

Cunninghame House,
Irvine.

19 March 2015

North Ayrshire Licensing Board

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 25 MARCH 2015** at **11.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

1. Minutes

Confirm the Minutes of the Board Meeting held on 2 March 2015.

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

Submit report by the Clerk to the Licensing Board on applications under the Licensing (Scotland) Act 2005 (copy enclosed)

Licensing Board

Sederunt: Ronnie McNicol (Convenor)
Tom Marshall (Vice-Convenor)
Robert Barr
John Bruce
Ian Clarkson
John Easdale
Grace McLean
Catherine McMillan
Donald Reid

Chair:

Attending:

Apologies:

Meeting Ended:

Agenda Item 2

25 March 2015

North Ayrshire Licensing Board

Subject: Licences and Applications under the Licensing (Scotland) Act 2005

Purpose: To inform the Licensing Board on the background to applications received under the Licensing (Scotland) Act 2005.

Recommendation: That the Licensing Board determines the applications.

1. Introduction

- 1.1 The Licensing Board is responsible for determining applications made under the Licensing (Scotland) Act 2005, and for determining questions under that Act.
- 1.2 The Board has previously approved a Scheme of Delegation whereby certain matters can be delegated.

2. Current Position

- 2.1 The applications before the Board are set out in the attached appendices. Each appendix contains reports prepared by licensing staff for each individual case before the Board.
- 2.2 Appropriate consultation has taken place with Police Scotland and with the Council's Building Standards and Planning Sections. Where relevant the reports have been copied to the applicants and any persons making objections or representations. Any objections or representations have been copied to the applicants, so that a response might be made at the Board Hearing.

Clerk to the Licensing Board

Reference : WO'B/MC

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

APPENDIX A

Premises Licence Applications or any other Applications requiring a Hearing

Case No.	Licence No.	Applicant/Licence Holder	Premises	Comments
1.	056/15 - 057/15	Donal Adam Boyle Fiddlers' Flat Shore Road Brodict Isle of Arran KA27 8AJ	Fiddlers' Shore Road Brodict Isle of Arran KA27 8AJ	Application for Extended Hours - Section 68 Continued from 02/03/15
2.	NA1349	Helen Deadman 35 Warrix Avenue Irvine KA12 0DP		Personal Licence Review Hearing - Section 84A
3	0405	Ian Alistair Kirsop Lamlash Bay Hotel Shore Road Lamlash Isle of Arran KA27 8LU	Lamlash Bay Hotel Shore Road Lamlash Isle of Arran KA27 8LU	Application for Variation of Premises Licence - Section 29 Continued from 02/03/2015

Application for Extended Hours under Section 68

1. Premises

Premises name	Fiddlers'
Address	Shore Road, Brodick, Isle of Arran KA27 8QS
Premises Licence No.	60
E.H. Ref.	2015-56, 2015-57 (two Applications)

CONTINUED FROM 2 MARCH 2015

2. Application

Dates requested	Friday 5 June and Saturday 6 June 2015
Extended Hours requested	Two periods: 01.00 a.m. Saturday until 11.00 a.m. on Sunday 01.00 a.m. Sunday until 11.00 a.m. Sunday
Existing Licensed Hours	Friday: 11.00 to 01.00 Saturday: 11.00 to 01.00 Sunday: 11.00 to 24.00
Event	Arran Folk Festival
Sale of alcohol	on-sales only (see Issue 4(g) below)
Children (0-15 years)	(a) Children under 12 are admitted if accompanied by an adult, until 10.00 p.m. (b) Children of 12 and older are permitted until 10.00 p.m. if consuming meal or snack - without an adult
Young Persons (16-17)	Young Persons of all ages are permitted: (a) up to 10.00 p.m. - without an adult (b) after 10.00 p.m. - if both with an adult, and consuming meal or snack.

3. Consultation

Police	No objection
LSO	Report will be given to Members

There is no statutory obligation to give public notice or to allow representations.

4. Procedure

The legislation does not state criteria for granting or refusing Extended Hours, but the Board must consider

- (a) any Notice of Objection given by the Chief Constable, and

- (b) the LSO's report
- (c) the Licensing Policy Statement ("LPS") (which seeks to promote the Licensing Objectives)

(Sections 6(3)(a), 6(4) and 70)

The Board must, before determining the Application, ensure that the Applicant is given an opportunity to comment on any such Notice or Report (Section 70(3)).

5. Issues

- (a) Unpaid Fee
- (b) Board's Policy - type of event
- (c) Board's Policy - times requested
- (d) The Application breaches the prohibition on granting a 24-hour Licence without exceptional circumstances.
- (e) The Application is inconsistent with L.O. (d): 'protecting & improving public health'
- (f) The Application is inconsistent with L.O. (e): 'protecting Children from harm'
- (g) The Application breaches the prohibition on Off-sales before 10 a.m. and/or after 10 p.m.

(a) Unpaid Fee

The Applicant has used a single Application Form and has paid a single fee of £10 although the Form contains two separate Applications. The LPS includes:

"7.17. For the convenience of Licensees, the Board accepts a single Application Form covering several different days, although these are individual Applications. The prescribed fee per Application is £10, so an Application covering 4 days would cost £40."

Section 136(4) of the 2005 Act provides:

"Where regulations under subsection (1) provide for a fee to be charged in respect of any application made to a Licensing Board under this Act, the Board need not consider the application unless and until the fee is paid."

The Applicant should pay the remaining £10.

(b) Board's Policy - type of event

The event is included in the list of events which are likely to be accepted as appropriate for a grant of Extended Hours (LPS, Para. 7.16).

(c) Board's Policy - times requested

The effect of the Extended Hours would be that the Premises would open at 11.00 on Friday morning and remain open continuously to 24.00 midnight on the night of Sunday/Monday, i.e. 2 days and 13 hours.

The Board Policy allows one hour to be added to normal Licensed Hours (LPS Para, 7.20).

The Policy was adopted after consideration of Licensing Objectives—

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting Children from harm.

The Applicant should seek to persuade the Board why they should depart from their policy and treat the present case as an exception.

(d) The Application breaches the prohibition on granting a 24-hour Licence without exceptional circumstances.

Section 64 applies to Applications where:

"if the Application were to be granted, the Licensed Hours in relation to the Premises would be such as to allow Alcohol to be sold on the Premises during a continuous period of 24 hours or more.

The Licensing Board must refuse the Application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of Alcohol on the Premises during such a period."

This applies to Extended Hours Applications: Section 64(1)(a)(iv).

Under Section 142 the Board must have regard to any guidance issued by the Scottish Ministers, and if a Board decides not to follow it they must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.

The relevant part of the Guidance is:

"21. Ministers are of the view that Licensing Boards should consider "exceptional circumstances" to cover special events such as one-off local or national festivals. It is unlikely that "exceptional circumstances" would be constituted in the case of premises where there were routine requests to sell alcohol for 24 hours. In considering applications for licensed hours Boards may wish to consider applications for up to 14 hours as being reasonable but local circumstances and views of Local Licensing Forums should always be considered. Any application for licensed hours for more than 14 hours should require further consideration to the effect of granting extra operating hours."

(e) The Application is inconsistent with L.O. (d): 'protecting & improving public health'.

The L.O. expressly states 'improving'. The extension of the ability to sell alcohol cannot be said to improve public health.

(f) The Application is inconsistent with L.O. (e): 'protecting Children from harm'.

This L.O. relates to Children aged 0-15 years, and not to older 'Young Persons' (aged 16-17).

The provisions of the Operating Plan (OP 6) will continue to apply throughout any period of Extended Hours. The Applicant may wish to undertake to the Board that Children will not be admitted, and will be required to leave, during the Extended Hours.

(g) The Application breaches the prohibition on Off-sales before 10 a.m. and/or after 10 p.m..

The Premises already have permitted Licensed Hours for off-sales from 11.00 to 22.00, so the Extended Hours Application can relate only to on-sales.

Section 65(3) is:

"If the Off-Sales Hours proposed in the Application are such that Alcohol would be sold for consumption off the Premises—

(a) before 10am,

(b) after 10pm, or

(c) both,

on any day, the Board must refuse the Application."

The Board has no discretion.

6. Extra Conditions

If Extended Hours are granted, the conditions of the Premises Licence continue to apply, but the Board may make such variation, addition, or deletion to those Conditions as they consider necessary or expedient for the purposes of any of the Licensing Objectives (Section 70A). Such a Variation only operates during the Extended Hours, and not during the normal operating hours.

If Premises had Licensed Hours beyond 1.00 a.m. as part of their normal operation national Regulations would apply at least one additional condition:

"A person trained to the satisfaction of the Licensing Board in administering first aid must be present on the premises from 1:00 am (on any day when the premises are open at that time) until whichever is the earlier of-

(a) the time at which the premises next close; and

(b) 5:00 am. "

(The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007/336)

In addition, there are further mandatory conditions which apply to Premises where, broadly, there are more than 250 people standing, or dancing, or listening to loud music, or watching displays of 'adult entertainment'. The Premises have a capacity of only 46 so these extra Conditions would not apply.

The Board applies Part D of its Standard Conditions to Premises open beyond 1.00 a.m. as part of their normal operation:

D.1 First Aider

D.2 Plastic glasses in Late Opening Premises

D.3 Door Supervisors

D.4 Curfew (the normal curfew is 00.30 a.m.; it was extended to 1.00 only for the Festive Period 2014-15).

There is an exemption from the 'plastic glasses' condition in favour of Premises operated exclusively as a restaurant, and the Board should consider whether or not this exemption should be removed for the duration of the Extended Hours - is the kitchen to operate as normal throughout the Extended Hours? If the Premises would only make snacks available, as opposed to meals, it might be thought that the principal activity was the consumption of alcohol, so should not qualify for the 'restaurant' exemption.

The Board should decide whether there should be additional conditions, and if so what they should be. The Board may wish to apply all of the Part D conditions, and state that the 'restaurant' exemption from the 'plastic glasses' condition does not apply.

If the Board decide to impose the 'first aider' and 'Door Supervisor' conditions, the Applicant should tell the Board who will be engaged and what qualifications they hold.

Personal Licence Review Hearing - Section 84A

Licence Holder	Helen Deadman
Ref.	NA 1349

1. Background

The Personal Licence Holder is the Premises Manager of the Crown Inn, 162 High St., Irvine (Premises Licence 341).

Section 84A entitles the Chief Constable to report to the Board where he considers that any Personal Licence Holder has acted in a manner which is inconsistent with any of the Licensing Objectives.

By letter of 23 February 2015 the Chief Constable reported certain circumstances relating to the Personal Licence Holder. Copies of the letter will be distributed to Members at the Meeting.

2. Previous history of Licence

The Licence was granted on 12 March 2012 and has not previously been either Suspended or Endorsed.

3. Procedure

Under Section 84A(2) the Board must, on receipt of that Report, hold a Hearing and give the Personal Licence Holder and the Chief Constable an opportunity to be heard.

At the Hearing, the Board must have regard to

- (a) the Report
- (b) any comments made by the Personal Licence Holder,
- (c) any comments made by the Chief Constable.

4. Board's Powers on Review

If the Board it considers 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,
- (c) Endorse the Personal Licence.

The Board is not obliged to take any of these steps, and may decide to take no further action. The Personal Licence Holder can appeal to the Sheriff against any decision taken at a Hearing.

An Endorsement lasts 5 years. If a 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.

Application for Variation of Premises Licence - Section 29

Applicant	Ian Kirsop
Premises	Lamlash Bay Hotel, Shore Road, Lamlash, Isle of Arran KA27 8LU
Ref.	405

CONTINUED FROM 2 MARCH 2015

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 20 February 2015:

1. *Until the Board has a Certificate of Display, it cannot determine the Application.*
2. *no details of comments from third parties are given here. If there any, the Applicant will be advised and copies will be handed to Members.*

1. Summary of Variation Request(s)

No.	Variation
1	Add 'pavement cafe'
2	Alter layout by demolishing perimeter wall

2. Changes

The Premises are at the corner of the main A841 road around Arran and a minor road. At this point the pavement is over 5 metres wide. The PLH proposes to have a table area extending 3.0 metres from the line of perimeter wall. The table area would be 4.5 metres long.

There are three separate sets of legislation:

- (a) Licensing
- (b) Planning
- (c) Roads

The Licensing Board makes decisions based only on its own legislation, and the fact that the proposal has already been granted Planning Permission does not oblige the Board to follow what the Planning officer has determined.

The Planning situation is this: the PLH has Planning Permission for the proposed change, and in the course of obtaining PP there was consultation with NAC Transportation, who advised that they would not object provided that 2.0 metres was kept free for pedestrians. The proposal achieves this, and accordingly PP was granted on 4 September 2014, subject to the condition that the PLH provide details of the proposed cafe barriers to be erected around the area, and that prior to the coming into use of the proposed Outdoor Seating Area the approved barriers should be erected and maintained, unless otherwise agreed in writing by the Planning Authority.

The Roads situation is this: at the time of preparing this Report the Licence-Holder has not been granted the Consent of the Roads Authority under Roads (Scotland) Act 1984, Section 59.

Note to Applicant: this is not an issue for the Licensing Board, but regardless of:

- (a) *the grant of PP by the Planning Authority and*
- (b) *the Variation of the Alcohol Licence,*

the pavement cannot be used without the formal grant of Consent by the Roads Authority, and without complying with any conditions of that Consent.

3. Issues

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

<p>Variation 1: Add 'pavement cafe'</p> <p>Discretionary refusal</p> <p>Notes:</p> <p>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'.</p> <p>Section 30(4) and 30(5) of the Licensing (Scotland) Act 2005 provide:</p> <p><i>"(4) Where a Hearing is held under subsection (3), the Board must consider whether any of the <u>grounds for refusal</u> applies and—</i></p> <ul style="list-style-type: none"> <i>(a) if none of them applies, the Board must grant the Application,</i> <i>(b) if any of them applies, the Board must refuse the Application.</i> <p><i>(5) The grounds for refusal are—</i></p> <ul style="list-style-type: none"> <i>(a) ...</i> <i>(b) that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives,</i> <i>(c) that, having regard to—</i> <ul style="list-style-type: none"> <i>(i) the nature of the activities carried on or proposed to be carried on in the Subject Premises,</i> <i>(ii) the location, character and condition of the Premises, and</i>
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(iii) *the persons likely to frequent the Premises,*

the Board considers that the Premises are unsuitable for use for the sale of Alcohol in accordance with the proposed Variation,

(d) *..."*

Section 4(1) is:

"For the purposes of this Act, 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 from harm."

Considerations which are relevant to the Licensing Objectives may also be relevant to the 'unsuitable premises' Ground of Refusal:

(a) "preventing crime and disorder"

If the proposed variation is granted, the area would become part of the 'Licensed Premises', and therefore people within it would not be breaking the Byelaws about drinking in public.

The Board would require to be satisfied that the area would be monitored and managed so as to minimise the possibilities:

- that alcohol might be consumed outside the area
- that alcohol would only be consumed by seated customers (the Board has a general concern with 'vertical drinking' - LPS Para. 4.6)
- that there would be a suitable barrier separating the area from the rest of the pavement. Where the Board has considered permitting an Outdoor Drinking Area adjacent to a public walkway, it has sought a permanent barrier, not a removable one, e.g. where the Licence for the 'Auld Brig' in Rivergate Mall was to include an outside area under the existing canopy, the Board approved plans which confirmed that the barriers would be fixed, opaque and 970 mm high.

(b) "securing public safety"

The Application relates to a pavement on the A841 road. The proximity of drinkers to traffic on a busy road creates a situation which is unique in North Ayrshire, in that the consumption of alcohol on pavements has not been permitted.

(c) "preventing public nuisance"

The Board should consider whether or not the proposal would cause nuisance to pedestrians and neighbouring occupiers.

The Board has Standard Conditions which are aimed at the common 'beer garden', i.e. an enclosed area adjacent to Licensed Premises and typically accessible only from the Premises:

"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.."

General

If the Board consider that the "grounds for refusal" in Sections 30(5)(b) and/or (c) may exist, the Board might continue the Application without limit of time and request the NAC Director of Physical Environment to report to the Board on the extent (if any) that the proposal might lead to congestion for pedestrians. The Board should not determine the Application without having such evidence and having made such an assessment.

If the Board allows Outdoor Drinking, and is later satisfied that this is inconsistent with any L.O. or that any Licence condition has been breached, it has the right to Vary the Licence so as to limit or remove the permission.

Variation 2: Alter layout by demolishing perimeter wall

Mandatory Grant : The request is for a 'Minor Variation'

4. Licence Conditions

If Variation 1 is granted, the Board should consider whether or not the existing conditions are appropriate for the particular proposal. A possible additional Condition:

"The tables, chairs and barriers shall be removed from the Outdoor Drinking Area on the pavement at 10.00 p.m. and not replaced before 11.00 a.m. the next day."

If the Board insist upon a permanent barrier, the condition would be edited. On a case-by-case basis the Board has sometimes allowed enclosed ODAs to operate earlier, for the provision of breakfast and soft drinks, but this has been on the basis that the location and the activities did not raise issues with the Licensing Objectives or the 'unsuitable premises' Ground of Refusal.