

SOUTH AYRSHIRE LICENSING BOARD.

Minutes of a Meeting in County Buildings, Wellington Square, Ayr,
on 27th May 2010 at 10.00 a.m.

- Present: Councillors Douglas Campbell (Chair), Andy Campbell, Ian Douglas, Ann Galbraith, Bill Grant, Alec Oattes and Tom Slider.
- Apology: Councillor Ian Fitzsimmons.
- Attending: V. Andrews, Clerk to the Board; M. Douglas, Licensing Policy Officer; C. Andrew, Licensing Standards Officer; G. Lauder, Senior Environmental Health Officer; P. Brennan, Out of Hours Noise Team; and J. McClure, Committee Administrative Officer.
- In Attendance: Chief Superintendent W. Fitzpatrick (for items 9(i)-(iii) only), Sergeant A. Kelly and Sergeant U. Menzies, Strathclyde Police.

1. Date of Next Board Meeting.

The Chair advised that the next Board meeting would be held in the County Hall, County Buildings, Ayr on Thursday, 24th June 2010 at 10.00 a.m.

2. Minutes of Previous Meeting.

The Minutes of the Meeting of South Ayrshire Licensing Board of 29th April 2010 (issued) were submitted.

Decided: to note the Minutes of the previous meeting.

3. Applications for Transfers Granted Under Delegated Powers.

There was submitted a report (issued) of 18th May 2010 by the Executive Director - Corporate Services advising Board Members of the following determination of applications for Transfer of Licences between the last Board meeting and the present one:-

The Failford Inn, Failford;
Bruces Well, 91 Portland Street, Troon;
Wheatsheaf Inn, 3 Main Street, Symington;
Smiths, 13 Dalblair Road, Ayr;
Cheeky Charlies, 47 Templehill, Troon;
Central Bar, 56/58 Main Street, Prestwick;
Coachhouse, 10 Portland Street, Troon;
High Society, 9-11 Ladywell Road, Maybole;
Wishing Well, 55 Alloway Street, Ayr;
Arches Bar, 58 Kyle Street, Ayr;
Drouthy Bar, 22 New Road, Ayr; and
The Bank, 111 Main Street, Prestwick.

Decided: to note the transfers granted under delegated powers.

4. Correspondence from Cabinet Secretary for Justice.

There was submitted a letter (issued) dated May 2010 from Kenny MacAskill MSP, Cabinet Secretary for Justice advising

- (1) that NHS Health Scotland had commissioned a three-year evaluation to assess the implementation of, and compliance with, the objectives and relevant requirements of the Licensing (Scotland) Act 2005 with this evaluation being undertaken by the Scottish Centre for Social Research (ScotCen);
- (2) that the study was one of a portfolio of seven studies developed by NHS Health Scotland led by the Monitoring and Evaluation Reference Group on Alcohol (MERGA) on behalf of the Scottish Government which was now being taken forward as part of the Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) programme;
- (3) that the aims of the evaluation were to monitor and describe the implementation of the Act, assess the effectiveness of implementation and compliance in controlling the availability of alcohol and identify the factors facilitating or acting as barriers to effective implementation;
- (4) that the evaluation would use a combination of qualitative and quantitative methods including: a baseline and follow-up telephone survey of Licensing Standards Officers and Licensing Board representatives; case studies in 4-5 Licensing Board areas, including interviews and focus groups with key local informants in each area; an analysis of available national and local monitoring data; and analysis of relevant documentary evidence and that toward the end of the evaluation a 'validation seminar' would be held to present and discuss the preliminary findings to key stakeholders;
- (5) that the project was a major undertaking, fully supported by the Scottish Government Ministers which would provide valuable learning to support further improvements in implementation and the achievements of the Act's objectives and that Local Authorities were encouraged to offer the evaluation full assistance; and
- (6) that the final report was due in March 2013 but interim briefing papers would be made available as data became available.

Decided: to note the letter from the Cabinet Secretary for Justice.

5. Report from Licensing Standards Officer.

The Licensing Standards Officer

- (1) advised
 - (a) that an information evening aimed at clubs had been held on 17th May 2010 to outline the requirements of the Licensing (Scotland) Act 2005 and remind clubs of their responsibilities in relation to signage, gaming, sign-in books, etc. and the need to apply for Occasional Licences and that presentations were given by Licensing staff and the Licensing Sergeant;

- (b) that the information evening had been well attended and, as a result of this, applications had been received for Occasional Licences for future events and that she had organised a number of visits over the coming weeks offering advice as requested by club members; and
- (c) that, since the Licensing (Scotland) Act 2005 had come into force on 1st September 2009 and with the subsequent help and advice offered to clubs and licensed premises, she expected to see all premises complying with the requirements of the Act; and

(2) outlined

- (a) the position in relation to “promotions” as described in the Mandatory Conditions under Schedule 3 of the Act; and
- (b) that any members of the licensed trade who were unsure if a promotion would meet the Mandatory Conditions should contact her for further advice.

Decided: to note the report.

6. **Licensing (Scotland) Act, 2005.**

(a) **Application for Provisional Premises Licence.**

The Board considered the following application:-

| <u>Applicant</u> | <u>Premises</u> |
|-------------------------|-----------------------------|
| Zuppa Kitchens Limited | 20 Portland Street Troon |

Retail Sale of Alcohol (On Sale) – every day from 10.00 a.m. to 11.00 p.m.

Retail Sale of Alcohol (Off Sale) – every day from 10.00 a.m. to 10.00 p.m.

The Board first considered the issue of locality for purposes of this application and agreed that a 500metres radius of the applicant premises would be the appropriate locality for consideration of this application and the map outlining this radius was circulated in agreement with the applicant.

Having then heard the applicant and having considered the letter from the objector, the Board granted the above application.

(b) Application for Premises Licence.

The Board considered the following application:-

| <u>Applicant</u> | <u>Premises</u> |
|-------------------------|--|
| Maidens Bowling Club | Maidens Bowling Club 31 Harbour Road Maidens |

Retail Sale of Alcohol (On Premises) – every day from 10.00 a.m. to 11.45 p.m.

Having heard the applicant, the Board granted the above application.

(c) Applications for Variation of Premises Licences.

The Board considered the following application:-

| <u>Applicant</u> | <u>Premises</u> |
|-------------------------|--|
| (2) CMT Scotland | Anchorage Hotel 149 Templehill Troon |

To amend the terminal hour on Friday and Saturday to 2.30 a.m. and on Sunday to 2.00 a.m. (currently Friday and Saturday 12.30 a.m. and Sunday midnight); utilise the existing cellar bar on the lower ground floor and also the ground floor restaurant area as a nightclub on these evenings to offer late night entertainment to residents and members of the public. These areas have their own entrance, fire escapes, bar and toilet facilities.

The Clerk to the Board advised that two objections had been received, one of them late and the Board heard from the objector in relation to why this objection had been received outwith the statutory timescale.

Councillor Douglas Campbell, seconded by Councillor Galbraith, moved that the late objection should be treated by the Board as “not made” in accordance with the Licensing (Procedure) (Scotland) Regulations 2007.

By way of Amendment, Councillor Douglas, seconded by Councillor Oattes, moved that the late objection be accepted and considered by the Board.

On a vote being taken by a show of hands, two Members voted for the Amendment and five for the Motion and it was accordingly carried that the late objection be treated by the Board as “not made”.

The Board then heard from the valid objector’s representative in relation to this application and the applicant in response and, following questions, adjourned for consideration of this application.

Upon reconvening, the Chair advised that this application contravened the Board's Policy in terms of the premises having letting bedrooms; the request for children having access to premises with extended hours; and there being no substantial entertainment on the whole premises and, therefore, the Board refused this application on the grounds that, having considered the grounds for refusal in terms of Section 30(5),

- (i) the Board considers the granting of this application would be inconsistent with the licensing objective Protecting Children from Harm, in terms of Section 30(5)(b); and
- (ii) in terms of Section 30(5)(c), the Board considers that the premises are unsuitable for the sale of alcohol in accordance with the proposed variation.

The Board noted that the following application had been continued until the Review application at item 9(a) on page 11 of this minute:-

| <u>Applicant</u> | <u>Premises</u> |
|----------------------------|--------------------------------------|
| (1) J. D. Wetherspoon Plc. | The West Kirk 58A Sandgate Ayr |

Variation to provide activities outwith the core licensed hours including Restaurant facilities, Receptions, Clubs or other group meetings. The activities would be permitted when the premises opened at 7.00 a.m. and cease when core licensed hours ceased. No alcohol would be sold outwith the core licensed hours.

The Board noted that the following application had been continued until the Review application at item 9(c) on page 12 of this minute:-

| <u>Applicant</u> | <u>Premises</u> |
|-------------------------------|---------------------------------------|
| (3) Iona Pub Partnership Ltd. | Toll Bar 144 Ayr Road Prestwick |

To amend the Operating Plan to allow children (0-17) on the premises until the terminal hour when attending a private function in the Lounge Area only.

The Board noted that the following application had been withdrawn:-

| <u>Applicant</u> | <u>Premises</u> |
|------------------------------------|---|
| (4) Western House Catering Limited | Princess Royal Stand Ayr Racecourse 2 Whitletts Road Ayr |

To amend On-Sale hours to close at 2.00 a.m. every Monday to Sunday (currently Monday to Saturday 12.30 a.m. and Sunday midnight).

(d) Hearings in Respect of Review of Premises Licences.

(i) Lansforth Limited for Harleys, Unit 2, 154 High Street, Ayr.

Following a Request for Review from members of the public under Section 36 of the Licensing (Scotland) Act 2005, the Board held a hearing in relation to these premises.

There were submitted reports (issued to members only) by the Executive Director of Corporate Services, Environmental Health, the Licensing Standards Officer and Strathclyde Police.

The Board heard from one of the applicants for the Review in relation to these premises, the reasons for requesting the Review and advising how, due to the unacceptable noise emanating from these premises late at night and lack of control outside the premises, the licenceholder had failed to comply with the preventing public nuisance licensing objective.

The representative from the Out-of-Hours Noise Team then advised of the complaints received from the applicants for the Review, the action taken by the Premises Manager, the subsequent letters issued to the licenceholder and lessee and that an acceptable level of amplified music had been agreed with the Premises Manager and the applicants for the Review.

Sergeant Kelly, Strathclyde Police then reported on a breakdown of all calls received by Strathclyde Police in relation to these premises from 12th May 2009 to 12th May 2010.

The Licensing Standards Officer then gave a report on these premises advising

- (A) that calls to and subsequent visits by the Noise Team had failed to resolved the issue to the satisfaction of the applicants;
- (B) that the applicants for the Reviews did not want the premises to close but felt that a permanently reduced noise level would improve the nuisance that they experienced;
- (C) that when the Premises Licence Review application had been lodged with the Licensing Office on 27th April 2010, the applicant had advised her that other neighbours had also signed the application on being made aware that this procedure existed;
- (D) that following the lodging of the request for the Premises Licence Review, the applicants for the Review had notified her on 30th April 2010 that the Noise Team had visited Harleys and the applicants and that an acceptable level for the music in Harleys had been reached and they had advised that if this level remained they would be satisfied;

- (E) that at a meeting on 10th May 2010 attended by both applicants for the Reviews and representatives of both Harleys and Fury Murrays, the applicants advised of their ongoing problems and all parties agreed that the noise level set by the Noise Team at the previous visit would be an acceptable compromise provided doors continued to be kept closed and that, should either applicant still experience noise problems, they should contact a named representative of the Company rather than the Noise Team; and
- (F) that she had not had any further contact with either applicant for the Review since that meeting.

The licenceholder's representative then advised

- (I) that it was accepted that there was a noise issue, however, this had only recently been brought to the attention of the licenceholder;
- (II) that, since the Licensing Standards Officer had become involved, meetings had taken place between the applicant for the Review, another neighbour, the Premises Manager and a representative of the licenceholder company and that an acoustics report had been prepared, however, he was disappointed to learn that the noise was still audible in the affected flats;
- (III) that ventilation outlets on the roof of the premises had been boxed in and further insulation of these vents would be taking place in the near future, a noise lobby would be created with a second set of double doors and secondary glazing would be installed and that the licenceholder was happy to implement the terms of the acoustics report; and
- (IV) that, with regard to smokers gathering outside the premises, a planning application had been made to create a new smoking area further from the flats which should alleviate that problem.

Questions were then raised by Members of the Board in relation to testing the volume of live music; the noise from the beer garden; why no complaints had been received prior to 2008 and why had the music become louder since that time, and whether a device could be fitted to the wall of the complainant's flat indicating when the noise rose about a certain level and the licenceholder's representative, Senior Environmental Health Officer and Out of Hours Noise Team representative responded accordingly.

Following the summing up, the Board adjourned for consideration of this matter.

Upon reconvening, the Chair advised that the Board had considered all reports submitted, the evidence heard and welcomed the appointment of the acoustics engineer and submission of his report, with a view to solving the noise issue.

Decided: to agree

- (aa) that the grounds for the Review application had been established, namely a failure to comply with the Preventing Public Nuisance Licensing Objective, in that the noise emanating from the premises late at night was unacceptable;
- (bb) to instruct the Clerk to the Board to write to the premises licenceholder and Premises Manager to remind them of their duties in relation to the beer garden and smokers;
- (cc) that there be a variation to the licence imposing a local condition regarding sound equipment to have the current equipment set at no more than 83 decibels with appropriate limiters on the amps and that all live bands must play through the in-house equipment to ensure that music is not audible in the nearest noise sensitive dwelling; and
- (dd) that, should the noise problems continue once the works outlined in the acoustics report had been carried out, the applicant for the Review had the right to request a further Review of the Premises Licence under Section 36 of the Licensing (Scotland) Act 2005.

(ii) Lansforth Limited for Fury Murrays, Unit 3, 154 High Street, Ayr.

Following a Request for Review from members of the public under Section 36 of the Licensing (Scotland) Act 2005, the Board held a hearing in relation to these premises.

There were submitted reports (issued to members only) by the Executive Director of Corporate Services, Environmental Health, the Licensing Standards Officer and Strathclyde Police.

The Board heard a representative of the applicants for the Review in relation to these premises, the reasons for requesting the Review and advising how, due to the unacceptable noise emanating from these premises late at night and lack of control outside the premises, the licenceholder had failed to comply with the preventing public nuisance licensing objective.

The representative for the Out of Hours Noise Team then advised

- (A) that sporadic complaints had been received about these premises since September 2008, both to the Out of Hours Noise Team and to his day time colleagues regarding noise from the previous evening;
- (B) that, due to loud amplified music, bass sounds and raised voices being heard in the applicant for the Review's flat, warning letters and a final letter of warning had been submitted to the licenceholder; and
- (C) that Environmental Health had monitored the noise, however, agreement could not be reached on a level of amplified music acceptable for all parties concerned.

The Licensing Standards Officer then gave a report on these premises advising

- (I) of her meetings with the applicants for the Review when they had outlined the noise problems experienced in their flats from the premises as well as noise from patrons leaving the premises or smoking outside the premises which they described as public nuisance;
- (II) that the applicants for the Review felt there was a lack of control by door stewards with regular shouting and swearing heard and a particular concern being door stewards allegedly having access to a key which opened the gate to the residential area and car park to their flats and had used this to allow patrons to make a "short cut" home;
- (III) that one of the applicants for the Review occupied the flat nearest to the premises, had only recently moved into the flat and had experienced problems with extremely loud music since moving in, could hear a constant bass sound and was distressed due to lack of sleep;
- (IV) that none of the applicants for the Review had been satisfied with the action taken following their calls to the Noise Team and the subsequent visits by the Noise Team despite the noise readings taken on each occasion being found to be excessive;
- (V) that the applicants for the Reviews did not wish the premises to close but felt that reduced operating hours would improve their quality of life in the evenings;
- (VI) that when the Premises Licence Review application had been lodged with the Licensing Office on 27th April 2010, the applicant for the review of Harleys had advised her that other neighbours had also signed the application on being made aware that this procedure existed;
- (VII) that, at a visit from the Noise Team in the morning of 30th April 2010, an acceptable level for the music for Fury Murrys could not be established;
- (VIII) that at a meeting on 10th May 2010 attended by two of the applicants for the Review and representatives of both Harleys and Fury Murrys, all parties had agreed that the noise problems arose due to the fabric of the building and had left the meeting with a greater understanding of each other's experiences and it was agreed that, should the applicants for the Reviews experience further noise issues, they should contact a named representative of the Company rather than the Noise Team; and
- (XV) that she had not had any further contact with either applicant for the Review since that meeting.

The Board then heard the licenceholder's representative

(aa) outline

(AA) that matters had come to the surface once one of the complainants had taken up residence next to the premises;

(BB) that there were long gaps in time when no complaints had been made suggesting that matters had been satisfactory;

(CC) that the letters from Environmental Health confirmed that, following their visits, matters were then dealt with by the licenceholder;

(DD) that the acoustics report had covered Harleys and Fury Murrys but had highlighted that more work was required to be carried out in Fury Murrys which had been accepted by all parties;

(EE) that the premises were well stewarded and well regulated, however, with regard to the smokers outside the premises, the stewards would now be more vigilant and would usher smokers away from the area of the flats; and

(FF) that should be Board decide to vary the core hours of the premises, this could have an adverse effect on business for the premises;

(bb) request that the objectors afford the licenceholder time to carry out the works outlined in the acoustics report.

Questions were then raised by Members of the Board in relation to

(1) how long it would take to carry out the works and the licenceholder's representative advised that these works should take no longer than three months;

(2) whether a Risk Assessment for staff was carried out and the licenceholder's representative advised that it had been undertaken and accordingly, staff had been offered protective earplugs;

(3) whether 93 decibels was an acceptable level to the neighbours or could it be reduced to 83 decibels in line with the limit set for Harleys and the licenceholder's representative advised that 83 decibels was too low for a club, therefore, the works would be carried out to reduce the noise emanating from the premises;

(4) a member of the public being given access to the flats and the licenceholder's representative advised that a resident had forgotten their key and a steward who also resided in the flats had given this person access to the flats as the person was known to him but the gate was then closed once the resident had entered the flats; and

(5) the noise levels being reduced to 93 decibels and whether this was satisfactory to the residents and an objector outlined that she was not advised of noise levels but the noise had reduced, however, she still could not open her bedroom window in the evening.

Following the summing up, the Board adjourned for consideration of this matter.

Upon reconvening, the Chair advised that the Board had considered all reports submitted and the evidence heard and had tried to balance the needs of the business with the rights of the residents and, although the Board was pleased to note that the acoustics report had been carried out and that work was ongoing to rectify the problems, residents were still presently living with the noise problems and that they should continue to contact the Noise Team and Licensing Standards Officer should problems continue.

Decided:

- (a) that the ground for the Review application had been established, namely a failure to comply with the Preventing Public Nuisance Licensing Objective, in that the noise emanating from the premises late at night was unacceptable; and
- (b) that the core hours be varied to permit current hours with the exclusion of every Thursday and Sunday when the terminal hour be restricted to 12.30 a.m., with the situation being reviewed by the Board in August 2010.

7. Adjournment.

The time being 1.20 p.m., the Board agreed to adjourn the meeting and reconvene at 2.00 p.m.

8. Resumption of Meeting.

The meeting resumed at 2.00 p.m.

9. Licensing (Scotland) Act 2005.

Hearings in Respect of Review of Premises Licences.

(a) J. D. Wetherspoon Plc. for The West Kirk, 58A Sandgate, Ayr.

The Board considered a notice from Strathclyde Police under Section 44(4)(b) of the Licensing (Scotland) Act 2005 in relation to convictions for relevant offences of the Premises Licenceholder. It also noted that these convictions had been intimated late to the Board by the Licenceholder. The Board then proceeded to a Premises Licence Review hearing.

The Board also considered the submitted reports (issued to members only) from the Executive Director of Corporate Services, Strathclyde Police and the Licensing Standards Officer.

The Board then heard the licenceholder's representative

- (i) outline that the Board had not been advised of these offences on time due to an administrative error;
- (ii) that the Company took the Health and Safety at Work Act very seriously; and
- (iii) that none of the offences had occurred in Scotland or were related to the sale of alcohol.

Decided: that, in terms of Section 39 of the Licensing (Scotland) Act 2005, the Board should not take any action in relation to the application for Review of the Premises Licence; and

The Board then heard the applicant's representative in relation to the application for the Variation of the Premises Licence at item 6(c)(1) on page 5 of this minute.

Decided: to grant the Variation of the Premises Licence.

(b) Naz Trader Limited for Nisa Day to Day, 16 West Portland Street, Troon.

The Board considered a notice from Strathclyde Police under Section 44(4)(b) of the Licensing (Scotland) Act 2005 in relation to a conviction for relevant offences of a person connected with the Premises Licenceholder. It also noted that this conviction had been intimated late to the Board by the Licenceholder. The Board then proceeded to a Premises Licence Review.

The Board also considered the submitted reports (issued to members only) from the Executive Director of Corporate Services, Strathclyde Police and the Licensing Standards Officer.

The Board then heard the licenceholder's representative

- (i) outline the circumstances of the offence; and
- (ii) advise that he had been unaware of this conviction at the time, therefore, the Board was informed of this conviction outwith the one month of the date of conviction timescale.

The Licensing Standards Officer then gave a report on these premises.

Decided: that, in terms of Section 39 of the Licensing (Scotland) Act 2005, the Board should not take any action.

(c) Iona Pub Partnership Ltd. for Toll Bar, 144 Ayr Road, Prestwick.

Following a Request for Review from Strathclyde Police under Section 36 of the Licensing (Scotland) Act 2005, the Board held a hearing in relation to these premises.

There were submitted reports (issued to members only) by the Executive Director of Corporate Services, the Licensing Standards Officer and Strathclyde Police.

The Board heard Chief Superintendent Fitzpatrick, Strathclyde Police in relation to these premises, the reason for requesting the Review and how the licenceholder had committed an offence by allowing alcohol to be consumed on the premises outwith the core hours and “drinking up time” and how the licenceholder had, therefore, failed to comply with the preventing crime and disorder licensing objective.

The Board then heard the licenceholder’s representative

- (i) advise
 - (A) that the Review should be for the tenants to answer to and not the Company and he submitted a copy of the Retailers Agreement (circulated) for the Board’s information;
 - (B) that, on the day in question, one of the tenants, the Premises Manager, was on the premises but at the back of the premises at the time of the occurrence; and
 - (C) that all alcohol being consumed had been purchased before closing time; and
- (ii) outline the previous employment of both tenants and highlight that they were both very experienced in the licensed trade.

Decided: that the Board was not satisfied on the evidence presented that the grounds for the Review of Premises Licence application had been established and, therefore, no action would be taken by the Licensing Board.

The Board then heard the applicant’s representative in relation to the application for Variation of the Premises Licence and heard the Licensing Standards Officer confirm that functions would be held in the Lounge of the premises and that the pool table was situated within the Bar of the premises at item 6(c)(3) on page 5 of this Minute.

A question was asked by a member of the Board in relation to the supervision of children on the premises and the licenceholder’s representative advised that customers with children would be reminded of their responsibility and that children would not be permitted around the bar.

Decided: having heard Councillor Grant record his dissent, to grant the application for Variation of the Premises Licence.

10. Premises Licence Review Proposals.

There was submitted a report (tabled) of 26th May 2010 by the Executive Director of Corporate Services advising of the premises licence review proposals required under Section 44(7) of the Licensing (Scotland) Act 2005.

Decided: to make a premises licence review proposal and thereafter hold premises licence reviews in respect of the following premises:-

Wm Morrison Supermarkets Plc, Castlehill Road, Ayr; and
Wm Morrison Supermarkets Plc, Dukes Road, Troon.

The meeting ended at 2.40 p.m.