

Cunninghame House,
Irvine.

30 June 2016

North Ayrshire Licensing Board

You are requested to attend a meeting of the North Ayrshire Licensing Board to be held in Garnock Committee Room, Cunninghame House, Irvine on **THURSDAY 7 JULY 2016** at **11.00 am** to consider the undernoted business.

Yours faithfully

Clerk to the Licensing Board

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

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

Licensing Board

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

Chair:

Attending:

Apologies:

Meeting Ended:

Agenda Item 1

7 July 2016

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.	0121	Buzzworks Inns Limited 145 St Vincent Street 6th Floor Glasgow G2 5JF	Stag & Hound 13 Howgate Kilwinning KA13 6EN	Application for Variation of Premises Licence - Section 29 Continued from 13/06/2016

Application for Variation of Premises Licence - Section 29

Applicant	Buzzworks Inns Limited
Premises	"Stag & Hound", 13 Howgate, Kilwinning, KA13 6EN
Ref.	0121

CONTINUED FROM 13 JUNE 2016

Preliminary

This Report has been prepared provisionally before the end of the Site Notice display period, which ends on 3rd June 2016:

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	<i>New Layout Plan</i>
2	<i>Change Name of Premises to 'Cornerhouse'</i>
3	<i>Increase Capacity to 150</i>
4	<i>Amend Sunday on-sale operating hours</i>
5	<i>Extension during Festive Season</i>
6	<i>To allow restaurant facilities outwith Licensed Hours for breakfast & soft drinks</i>
7	<i>Amend terms of access for Children and Young Persons</i>
8	<i>Amend OP: allow Films inside & outside Licensed Hours</i>
9	<i>Amend OP: allow Outdoor Drinking Area to be used inside & outside Licensed Hours</i>
10	<i>Amend Description of Premises</i>

2. Changes to permitted activities

	Current	Proposed
Accommodation		
Conference facilities		
Restaurant facilities		X
Bar meals		
Receptions (including weddings, funerals, birthdays, retirements, etc.)	X	X
Club or other group meetings	X	X
Recorded music	X	X
Live performances	X	X
Dance facilities		
Theatre		

Films		X
Gaming	X	X
Indoor/Outdoor sports	X	X
Televised sport	X	X
Outdoor Drinking		X
Adult entertainment		

3. Issues

Variation 1: New Layout Plan

Grant (no statutory reason to refuse, and no breach of Board policy)

The Board may wish to defer dealing with this Variation until the other Variation requests have been determined.

Variation 2: Change name of Premises to "Cornerhouse"

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

Variation 3: Increase capacity

Discretionary Refusal

The existing licensed capacity is 110 customers. The proposal is to increase this to 150.

The Board should consider:

- (a) whether or not the proposal is consistent with the Licensing Objective "protecting public safety" and whether or not the Premises (as varied) would be suitable for the sale of alcohol.
- (b) the question of Overprovision.

Overprovision

There is a rebuttable presumption of refusal due to Scottish Government guidance and the Board's own Licensing Policy Statement (LPS 2013-2018, Annex E). It is not necessary, for the presumption of refusal to apply, for there to be any objection made by a third party.

The Board should consider any submissions made by the Applicant and any interested party, and take into account those submissions and the following presumptions:

- (a) the existing number and capacities of Premises in that Locality and in that Function Type is already sufficient,
- (b) Overprovision would result if the Application was to be granted, and

- (c) the Application should be refused.

The Policy is only a guideline and does not set rigid quotas. It would always be open to the particular Applicant to seek to persuade the Board that the Application should be granted.

The Board will expect Applicants who are seeking the grant of a Variation which increases the capacity under an existing Licence to provide robust and reliable evidence as to why the benefit to each of the Licensing Objectives outweighs the apparent detriment to those Licensing Objectives. The Board will expect to be addressed on the way the promotion of each Licensing Objective will be achieved by granting the Application.

This report to the Board supplies the following information:

- (a) the Locality of the Premises
- (b) the Function Type of the Premises
- (c) any Additional Factors

(a) the Locality of the Premises

The Board has determined that there are 6 'localities' in its area (coinciding with the 6 'Neighbourhood Areas' used by the North Ayrshire Community Planning Partnership).

The Subject Premises are in Locality 3 : "Kilwinning" (including Pennyburn, Blacklands, Whitehurst Park, Woodside).

(b) the Function Type of the Premises

The Subject Premises are in Function Type 3 (On-sales other than entertainment venues, e.g. public houses).

(c) Additional Factors

The likelihood that the Application will be granted or refused will be influenced by the Locality and the Function Type:

- (1) Locality: the Premises are in a Locality where Applications are especially unlikely to be granted (regardless of the Function Type);
- (2) Function Type: The presumption of refusal applies to FT 2, 3 & 6 (nightclubs, pubs, and 'Part K' Clubs (regardless of the Locality);

Variation 4: Amend the Sunday on-sales hours

Grant (no statutory reason to refuse, and no breach of Board policy)

The current licensed hours start are 12.30 - 24.00. The proposal is 12.00 - 24.00.

Variation 5: Extension during Festive Season

Refuse as inconsistent with the Licensing Objective "Preventing crime and disorder"

The proposal is for one extra hour from 1st December to 2nd January.

It is not appropriate to request such a Variation under Section 29. The correct way to seek extra hours is to apply for "Extended Hours" under Section 68, for each period of Licensed Hours, as they are requested. Each year the Board sets a Policy applying allowing Premises throughout North Ayrshire to apply for "Extended Hours". This Policy never allows Premises to remain open for a whole month. If the present Premises were granted this Variation, it would place all other Premises in North Ayrshire (who comply with the Policy) at a disadvantage.

A Premises Licence potentially lasts forever. The Board cannot be expected to prejudge, in 2016, whether or not Extended Hours will be appropriate in 2026, and neither can the Police, who are part of the Extended Hours procedure.

The requirement of a PLH to state in his Operating Plan (OP 4) whether or not he has 'seasonal opening' does not mean that the Board are granting Extended Hours. When an Applicant completes OP 4, all that that means is that he is indicating a future intention to apply for Extended Hours. Commonly Applicants will say something like 'we propose to apply for Festive Extensions in accordance with the Board's Policy'.

Variation 6: To allow restaurant facilities outwith Licensed Hours for breakfast & soft drinks

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

Variation 7: Amend terms of access for Children and Young Persons

Grant (no statutory reason to refuse, and no breach of Board policy)

The Premises currently exclude under-18s. The proposal is to allow them for meals and functions until 22.30 (but not in the bar area).

The requirement for Adult accompaniment only applies to "Children" (under 16) and not to "Young People" (16-17).

The Board would have to be satisfied that this was consistent with the Licensing Objective "Protecting children from harm".

Variation 8: Amend OP to allow Films inside & outside Licensed Hours

Grant (no statutory reason to refuse, and no breach of Board policy)

Variation 9: Amend OP: to allow Outdoor Drinking Area to be used inside & outside Licensed Hours

Discretionary Refusal

The new layout includes an Outdoor Drinking Area. The proposal is to allow the use of this area outside Licensed Hours for hot beverages, food and non-alcoholic drinks.

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'.

It is not clear from the Layout Plan provided whether the area is close to any dwelling-houses or other noise-sensitive premises.

The Board are entitled to ask the Applicant to vary the proposal, e.g. to alter the times or locations of activities which might lead to noise or other nuisance.

The Board may consider that their Standard Conditions are sufficient:

"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.."

The reason that the phrase "alcoholic or not" is used is that the Board are unlikely to know that a container contained Alcohol, e.g. if the Board received a complaint, all that the complainer might be able to say was "I saw a customer drinking from a container" - without being able to say that there was Alcohol in it.

The Board have allowed early use of such areas in other cases, adding to C.5.2 words such as "except that the consumption of tea, coffee and other non-alcoholic drinks is permitted from 10.00."

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

Variation 10: Amend Description of Premises

Grant (no statutory reason to refuse, and no breach of Board policy)

As with Variation 1, the Board may wish to defer dealing with this Variation until the other Variation requests have been determined.

4. Licence Conditions

If Variation 9 is granted condition C.5.2 should be amended.

