

**Licensing (Scotland) Act 2005 - Statement of Reasons
The Licensing (Procedure) (Scotland) Regulations 2007 No. 453,
Regulation 15(3) and Schedule 4**

1. Name and address of Licensing Board:
North Ayrshire Licensing Board, Cunninghame House, Irvine
2. Date of Licensing Board meeting:
22 June 2015
3. Name and address of agent
For Applicant "The Co-operative Group Food Ltd." Ms. Audrey Junner Solicitor Hill Brown Licensing 3 Newton Place Glasgow G3 7PU
4. Name and address of premises (if applicable)
Shop, 19 Cardiff Street, Millport, Isle of Cumbrae, KA28 0AS (NALB Ref. 471)
5. Materials before the Board
<u>Board's documents</u>
<ol style="list-style-type: none"> 1. Licensing Policy Statement (adopted 19 November 2013) (hereafter "LPS"); 2. Application for Grant of Provisional Premises Licence (hereafter "PPL") dated 12 May 2015; 3. Report on Application prepared by Solicitor (Licensing); 4. Overprovision Assessment Report based on data as at 11 June 2015; 5. Statement of Reasons relating to Board decision on 2 March 2015 (Application 466).
<u>Objections and Representations</u>
<ol style="list-style-type: none"> 1. Luigi Giorgetti, Nether Kirkton, Golf Road, Millport KA28 0HB (received by the Board 29 May 2015); 2. Angela Giorgetti, (same address & date); 3. James Thomson, 6 Kirkton Crescent, Millport KA28 0HJ (3 June 2015); 4. Mrs. Mae Watson, 27 Glasgow St., Millport KA28 0DL (4 June 2015); 5. James Patrick & Muir, Solicitors, on behalf of Margaret and Alexander Caldwell, Kames House, Millport KA28 0EA (5 June 2015); 6. Margaret and David Templeman, 27 Cardiff St., Millport KA28 0AS (8 June 2015); 7. Kyle Jamieson, 42 George St., Millport KA28 0BQ (10 June 2015); 8. Colin Whyte, 23 Marine Parade, Millport KA28 0EF (10 June 2015);

9. Valerie Nailor, 12 Marine Parade, Millport KA28 0ED (10 June 2015);
10. Johanne Watson, 21 Cardiff Street, Millport KA28 0AS (11 June 2015);
11. Alex Dobbin, 8 St. Maura Gardens, Millport KA28 0HL (11 June 2015);
12. Darren C. McLachlan, 16 Marine Parade, Millport KA28 0ED (12 June 2015);
13. Sharon Hagan, 4 St. Maura Gardens, Millport KA28 0HL (12 June 2015);
14. Derek Hagan (same address & date);
15. Kenneth J. Gibson, MSP (12 June 2015).

6. Type of application

Application for Grant of PPL

7. Names of all parties present

For Applicant: Ms. Audrey Junner, Solicitor
with Russell Gormley, Acquisitions Manager, and Gerry Murphy.

Persons making Objections or Representations:

Mr. James Russell, Solicitor, James Patrick & Muir, 3 Frazer Street, Largs KA30 9HP on behalf of Margaret and Alexander Caldwell (objector 5).

Alex Dobbin (objector 11). Mr. Dobbin produced letters of authority from Kyle Jamieson and Valerie Nailor (objectors 7 & 9)

The Board consisted of Councillors Clarkson (Convenor), Marshall (Vice-Convenor), Bruce, MacMillan, Barr, Reid, McLean and Easdale. Cllr. Reid declared an interest, being a dividend holder of the Applicant.

The Board were accompanied by William O'Brien (Solicitor (Licensing)), Chris Pollock (Licensing Administrative Officer), and Grace Cullen (Licensing Standards Officer).

8. Preliminary issues

(a) The Applicant delivered the Site Notice Display Certificate required by The Licensing (Procedure) (Scotland) Regulations 2007 No. 453, Reg. 7(8), and accordingly the Board were able to proceed to determine the Application.

(b) The previous Convenor of the Board (Cllr. Ronnie McNicol) had intimated his resignation effective 17 June, and prior to the start of the usual Board business the Solicitor (Licensing) advised the Board that an election for a new Convenor should be conducted (Licensing (Scotland) Act 2005, Schedule 1, Paragraph 2(4)).

Cllr. Marshall, seconded by Cllr. Barr, proposed that the Convenor should be Cllr. Clarkson. There were no countermotions or abstentions. The Motion was held to be carried unanimously '*qui tacet consentire videtur*'.

Cllr. Barr, seconded by Cllr. McLean, proposed that the Vice-Convenor should be Cllr. Marshall. There were no countermotions or abstentions. The Motion was held to be carried unanimously '*qui tacet consentire videtur*'.

9. Summary of submissions made
See below
10. Decision(s) taken
See below
10a. Reasons for decision
See below
11. Legal powers used to come to decision
Section 23
12. Date statement of reasons issued
Name of Representative of Clerk
Print Name
William O'Brien, Solicitor (Licensing)

9. Summary of submissions made

Introduction

The proposal related to a small supermarket in Millport, Isle of Cumbrae, part of a national chain, selling a range of food, fruit and other groceries for consumption off the Premises. The proposal was to include an off-sales alcohol display of 19.814 square metres, with Licensed Hours of 10.00 - 22.00, 7 days a week.

The proposal was similar to, but not identical to, the Application which had been refused by the Board on 2 March 2015. The Board granted the Applicant's request for a Direction under Section 25 (so as to permit a further Application within one year without the need for a material change of circumstances).

The earlier Application sought an off-sales alcohol display of 25.75 square metres, and the capacity now requested was about 77% of that.

The Board started at 11.26, after a case at the Licensing Committee was part-heard. The Co-op case was the only Board case considered, after the election of the Convenor, until the Board was adjourned at 12.26 and the Committee resumed.

Submissions

(a) For Applicant:

Ms. Junner said that the Applicants had been refused only 3 months ago. She said that the Applicant was not contractually-obliged to the site, but they did believe in the site, firmly believing that it would be an asset to the island. They proposed to invest £1 million.

There were 14 resident Objections. This was, she said, a small percentage out of a population of about 1,300. The majority of residents had not objected. She produced a signature sheet in favour of the shop which had 27 signatures.

The proposal now had a changed layout, with the capacity reduced to 77% of the earlier proposal. The alcohol display had moved towards the till. She adopted the submissions made by her colleague at the previous Meeting concerning the quality of the operator, and the choice of produce available. The Co-op had an impeccable licensing record. They were a highly respected operator who had never been convicted in the U.K. under the 2005 Scottish Act or the 2003 equivalent Act in England and Wales.

She acknowledged that the Board had an Overprovision policy, but referred to the case of Brewdog Bars Ltd. v Leeds City Council, which was a decision of Leeds Magistrates Court on 6 December 2012 under the Licensing Act 2003, concerning the 'cumulative impact' policy of the Council.

Referring to the Objectors, she said that much was made of the need for the Premises and what they would provide. This was not a matter for the Licensing Board. Planning Permission had already been granted for the proposal.

Regarding the Overprovision issue, the Board should view Millport as a separate "Locality" from the "North Coast" - Cumbrae had specific requirements, and it was an island.

The Applicant would reduce capacity further but the current request was not unreasonable given the population.

The LPS used statistics from 2010. Statistics had moved on substantially since then. Alcohol consumption had fallen 10% since 2007. Data for the "North Coast" Locality was positive, when compared to the rest of North Ayrshire.

She pointed out that there was not here an objection from N.H.S. Ayrshire and Arran.

The Premises would not sell 3-litre bottles or single cans with over 4 Units of alcohol.

The capacity now requested was substantially lower than the proposal refused earlier.

The addition of the shop would keep shopping local, on the island. Studies had shown that, if local shops were available, they would be used. People nowadays tended to do their shopping locally. There was a "travelling pound" argument - people don't buy things twice.

It was open to the Board to grant an Application against Policy, where the Application was good and was from a responsible operator.

Job creation was good for mental health. The proposal would create 15 new jobs, as opposed to taking jobs from existing businesses. This was backed up by Planning.

Mr. Dobbin

He enquired of Ms. Junner if the 27 signatures came from the Applicant's "Open Day"? Ms. Junner confirmed that they did. Mr. Dobbin then enquired why she had not shown the Board a second list of 75 signatures which were against the proposal? He asked if she was not being 'devious' by telling the Board that no-one was against the proposal?

Ms. Junner said it was up to the Applicant to present evidence in support of their case. She said that Objectors would have their own opportunity.

Mr. Russell

He commented that Planners have no input in the Licensing process. Ms. Junner agreed that this was so, and explained that the reason she had referred to Planning was that several of the Objectors had referred to Planning issues. She said that a refusal today could only be based on Licensing Objectives or Overprovision.

The Board had refused in March, with the Board concluding that the "Locality" was overprovided. He quoted from the earlier Statement of Reasons. He invited the Board to refuse again, due to Overprovision. The existing provision was more than sufficient. There had been no significant change in any of the factors that the Board had to take into account.

Mr. Dobbin

He referred to the current situation in Millport. There were 16 Licences for a population of 1,280, i.e. one Licence per 80 people. The North Ayrshire average was about one Licence per 300 people. If the Subject Premises were Licensed, there would be 4 off-sales within a 5" walk - a single bus-stop stage. If this wasn't Overprovision, he did not know what was. He read out Valerie Nailor's Objection (no. 9).

Ms. Junner commented that the issue for the Board was not the number of Premises, but rather their capacities.

Questions from Members

Cllr. Barr enquired what percentage of the Premises' trade would be alcohol? Mr. Gormley said it would be in the range 12 - 18% of sales turnover.

Cllr. Barr enquired if the Applicants were saying that the store would not be profitable without a Licence? Mr. Gormley said that the Co-op's policy was to make a full provision of products available to customers. The only place where alcohol was not included was in parts of London, where the ethnic breakdown was an issue.

Cllr. Marshall said that he also sat on the Planning Committee and he agreed that Planning had nothing to do with today's case. The Board's concern was with Overprovision, not competition. He said competition was good, but this proposal would double alcohol provision. Millport already had a capacity of about 21 square metres, and the proposal now was to add almost 20 more. The "North Coast" data was positive, as Ms. Junner had said, but he wanted to keep it that way. Why was the Co-op only reducing the earlier proposal from 26 to 20?

Ms. Junner answered that it was important that customers should have a full range of products, with different varieties to choose from. There was scope for a further reduction - the proposal included a 2.1 sq.m. display of red wine, and she would make that amendment.

Cllr. Marshall pointed out there was already a store in Millport which was operating successfully with 10 sq.m.. Ms. Junner answered that she could not comment on other stores but viability and choice had led to the Applicant's figures. People would leave the island.

Cllr. Easdale pointed out that the form with 27 signatures said nothing about alcohol. Ms. Junner said that she'd just been saying that people wanted a shop.

Cllr. McLean said that while residents would welcome a new store, nothing had changed in 3 months.

The Convenor (Cllr. Clarkson) invited parties to sum up.

Ms. Junner

She said the Co-op would be an asset which would warrant the Board making an exception to their Overprovision Policy. The operator would be a good addition to the island. The Board's statistics were out-of-date.

The Convenor asked her what her proposal now was? Ms. Junner answered that she would deduct the 2.1 area, leaving 17.81.

Mr. Dobbin

He commented that even if the Co-op got 10, it would still be adding 50% to the Millport total off-sales capacity.

Mr. Russell

He said he didn't see anything from the Co-op which would warrant the Board deviating from their Overprovision Policy. Nothing had changed since the refusal 3 months ago.

Deliberation

At 12.09 the Board retired to Members Lounge with the Solicitor (Licensing). The Board returned to the public meeting at 12.21.

On returning, the Convenor said to Ms. Junner that the Board did not think that she'd gone far enough, and enquired what square meterage was she proposing, bearing in mind the conversation she and the Board had had earlier (i.e. during the earlier public session).

Ms. Junner conferred with her clients and replied "It's technical".

The Convenor pressed her to state the maximum square meterage on which the shop could be operated.

Ms. Junner said 14.5, and agreed when the Convenor enquired "No lower?"

10. Decision(s) taken

The Convenor enquired if there were any Motions.

Cllr. Barr moved to refuse the Application on the basis of Overprovision. Cllr. McLean seconded this Motion.

As an amendment, Cllr. Easdale proposed that the Application should be granted if the proposal was dropped to 10. Cllr. McMillan seconded this.

The Convenor said to Ms. Junner "Yes or no to 10?". She replied "Yes to 10".

There was then a roll-call vote.

For the Motion to refuse: Cllrs. Barr and McLean.

For the Amendment: Cllrs. Clarkson (Convenor), Marshall (Vice-Convenor), Bruce, MacMillan, Reid, and Easdale.

There were no abstentions.

The Amendment was held carried 6 votes to 2, and the Application was granted with a capacity of 10 square metres.

10a. Reasons for Decision

(a) Board's approach to Objections and Representations

An objection or representation may be:

(a) treated as 'not made' if it is lodged late (The Licensing (Procedure) (Scotland) Regulations 2007 No. 453, Reg. 10);

(b) rejected as "frivolous or vexatious" under Section 22(4),

but otherwise the Board are obliged to have regard to it (Section 22(3)(b)), whether or not the person making it attends the Board.

There were no submissions on issues (a) or (b) in relation to any of the letters. The Board were satisfied that the Objections and Representations they had received were competent and did not fall to be rejected as "frivolous or vexatious" under Section 22(4).

(b) Forum

The Licensing Forum did not give any advice or make any recommendation to the Board in relation to the particular Application, and accordingly the duty on the Board created by Section 12 did not arise.

(c) Potential Grounds for Refusal

Section 23(5) is:

"The grounds for refusal are—

(a) that the Subject Premises are Excluded Premises,

(b) that the Application must be refused under section 25(2), 64(2) or 65(3),

(c) that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives,

(d) that, having regard to—

(i) the nature of the activities proposed to be carried on in the Subject Premises,

(ii) the location, character and condition of the Premises, and

(iii) the persons likely to frequent the Premises,

the Board considers that the Premises are unsuitable for use for the sale of Alcohol,

(e) that, having regard to the number and Capacity of—

(i) Licensed Premises, or

(ii) Licensed Premises of the same or similar description as the Subject Premises,

in the locality in which the Subject Premises are situated, 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 that description, in the locality."

The Board were satisfied that none of Grounds for Refusal (a), (b), (c) or (d) applied:

There were no mandatory refusal grounds present so Grounds (a) and (b) did not arise;

Ground (c): The issue of inconsistency with one or more Licensing Objectives (set out in Section 4) did not arise, except in so far the Public Health Licensing Objective ("protecting & improving public health") was concerned. The Board were satisfied that their approach to Overprovision addressed that L.O., and did not consider (c) further.

Objection 6 referred to loitering and possible increase in crime. The Board regarded that part of the Objection as too speculative. Applications are routinely copied to the Chief Constable, and who can make representations concerning the Crime and Disorder, Public Safety and Public Nuisance Licensing Objectives if he has any concerns. He had not done so here. If such concerns arise later then either the Police or residents can commence Review Application procedure under Section 36.

Objections 13 and 14 referred to the Police presence on Cumbrae: in the absence of a representation from the Chief Constable suggesting that the new Licence would be likely to place undue demands on Police resources, the Board could give little weight to those Objections.

Ground (d): The Board had no reason to suppose that the Premises would be unsuitable for the sale of alcohol, and did not consider (d) further.

The Board considered that the only issue was whether or not Ground for Refusal (e) (Overprovision) applied.

Objection 6 also raised issues of the area being a "Conservation Area". The Board have no powers under the Planning legislation and the Planning status of the area did not raise Licensing Objective issues. An Applicant for a new Licence requires to produce a Planning Certificate under Section 50, but this does not entitle the Board to take account of Planning issues. The Board are not entitled to take account of alleged devaluation of property prices.

(d) Overprovision

1. The Board's approach to Overprovision was set out in their LPS and in the Report prepared by the Solicitor (Licensing).

2. There was a rebuttable presumption of refusal due to Scottish Government guidance issued under Section 142 (Paragraphs 54 to 57). The Board must, in the exercise of their functions under the Act, have regard to any Guidance issued by Scottish Ministers, and if the Board decide not to follow the Guidance they must give the Scottish Ministers notice of their decision together with a statement of the reasons for it. By Section 6(4), in exercising their functions under the Act the Board must have regard to their LPS. In this case, the relevant part was LPS 2013-2016, Annex E.

3. In adopting the Overprovision Policy, the Board were aware that it is not a rigid rule and must admit of exceptions. It is always open to the particular Applicant to seek to persuade the Board that the Application should be granted. Therefore, whenever an Application is made which raises a Policy issue, the Board Report alerts the Applicant, so that submissions can be made with a view to persuading the Board to make an exception. However, it is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

4. For the purpose of the LPS:

(a) Under Section 7(2) it is for the Licensing Board to determine the relevant 'Localities'. The Board has decided to divide its area into 6 'Localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership). The Subject Premises are in Locality 1 (North Coast: Skelmorlie, Largs, Isle of Cumbrae, Fairlie, Seamill & West Kilbride);

(b) Premises are distinguished Premises by 'Function Types'. The Subject Premises are in Function Type 1 (Off-sales).

5. In determining any particular application, the Board have regard to those factors, and also:

(a) the 'Locality' of the Premises;

(b) the 'Function Type' of the Premises;

(c) any 'Additional Factors' (see below);

(d) other similar Premises in the Locality (the Board had an "Overprovision Assessment Report").

6. Additional Factors: As indicated in the LPS, the likelihood that the Application will be granted or refused will be influenced by the 'Locality' and the 'Function Type':

(a) Locality: the Premises are not in one of 4 'Localities' where Applications are especially unlikely to be granted (regardless of the 'Function Type' - "Three Towns"; "Kilwinning"; "Irvine etc."; or "Garnock Valley") so the Additional Factor related to Locality did not apply;

However the nature of the Subject Premises was significant. They were an off-sales shop (in the LPS, "Function Type 1"). LPS Annex E, Para. 4.5 ("Additional Factors") includes:

"(b) Function Type: the Board is aware:

- that a substantial proportion of alcohol is bought from off-sales shops and consumed in an unregulated environment (unlike a public house, there are no checks on the rate consumed, volume consumed, the consumer's state of intoxication, or the age of the consumer);

- that disorder in or near on-sales is often contributed to by customers 'front-loading' by drinking at home or in public places;

Accordingly any Application for Premises in Function Type 1 is especially unlikely to be granted (regardless of the Locality);"

Several of the objections referred to the total number of Licensed Premises on Cumbrae, e.g. including public houses (what are referred to in the LPS as 'Function Type 3'). The system of 'Function Types' has been adopted by the Board to assess Overprovision, and the Board do not think it appropriate to compare Premises which have a different activity profile from those under consideration. The "Overprovision Assessment Report" therefore concentrated on comparable Premises. The total:

(a) had already been taken into account in setting the "Additional Factors", and

(b) was stated in Part E of the O.A.R. (the Assessment excludes "Section 125" Clubs as these are excluded from Overprovision considerations: Section 125(2)(a), (c) and (e)).

7. The Scottish Government Guidance was that, once a Board had determined that Overprovision existed, there was a presumption of refusal. The Board had already concluded that the Locality was overprovided. The issue for the Board in the present case, was whether or not an exception to its Policy should be made.

8. The Board proceeded with the following presumptions:

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

- (b) Overprovision would result if the Application was to be granted, and
- (c) the Application should be refused.

The presumption of refusal is particularly strong with off-sales Premises (in the LPS, 'Function Type 1'), of which the Subject Premises were an example.

9. The Board did not accept Ms. Junner's comment that their statistics were out-of-date. The Board considered that the LPS continued to be a reliable guideline, and recalled that extensive statistics, both on health and other matters, had been considered prior to it being adopted. The Board had been kept informed on more recent developments. At their meeting on 19 January 2015 the Board had received a Report on two further health reports produced since the current LPS was prepared:

- (a) "Alcohol-related illness and death in Scottish neighbourhoods: is there a relationship with the number of alcohol outlets?" - Report for Alcohol Focus Scotland (AFS) produced by the "Centre for Research on Environment, Society and Health" of the Universities of Glasgow and Edinburgh, published 2 October 2014 ("CRESH");
- (b) "Monitoring and Evaluating Scotland's Alcohol Strategy", Report published by NHS Health Scotland, 4th Annual Report, published 8 December 2014 ("MESAS 4").

The Board had noted that the author of the CRESH report, while saying that there was a correlation between the number and density of alcohol outlets, acknowledged that it could not be said on the basis of the information available that there was a causal link:

"The alcohol-related hospitalisation results suggest the existence of outlet availability thresholds – over 6 off-sales, 9 on-sales, or 14 total outlets within 800 m – below which hospitalisation rates did not differ, but above which rates increased significantly.

... while [the CRESH study] suggested significant associations between outlet availability and alcohol-related harm we cannot conclude that the relationship is causal."

AFS had also published local authority factsheets, and the one for North Ayrshire noted that a significant positive relationship was found between outlet density (on-sales premises) and alcohol-related deaths and hospitalisations. It stated:

"Alcohol-related harm

In North Ayrshire as a whole there is:

- An annual average of 35 alcohol-related deaths (26 deaths per 100,000 adults). This is similar to the Scottish average of 25 deaths per 100,000.

- An average alcohol-related hospitalisation rate ratio of 148. This is 48% higher than the Scottish average of 100."

The factsheet had a caveat recognising the correlation vs. causal link distinction:

"This study shows a relationship between alcohol outlet density and alcohol-related health harms, but does not definitively conclude that there is a causal relationship. Proving something is "causal" with population level data is difficult because of the ethical and financial constraints in conducting the studies needed to prove a causal relationship. Often it is necessary to use the best possible population level evidence we have to determine what is likely, probable or reasonable in the absence of the studies that would provide "causal" evidence."

The Board appreciated the distinction, and acknowledged that it is likely to be impossible to say, pointing at particular Premises:

"the operation of these Premises is inconsistent with the 'protecting and improving Public Health Licensing Objective' ".

It is particularly difficult to say that where the Premises have not yet opened.

However, it is legitimate to consider the whole 'Locality' generally when assessing Overprovision, and that is what the Board have done. The Board were satisfied that throughout North Ayrshire there is 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.

10. The LPS, Annex E includes:

"4.5(d) ... 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" ..."

"4.6 ... The Board will expect Applicants who are seeking the grant of 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."

11. The Statement of Reasons issued after the earlier decision included in relation to the Section 25 direction:

"The Board remained open to the possibility that a Licence might be granted for the Premises, but any future Application would be assessed on its merits, having regard to the LPS and any submissions, objections and representations. The fact that the Board on 2 March 2015 were prepared to waive the one-year bar on re-application should not be understood by the Applicant or anyone else as indicating that a different approach from the one taken on 2 March 2015 would be taken by the Board, or that a different view of Overprovision would be taken if a different capacity proposal was later made."

The Board accordingly looked at the merits of the second Application and the submissions, objections and representations before the Board on 22 June.

12. That Statement of Reasons included:

"14. ... The Board cannot and do not purport to impose conditions on the type of alcohol sold. If an applicant chooses to inform the Board of his intention to not stock a certain type of alcohol, that may be taken into account in the Board's decision of whether or not an exception should be made to their Overprovision policy, but the fact that such an intention is stated does not equate to the Board imposing a condition."

13. The Board had regard to all the submissions, objections and representations, and in particular noted:

- (a) Ms. Junner's statement that the Premises would not sell 3-litre bottles or single cans with over 4 Units of alcohol;
- (b) the capacity requested - Ms. Junner requested 10 immediately before the vote - was substantially lower than the proposal refused in March (25.75) or the original proposal in June (19.814);
- (c) the present Application (unlike the earlier Application) had attracted no representation from N.H.S. Ayrshire and Arran (the "Relevant Health Board" - in terms of Section 21(1)(ca) of the 2005 Act, as inserted by the Alcohol (Scotland) Act 2010);
- (d) there was no representation from the Chief Constable.

14. In the Board's opinion:

- (a) the June Application was materially different from the one that was before the Board in March,
- (b) the presumption of refusal had been overcome,
- (c) an exception to their Policy was justified, and
- (d) the only possible "Ground for Refusal" did not apply.

15. Given that the Board had determined that no "Ground for Refusal" stated in Section 23(5) applied, the Board granted the Application as they were obliged to do by Section 23(4).

16. The Board did not consider that the case of Brewdog Bars Ltd. v Leeds City Council assisted in the determination of the present Application. That case concerned the 'cumulative impact' policy of the Council under the Licensing Act 2003 (applying in England and Wales). The Scottish Act did not have a concept of 'cumulative impact', but Overprovision, and the Board had already acknowledged that their Overprovision Policy was just that - a policy, not a rigid rule. The hearing in June would not have lasted almost an hour if the only possible course of action was to repeat the March decision.