

**North Ayrshire Licensing Board  
14 September 2015**

**Irvine, 14 September 2015** - At a meeting of the North Ayrshire Licensing Board at 10.00 am in the Council Chambers, Cunninghame House, Irvine.

**Present**

Ian Clarkson, 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, K Sharkey, Trainee Solicitor, 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**

Tom Marshall.

**Declarations of Interest**

None.

**1. Minutes**

The Board were asked to confirm the Minutes of the Board meetings held on 22 June 2015 and 7 August 2015. The Convenor proposed that both sets of Minutes be adopted and this was seconded by Councillor Barr. The Board unanimously agreed to confirm and adopt both sets of Minutes.

**2. Chief Constable's Annual Report to North Ayrshire Licensing Board – Licensing (Scotland) Act 2005, Section 12A for year to 31 March 2015.**

The Board considered the Chief Constable's Annual report for the year to 31 March 2015.

Chief Inspector Shaw said that he was available to answer any questions that the Board may have regarding the report.

Councillor Reid asked what the proposed Police activity was for the year ahead. The Chief Inspector confirmed that there would be a programme of activity to tackle excess alcohol consumption and the issue of vulnerability in relation to alcohol consumption. Premises are identified that are giving cause for concern, these are then targeted with extra resources allocated to monitoring them.

Councillor McNicol commented that it was a very good report, highlighting the test purchase data as very positive.

Having considered the report, the Convenor thanked the Chief Inspector and stated that the Board were pleased to note the report.

### **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 Premises Licence 0432 Gulab 2A Stanecastle Road, Irvine**

The Board resumed consideration of a Review Proposal under Section 37, relating to the above premises. Although the Licence Holder, Summel and Summel Ltd, was not represented at the time of the Hearing, Dalvinder Summel did subsequently attend the meeting. He informed the Board staff that he had made a mistake regarding the start time of the meeting. Mr Robinson, a residents of Castlekeep Gardens, Irvine, and a neighbour of the Gulab premises, was 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. Ms Cullen's report detailed a site visit to the premises which took place at 10.30 pm on 29 August 2015 and was attended by Ms Cullen, Councillor Clarkson and Councillor Marshall. Although there were a few administrative issues, no noise issues were noted at the visit. Ms Cullen referred the Board to Mr Robinson's e mail of 4 September 2015.

Mr Robinson then addressed the Board. He confirmed that the last incident took place on the 1 May 2015, there has been no noise nuisance or trouble since then, and the communication issues with the premises have been resolved.

Councillor Barr commented that he thought the spot check nature of the site visit had worked well and is something that the Board should utilise again in the future.

Having considered the terms of the reports, and the submissions made, 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.

The Convenor said that the Board would monitor the situation, via the Licensing Standards Officer.

Mr Robinson thanked the Board for their help with this matter, especially Ms Cullen.

##### **A.2 Premises Licence 0216 Fiddlers & Oceans, 4 Townhead Close, Largs**

The Board considered 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 and to an Antisocial Behaviour report from Police Scotland.

Thereafter Mr Hunter addressed the Board on the issues arising. He said that in the absence of the Applicant, Mrs Mullen, there was not much for him to say. Referring to the LSO and Police reports, Mr Hunter argued that there was no independent evidence to back up Mrs Mullen and he invited the Board to dismiss the Review and take no further action.

The Convenor asked Mr Hunter if there had been a meeting between Mr Clark and Mrs Mullen. Mr Hunter confirmed that there had been no meetings or dialogue between Mr Clark and Mrs Hunter, however Mr Clark maintains good relations with all of his neighbours.

With reference to the Police Antisocial Behaviour report, Councillor Barr and Councillor Easdale both asked if there was any information on how many of the incidents stemmed from the premises. Chief Inspector Shaw confirmed that 2 incidents, a theft in October 2014 and an assault in December 2014, occurred within the premises but there was no information to link any of the other incidents to Fiddlers. The Chief Inspector informed the Board that there was a blue tape serious assault in the area on the 26 July 2015, although it was out with 50 metres from Fiddlers and there was no connection to the premises.

Referring to information detailed in Ms Cullen's report, Councillor Reid suggested that the curfew is not being complied with at the premises if patrons are being permitted to leave to smoke or go to the bank and are then allowed to enter again. Ms Cullen confirmed the information within the report and added that the smoking issue is something common to all nightclubs, which is not a condition of the licence and the information contained in the report regarding the practice of permitting persons to go to the bank is for the Board to discuss in relation to the curfew.

Mr Clark explained that young people regularly turn up at the premises without any money. They are permitted to 'nip out' for 5 minutes only, to go to the cash machine and then re-enter and this is managed and controlled by a stamp system. Patrons are allowed outside to smoke a maximum of 4 times on any night.

Councillor Reid said that the curfew does not allow for this type of system and he noted that the premises had not asked the Board for permission to operate such a system.

Noting that the designated smoking area is outside the front of the premises, Councillor McNicol asked if it were possible for it to be moved further away from Mrs Mullen's property. Mr Clark submitted a photograph which showed the layout of the premises in relation to the car park and Mrs Mullen's house. He explained that the smoking area is already located as far away from Mrs Mullen's property as possible and he added that the nightclub was there before Mrs Mullen purchased her property.

The Convenor queried the selling of hotdogs, referred to in Ms Cullen's report. Mr Hunter confirmed that this was stopped 6 weeks ago.

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 10.26 am to deliberate in private and re-convened at 10.40 am.

Having considered the terms of the reports, and the submissions made, Councillor Barr moved that the case be continued to the next scheduled meeting to allow for the Board to make an unannounced site visit to the premises and for the Licensing Standards Officer to make a further report to the Board. Councillor Bruce seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to continue the case to the next scheduled meeting, make an unannounced site visit to the premises and ask the Licensing Standards Officer to make a further report.

Mr Hunter noted his discontent with the Board's decision to continue the case. He said that his client had went to the expense of appearing today and if the Applicant for Review does not attend again at the next meeting, Mr Hunter confirmed that he would re-make his submission for the Review to be dismissed.

The Convenor confirmed that all of Mr Hunter's comments had been noted.

### **A.3 Premises Licence 0267 Beith Masonic Social Club, 3-5 Eglinton Street, Beith**

The Board considered an application for variations of a Premises Licence made by Beith Masonic Social Club for the above premises. The Licence Holder was represented by Marshall Carmichael, Club Secretary, and he was accompanied by Jim Lamont.

The Licence Holder was requesting the following variations:

1. 'Other licensed activities': include 1. the service of food at functions and; 2. karaoke.
2. Amend operating plan to allow new arrangements for guests.

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 Carmichael addressed the Board regarding the application. Regarding variation 1, he said that he would have to be honest and confirm that these activities have been going on in the Club for a while but the Officer Bearers were not aware that they had to be included in the operating plan.

Regarding variation 2, Mr Carmichael explained that the 3 guest limit is restrictive, especially on a Friday night which is the busiest night of the week. He added that the Board's staff, especially Ms Cullen and Mrs Champion, had been extremely helpful in relation to the submission of this application.

Ms Cullen confirmed that the Club is well run but there are a few things which need to be tidied up, hence the application before the Board today.

Mr Carmichael explained that only Masons are full members of the Club, and only they have the ability to sign in guests. Unfortunately, on many evenings the only Mason present at the Club is Mr Carmichael himself. There is another level of membership, Associated Membership, which was set up around 2 years ago. Associated Membership incurs a one off cost of £2.00, however it does not entitle the holder to anything other than an entrance card to the premises.

Councillor McMillan asked why Associate Members can't sign in guests. Mr Carmichael explained that the Constitution, which maintains the ethos of the Club, does not allow it.

Councillor McNicol asked if the Club had a number in mind in terms of how many guests each member is permitted to sign in, was it 6 for example? Councillor McNicol said that it may be the case that the Club would need to change its Constitution. Mr Carmichael agreed.

Councillor Reid asked, at which point a Members Club becomes a Public House. Mr O'Brien referred to the Board report which explained the difference between Clubs and commercial premises, and the special status available to Clubs, known as Part K. Mr O'Brien highlighted that what is important is that a Club should maintain the character of a Club. Mr O'Brien suggested that this may be an opportunity for the Board to provide some guidance to the Licensing Standards Officer on how she should approach this matter.

The Convenor said that in his opinion the Board should treat each application / Club individually.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the application be granted on the basis that for variation 2 (amend Operating Plan to allow new arrangements for guests) a single Member is permitted to sign-in a maximum of 8 non-Members, who must be bona fide guests of the Member. Councillor McLean seconded the motion. There was no counter-motion and the Board unanimously agreed without dissent or abstention to grant on that basis.

The Convenor suggested to Mr Carmichael that a change to the Club's Constitution may be a longer term solution to this issue.

#### **A.4 Premises Licence 0097 The Kiosk, 1 Woodlands Avenue, Irvine**

The Board considered an application for variations of a Premises Licence made by the Licence Holder, Mohammed Khan, for the above premises. Mr Khan was present.

The Licence Holder was requesting the following variations:

1. Increase off sales capacity from 16.7 sq m to 21.6 (about 29%).
2. Change Sunday hours from 12.30 pm-10.00pm to 10.00am-10.00pm.
3. Change name of Premises

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.

An objection to the application had been made by Irvine Community Council. Copies of the written objection were given to the Board Members. June Niven, Chairperson of Irvine Community Council was present.

Ms Niven then addressed the Board, re-iterating the content of the written objection. She explained that the objection to variation 1 is on the grounds of overprovision, and she highlighted that the shop is used extensively by school children and there are lots of other shops in the vicinity that sell alcohol.

Councillor McNicol and Councillor Easdale asked Mr Khan what his case was for applying to increase the display capacity.

Mr Khan said that he was responding to customer demand. He had invested a lot in the store and was proposing to increase the provision of wines. The display units were already in place.

Having considered the terms of the report, and the submissions made, Councillor Bruce moved that the Board grant variations 2 and 3, and refuse variation 1, on the grounds of overprovision. Councillor Barr seconded the motion. Councillor Easdale moved, as an amendment, that the entire application be granted. There was no seconder for the amendment.

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

The motion was accordingly carried. Variations 2 and 3 were granted, and variation 1 was refused, on the grounds of overprovision.

#### **A.5 Premises Licence 0140 Keystore, 1-3 Gagarin Terrace, Kilwinning**

The Board considered an application for variation of a Premises Licence made by the Licence Holder, Greenmill Limited, for the above premises. Sukhdave Basra of Greenmill Limited was present.

The Licence Holder was requesting the following variation:

1. 'Other licensed activities': include the supply of hot food 7am – 5pm.

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 Basra addressed the Board regarding the application. He confirmed that he had been in touch with the Planning Department regarding this matter.

Having considered the terms of the report, and the submission 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.

#### **A.6 Premises Licence 0280 Dreghorn Bowling Club, 88 Main Street, Dreghorn**

The Board considered an application for variation of a Premises Licence made by Dreghorn Bowling Club for the above premises. The Licence Holder was represented by Alexander Stevenson, Club Treasurer, and he was accompanied by Elizabeth Spence, Premises Manager.

The Licence Holder was requesting the following variation:

1. 'Permit under 18s when accompanied by an adult.

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 Stevenson addressed the Board regarding the application. He confirmed that the application relates to the Club Lounge, not the Quiet Lounge. The proposal is for all under 18s, who will be accompanied by an adult and will not be permitted within the vicinity of the bar.

Having considered the terms of the report, and the submission made, Councillor Easdale 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 0292 Glengarnock Ironworks Bowling Club, Lochend Road, Glengarnock**

The Board considered an application for variations of a Premises Licence made by Glengarnock Ironworks Bowling Club for the above premises. The Licence Holder was represented by Jim Sharp.

The Licence Holder was requesting the following variations:

1. Amend Sunday opening hours.
2. 'Other licensed activities': include (i) live performances (ii) recorded music (iii) television; and (iv) service of food.
3. Permit outdoor drinking.
4. Disapply Licence conditions re occupancy checks when an Occasional Licence is not in operation.
5. Disapply Licence conditions re toilet checks when an Occasional Licence is not in operation.

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 Sharp addressed the Board regarding the application. He explained that the Club were seeking the extra permissions as they are intending to start to hold functions in the premises in a bid to generate some income.

Councillor Barr highlighted the remote location of the Club, and having considered the terms of the report, and the submission made, he 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.

## **A.8 Rivergate Shopping Centre, Irvine (Reference NA FEC GMP 9)**

The Board considered an application for grant of a Family Entertainment Centre Gaming Machine Permit made by Bardon Leisure for the above premises. Noel Bardon of Bardon Leisure was present.

The Board considered the terms of a report by the Solicitor (Licensing) which set out the legal position and summarised the issues arising. Mr O'Brien referred the Board to guidance given by the Gambling Commission in relation to applications made under the Gambling Act 2005 for this type of permit. Copies of the guidance documentation were given to the Board Members.

Mr Bardon addressed the Board regarding the application. He informed the Members that he operated booths in other Shopping Centres, and already had the crane grab teddy bear machines in place at the location which is the subject of this application, the Rivergate Shopping Centre, Irvine. These machines are not gambling machines but are purely skill machines, which, at the moment, are not fitted with compensators. Mr Bardon explained that a compensator is a 'brain' which when fitted adds to the profitability percentage. Mr Bardon's intention is to add compensators to these machines in order to increase the income generated from them. He acknowledged that fitting compensators to the machines would re-classify them as 'Category D' machines under the legislation. Mr Bardon also acknowledged and understood the Board's concern with problem gambling but he said that in his experience problem gambling did not exist with these type of crane grab teddy bear machines.

Councillor Barr asked if the cash prizes within the machines attracted children to play them. Mr Bardon said that children are interested in the toy(s) that can be won, not the cash.

Mr O'Brien referred to Section 238 of the Act (section 2.1 of the Board report) and the 'wholly or mainly used' issue. Mr Bardon confirmed that the machines would be totally enclosed within a purpose built unit, as per a meeting with the Gambling Commission.

Councillor Barr asked how children would be monitored / supervised if the area was enclosed. Mr Bardon produced guidelines from the Shopping Centre Management for their CCTV to monitor the machines. He re-iterated that problem gambling does not occur with these type of machines and he added that he had yet to see a person stand in front of a teddy bear machine for hours.

Councillor Easdale said that he was concerned that a 8 or 10 year old might win £50. Mr Bardon said that he would never put a £50 note on a teddy bear, and if the Gaming Machine Permit was granted by the Board then a maximum prize limit of £5 would apply. Mr Bardon informed the Convenor that without the Permit, the legal prize limit was £50, however it was not economically viable to exceed £10.

Councillor McNicol suggested that it might be better for Mr Bardon to occupy a full shop unit. In response, Mr Bardon said that he only had 4 machines, 5 or 6 kiddies rides, and a photo-booth. It would be extremely costly to take on a shop unit, in terms of the type of machines provided.

Councillor McNicol asked you how much it cost to play the machines. Mr Bardon confirmed that the current charge was £1 but if the Gaming Machine Permit was granted the cost to play would be 30p.



Mr Bardon informed the Board that the existing machines would remain in place even if the Gaming Machine Permit was refused. The Convenor asked Mr Bardon why he had told the Board that. Mr Bardon said that the Trade's view of the Gambling Commission's approach to lower end gambling was that they were being 'over the top'. He added that problem gambling existed at the higher end, for example with Fixed Odds Betting Terminals (FOBTs).

The Board adjourned to the Members' Lounge with the Solicitor (Licensing) at 11.38 am to deliberate in private and re-convened at 11.55 am.

Councillor Easdale asked Mr Bardon what kind of an enclosure he was proposing to build. Mr Bardon submitted photographs of the proposed enclosure and he informed the Board that the Gambling Commission were happy with such booths.

Councillor Easdale asked if what was proposed was like a photo booth. Mr Bardon said that children playing the machines could be seen by people walking in the Shopping Mall, and that places with high visibility deterred problem gamblers, who preferred dark, hidden areas.

Having considered the terms of the report, and the submissions made, Councillor Barr moved that the Board refuse the Permit, as inconsistent with Licensing Objective (c) protecting Children and other Vulnerable Persons from being harmed or exploited by Gambling. Councillor Bruce seconded the motion. Councillor Easdale moved, as an amendment, that the Board grant the Permit, on the basis that the machines are enclosed using the proposed booths. Councillor McMillan seconded the amendment.

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

With the result of the vote being even at 4-4, the Convenor exercised his casting vote. He re-iterated his vote for the motion and accordingly the application was refused.

Mr Bardon stated his disappointment with the decision and the Convenor thanked Mr Bardon for his attendance.

#### **4. Consideration of NALB Policy for Festive Period 2015-2016**

The Board considered a report by the Solicitor (Licensing) regarding Extended Hours and Occasional Licences during the Festive Period 2015-2016.

Referring to section 4.2 of the report, Mr O'Brien clarified that the curfew last year was set at 1.00 am, not 00.30 am.

The Convenor asked the Police if they had any comments regarding the 1.00 am curfew last year. Chief Inspector Shaw confirmed that the Police had no problems with the 1.00 am curfew, although he observed that the later the curfew time, the more risk there is of alcohol related disorder. The Chief Inspector added that there was some uncertainty at this stage in relation to the additional funding which is provided by the Council towards the cost of policing the festive period. Between 300-400 additional hours of Police presence were provided for by the £9000 of Council funding last year.

Councillor Reid said that the curfew time should be increased from the normal 12.30 am during the festive period, to allow revellers some additional flexibility. He noted that no such curfew exists in South Ayrshire. Chief Inspector Shaw informed the Board that there has been a significant increase in alcohol related violence in South Ayrshire and this is currently causing concern amongst senior Police Officers.

Having considered the report, Councillor Reid moved that the Board adopt the following policy:

- The festive period be split 29 November – 12 December (period 1), and 13 December – 2 January (period 2), and that 4 extensions are permitted in period 1 and 7 extensions are permitted in period 2
- Extended Hours are applied for and authorised in accordance with the Board's Festive Extension Policy Hours (detailed at Section 9.14 of the NALB Licensing Policy Statement)
- As Christmas Eve & Hogmanay both fall on a Thursday this year, there is no requirement for the Board to consider the implementation of a special rule for these dates
- A 1.00 am curfew shall apply to all premises (throughout the whole of North Ayrshire) open after 1.00 am, regardless of the nature of the Licence or permission which authorises opening after 1.00 am.

Councillor Easdale seconded the motion. Councillor McNicol moved, as an amendment, that the policy be adopted as proposed by Councillor Reid, except that a 00.30 am curfew should apply to all premises. Councillor McLean seconded the amendment.

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

The amendment was accordingly carried and the policy adopted, with a 00.30 am curfew.

## **5. Public Health Reports**

The Board considered a report by the Solicitor (Licensing) which updated the current position following an update in August 2015 to the Monitoring and Evaluating Scotland's Alcohol Strategy report (4<sup>th</sup> annual report), published by NHS Health Scotland on 8 December 2014.

Having considered Mr O'Brien's report, the Board unanimously agreed to note the position and refrain from instructing a process of consultation which would lead to the publication of a Supplementary Licensing Policy Statement.

The meeting ended at 12.38 pm