

- the amount due
- the date of notification by the Board to the PLH and
- the date of the Breach of Condition Notice

are contained in documentation which the PLH already has.

## **2. The Grounds for Review**

The LSO submits that in each case the "Ground for Review" stated in Section 36(3)(a) exists - that a condition to which the Premises Licence is subject has been breached. The condition is a mandatory condition – it is applied by statute, not by Board decision, and the Board can neither remove nor vary it. The condition applies to all Premises Licences and requires that Annual Fees should be paid: 2005 Act, Schedule 3, Paragraph 10 ("Payment of annual or recurring fees").

## **3. The Annual Fee**

Annual Fees are charged under Regulations 7 to 9 of The Licensing (Fees) (Scotland) Regulations 2007 No. 553. The amount of the Annual Fee is fixed by those Regulations. Annual Fees are due on 1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday. The Board must notify the Premises Licence Holder of the Annual Fee due at least 30 days before the due date. The attached spreadsheet includes the date of notification. The obligation to pay the fee does not depend on the Board having fulfilled its duty to notify.

## **4. The present situation**

1 October 2023 was a Sunday and therefore the Annual Fees were due on Monday 2 October 2023. The LSO issued Breach of Condition Notices to Premises which failed to pay within that time. These called upon the Premises to pay within 7 days. Premises which did not are listed in the Appendix.

## **5. How the Board should proceed**

The Board must hear the PLH and decide the following questions. Possible decisions are set out at paragraph 6.

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

If 'no', the case ends.

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

### **Question (b): "if 'yes', what Licensing Objectives are relevant?"**

The Board might consider that:

- (i) the PLH's action in breaching 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 (c): "what are the Board's options?"**

The steps available in Reviews generally are:

- (a) revocation
- (b) suspension
- (c) variation or
- (d) the issue of a written warning.

In the case of Annual Fee Reviews the Board cannot vary the payment obligation (for example, by reducing the amount) as it arises from a statutory mandatory condition. The other 3 options are available:

#### **(a) 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

## CASES 4 & 5

was not an issue, whereas the Board's Overprovision Policy nowadays means that it is likely that new Licences would be refused.

### **(b) 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 (under Section 40).

### **(d) 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.

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

They might defer a case until a later Board meeting, for example where the PLH attends, admits what is due and undertakes to pay it soon after the Board.

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

A Written Warning has immediate effect.

A Revocation or Suspension should not have immediate effect unless the Board consider this is necessary in the public interest. This is not likely to be an issue with unpaid fees. If the Board revokes or suspends, the order should be delayed for at least 7 days to allow the PLH to consider whether to appeal to the Sheriff.

if the Licence is Suspended, further questions arise:

### **Question (e): "Should the Board delegate to the Clerk the power to revoke the Suspension, if all 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 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.

## CASES 4 & 5

A decision to issue a Written Warning or to Revoke a Licence cannot later be revoked.

If revocation of the Suspension was not delegated, the Application for Revocation would have to call at a future Board Meeting and the Suspension would remain in force meantime – so the Premises could not trade - whereas if the decision was delegated the Clerk could lift the Suspension as soon as the arrears were paid and the Premises could immediately re-start operating without needing to wait until the next Board date.

### 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 present Annual Fee is unpaid and the next Annual Fee is also unpaid, the Board might revoke the Licence.

While the Licence is suspended, Annual Fees continue to be charged. These Review Applications relate only to the Annual Fees which were due in October 2023. Each Premises will have to pay a further Annual Fee in October 2024 unless the Licence is revoked or surrendered before then. If the Licence is suspended as a result of the present Review Application, the Annual Fee for next year will still be due:

*"Where a Premises Licence is in effect or is suspended, the holder of that Licence must make payment of an Annual Fee in respect of the performance in relation to that Licence of functions by the Relevant Board, the council within the area of which the Premises are situated and that council's Licensing Standards Officers (other than functions in respect of which a separate fee is specified under these Regulations)." (The Licensing (Fees) (Scotland) Regulations 2007 No. 553, Regulation 7(1)).*

## **6. Possible decisions**

### (a) revocation

*"The Board, being satisfied that a Ground for Review is established, grants the Review Application, and, being satisfied that it is appropriate to do so, revokes the Premises Licence with effect 7 days after today."*

### (b) suspension

*"The Board, being satisfied that a Ground for Review is established, grants the Review Application, and, being satisfied that it is appropriate to do so:*

- 1. directs that the Premises Licence should be suspended for 24 months with effect 7 days after today;*
- 2. delegates to the Clerk the power to revoke that Suspension if all arrears of Annual Fee are paid in full (whenever those arrears arose, before or after the Board's decision)."*

### (d) written warning

## CASES 4 & 5

*"The Board, being satisfied that a Ground for Review is established, grants the Review Application, and, being satisfied that it is appropriate to do so, issues a written warning to the Premises Licence Holder that the circumstances of the present Annual Fee might be taken into account if there is a future default in that or any other obligation of the Licence."*

### **7. Other procedure**

The conditions in Section 36(4) for the LSO making a Review Application are satisfied, in that the LSO has served a Breach of Condition Notice, and the Licence Holder has failed to take the action specified in the notice to the satisfaction of the Officer. The LSO has not submitted separate reports on these Review Applications because she herself has made the Applications (the Section 38(4) duty does not apply because of Section 38(3)(b)(ii)).



**CASES 4 & 5**

<b>Lic No</b>	<b>Premises</b>	<b>Address</b>	<b>Address 1</b>	<b>Postcode</b>	<b>Fee</b>	<b>Notification Date</b>	<b>Breach of Condition Notice Issued</b>
241	Revels	53-59 Main Street	Kilwinning	KA13 6AN	£280.00	22 August 2023	31 October 2023
326	Albert's	84 Gallowgate Street	Largs	KA30 8LZ	£220.00	22 August 2023	31 October 2023

**6. Margaret Pollock [NA2602]**

Personal Licence Review

Continued from Board on 18 September 2023

**\*\*\* See detailed report in Agenda**

**Personal Licence Review Hearing - Section 83**

Licence Holder	Margaret Pollock
Ref.	NA2602

**CONTINUED FROM 18 SEPTEMBER 2023**

**1. Introduction**

Within one month of conviction of a "Relevant or Foreign Offence" (offences which are on a statutory list - The Licensing (Relevant Offences) (Scotland) Regulations 2007 No. 513) a Personal Licence Holder must tell the Board (Section 82(2)).

The Licence Holder here complied with this legal obligation.

The Police have confirmed details of the conviction and a copy of their letter will be in Members' Background Papers.

**2. Circumstances**

The Police have not made a Recommendation that the Board should Revoke, Suspend or Endorse the Personal Licence (Section 83(5)). The Police view is not binding on the Board.

**3. Hearing Procedure**

Under Section 83 the Board must hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

**4. Board's Powers on Review**

The Board must proceed in two stages:

**Stage 1**

The Board must answer this question:

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

The Licensing Objectives are:

- (a) preventing crime and disorder,

- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting 'Children' or 'Young People' from harm (any persons aged under 18) (Section 4)

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

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

What happens next depends on the Board's answer:

**"yes, the Licence Holder is NOT a fit and proper person"**

then:

- (a) the Board should decide which Licensing Objective(s) are relevant,
- (b) the Board **must** revoke the Personal Licence (the Board have no discretion) - the Licence is revoked altogether, rather than simply being suspended for a time (Section 83(9A), as added by Air Weapons and Licensing (Scotland) Act 2015, and S.S.I. 2017/119).

**"no, the Board is not prepared to say that the Licence Holder fails THAT 'fit and proper' test"**

then the Board must proceed to Stage 2.

### **Stage 2**

If the Board reach Stage 2, it now has a **discretion**.

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

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

- (c) Endorse the Personal Licence.

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

### **5. Effect of Endorsement**

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

An Endorsement will be noted in Annex C to the Personal Licence.

### **6. Administration**

Whether or not the Board take any action (a) (b) or (c), any conviction for a 'Relevant or Foreign Offence' will be updated in Annex B to the Personal Licence: Section 89(4). The Licensing Office will issue an updated document to the Licence Holder.

### **7. Appeal to the Sheriff**

The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing:

- (a) The Board's decision stands during the appeal process and is not postponed pending the Sheriff's decision (Section 132(7));
- (b) the appeal procedure involves lodging a "Summary Application" at Kilmarnock Sheriff Court within 21 days of the Board's decision (Rule 3.34 of the Summary Application Rules 1999 No. 929 (as substituted by Article 9 of the Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010 No. 416); and
- (c) The Sheriff may order the Licence Holder to pay a deposit of up to 25 times the Court lodging fee (Rule 2.24).

### **8. Revocation or Suspension of a Premises Manager's Licence**

If the Licence Holder is a Premises Manager and the Personal Licence is revoked or suspended, then the Premises Licence Holder has:

- (a) 7 days to notify the Board that the Licence Holder is no longer acting as the Premises Manager; and

## **CASE 6**

(b) 6 weeks to apply to the Board for a variation to appoint a new Premises Manager (Schedule 3, Paragraphs 4(1)(b) & (c), Section 54).

Unless both (a) and (b) are done, the Premises are liable to be closed by the Police because there is no Premises Manager.

## **AGENDA ITEM 4**

### **Functions Report**

After each Financial Year the Board must prepare and publish two reports: a Financial Report and a Functions Report. The draft Functions Report will be included in draft in Members' Background Papers. If approved, it will be published on the Board's website.



**North Ayrshire Licensing Board**

**Annual Functions Report under Section 9A of the  
Licensing (Scotland) Act 2005**

**for the Financial Year 2022-2023**



# AGENDA ITEM 4

## **General**

The Board consists of 10 elected Councillors from North Ayrshire Council. The Board meets in public, usually in Council Chambers, Cunninghame House, Friars Croft, Irvine, KA12 8EE. The dates, times and places of meetings are publicised.

Information and assistance is provided by Board staff and the Licensing Standards Officer to members of the public wishing

- to apply for a Licence
- to object to a Premises Licence or
- to complain about the operation of Licensed Premises.

Many documents and application forms are available from the Board's website: [Licensing Board \(north-ayrshire.gov.uk\)](http://licensing-board.north-ayrshire.gov.uk).

The Board attempts to make the Public Meeting process as informal as possible and consistent with the Board's quasi-judicial function. The Board is aware that often people applying for a Licence, or objecting, or complaining about the operation of Premises already licensed, are not legally represented. Therefore, the Convenor will explain the procedure to them at the start of the meeting, and sometimes the Convenor makes an announcement to people waiting for cases to call to explain what is happening. The Convenor will consider requests to change the sequence of cases on the Agenda in order to accommodate parties, so long as other parties are not inconvenienced. The Convenor will also consider requests to postpone a case to a later Meeting in order to accommodate a party (for example, where a party's legal representative is otherwise engaged on the appointed day).

## **Licensing Objectives**

The Board is required to ensure that its policies promote the Licensing Objectives as set out in Section 4 of the Licensing (Scotland) Act 2005 ("the Act"). There are five Licensing Objectives contained within Section 4:

- i) preventing crime and disorder;
- ii) securing public safety;
- iii) preventing public nuisance;
- iv) protecting and improving public health; and
- v) protecting children and young persons from harm.

The Board has regard to the Licensing Objectives and the Licensing Policy Statement adopted in 2013 when considering cases on their merits.

Applications and other matters before the Board are dealt with in an open and transparent manner - for example, all meetings are in public and the Agendas and Reports are published in advance. The Board acts in accordance with the licensing legislation and its Licensing Policy Statement.

## **Annual Functions Report**

Section 9A of the Act requires that an Annual Functions Report is prepared for publication. This report contains information relating to the financial year of 2022/23, running from 1 April 2022 until 31 March 2023.

The Act states that an Annual Functions Report must contain the following information:

## AGENDA ITEM 4

- a statement as to how the Licensing Board has had regard to the Licensing Objectives;
- a statement as to how the Licensing Board has had regard to its Licensing Policy Statement;
- a summary of the decisions made by the Licensing Board; and
- information about the number of licences held under the 2005 Act in the Licensing Board's area, including Occasional Licences.

### 1. Statement of how the Board has had regard to the Licensing Objectives

The Board's approach to the issues raised in individual cases is set out in detailed Minutes which are published on the Board's website.

In the year ended on 31 March 2023, the Board met on 5 occasions.

The Board has regard to the Licensing Objectives and the Licensing Policy Statement when considering cases on their merits. These matters are considered whether or not any third-party makes an objection or representation. The considerations for the Board are set out in the Reports or Case Summaries prepared by or on behalf of the Clerk. These appear on the Board's Agenda, which is published on the Board's website in advance of the meeting:

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

### 2. Statement of how the Board has had regard to its Licensing Policy Statement

The Minutes show this consideration. The Board applies 'Standard Conditions' when granting Premises Licences and Occasional Licences. These go further than the basic mandatory conditions which the statute applies and reflect the Board's Licensing Policy Statement and its views on the Licensing Objectives. These are on the Board's website. It is not possible to attach conditions to Personal Licences. [Licensing Board \(north-ayrshire.gov.uk\)](https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling/licences/licensing-board.aspx)

### 3. Summary of the decisions made by (or on behalf of) the Board during the Financial Year

Premises Licences	
<b>Licences in Force on 31 March 2023</b>	<b>383</b>
(a) on-sales only	99
(b) off-sales only	126
(c) both	158
<b>Applications received during 2022-23</b>	
(a) on sale	3 (3 PPL)
(b) off sale	1 (1 PPL)
(c) both	1 (1 PPL)
Applications refused during 2022-23 under section 23	0
Applications granted during 2022-23 under section 23	5 (5 PPL)
Applications for review of premises licence during 2022-23 under S36 & S37 resulting in:-	

## AGENDA ITEM 4

(a) written warning	0
(b) variation	0
(c) suspension	0
(d) revocation	0
(e) no action	0
<b>Occasional Licence Statistics</b>	
<b>Number of Occasional Licences granted during 2022-23</b>	<b>701</b>
<b>Personal Licence Statistics</b>	
<b>Personal Licences in Force on 31 March 2023</b>	<b>1,338</b>
Applications during 2022-23 under section 72:-	
(a) refused	0
(b) granted	128
Proceedings taken during 2022-23 under section 83 (notice of conviction) resulting in:-	
(a) endorsement	0
(b) suspension	0
(c) revocation	0
(d) no action	0
Proceedings taken during 2022-23 under section 84 (conduct inconsistent with licensing objectives) resulting in:-	
(a) endorsement	0
(b) suspension	0
(c) revocation	0
(d) no action	0
Proceedings during 2022-23 under section 86 (multiple endorsements) resulting in:-	
(a) endorsement	0
(b) suspension	0
(c) revocation	0
(d) no action	0
<b>Revocations of personal licences during 2022-23 under section 87(3) (failure to provide evidence of having undertaken refresher training)</b>	<b>156</b>
<b>Staff employed at 31 March 2023</b>	
Number (full-time equivalent) of licensing standards officers employed	1

### Premises Licence

A Premises Licence is required by anyone who intends to carry on a permanent business of selling alcohol on their premises.

### Provisional Premises Licence (PPL)

A Provisional Premises Licence is for an alcohol business where the premises are still under construction or conversion. These are commonly chosen by Applicants due to the Board's policy about Overprovision, with a presumption of refusal of:

- new Licences, and
- variation increasing capacity

## AGENDA ITEM 4

In both cases the presumption is particularly strong with off-sales, and also particularly strong in certain parts of the Board's area.

### Personal Licences

A Personal Licence allows an individual to supervise or authorise the sale of alcohol. It is a mandatory condition of a Premises Licence that there should be a Premises Manager and that they should have a valid Personal Licence. Not all staff who work on premises have to hold a "Personal Licence", as the legislation allows people to sell alcohol after passing a training course (the content of the course is not set by the Licensing Board, and the administration of courses is done by external bodies).

### Occasional Licence

An occasional licence is issued under the Licensing (Scotland) Act 2005 to allow unlicensed premises to sell alcohol for occasions such as parties and other social functions. These occasions are usually one-off events and last only a few hours.

### Decision of the Board

Where the Board reviewed a Premises Licence or Personal Licence, 'granted' indicates that the Review was upheld. The Minutes in individual cases show what action, if any, the Board took in the particular case. The options are:

Premises Licence - revoke, suspend, vary, or issue a written warning (or none of these)

Personal Licence - revoke, suspend or endorse (or none of these)

The legislation does not allow for any of these actions in relation to Occasional Licences.

### Variation of Licence

A variation is required if there is a need to change or delete any of the following licence details:

- licence conditions;
- information contained within the operating plan;
- information contained or referred to in the licence; and/or
- layout plan

There are two main kinds of variation:

- Minor Variations
- Major Variations

A "Minor Variation" is an application to make a change to the licence which does not have a significant effect, or increase to, how alcohol is sold from the subject premises licence. This is defined by the legislation, so an amendment to a Premises Licence which might be described as a 'minor' change in ordinary language might not be treated as a "Minor Variation".

The Board calls any variation other than a "Minor Variation" a "Major Variation".

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The distinction affects the procedure to be followed, the processing time, and the fee the Premises Licence Holder must pay:

“Minor Variation” applications:

- are usually granted quickly under “Delegated Powers”, which often means that they can be granted by the Clerk or another Board officer without the need for a hearing at a Licensing Board meeting (it may take longer if the Premises Licence Holder wants a “Major Variation” as well, because that has to call at a Board meeting)
- Minor Variations cost £20 or £31, depending on what is requested.

“Major Variation” applications:

- must call at a Licensing Board meeting (Delegated Powers are not used) and
- follow a procedure which is similar to that used for applying for a Premises Licence in the first place, e.g. the Premises Licence Holder must display a Site Notice at or near the Premises informing the public of the proposals, and third parties (such as the Police, the Community Council and neighbours) have the right to state Objections or Representations to the Licensing Board.
- Major Variation cost the same as the Premises’ “Annual Fee” (which is usually linked to their “Rateable Value”, so can be hundreds of pounds).

### North Ayrshire Council Licensing Register

North Ayrshire Council maintains a licensing register containing a summary of current licence information both under:

- the Licensing (Scotland) Act 2005 (Licensing Board: alcohol licensing) and
- the Civic Government (Scotland) Act 1982 and other licensing legislation (Licensing Committee: non-alcohol legislation)

This is at

<https://www.licensingregisters.north-ayrshire.gov.uk/licensingregister/>

Select tabs "Premises Licence", "Personal Licence" or "Occasional Licence".

#### **4. Licensed Hours**

Licensed Hours are an integral part of the function of a licensed premises. The Board Members recognise the importance of licensed hours to the operators of licensed premises and that this can have an impact on the persons who live and work within a close proximity to the premises.

The Board’s policy is contained within the Licensing Policy Statement: [Licensing Board \(north-ayrshire.gov.uk\)](https://www.north-ayrshire.gov.uk).

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### 5. Licensing Board Training

The 2005 Act provides that an 'election of Licensing Board members' must be carried out by the local authority at their first meeting after each ordinary election of the local authority. All Licensing Board members must undertake the required training within 3 months of appointment. Each time members are re-elected they must undergo the training again, within three months of their re-election. Members must provide evidence of having completed their training to the clerk to the Licensing Board within four months of the member's election or re-election. The North Ayrshire Council Licensing Board Members received training on 15 June 2022.

### 6. Licensing Standards Officers (LSOs)

The 2005 Act requires local authorities to appoint at least one Licensing Standards Officer in their area.

A Licensing Standards Officer is neither an agent nor an employee of the Licensing Boards,

Licensing Standards Officers do not need to be legally qualified and must not provide legal advice when offering guidance, information and assistance to interested parties.

The general functions of Licensing Standards Officers for a local authority area are:

- providing information and guidance concerning the operation of the 2005 Act in the area;
- supervising the compliance of the holders of premises licences or occasional licences in respect of premises in the area with the conditions of their licences and other requirements of the 2005 Act (which includes powers to issue notices to licence holders; and in relation to premises licences to make licence review applications);
- providing information to Licensing Boards about any conduct of holders of, or persons applying for, personal licences in the area, which is inconsistent with the licensing objectives; and
- providing mediation services for the purpose of avoiding or resolving disputes or disagreements between the holders of premises licences or occasional licences; and any other persons, concerning any matter relating to compliance with the 2005 Act as referred to in this paragraph.

The LSO can be contacted by emailing [licensing@north-ayrshire.gov.uk](mailto:licensing@north-ayrshire.gov.uk)