

North Ayrshire Licensing Board
22 June 2015

Irvine, 22 June 2015 - At a meeting of the North Ayrshire Licensing Board at 11.26 am in the Council Chambers, Cunninghame House, Irvine.

Present

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

In Attendance

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

Also In Attendance

Sergeant McIntosh and Police Constable Jenkins (Police Scotland).

Convenor

Councillor Clarkson appointed as Convenor (see Item 1).

Apologies for Absence

Ronnie McNicol.

Declarations of Interest

Councillor Reid declared a non-financial interest in Case 1, involving the Co-operative Group Food Ltd.

1. Election of Convenor – Licensing (Scotland) Act 2005, Schedule 1, Paragraph 6(2)

The Board considered a report by the Solicitor (Licensing), confirming the resignation of the Board Convenor, Councillor McNicol, and advising that the Board conduct an election to appoint a new Convenor in accordance with the Licensing (Scotland) Act 2005, Schedule 1, Paragraph 6(2).

Having considered the report, Councillor Marshall moved that Councillor Clarkson be appointed as Convenor. Councillor Barr seconded the motion. There were no countermotions or abstentions. Accordingly, the motion was unanimously carried and Councillor Clarkson appointed as Convenor.

Councillor Barr moved that Councillor Marshall be re-appointed as Vice Convenor. Councillor McLean seconded the motion. There were no countermotions or abstentions. Accordingly, the motion was unanimously carried and Councillor Marshall re-appointed as Vice Convenor.

2. Minutes

The Board were asked to confirm the Minutes of the Board meeting held on 18 May 2015. The Convenor proposed that the Minutes be adopted and this was seconded by Councillor Marshall. 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 Co-operative Food, 19 Cardiff Street, Millport

The Board considered an application for grant of a Provisional Premises Licence made by the Co-operative Group Food Ltd for the above premises. The Applicant was represented by Audrey Junner, Solicitor, and she was accompanied by Mr Gormley and Mr Murphy of the Co-operative Group Food 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, 15 objections had been lodged with the Licensing Section in relation to the application. Ms Junner confirmed that she had seen a copy of all objections prior to the Board meeting. Copies of the written objections were given to the Board Members. Objectors Alexander and Margaret Caldwell were represented by James Russell, Solicitor. Objector Alex Dobbin was also present and he produced letters of authority to represent fellow Objectors Kyle Jamieson and Valerie Nailor.

Ms Junner addressed the Board regarding the application and issues arising.

Ms Junner acknowledged that the Applicant had been refused only 3 months ago. She said that the Co-op 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. The Co-op proposed to invest £1 million.

Ms Junner noted that 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 and the alcohol display had moved towards the till. Ms Junner adopted the submissions made by her colleague, Mr Lawson, at the previous Board meeting concerning the quality of the operator, and the choice of produce available. The Co-op had an impeccable licensing record and were a highly respected operator who had never been convicted in the United Kingdom under the 2005 Scottish Act or the 2003 equivalent Act in England and Wales. Ms Junner acknowledged that the Board had an Overprovision policy, but referred to the case of Brewdog Bars Ltd. v Leeds City Council.

Referring to the objections, Ms Junner 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 and Planning Permission had already been granted for the proposal.

Regarding the issue of Overprovision, Ms Junner argued that the Board should view Millport as a separate 'locality' from the North Coast as Cumbrae had specific requirements, and it was an island. She informed the Board that the Co-op would reduce the requested capacity further but the current request was not unreasonable given the population.

Ms Junner noted that the Board's Licensing Policy Statement used statistics from 2010. Statistics had moved on substantially since then and alcohol consumption had fallen by 10% since 2007. Data for the North Coast locality was positive, when compared to the rest of North Ayrshire. Ms Junner pointed out that there was no objection from NHS Ayrshire and Arran and she confirmed that the Premises would not sell 3-litre bottles or single cans with over 4 units of alcohol.

Ms Junner highlighted that 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 as people nowadays tended to do their shopping locally. There was a 'travelling pound' argument - people don't buy things twice.

Ms Junner said that it was open to the Board to grant an application against its policy, where the application was good and was from a responsible operator. This proposal would create 15 new jobs, as opposed to taking jobs from existing businesses. This was backed up by Planning. She added that job creation was good for mental health.

Mr Dobbin then addressed the Board. He asked Ms Junner if the 27 signatures had come from the Applicant's Open Day. Ms Junner confirmed that they did. Mr Dobbin then asked 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 that it was up to the Co-op to present evidence in support of their case and that Objectors would have their own opportunity.

Mr Russell then addressed the Board. 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 the Licensing Objectives or Overprovision.

Mr Russell highlighted that the Board had refused the Co-op in March, with the Board concluding that the 'locality' was overprovided. He quoted from the earlier Statement of Reasons and invited the Board to refuse again, due to Overprovision. The existing provision was more than sufficient and there had been no significant change in any of the factors that the Board had to take into account.

Mr Dobbin referred to the current situation in Millport. There were 16 licences for a population of 1,280, i.e. 1 Licence per 80 people. The North Ayrshire average was about 1 licence per 300 people. If the subject premises were licensed, there would be 4 off-sales within a 5 minute walk. Mr Dobbin argued that if this wasn't Overprovision, he did not know what was. He then read out Valerie Nailor's objection.

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

Councillor Barr asked what percentage of the Premises' trade would be alcohol, and he asked if the Co-op were saying that the store would not be profitable without a licence. Mr Gormley said that alcohol would account for between 12 - 18% of sales turnover and he added that it was the Co-op's policy to make a full provision of products available to customers, which included alcohol.

Councillor 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 that competition was good, but this proposal would double alcohol provision. Millport already had a capacity of about 21sq.m, and this 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. Councillor Marshall asked why the Co-op was only reducing the earlier proposal from 26 to 20 sq.m.

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 present proposal included a 2.1 sq.m. display of red wine, and that could be removed.

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

Councillor 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.

Councillor McLean commented that while residents would welcome a new store, nothing had changed in the previous 3 months.

The Convenor invited parties to sum up.

Ms Junner 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. She added that the Board's statistics were out of date.

The Convenor asked Ms Junner to confirm what the proposal now was. Ms Junner confirmed that she would deduct the 2.1 sq.m area, leaving 17.81 sq.m.

Mr Dobbin commented that even if the Co-op were granted a licence with 10 sq.m of off sales capacity, that would still add 50% to the total off-sales capacity in Millport

Mr Russell said that 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.

The Board adjourned to the Members Lounge with the Solicitor (Licensing) at 12.09 pm to deliberate in private and re-convened at 12.21 pm.

On returning, the Convenor informed Ms Junner that the Board did not think that her reduction to 17.81 sq.m had gone far enough, and he enquired if she had a further revised proposal, bearing in mind the conversation she and the Board had had prior

to the adjournment. Ms Junner conferred with her clients and confirmed that the store could be operated with an off sales capacity of 14.5 sq.m. The Convenor enquired if this was the lowest possible figure. He then asked if there were any motions.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the Board refuse the application, on the ground of overprovision. Councillor McLean seconded the motion. As an amendment, Councillor Easdale proposed that the application should be granted if the proposal was reduced to 10 sq.m. Councillor McMillan seconded the amendment.

The Convenor asked Ms Junner, "yes or no to 10 sq.m?". She replied "yes".

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

The amendment was accordingly carried and the application granted with an alcohol display capacity of 10 sq. m. The Provisional Premises Licence is granted subject to Standard Conditions (Edition 5) Parts A and B.

The Convenor suggested that the Board consider Cases 2 and 3 together. Andrew Hunter, Solicitor, representing Lidl UK GmbH, confirmed that he was content for the Board to proceed as per the Convenor's suggestion.

A.2 & A.3 Premises Licence 0386 Lidl, 2 Kilwinning Road, Dalry and Premises Licence 303 Lidl, 104 Boglemart Street, Stevenston

The Board considered 2 applications for variations of Premises Licence made by the Licence Holder, Lidl UK GmbH, for the above premises. The Licence Holder was represented by Andrew Hunter, Solicitor, and he was accompanied by Tracy Broomfield of Lidl UK GmbH.

The Licence Holder was requesting the following variations:

1. Add 'Recorded Music' (Both Premises)
2. Increase off-sales capacity from 37.13 sq.m to 43.25 (Dalry Premises)
3. Increase off-sales capacity from 38.16 sq.m to 44.28 (Stevenston Premises)

The Board considered the terms of 2 reports by the Solicitor (Licensing) which set out the results of consultations on the applications and summarised the issues arising. Mr O'Brien updated the Board on progress made against the observations set out in the reports.

Mr Hunter then addressed the Board regarding the background to the applications. He explained that the applications were being made in line with a national initiative being undertaken by the Licence Holder. The intention is to utilise a relatively small additional area to display wines during theme weeks. Even with the additional display area, the alcohol display would only account for 3-4% of the overall sales area in both premises. Mr Hunter highlighted that all Lidl stores are operated well and, as a policy, the company to do not utilise deep discounting.

Councillor Barr noted his support for both applications, however, Councillor Reid commented on the high presence of alcohol at the till points.

Mr Hunter said that alcohol is not displayed right at the till points and it is always Lidl policy to locate alcohol furthest away from a store's entrance point.

Having considered the terms of the reports, and the submissions made, Councillor Barr moved that both applications be granted. Councillor Marshall seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant both applications.

A.4 Restaurant, 73 Main Street, West Kilbride

The Board considered an application for grant of a Provisional Premises Licence made by Rosenwheel Property Ltd for the above premises. The Applicant was represented by Ian Hunter, Solicitor, and he was accompanied by Mr Russell, Director, Rosenwheel Property 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.

Mr Hunter then addressed the Board regarding the application. He explained that unfortunately for his client, the previous tenant had surrendered the premises licence. Significant money has been spent bringing the premises up to scratch and the layout of the proposed premises will be as before. Mr Hunter noted that there were no objections to the application and he added that, if granted, this facility would assist and enhance the local effort to attract visitors into the village of West Kilbride.

Regarding the observations within the Board report, Mr Hunter explained that 'live performances and dancing' is to cater for small wedding parties or other functions with small scale live music. 'Theatre and films' is to provide facilities for local clubs, and any additional permissions that are required will be applied for. Baby changing facilities will be located in the disabled toilets at the rear of the premises. It followed that children under 5 would be permitted access in the rear of the premises only. Mr Hunter acknowledged the provisions of the Gambling Act 2005 and he confirmed that under 18s will not be permitted within 1 metre of the bar area.

Councillor Barr commented that locally, people and businesses are in favour of the application.

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

The Board adjourned at 12.49 pm and re-convened at 1.00 pm.

A.5 Premises Licence 0333 Londis, 132 Hayocks Road, Stevenston

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Salma Manzur, for the above premises. Mrs Manzur was present.

The Licence Holder was requesting the following variations:

1. Change name of Premises to 'Day to Day'.
2. Amend Sunday off sales hours from 12.30 pm-6.00pm to 10.00am-10.00pm.

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 Reid moved that the application be granted. Councillor Bruce seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant.

A.6 Premises Licence 0127 The Wineport, Cladach, Brodick

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

The Licence Holder was requesting the following variation:

1. Permit 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.

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

Mr Hunter then addressed the Board regarding the application. He referred to the letter of support from the Community Council and explained that, as the premises were very popular with hill walkers, the Licence Holder wished to make the outdoor area available for use for these persons as a commencement point for their hill walking activities.

Having considered the terms of the report, and the submissions made, 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. 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 tea, coffee and other soft drinks may be served from 8.00 am.'

A.7 Premises Licence 0214 Kings Arms Hotel, 115 High Street, Irvine

The Board considered an application for Transfer of a Premises Licence, under Section 34, made by Matthew Dyson, Area Manager Heineken (UK) Ltd, for the above premises. Mr Dyson was present and was represented by Janet Hood, Solicitor.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the background to the application and summarised the issues arising. Mr O'Brien

highlighted the preliminary matter of competency and drew the Board's attention to the 3 issues detailed at Section 1.7 of the Board report. The Board also considered a document submitted by Flint Bishop Solicitors, namely the Opinion of Counsel, Robert Skinner.

Mr O'Brien stated that in his view, according to the strict legal position, the application would have to be refused as incompetent.

Ms Hood then addressed the Board regarding the application and issues arising. She acknowledged Mr O'Brien's clear interpretation of his position. However, with reference to the Opinion of Counsel, Ms Hood said that she held an opposing view, derived from a wider interpretation of the legal position. If the Board were of a mind to agree with Ms Hood's view then the premises would be saved. Ms Hood noted that in the Counsel's opinion there was reference to other closed premises where the licence remains.

Ms Hood said that in her view, the business has reverted to the owners of the property. Regarding the issue of consent, Ms Hood argued that the person who has the greatest right to occupy a building is the owner. A business has carried on at these premises since 1850. Granted, it has certainly changed a few times over the years but the business of hospitality with the sale of alcohol, has continued in a form since 1850. The business has not been lost, it has just changed over the years. The Act clearly allows for this type of transfer.

Ms Hood argued that it was perverse that a premises which have been closed for 1 month should lose its licence when other premises have been closed for 2 years but continue to hold a licence by payment of the annual fee.

Ms Hood said that the Scottish Government had written the legislation to allow local Licensing Boards to act appropriately to meet local needs. In this regard, Boards should have regard to other policies such as those concerning Regeneration.

Referring to Section 34(3)(d) of Act, Ms Hood highlighted the inclusion of the word 'otherwise'. She argued that the reversion of control to the owner of the business is the 'otherwise'. The premises have a prominent location in the centre of Irvine but there are considerable issues to be overcome regarding the building's current state of disrepair. However, Ms Hood said that her clients do want to resolve the issues and make the building acceptable again so that the premises may trade again in the centre of Irvine. There was no question regarding Mr Dyson's suitability as an Applicant and the 'otherwise' part of Section 34 should permit the Transfer to happen. On this basis, Ms Hood invited the Board to grant the application.

The Convenor commented that the current state of the premises was sad and that this is a difficult case as it is a very iconic building within Irvine town centre. He asked if Heineken had been aware of the problems within the building. Mr Dyson confirmed that they had been aware and he explained the lease agreement that was in place with the most recent tenant. Attempts were made over a 3 year period to engage and negotiate with the tenant in a bid to enforce the outstanding repairs. Unfortunately, the situation led to legal recourse to recover occupancy of the premises.

Councillor Barr asked Mr Dyson what time scale he had in mind for re-opening the premises. Mr Dyson explained that £600,000 of investment would be required to bring the premises back up to standard. The company would undertake to make the building safe and further renovations would involve the input of prospective tenants.

The intention is to move forward as soon as possible with a potential re-opening of the premises in Quarter 1 or Quarter 2 of next year, depending upon discussions with prospective tenants.

Ms Hood added an absolute guarantee that, if the Transfer was granted, the premises would not be re-opened in its current state.

The Board adjourned to the Members Lounge with the Solicitor (Licensing) at 1.50 pm to deliberate in private and re-convened at 2.15 pm.

Having considered the terms of the report, and the submission made, Councillor Easdale moved that the Board accept the application as competent and grant the Transfer, with a Review near the end of the restoration period. Councillor Bruce seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to accept the application as competent and grant the Transfer. Additionally, a Review will be instigated by the Board near the end of the premises restoration period.

Ms Hood thanked the Board and the Board's staff, whom she thought were extremely proficient and professional. She informed the Board that her clients will work very closely with the Council, and in particular Building Standards, throughout the restoration period and in all likelihood a variation application would come before the Board prior to the premises re-opening.

A.8 Margaret Reilly (Reference NA 1937)

The Board considered an application for a Personal Licence made by the above Applicant. Mrs Reilly was present.

The Board considered the terms of a report by the Solicitor (Licensing) which referred to the Chief Constable's Notice under Section 73(3)(b) of the 2005 Act and summarised issues arising. Copies of the Police letter were given to the Board Members.

Mrs Reilly was given the opportunity to address the Board on the issues arising. Referring to the convictions detailed in the Police letter, Mrs Reilly said that she was deeply ashamed and embarrassed by the whole situation. She had never been in trouble before or since the incident in December 2012.

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

Councillor Barr advised Mrs Reilly to look after her conduct at all times in the future.

A.9 Provisional Premises Licence 0468 Restaurant, 17-19 Aitken Street, Largs

The Board considered a Review Proposal under Section 37, relating to the above premises. The Licence Holder, Acre Lettings Ltd, was not represented.

The Board considered the terms of a report by the Solicitor (Licensing) which set out and summarised the issues arising. Mr O'Brien explained that Mr Corrigan had

contacted the Licensing Office to notify the Board that he would not be able to attend the Hearing today for health reasons.

Having considered the terms of the report, Councillor Barr moved that the Board issue a written warning to the Licence Holder. Councillor Marshall seconded the motion. Councillor Reid moved, as an amendment, to continue the case and re-cite Mr Corrigan to attend at a future meeting. Councillor Bruce seconded the amendment.

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

The amendment was accordingly carried and the case continued to a future Board meeting at which Mr Corrigan will be re-cited to attend.

Councillor Marshall departed the meeting at 2.25 pm.

A.10 Premises Licence 0432 Gulab 2A Stanecastle Road, Irvine

The Board considered a Review Proposal under Section 37, relating to the above premises. The Licence Holder, Summel and Summel Ltd, was represented by Dalvinder Summel. Mr Robinson and Mr Crombie, both residents of Castlekeep Gardens, Irvine, and neighbours of the Gulab premises, were also present.

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

Referring to the Board report and Ms Cullen's report, Mr O'Brien explained the background to the case.

The Board then considered various documents, including e mails from Mr Robinson and an e mail from Rajinder Summel, Premises Manager at the Gulab.

Thereafter Mr Summel addressed the Board on the issues arising. In response to a question from Councillor Clarkson regarding the incident on 11 April 2015, Mr Summel explained that 2 large groups of males had a fight right outside the premises. The Police attended and on viewing CCTV it was confirmed that the individuals involved in the disturbance had not been within the premises. Mr Summel added that recently there had not been any problems with the Gulab.

Mr Robinson then addressed the Board by reading from a prepared statement. He added that he totally disagreed with the content of Rajinder Summel's e mail as problems do stem from within the Gulab and its smoking area. Mr Robinson acknowledged that since 1 May this year, there has not been any trouble for the neighbours, and prior to that there have only been 4 incidents this year. He said that before the Summel brothers took over the running of the premises 2 years ago the situation was horrendous for the neighbours. Mr Robinson stated that he did not want the Gulab to be punished, he just wanted a workable, long term solution so that the Licence Holder and the neighbours can all get along.

Mr Summel then responded to questions from Councillors Reid, Easdale and Bruce. He confirmed that the premises now have a new telephone system which can accept incoming calls that do not display a number. All of the measures referred to in the

Board report were implemented. Karaoke is not even held once a month, but is now only on special occasions. Licensed stewards are employed and 3 personal licence holders are on duty at the end of the night.

Having considered the terms of the reports, and the submissions made, Councillor Clarkson stated that he was concerned that this situation had still not been resolved after 2 years. As such, he moved that the case be continued to allow for the Board to make a site visit to the premises. Councillor Reid seconded the motion, adding that the Board should also direct the Licence Holder to re-engage with their neighbours in terms of communication. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue the case and make a site visit to the premises. The Board also directed the Licence Holder to re-engage and re-establish communication with the neighbours.

The meeting ended at 3.02 pm