

**North Ayrshire Licensing Board
9 November 2015**

Irvine, 9 November 2015 - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

Present

Ian Clarkson, Tom Marshall, Robert Barr, John Bruce, John Easdale, Grace McLean, Catherine McMillan, Ronnie McNicol and Donald Reid.

In Attendance

W O'Brien, Solicitor (Licensing), G Cullen, Licensing Standards Officer, C Pollock, Licensing Administration Officer and M Champion, Administration Assistant.

Also In Attendance

Chief Inspector Shaw and Sergeant Griffiths (Police Scotland).

Convenor

Councillor Clarkson

Apologies for Absence

None.

Declarations of Interest

None.

1. 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 Pennyburn Stores Ltd, Unit 5, Station Plaza, Kilwinning

The Board considered an application for grant of a Premises Licence made by Javid Iqbal for the above premises. Mr Iqbal was present and was represented by Stewart Gibson, Solicitor, GP Retail Services Ltd. The Applicant was also accompanied by James Carroll, Business Development Manager, One Stop Stores Ltd.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the report.

In total, 26 objections and a petition, bearing 147 signatures, had been lodged with the Licensing Section in relation to the application. Mr Gibson confirmed that he had seen a copy of all objections prior to the Board meeting. Copies of the written

objections were given to the Board Members. Objectors Rupinder Dillon, Anne Robertson MBE and Mary Gavin were present. Ms Dillon was represented by Gordon Robertson, Solicitor.

Referring to the petition, Mr Gibson highlighted that it did not refer to any of the 5 Licensing Objectives and he invited the Board to reject it as frivolous or vexatious under Section 22(4) of the Act. The Board considered the petition against their Licensing Policy Statement and concluded that it was not sufficiently specific, and disregarded it entirely.

Mr Gibson then addressed the Board regarding the application and issues arising. He said that the plan was that the shop would become part of the One Stop franchise.

Mr Carroll explained that One Stop was a well-established operation in England and Wales, with over 800 premises, the majority of which are south of the border. The firm was a member of the British Franchising Association and was a wholly-owned subsidiary of Tesco, which has three divisions: One Stop, Tesco Metro, and Tesco Express. One Stop stores are mini Tesco Express stores. They are not your typical convenience store as the One Stop firm control everything about the premises. Since June 2015 Mr Iqbal had operated another One Stop franchise elsewhere in Scotland. Mr Carroll said that One Stop have Challenge 25 till prompts and he receives monthly reports of these, as the firm itself had the legal responsibility for under-age sales. He added that a licence is required so that alcohol products may form part of the overall product range.

Mr Gibson submitted that alcohol would occupy a very small proportion of the selling floor. Only 10.4 sq mtrs of alcohol display was being sought and the store's turnover of alcohol would not exceed 10%. Alcohol would have a high ticket price and Buckfast-type products were not in the firm's range. One Stop propose to retail beers, wines and spirits to existing customers. Mr Gibson added that the shop would sell fresh and frozen food, and would be an asset to the Pennyburn area.

Regarding the letters of objection, Mr Gibson noted that there were no objections or representations from Police Scotland. Some of the objectors were raising the crime and disorder Licensing Objective, but their speculations were not based on facts. If there was a real risk from the application, then the Police would have made comment. An objector mentioned an incident at Premier Stores. Mr Gibson stated that this was a matter for the relevant operator, not for his premises.

Mr Gibson also noted that many of the objectors were saying there were too many off-sales, but this was not a basis for objection. Any complaint that "this is harmful to business" did not relate to any Licensing Objective and Mr Gibson added that this store would provide a choice for customers.

Mr Gibson dismissed the fear that people would buy alcohol in the shop and get on a train at the nearby station, adding that people can already get alcohol anywhere. He also argued that any reference to the risk of suicide was just speculation.

Mr Gibson noted that 5 of the objection letters were a pro forma style. He also highlighted that an objector had said that there was only a 10-minute walk to the next nearest off sales. He said that was actually quite a significant distance.

Regarding the Licensing Objective 'protecting & improving public health', Mr Gibson said that no sale of alcohol in Scotland could ever be said to improve public health. The proper question was, "will the new Licence make things worse?"

In relation to overprovision, Mr Gibson said that alcohol needed to be part of the business model. One Stop stores were different from all the other shops in Kilwinning, barring the existing Tesco Express. Once the subject premises were part of the One Stop franchise, they would stay that way. They would not be like other premises, which might be a Spar today but a Cost Cutter next week. Mr Gibson added that he would accept a condition that the store should remain a One Stop store.

Mr Gibson submitted that the store would be a benefit to the community and he said that Mr Iqbal was a responsible retailer, who had the backing of a major firm under a long term franchise agreement.

Mrs Robertson then addressed the Board. She said she was representing Pennyburn Community Association and Pennyburn Residents' Association. Referring to Mr Gibson's statement about the area given over to alcohol sales, she said that a small amount to a retailer is a large amount to the community. The Pennyburn area was already 'blighted' by Antisocial Behaviour and under-age drinking. For the past 15 to 20 years the Associations had worked with Police and Trading Standards to deal with this. The existing store in Pennyburn operated CCTV and bottle marking, to combat under-age and agent sales. Mrs Robertson said Kilwinning already had enough premises selling alcohol and she asked why Kilwinning needed a second Tesco. Mrs Robertson added that it is a very short walk to the existing off-sales premises in Whitehirst Park and Kilwinning Town Centre, where Challenge 25 Policies were already in place.

Ms Gavin then addressed the Board regarding her objection. She said that it was not just young people who were drinking and causing disorder, she'd experienced drunk and abusive adults in her neighbourhood. She explained she was a local resident with two daughters aged 16 and 17. As a local resident, she could confirm from her own knowledge that there was violence and vandalism in the area, and gangs of teenagers were causing older people not to go out. She stated that the proximity of the railway station was an issue and at the premises there was a car park where people would loiter. Ms Gavin argued that there was no need to sell alcohol with groceries, and selling them together sent out the wrong message.

Mr Robertson then addressed the Board, representing Ms Dillon. He informed the Board that Ms Dillon's premises (Pennyburn Premier Supermarket) had 7.9 sq mtrs of alcohol display capacity, so the present proposal for 10.45 sq mtrs would double the provision locally and add 5% to the provision for Kilwinning as a whole.

Mr Robertson confirmed that the incident at his clients' shop, referred to by Mr Gibson, had been an attempted robbery.

Mr Robertson reminded the Board that in March 2015 they had refused an application for another off-sales in Kilwinning, the Dirrans Store. He also explained that in 2004 there had been an off-sales application under the Licensing (Scotland) Act 1976 for the same premises, which had been refused. He said that the present Applicant had taken over a successful business knowing that it did not have a Licence. Mr Robertson had acted in the 2004 case and the comments from objectors then were much as they were now. He added that however the present Applicant

'dressed it up', their shop was still a grocer's shop. It might appear 'shinier', being backed by Tesco, but otherwise nothing had changed.

Mr Robertson pointed out that the Board had granted a new off-sales Licence in Springside in January 2015 but that particular application could be distinguished as it was in a different overprovision area, it was granted to a franchise taking over and renovating a derelict building, and the renovation also created premises for two other businesses, and provided an ATM.

In summary, Mr Robertson stated that this proposal should be refused based on 3 issues. Firstly, there were already sufficient alcohol outlets in Kilwinning. Secondly, overprovision would be caused if this new Licence was granted, and thirdly, the application was inconsistent with two Licensing Objectives, namely preventing public nuisance and protecting and improving public health.

Councillor Reid commented that Mr Gibson had spent longer attacking the objectors than dealing with the issue of overprovision. The Councillor asked Mr Carroll if the store would only stock Tesco branded products. Mr Carroll replied that, no, One Stop had their own supply line.

Councillor Marshall commented that there were over 140 signatures on the petition, and given Mrs Robertson's comments about the area being 'blighted', should the Board not have given some weight to the petition?

Mr Gibson replied that his submission regarding the petition had echoed the Board report, which explained that a petition must be tied to the 5 Licensing Objectives.

Councillor Marshall asked Mrs Robertson about the suggestion that some of the signatures were in the same handwriting. She replied that there are many people in the community who need assistance to write letters or complete petitions.

Councillor McNicol asked Mr Carroll if 10% of the store's sales would be alcohol. Mr Carroll said that the figure would be 10-15%, based on One Stop's 800 other stores.

In response to a comment from Councillor McNicol, Mr O'Brien, Solicitor (Licensing) confirmed that gantries in public houses were not taken into account by the Board when considering overprovision in this case. The Overprovision Assessment Report which had been prepared for the Board listed only premises in the same function type as the subject premises, which was off-sales.

Mr Gibson then re-addressed the Board. He confirmed that the store would have CCTV and would operate Challenge 25. One Stop would invest £50,000 in the store when the Applicant signed the franchise agreement.

With reference to the 2004 Board decision, Mr Gibson submitted that both the world and the community were different now. Mr Gibson added that Mr Iqbal had always intended to apply for a Licence for the subject premises, and if granted, he would 'set a standard for Pennyburn and Kilwinning'.

Councillor McNicol asked Mr Iqbal what hours he currently traded. Mr Iqbal replied 7am - 9 pm, but in terms of the application before the Board, he was requesting core hours of 10am - 10 pm. Mr Iqbal said he already had premises in West Lothian, and had engaged with the Police, a local school, and the community about the problem of agent purchasing. He added that while his livelihood mattered, the local community

mattered too. Mr Iqbal stated that as an operator of premises, he took very seriously his role in the community.

Councillor McNicol asked who would be the manager at the subject premises. Mr Iqbal said that initially it would be him, but as he lives in Bothwell, he would eventually employ local staff to manage the premises.

Councillor Easdale noted that many of the objectors had raised concerns about Antisocial Behaviour, and he wondered if the Police had any comments. Mr O'Brien advised that the Police had made no comment, beyond the necessary 'no conviction' Notice under Section 21(3), however the Board had the option to seek an Antisocial Behaviour Report under Section 24A.

The Board adjourned to the Members Lounge with the Solicitor (Licensing) at 10.51 am to deliberate in private and re-convened at 11.04 am.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the Board refuse the application, on the grounds of overprovision. Councillor McNicol seconded the motion. There was no counter-motion, however Councillor Easdale stated that he wished to abstain. All other Board Members confirmed their vote in favour of the motion.

The motion was accordingly carried and the Premises Licence application refused.

A.2 Il Cardo Limited, 116/118 Main Street, Largs

The Board considered an application for grant of a Provisional Premises Licence made by Il Cardo Ltd for the above premises. John Corrigan of Ill Cardo Ltd was present.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the report.

The Chief Constable had submitted a Notice under Section 21(4)(b)(i) of the 2005 Act, confirming the existence of a relevant conviction.

Copies of the Chief Constable's Notice were given to the Board Members and the content of the Notice letter was read aloud by Chief Inspector Shaw.

Mr Corrigan addressed the Board regarding the application and issues arising. Regarding the conviction, he explained that the incident occurred 20 months ago. Under provocation, he retaliated to defend himself.

Regarding the application, Mr Corrigan explained that the proposed premises are opposite Hastie of Largs, which is due to close down on Christmas Eve. Taking this closure into account, if this application were granted with 15 sq mtrs of alcohol display capacity, the overall effect would be a reduction in display capacity of 40 sq mtrs. The proposal is for a delicatessen, selling fine wines and other alcoholic cooking related products. All produce would be in keeping with an authentic delicatessen and a lot of the products will be sourced from Italy where Mr Corrigan has contacts which have been established over many years.

In response to questions from Councillor Reid and Mr O'Brien, Mr Corrigan confirmed that he would oversee the premises but would not be the premises manager at this unit. He has a manager lined up who has experience of running a similar type of operation in Gourrock. Mr Corrigan added that he has operated licensed premises in Largs for 10 years with no issues.

The Board adjourned to the Members Lounge with the Solicitor (Licensing) at 11.20 am to deliberate in private and re-convened at 11.30 am.

The Convenor asked Mr Corrigan if he would accept an off sales display area capacity of 10 sq mtrs, instead of 15 sq mtrs. Mr Corrigan confirmed that he would accept 10 sq mtrs.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the Board grant the application with an off sales display capacity of 10 sq mtrs. Councillor Reid seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant with an off sales display capacity of 10 sq mtrs. The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A and B.

A.3 Provisional Premises Licence 0468 Restaurant, 17-19 Aitken Street, Largs

The Board resumed consideration of a Review Proposal under Section 37, relating to the above premises. John Corrigan of Acre Lettings Ltd was present.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the background to the Review Proposal and summarised the issues arising.

The Convenor noted that Mr Corrigan's relevant conviction had been considered during the previous case.

Having considered the terms of the report, and Mr Corrigan's previous submission, Councillor Marshall moved that the Board note the conviction and take no further action. Councillor Easdale seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to note the conviction and take no further action.

A.4 Premises Licence 0257 Pierhead Tavern, Main Street, Lamlash, Isle of Arran

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Partnership of A & J L Howe, for the above premises. The Licence Holder was represented by Peter Lawson, Solicitor, and he was accompanied by Jane Howe.

The Licence Holder was requesting the following variations:

1. Add roof garden as Outdoor Drinking Area
2. Extend existing Outdoor Drinking Area
3. Alter Sunday on sales hours.
4. Alter Sunday off sales hours.
5. Add reference to NALB Policy on Extended Hours
6. Add licensed activities.
7. Amend under 18 access.

8. Alter on sales capacity.
9. Add off sales capacity.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the report.

A representation in support of the application had been made by Arran Community Council and copies of the written submission were given to the Board Members. The Community Council were not represented.

Mr Lawson addressed the Board regarding the application. He referred to the letter of support from the Community Council and explained that the Licence Holder has invested £200,000 making renovations to the premises, with the principle change being the addition of a roof garden. It is hoped / proposed that the premises will re-open on 28 November. Although there is no dedicated off sales display area as such, the off sales display capacity figure is 2.1 sq mtrs.

Councillor Reid said that he had concerns about the roof garden given that it overlooks the road and he suggested that the Board should consider insisting on the installation of barriers of a substantial height, and that plastic glasses should be used within that area.

Mr Lawson said that during the construction project there had been lengthy discussion with Building Standards and Planning regarding safety in relation to the roof garden overlooking the pavement. All of the required stipulations were adhered to and the safety barriers were constructed as per the Building Standards safety requirements. In terms of plastic glasses being used outside, Mr Lawson said that was a decision for the Board.

Mr Lawson highlighted that the Licence Holder intends to operate a family orientated premises, however, should there be any future issues or concerns the Review procedure enables to Board to deal with such matters.

Having considered the terms of the report, and the submissions made, Councillor Bruce moved that the application be granted. He commented that the new facilities at the premises are of an exceptional standard. Councillor McLean seconded the motion.

Councillor Reid moved, as an amendment, that variation 1 be refused and the remainder of the application granted. There was no seconder for the amendment.

There was then a roll-call vote. Councillor Reid noted his dissent. Councillors Clarkson, Marshall, Barr, Bruce, Easdale, McLean, McMillan, and McNicol voted for the motion.

The motion was accordingly carried and the application granted.

A.5 Premises Licence 0356 Coast, Shore Road, Whiting Bay, Isle of Arran

The Board considered an application for variations of a Premises Licence made by the Licence Holder, The Firm of Coast, for the above premises. The Licence Holder was not represented.

The Licence Holder was requesting the following variations:

1. Alter Sunday on sales hours
2. Permit breakfast use of Outdoor Drinking Area from 8.00 am.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the report.

Having considered the terms of the report, Councillor Barr moved that the application be granted. Councillor McLean seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. The Board's Standard Conditions Edition 5 will now apply. Standard Condition C.5.2 is amended to read:

'No drinks (alcoholic or not) shall be taken into or consumed in such areas earlier than 11.00 am and later than 10.00 pm, except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 8.00 am.'

A.6 Premises Licence 0195 General Store, 7B St Margaret's Road, Ardrossan

The Board considered an application for a variation of a Premises Licence made by the Licence Holder, Herjinder Kaur Sanghera, for the above premises. The Licence Holder was represented by Ian Hunter, Solicitor.

The Licence Holder was requesting the following variation:

1. Alter Sunday off-sales hours.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the report.

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

A.7 Premises Licence 0216 Fiddlers & Oceans, 4 Townhead Close, Largs

The Board resumed consideration of a Review Application under Section 36 made by Diane Mullen, 3 Waterside Street, Largs, relating to the above premises. The Licence Holder, Aquilla Clark, was present and was represented by Andrew Hunter, Solicitor.

The Review Application was made by a letter to the Board, dated 20 August 2015. Copies of the letter were given to the Board Members. Mrs Mullen was not present.

The Board then considered the terms of a report by the Solicitor (Licensing) which set out the background to the Section 36 Review Application, summarised the issues arising and detailed the Board's powers on review. The Board also had regard to a report supplied by Grace Cullen, Licensing Standards Officer. Ms Cullen's report detailed a site visit to the premises which took place on the night of 31 October 2015

and was attended by Ms Cullen, Councillor Clarkson, Councillor Marshall, Councillor McNicol and Councillor Barr.

The Convenor, Councillor Barr and Councillor McNicol all commented that at the site visit everything was found to be in order. The only point of note was that perhaps individuals that have been refused entry could be dispersed quicker.

Councillor Reid said that he was still concerned that the curfew was being broken by the system which permits patrons to temporarily exit the premises to smoke or go to the cash machine. He observed that Mrs Mullen was not present however he had taken on board the complaints regarding people being outside of the premises causing problems.

Mr Hunter said that it was his understanding that the stamping procedure was acceptable and did not breach any of the licence conditions.

Ms Cullen confirmed that the stamping procedure does not breach any of the licence conditions.

The Convenor, Councillor Barr and Councillor McNicol all confirmed that on the site visit they observed that the curfew was being adhered to. They did not witness any patrons leaving to go to the cash machine.

Councillor Marshall observed that on the night of the site visit, there was an absence of any visible Police presence in the town of Largs.

Having considered the terms of the reports, and the submissions made, Councillor Barr moved that the Grounds for Review were not established and that no further action be taken. Councillor McLean seconded the motion. There was no counter-motion and the Board unanimously decided, without dissent or abstention, that the Grounds for Review were not established and that no further action should be taken.

Mr Hunter confirmed that he had noted the Board's decision.

A.8 Premises Licence 0042 The Station Bar, 18 Station Road, Stevenston

The Board considered a Review Application under Section 36 made by the Licensing Standards Officer relating to the above premises. The Licence Holder, Margaret Emmanuel, was not present or represented.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the background to the Section 36 Review Application and summarised the issues arising.

Mr O'Brien highlighted that the Grounds for Review was that the Board's Standard Condition A.7, namely, 'Any annual or other recurring fee must be paid if required by the regulations', had been breached by the Licence Holder. Mr O'Brien updated the Board that the outstanding fee was paid on 5 November 2015.

The Convenor proposed that the Grounds for Review were established but no further action should be taken. There was no counter-motion and the Board unanimously decided, without dissent or abstention, that the Grounds for Review were established but no further action should be taken.

A.9 Premises Licence 0238 Café Bar, 47A Main Street, Beith

The Board considered a Review Application under Section 36 made by the Licensing Standards Officer relating to the above premises. The Licence Holder, Angela Watson, was not present or represented.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the background to the Section 36 Review Application and summarised the issues arising.

Mr O'Brien highlighted that the Grounds for Review were that the Board's Standard Condition A.7, namely, 'Any annual or other recurring fee must be paid if required by the regulations', had been breached by the Licence Holder. Mr O'Brien updated the Board that the outstanding fee was paid on 5 November 2015.

The Convenor proposed that the Grounds for Review were established but no further action should be taken. There was no counter-motion and the Board unanimously decided, without dissent or abstention, that the Grounds for Review were established but no further action should be taken.

A.10 Site to the north of Pennyburn Roundabout, to be accessed from Stevenston Road, Kilwinning

The Board considered an application for variation of a Provisional Premises Licence made by the Licence Holder, Marston's Operating Ltd, for the above premises. The Licence Holder was represented by John Gaunt, Solicitor, and he was accompanied by Avril Lothian of Marston's Operating Ltd.

The Licence Holder was requesting the following variation:

1. Add off sales facility.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the results of consultations on the application and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the report.

Mr Gaunt then addressed the Board regarding the application. He said that it was hoped that the development would be open for business in March 2016. It was envisaged that the hotel / lodge would not be part of the pub / restaurant licence, however, the addition of an off sales facility at the pub / restaurant would allow for alcohol to be sold to guests staying at the hotel / lodge.

Regarding observations detailed in the Board report, Mr Gaunt commented that if it were to be the hotel / lodge that was to be licensed then it would fall well down the list of function types which cause concern in terms of overprovision. Mr Gaunt confirmed that the Licence Holder is aware of the limitation to only sell off sales to hotel / lodge residents and would accept the additional wording in Section 5 of the Operating Plan as suggested by Mr O'Brien. The Licence Holder is fully aware of their responsibilities in relation to the operation of the licence. The off sales facility would not become like a supermarket, full pub prices would be charged.

Councillor Reid said that the Board should consider this application as an exception to the Policy, however, he queried whether the Board should consider restricting sales to during the day.

Mr Gaunt re-assured the Board the operator would 'absolutely' act in a responsible manner in relation to an off sales permission and he requested that no restriction be imposed in terms of times.

Councillor Bruce asked if the hotel / lodge rooms contained a minibar. Mr Gaunt confirmed that hotel / lodge under construction is a budget hotel and such rooms do not have a minibar.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the application be granted. Councillor McMillan seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant. Part B of the Board's Standard Conditions will now apply, and the following is added to Section 5 of the Operating Plan:

'Any off sales supplied shall be limited to residents of the Hotel / Lodge being constructed by the Applicant / PLH as part of the larger development; and alcohol shall not be available or sold to members of the public who are not so resident'.

The meeting ended at 12.32 pm