

SOUTH AYRSHIRE LICENSING BOARD (SPECIAL)

Minutes of special meeting in the County Buildings, Wellington Square, Ayr,
on 5th October 2011 at 10.00 a.m.

Present: Councillors Douglas Campbell (Chair), Andy Campbell, Ian Douglas,
Ian Fitzsimmons, Ann Galbraith, Bill Grant, Alec Oattes and Tom Slider.

Attending: V. Andrews, Clerk to the Board; K. Briggs, Principal Solicitor; M. Douglas,
Licensing Policy Officer; C. Andrew, Licensing Standards Officer; and J. McClure,
Committee Administrative Officer.

1. Licensing (Scotland) Act, 2005.

Application for Provisional Premises Licence.

The Chair advised

- (1) that, following the decision of the Licensing Board at its meeting of 11th November 2010 to grant the application for a Provisional Premises Licence from J. D. Wetherspoon Plc. for 87 Main Street, Prestwick, a judicial review had been raised and the decision of the Court of Session had been to remit the application back to the Board for reconsideration;
- (2) that the Board would now reconsider the evidence at this Special meeting and would allow those people who had submitted objections or letters of support to the original application to speak to their representation and raise any further issues which may have arisen since the Board first considered the application;
- (3) that the Board had had sight of all objections and letters of support and would consider all of this evidence when making their deliberation; and
- (4) that the Board would hear from the applicant's representative, each of the objectors who wished to speak, any of the supporters who wished to speak and they would also consider the reports from Strathclyde Police prior to making their decision.

The Clerk to the Board then outlined the procedural matters for the meeting as follows:-

- (a) that Appendix 3 to her report had been amended and updated copies would be issued to all relevant parties;
- (b) that a Building Warrant had been issued and the capacity of the premises had been revised to 481 persons which the applicant had agreed; and
- (c) that following receipt of a petition, letters of objection and letters of support, twenty three parties were entitled to speak.

The Board then considered the following application:-

Applicant

Premises

J. D. Wetherspoon Plc.

87 Main Street
Prestwick

Retail Sale of Alcohol (On Premises) – every Monday to Saturday inclusive from 10.00 a.m. to 12.30 p.m.; and every Sunday from 10.00 a.m. to midnight.

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

There were submitted reports

- (i) dated 27th September 2011 by the Clerk to the Board (issued) outlining the background to this application; and
- (ii) dated 12th and 15th October 2010 by Strathclyde Police (issued) outlining cases, complaints and representations within the relevant period concerning anti-social behaviour within a 50m radius of the applicant premises; and outlining the applicant's previous relevant convictions.

The Chair advised that the Board must first consider the issue of locality for the purposes of this application and that the Licensing Policy Statement outlined that Main Street, Prestwick was the appropriate locality, however, as the objectors may have an alternative view on this, the Board would consider the locality during the adjournment as part of the decision making process.

The Board then heard from the applicant's representative who amended the application to remove that part of the application for the playing of recorded music; from Councillor Hugh Hunter, Local Member; from various objectors and representatives of objectors; and from the Licensing Standards Officer and, following questions from Board members, the Board adjourned for consideration of this application.

Upon reconvening, the Chair advised

- (A) that the Board had taken some time to consider the evidence from all parties and that, in determining the application the Board had to consider if any of the five grounds for refusal applied and that, if they did not, the Board was required to grant the application;
- (B) that the first ground for refusal, "that the subject premises are excluded premises" was not applicable;
- (C) that the second ground for refusal, "that the application must be refused under Section 25(2), 64(2) or 65(3)" was not applicable;
- (D) that with regard to the third ground for refusal "that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives", the Board had considered each of the issues and that

- (I) in terms of the Preventing Crime and Disorder objective, the Board had noted the comments from Strathclyde Police who had opted not to attend this meeting and had heard from the applicant's representative regarding the management of the premises and had taken the view that there was nothing inconsistent with this objective;
 - (II) in terms of the Securing Public Safety objective, the Board noted that the issues referred to under this objective were largely regulated by the Planning and Building Standards Services and that Planning permission had been granted and a Building Warrant issued; that with regard to the public concerns regarding access and egress and smokers outside the premises, the management arrangements proposed by the applicants were noted and, in the view of the Board, would adequately address these concerns and, therefore, the Board were of the view that there was nothing inconsistent with this objective;
 - (III) in terms of the Preventing Public Nuisance licensing objective, the nature of the proposed operation and the siting of the premises had been taken into account and it was noted that there were other, similar sized premises in the locality and elsewhere in South Ayrshire and, as there was no entertainment proposed, noise breakout would be limited and the Board came to the view that approving the application would not be inconsistent with this licensing objective;
 - (IV) in terms of the Protecting Children from Harm licensing objective, having noted the applicants' policy regarding alcohol sales when children were with a family and the requirement for meals to be served for an alcoholic drink to be purchased by an adult when visiting the premises with a child, the Board took the view that there was nothing inconsistent with this objective; and
 - (V) in terms of the Protecting and Improving Public Health objective, the Board accepted that the health statistics for Ayrshire were poor and accepted the concept that price and accessibility were a key factor in this, however, the Board held the view that it was preferable for people to drink alcohol in a regulated on-sales environment and noted that 70% of alcohol sales in South Ayrshire were, according to Health Board statistics, from off-sales, therefore, the Board took the view that the grant of this particular application would not be inconsistent with this licensing objective;
- (E) that with regard to the fourth ground for refusal that, "having regard to
- (I) the nature of the activities proposed to be carried on in the subject premises;
 - (II) the location, character and condition of the premises; and
 - (III) the persons likely to frequent the premises,
- the Board considers that the premises are unsuitable for use for the sale of alcohol",
- the Board considered a number of issues raised and heard nothing to persuade them that the premises were unsuitable; and

(F) that, with regard to the fifth ground for refusal that “having regard to the number and capacity of

(I) licensed premises; or

(II) licensed premises of the same or similar description as the subject premises,

in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality”,

the Board

(aa) agreed that South Ayrshire was a tourist area with Prestwick serving the wider community of South Ayrshire and beyond, including an International Airport and that, in view of the need to maintain and increase tourism, came to the conclusion that there was not overprovision of licensed premises in general;

(bb) in relation to premises of the same or similar description and, in determining the locality, the Licensing Policy Statement referred to Prestwick Main Street as the appropriate locality, however, having heard submissions the Board agreed to include premises at The Cross, namely the Red Lion, The Eagle Tavern and Bryson’s Garage when making their deliberations about overprovision and, thereafter, proceeded to consider whether there was overprovision of licensed premises of the same or similar description as the application premises within that extended locality;

(cc) noted when coming to its conclusion on overprovision that Strathclyde Police had made no comment on overprovision at the time of consultation on the Licensing Policy Statement nor on this application and the extent to which additional Police resources might be required consequent on grant of this application;

(dd) in determining premises of a similar or same description had excluded all off-sales premises or those premises not serving food and had accordingly considered the number and capacity of the remaining premises within the locality determined as above;

(ee) when considering overprovision, had taken into account the submissions from the applicant’s representative and the objectors and had discussed whether granting this application would result in overprovision of the same or similar type of premises; and

(ff) had considered the application in terms of local knowledge and past experience and had come to the conclusion that granting this application would not result in overprovision of licensed premises, or licensed premises of that description, in the locality.

The Board then agreed to grant the above application.

The meeting ended at 5.10 p.m.