

EAST AYRSHIRE LICENSING BOARD

Minute of the meeting of East Ayrshire Licensing Board held within The Council Chambers on Tuesday 10 August 2010 at 10am

- SEDERUNT** : Councillor J Buchanan, Councillor G Cree, Councillor J McGhee, Councillor J MacKay and Councillor H Ross
- ATTENDING** : Mr S McCall (Depute Clerk to the Licensing Board), Mr B Roy (Building Standards), Mr I Hiles (Licensing Standards Officer), Mrs P Duncan (Licensing Board Administrator).
- APOLOGIES** : Councillor J Campbell, Councillor H Coffey, Councillor R Cunninghame, Councillor E Dinwoodie and Councillor N McGhee.

1. SEDERUNT

Noted.

2. MINUTES OF MEETINGS

2.1 Minute of the Licensing Board meeting held on 22 June 2010 was approved and noted.

3. REVIEW OF PREMISES LICENCE

3.1 Review of premises licence for premises known as Morrisons, West Langlands Street, Kilmarnock following receipt of a notice in terms of Section 44 of the Licensing (Scotland) Act, 2005 from the Agents for the Licence Holders.

The Depute Clerk reminded the Board that, in terms of Section 44 of the Licensing (Scotland) Act 2005, where a Licensing Board receives notification of a conviction from a licence holder, the Board must make a premises licence review proposal in respect of the premises licence. He advised that notification of convictions, relating to Health & Safety matters, had been received in respect of the above premises. Details of these convictions were:-

- 1. South Cheshire Magistrates Court on 16 October 2009 for contravention of the Health and Safety at Work Act, 1974 Sections 2 and 3 (2 charges) and fined £83,315 on charge 1 and £83,300 on charge 2.**
- 2. Leeds Magistrates Court on 22 April 2010 for contravention of Regulation 12 of the Workplace (Health, Safety and Welfare) Regulations 1992 and fined £12,000.**

Mr Hamilton, Solicitor, appeared and submitted that the convictions were Health and Safety contraventions and were not convictions in terms of the licensing legislation. He stated that Morrisons was a national company and had an obligation to ensure the safety of employees and persons entering their premises who were not in their employment.

Addressing the first conviction, Mr Hamilton explained that an employee had been purchasing petrol from the service station prior to commencing work when the entrance barrier had swung open, hitting his windscreen and causing facial injuries. He advised that, as a result of this incident, improvements had been carried out to all similar barriers at stores.

Addressing the second conviction, Mr Hamilton stated that this conviction had been as a result of the floor of an open food preparation area within a store failing to have the proper non slip prevention. He stressed that there had been no accident or injury to anyone but that the failure had been detected by the Health and Safety authorities, resulting in the fine.

Councillor Cree asked if the matter had been rectified. Mr Hamilton advised that all the relevant amendments had been made to prevent any recurrence.

The Board agreed unanimously to take no further action in relation to the convictions.

4. PERSONAL LICENCE REVIEW

- 4.1 Review of personal licence granted to Fred Brown, 21 Keir Hardie Crescent, Galston, following a notice issued in terms of Section 84 of the Licensing (Scotland) Act 2005 by East Ayrshire Licensing Board.

The Depute Clerk referred to the Board meeting on 22 June 2010 and to the Premises Licence Review Hearing in respect of The Buck's Head, 8 Bridge Street, Galston which resulted in the Premise Licence being suspended for a period of 3 months. At that time Members also determined that Fred Brown, as Premises Manager of The Buck's Head had acted in a manner which was inconsistent with the prevention of crime and disorder licensing objective and requested that a Personal Licence Review Hearing be set regarding Mr Brown's personal licence.

Mr Brown was not present, nor was he represented.

The Depute Clerk stated that the Board could continue the Hearing to the next meeting of the Board to allow Mr Brown an opportunity to appear before the Board or could continue with the Hearing in Mr Brown's absence. As Mr Brown had been cited to the Board and had failed to appear or advise that he was unable to appear, the Board agreed to continue with the Hearing in Mr Brown's absence.

The Depute Clerk advised that the options available to the Board were to endorse the licence, suspend the licence or revoke the licence.

The Chair stated that, after having taken account of Mr Brown's actions when employed as Premises Manager of The Buck's Head, the Board had a responsibility to take appropriate action. The Chair moved that, in his opinion, Mr Brown, while working as Premises Manager of The Buck's Head, Galston during the period from 4 December 2009 until 29 May 2010 acted in a manner which was inconsistent with the licensing objective, namely prevention of crime and disorder and moved that Mr Brown's Personal Licence be revoked. The Board agreed unanimously.

5. APPLICATIONS

Consider applications received under the Licensing (Scotland) Act 2005 and the Gambling Act, 2005 – Appendix I.

There being no further business the meeting ended at 12.25pm.

LICENSING (SCOTLAND) ACT, 2005

APPLICATION FOR PERSONAL LICENCE

James McLelland
52 Peden Drive
Auchinleck

The Depute Clerk reminded the Board that this application had been continued from the meeting on 22 June due to Mr McLelland's failure to appear. He stated that Mr McLelland had been cited to the meeting as he had a relevant conviction.

Mr McLelland was not present at the meeting, nor was he represented.

The Board asked for details of Mr McLelland's conviction.

The Depute Clerk advised the Board that Strathclyde Police had confirmed that the applicant had been convicted of a relevant offence at Ayr Sheriff Court on 11 November 2008, the offence being Assault to Injury and the applicant had been detained in a Young Offenders Institution for a period of 2 months.

The Board agreed unanimously to refuse the personal licence on the ground of the crime prevention licensing objective.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Tho & J W Barty
Solicitors
61 High Street
Dunblane**

**Co-operative Group Food Ltd
25/27 Church Street
Auchinleck**

Details of the application are as follows:-

The purpose of the application is to amend the layout plan and alter the alcohol display area.

The Depute Clerk advised that this application had been submitted to alter the alcohol display area. He stated that the plans were available for any Member who wished to view them.

The Depute Clerk advised that the premises were inspected by Building Standards on 11 June 2010 and the following issue was identified :-

- 1. Protective barrier / handrail required to steps and platt at rear exit.**

As there had been no objections or representation in respect of the application, the Board agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Robert Wardrop Sharpe
61 Irvine Road
Kilmaurs**

**The Tudor Inn
147 Titchfield Street
Kilmarnock**

Details of the application are as follows:-

The purpose of the application is to add outdoor drinking to the operating plan and include a beer garden to the rear of the premises.

The Depute Clerk advised that this application had been submitted to include a beer garden to the premises and include outdoor drinking to the operating plan.

The Depute Clerk advised that the premises were inspected by Building Standards on 7 July and found to be satisfactory.

As there had been no objections or representation in respect of the application, the Board agreed to grant the variation and restricted the use of the outside drinking area to 9pm.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Carruthers Curdie Sturrock & Co
Solicitors
1 Howard Street
Kilmarnock
KA1 2BW**

**St Enoch News
9 Burns Precinct
Kilmarnock**

Details of the application are as follows:-

The purpose of the application is to amend the layout plan and alter the alcohol display area.

Mr Hamilton, Solicitor, appeared on behalf of the applicant and explained that the units at numbers 9 and 10 Burns Precinct had been made into a single shop with a single entrance. It was intended to move the alcohol display area to the south wall with a small display behind the counter.

The plans of the premises were circulated to Members.

The Depute Clerk advised that the premises were inspected by Building Standards on 21 July and found to be satisfactory.

As there had been no objections or representation in respect of the application, the Board agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Lindsay
Solicitors
Caledonian Exchange
19A Canning Street
EDINBURGH**

**BHs
28 King Street
Kilmarnock
KA1 1LJ**

Details of the application are as follows:-

To amend the seasonal variation to offer alcohol from the third Friday in October until 31 December each year. The variation will also include the re-location of the alcohol display area together with the addition of a new window bed wall.

The Depute Clerk advised that this application had been submitted to alter the alcohol display area and the times of the year when alcohol would be available within the store. He stated that the plans were available for any Member who wished to view them.

The Depute Clerk advised that the premises were inspected by Building Standards on 6 July and the applicants advised by letter that the proposed works would be subject to a Building Warrant application. To date no application had been received.

As there had been no objections or representation in respect of the application, the Board agreed to grant the variation, subject to a Building Warrant being obtained.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Tariq Sultan
63 London Road
Kilmarnock**

**Craigie Stores
4b Craigie Road
Kilmarnock**

Details of the application are as follows:-

The purpose of this application is to amend the hours for sale of alcohol as stated below and also to amend the layout plan to reduce the display area of alcohol within the premises.

Current Licensing Hours:

Off-Sale

Monday – Saturday
Sunday

10.00am – 8.00pm
10.00am – 7.00pm

Licensing Hours Applied for:

Monday – Sunday

10.00am – 10.00pm

The Depute Clerk advised that this application had been submitted to amend core licensing hours and reduce the alcohol display area.

The Depute Clerk advised that the premises were inspected by Building Standards on 2 June and found to be satisfactory.

As there had been no objections or representation in respect of the application, the Board agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Mark McAllister
Wheatsheaf Inn
35 Main Street
Patna**

**Wheatsheaf Inn
35 Main Street
Patna**

Details of the application are as follows:-

The purpose of this application is to vary the premises licence to permit children and young persons between 0 – 17 years of age entry to the premises to attend a function or private party accompanied by a responsible person for the duration of the function or private party.

The Depute Clerk advised that this application had been submitted to allow children and young persons access to the premises.

The Depute Clerk advised that the premises were inspected by Building Standards and found to be satisfactory.

As there had been no objections or representation in respect of the application, the Board agreed to grant the variation.

APPLICATION FOR GRANT OF A PROVISIONAL PREMISES LICENCE

**Messrs Trainor Alston
Solicitors
18 Academy Street
Coatbridge
ML5 3AU**

**59 – 61 West Main Street
Darvel
KA17 0EB**

Details of the application are as follows:-

The premises will be a licensed convenience store.

Licensed Hours Applied for:-

Monday – Sunday

10.00am – 10.00pm

The Depute Clerk advised that a letter had been received from the Agents for the applicant requesting that this application be continued to the next meeting of the Board. The Board agreed.

GAMBLING ACT 2005

The Depute Clerk advised that the undernoted applications for Club Machine Permits were all in order. He explained that these permits were previously registered by the Sheriff Clerk, however in terms of the Gambling Act 2005 these were now dealt with by Licensing Boards.

APPLICATION FOR CLUB MACHINE PERMIT

Auchinleck Indoor Bowling Club
Well Road
Auchinleck

Granted

APPLICATION FOR CLUB MACHINE PERMIT

Auchinleck Outdoor Bowling Club
7 Market Place
Auchinleck

Granted

APPLICATION FOR CLUB MACHINE PERMIT

Drongan Miners Welfare Bowling Club
2b Millmannoch Avenue
Drongan

Granted

APPLICATION FOR CLUB MACHINE PERMIT

Darvel Bowling Club
Ranoldcoup Road
Darvel

Granted

APPLICATION FOR CLUB MACHINE PERMIT

Annanhill Golf Club
Irvine Road
Kilmarnock

Granted

APPLICATION FOR CLUB MACHINE PERMIT

The Club
2 Dunlop Street
Kilmarnock

Granted

APPLICATION FOR CLUB MACHINE PERMIT

Ballochmyle Golf Club
Catrine Road
Mauchline

Granted

APPLICATION FOR GRANT OF BETTING PREMISES LICENCE

**William Hill Organisation Limited
Greenside House
50 Station Road
Wood Green
London**

**William Hill
12 The Square
Cumnock**

The Depute Clerk advised that he had received 4 letters of representation in respect of this application.

Mr Hunter, Solicitor, appeared on behalf of the applicants, together with Mr Buchanan of the applicant company.

Mr Batters, Solicitor, appeared to speak in support of the representation submitted on behalf of Freddie Williams Bookmakers, together with Julie Williams.

Mr McKinstry, Solicitor, appeared to speak in support of the representation submitted on behalf of Mrs Sheila Armitage.

Mr Andrew Allan, owner of Andrew Allan Bookmakers, Ryderston Drive, Netherthird, Cumnock appeared to speak in support of his representation.

Mr Dennis Savage submitted a letter making representation, however was not present at the meeting, nor was he represented.

The Depute Clerk advised that Mr Hunter had a preliminary matter to raise as Mr Hunter was of the opinion that the letters of representation from The McKinstry Company on behalf of Sheila Armitage, from Andrew Allan and from Dennis Savage should be excluded from consideration by the Board. The Depute Clerk stated that in order to allow the Board to make a decision they would require to have sight of the letters. Mr Hunter agreed and the letters were circulated.

The Board were given the opportunity to read the letters of representation.

Mr Hunter referred to the guidance issued to Licensing Authorities by the Gambling Commission and to paragraphs 7.53 and 7.54 which set out matters which should not be taken into account by the Licensing Board when considering applications. Referring to paragraph 7.53, Mr Hunter stated that having too many gambling premises in a locality, traffic issues and crowds of people congregating in one area causing noise were not relevant considerations for the Board.

Mr Hunter reminded the Board that the Gambling Act did not include the licensing objective preventing public nuisance and that such issues should be tackled under relevant laws. He also reminded the Board that Section 25 of the Act required that the Board have regard to guidance issued by the Gambling Commission.

Addressing Mr Allan's representation, Mr Hunter reminded the Board that in terms of Section 153 of the Act the Board may not have regard to the expected demand for the facilities which it is proposed to provide. He moved that Mr Allan's representation was clearly demand led and should not be considered by the Board.

Mr Hunter submitted that Mr Savage's representation fell within paragraph 7.53 of the guidance insofar as it referred to noise and extra people in The Square as these were public nuisance issues. Referring to the concern about the premises being in close proximity to the Church and to Sunday opening, he stated that the Act permitted Sunday opening and pointed out that the Church had not made any representation in relation to the application.

Addressing the representation on behalf of Sheila Armitage, Mr Hunter stated again that the representation fell within paragraphs 7.53 and 7.54 of the guidance insofar as it related to issues such as noise, litter and parking, which should not be a consideration for the Board.

Mr Hunter moved that the representations from Dennis Savage, Andrew Allan and from The McKinstry Company on behalf of Sheila Armitage all sought to have the Board consider matters which it should not consider.

Mr McKinstry stated that as Mrs Armitage lived sufficiently close to the application premises, she was an interested party in terms of Section 158 of the Act and was entitled to make a representation.

Mr McKinstry moved that Mrs Armitage was an elderly person who spent the majority of her time in her home. He stated that the granting of the licence would cause a disruption to the amenities currently enjoyed by Mrs Armitage.

Referring to the guidance issued by the Gambling Commission, Mr McKinstry stated that this was merely guidance and the question was whether it was convenient or suitable to grant a licence for these premises.

Mr Hunter disagreed and stated that issues such as noise, litter or parking were matters for other authorities and not considerations for the Board.

The Depute Clerk pointed out to Mr Hunter that the reference within paragraph 7.53 of the Gambling Commission's guidance is to responsible authorities as opposed to interested parties.

Mr Hunter stated that responsible authorities were able to take up issues such as noise, litter or parking under other legislation.

The Depute Clerk stated that a responsible authority would be able to take up issues such as noise, litter or parking under other legislation, however an interested party would not and that the application stage may be the only opportunity for an interested party to express any concerns. He stressed that the Board must take account of the facts provided by all parties.

Mr Hunter stated that the Gambling Act 2005 did not include as a licensing objective, the prevention of public nuisance.

The Board adjourned to consider the matter and take advice.

Upon returning the Chair moved that Andrew Allan's representation was demand led and should not be considered by the Board and that the representations from Dennis Savage and from The McKinstry Company on behalf of Sheila Armitage should be considered by the Board. The Board agreed.

Mr Hunter submitted that the application premises within the pedestrian area of The Square, Cumnock was approximately 475 sq ft., would have two terminals, fixed seating, unisex toilets, a 17 screen gantry system and would provide facilities to bet on all types of sports. He advised that The Square was a commercial area with a Solicitors office, a Beautician's, a Hotel and a Pub all within close proximity.

Mr Hunter advised that there were currently 5 Betting Premises Licences within East Ayrshire held by William Hill, with the one at The Cross, Kilmarnock opening in May 2007. He stated that all 5 premises operated in compliance with the licensing objectives and without problem and that the aim was to offer the same facilities at 12 The Square, Cumnock as was offered in those shops.

Mr Batters stated that his clients, Freddie Williams Bookmakers, held 2 Betting Premises Licences, one in Cumnock and one in Auchinleck, as opposed to William Hill who were one of the largest operators in the UK. He advised that William Hill had over 2300 betting premises, the equivalent of 25% of the total number of premises in the UK. He stated that the population of Cumnock was 9000 which was declining and that the Cumnock area had its fair share of problems.

Mr Batters advised that his clients were already planning to carry out a refurbishment to the shop at 2 Glaisnock Street, Cumnock prior to the application for 12 The Square being submitted and had lodged an application for Variation of the Premises Licence with East Ayrshire Licensing Board. He stated that his clients' shops did not open late, unless a sporting event was taking place.

Mr Batters referred to Fixed Odds Betting Terminals (FOBT) within betting premises, advising that they were gaming machines which allowed customers to bet on fantasy games, which was far removed from traditional betting where bets were placed on events taking place. He stated that William Hill's annual report of 2009 showed that horse racing accounted for only 30% of the turnover, as opposed to 75% approximately 20 years ago. Mr Batters reported that the turnover from FOBT within William Hill premises was around 46%.

Mr Batters submitted that previous legislation allowed for trade objections, however demand was no longer a relevant consideration for the Board. He continued that FOBT were the driver for the opening of many betting shops and that FOBT were not permitted in betting shops in Southern Ireland. He stated that as a result, William Hill may close their shops in Ireland.

Mr Batters advised that his clients had 2 within their shop at 2 Glaisnock Street, which were not advertised, and that Mr Allan had no FOBT within his shop at Ryderston Drive, Netherthird. He stated that if the licence was granted William Hill would be permitted up to 4 FOBT and that his clients may have to respond.

Mr Batters submitted that in his opinion FOBT were more attractive to a younger age group. He stated that previously betting was a social activity, however with FOBT the player knows instantly if they have won, providing immediate gratification, which was a different way of gambling. He stated that FOBT were used to maximise income.

Mr Batters then referred to an article which had appeared in the London Times in 2009 regarding gambling addictions. He stated that traditional betting was betting on an event. Once the event was over the betting stopped, however when playing FOBT there was no end to the game and no cue to tell the player when to stop playing. Mr Batters stated that gambling by way of these machines had been seen as more addictive than traditional betting.

Mr Batters stated that the income from FOBT accounted for a very large proportion of William Hill's income. He advised that there was now a new generation of FOBT called

Storm Cabinets which had dual definition screens and which William Hill relied heavily on. He advised that William Hill had around 8700 FOBT in the UK, however according to their annual report 6250 of these were to be changed to the new Storm machines by March 2010. Mr Batters added that the application premises would probably open later at night when the only facility available would be FOBT, operating more like an amusement arcade than a traditional betting office.

Mr Batters concluded that Cumnock and the surrounding area contained a high proportion of persons who may be considered vulnerable and who might easily become addicted to gambling. He stated that William Hill were a national company and would no doubt promote the FOBT which would increase betting in the area and would take in vulnerable persons. Mr Batters invited the Board to refuse the application.

Mr McKinstry circulated copies of photographs of the location of the application premises, advising that his client, Mrs Armitage, lived in the property immediately above the shop.

Mr McKinstry advised that the photograph numbered 2 showed the windows the lounge and dining room of his clients home which were immediately above the application premises. The picture numbered 3 showed the Church in The Square, the picture numbered 5 showed The Square, the picture numbered 7 showed the residential area of The Square and the picture numbered 9 showed residential accommodation in The Square.

Mr McKinstry submitted that the granting of the licence would have an impact on his client's quality of life and would completely reconfigure The Square. Referring to the licensing objective, protecting children and other vulnerable persons from being harmed or exploited by gambling, he stated that this referred to all vulnerable people, not only gamblers.

Mr McKinstry concluded that the granting of the licence would result in turning night into day for this quiet area of the Square and invited the Board to reject the application.

Mr Hunter referred to Mr Batters reference to FOBT and questioned why, if the FOBT were so wrong, his clients had 2 within their premises. He advised that the machines used by William Hill were all machines approved by the Gambling Commission and that there was no evidence to support that FOBT were more attractive to younger people. He stated that to his knowledge no licence had ever been reviewed on the ground of protecting children and other vulnerable persons from being harmed or exploited by gambling due to FOBT.

Mr Hunter stressed that if the licence were granted, the premises would operate similar to those already in operation within East Ayrshire, which had never caused any problems.

Mr Hunter referred to the British Gambling Prevalence Survey 2007 which had been issued by the Gambling Commission stating that the conclusion of the Gambling Commission following research was that it was not possible to single out particular forms of gambling that are especially related to problem gambling.

Mr Hunter stated that William Hill did not advertise for people to enter the premises to use the FOBT.

Referring to the representation on behalf of Mrs Armitage, Mr Hunter stressed that public nuisance was a matter for other officials. He stated that residents lived above the William Hill premises at Low Glencairn Street, Kilmarnock and that these premises had attracted no complaints.

Referring to Mr McKinstry's submission that the day ends in The Square at 5pm, Mr Hunter advised that there was currently a Chinese take away, a chip shop, a Hotel and a Pub, all within

close proximity to the application premises and which opened later at night. He stressed that William Hill was a responsible company and had no history of public nuisance complaints.

Referring to the representation made by Mr Dennis Savage, Mr Hunter moved that the points in the letter referring to public nuisance were not relevant considerations for the Board. He referred to Mr Savage's concerns about Sunday opening and The Church which was close to the application premises and stated the Sunday opening was permitted in terms of the Act and pointed out that the Church had not made any representation.

Mr Hunter concluded that the starting point for the Board was to permit gambling unless there was a ground for refusal.

Councillor Ross referred to Mr Batter's submission that if the licence was granted William Hill would be permitted 4 FOBT and that his clients may have to respond and asked what Mr Batters meant by this.

Mr Batters stated that his clients were entitled to have 4 FOBT within their premises, however currently offered 2 FOBT. If the licence were granted, his clients may have to change how they operate by increasing the number of machines offered.

Councillor John McGhee asked why William Hill intended to have 4 FOBT within their premises.

Mr Hunter stressed that William Hill was a responsible operator and intended to offer the same number of machines as the other William Hill premises as this had proved to be successful.

Councillor McGhee questioned Mr McKinstry's submission that the life of The Square ended at 5pm. Mr McKinstry stated that late opening in The Square was usually restricted to Thursday, Friday and Saturday nights.

Councillors McGhee asked Mr Batters how he thought that FOBT were the cause of problem gambling in William Hill premises but that his clients also offered the machines.

Mr Batters accepted that FOBT were approved machines. He stated that William Hill maximised exposure to the machines but that his clients did not. Referring to the British Gambling Prevalence Survey 2007 issued by the Gambling Commission Mr Batters pointed out that it showed that 11.2% of the people questioned used FOBT, which was one of the highest.

As there were no further questions, all parties were given the opportunity to sum up.

Mr Hunter submitted that William Hill were responsible operators who already operated in the area with no difficulties. He stated that his clients intended to offer 4 FOBT however if there was no demand for these, this could be reduced.

Mr Hunter stated that public nuisance issues were not a consideration for the Board.

Mr Hunter concluded that the set up of the Act was such that the Board should aim to allow gambling, unless there was a ground for refusal.

Mr Batters moved that the granting would be a risk to vulnerable persons and moved that the licence be refused.

Mr McKinstry had nothing to add to his earlier submission.

The Board adjourned to consider the application.

Upon returning Councillor Ross moved that the licence be granted, which was seconded by Councillor Cree. The Board agreed unanimously to grant the licence.

The Depute Clerk advised that the notices in terms of Section 164 of the Act, containing the relevant information, would be issued to all parties in due course.
