

EAST AYRSHIRE LICENSING BOARD

Minute of the meeting of East Ayrshire Licensing Board held within Meeting Room 1, on Tuesday 12 January 2010 at 10am

SEDERUNT : Councillor J Buchanan, Councillor J Campbell, Councillor H Coffey, Councillor R Cunninghame, Councillor E Dinwoodie, Councillor J McGhee, Councillor N McGhee, and Councillor H Ross

ATTENDING : Mr S McCall (Depute Clerk to the Licensing Board), Mr B Roy (Building Standards), Mr B Campbell (Environmental Health), Superintendent Fitzpatrick, Sgt. A Kelly and Mrs C McKenna (Strathclyde Police), Ian Hiles (Licensing Standards Officers), Mrs P Duncan and Ms S Gillies (Licensing Board Administrators).

Councillor G Cree and Councillor J McKay were unable to attend the meeting.

1. SEDERUNT

Noted.

2. MINUTES OF MEETINGS

- 2.1 The Minute of the Licensing Board meeting held on 6 November 2009 was approved and noted.
- 2.2 The Minute of the Licensing Board meeting held on 1 December 2009 was approved and noted.
- 2.3 The Minute of the joint meeting of East Ayrshire Licensing Board and East Ayrshire Local Licensing Forum held on 1 December 2009 was approved and noted.

3. REVIEW OF PREMISES LICENCE

- 3.1 Review of premises licence for premises at Doonside Stores, 28 Barbieston Road, Dalrymple following receipt of a notice in terms of Section 38 of the Licensing (Scotland) Act, 2005 from Strathclyde Police.

The Depute Clerk advised that Strathclyde Police had applied for a review of premises licence for Doonside Stores, 28 Barbieston Road, Dalrymple.

Superintendent Fitzpatrick reported that a review of the premises licence had been requested in terms of Section 36(3)(b) as a female employee failed to comply with the following licensing objectives, namely:- 1. Protecting Children from Harm and 2. Preventing Crime and Disorder as detailed below:-

About 1745 hours on Friday 30 October 2009 a test purchase operation took place within the premises. At that time a female employee was serving alone within the shop. A 2 litre bottle of Strongbow Cider was purchased by a 16 year old test purchaser, without him being asked for any form of identification or proof of age. The test purchaser then left the premises and Community Police

Officers identified themselves and informed the female employee of the offence committed. She was interviewed under caution where she fully admitted her actions and further stated she had received the appropriate training and was aware of her responsibilities. This was verified from the records of training held by the Designated Premises Manager. The female employee was thereafter cautioned and charged making no reply.

A subsequent test purchase was carried out on Friday 13 November 2009 which the premises passed.

The premises manager Tami Stobbs appeared before the Board.

The Depute Clerk asked for confirmation that the facts supplied by Strathclyde Police were accurate and Ms Stobbs confirmed the facts were accurate.

The Depute Clerk advised Board Members that in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005 it is a statutory requirement for Licensing Standards Officers to submit a report in respect of a premises licence review and Ian Hiles, LSO, reported as follows:-

The Transitional Premises Licence application submitted in terms of the Licensing (Scotland) Act 2005 in respect of the premises forming and known as Doonside Store, 28 Barbieston Road, Dalrymple, was considered and granted by the Board at their meeting on 13 January 2009. The applicant was not present at the board meeting.

The premises known as Doonside Store were visited on Wednesday 23rd September 2009 and Thursday 19th November 2009 to ascertain that all statutory requirements in terms of the current legislation were being met.

During the first visit in September, it was ascertained that the staff at the premises still had not received their minimum two hours training and assurances were made by the Designated Premises Manager, Tami Stobbs, that the relevant training would be carried out within one week to her members of staff. The Summary Premises Licence and a relevant Notice in terms of S110 were properly displayed at this time.

During the second visit in November, the Designated Premises Manager, Tami Stobbs, was not present and the member of staff working in the premises stated that all staff members had received suitable training but was unable to locate the training records. The Summary Premises Licence and Section 110 Notice were still properly displayed at this time.

Doonside store was re-inspected on Wednesday 2 December 2009 and the Owner/Designated Premises Manager, Tami Stobbs was spoken to. Training records for four members of staff were seen and were found to be in order. The Designated Premises Manager stated that the staff member involved in the alleged offence at Doonside Store had undergone refresher training.

As the Licensing Standards Officers were not present and did not witness the events surrounding the test purchase we are unable to offer any information at this time.

The Depute Clerk pointed out that as reported by the LSO, all procedural aspects relating to training and displaying notices had been complied with.

Ms Stobbs stated that the incident had been taken seriously and she had teenage children of her own and wouldn't want alcohol to be sold to them. Ms Stobbs confirmed that the premises were routinely checked by Strathclyde Police and the premises did not sell alcopops.

Councillor J McGhee asked the LSO if the training records were dated when inspected and the LSO confirmed that they were dated and complied with statutory procedures.

The Depute Clerk advised Members that if they were satisfied that the 2 grounds stated by Strathclyde Police had been established then the appropriate steps were (a) issue a written warning to the licence holder; (b) make a variation to the licence; (c) suspend the licence for such period as the Board may determine; and (d) revoke the licence.

The Chair asked Members if they were in agreement that the 2 grounds had been established.

Councillor John McGhee agreed that the first ground of Protecting Children from Harm had been established but not the second ground of Preventing Crime and Disorder. Councillors Campbell and Ross also agreed that the second ground had not been established.

Councillor John McGhee stated that the system of inspections by Strathclyde Police and Licensing Standards Officers were working and that in this instance a formal written warning would be sufficient.

The Board Members unanimously agreed that the first ground of Protecting Children from Harm had been established but not the second of Preventing Crime and Disorder.

The Board Members unanimously agreed to issue a written warning to the premises licence holder and requested that the Depute Clerk arrange for the written warning to be issued.

- 3.2 Review of premises licence for premises at Gogy's Mini Market, 24-30 St Germain Street, Catrine following receipt of a notice in terms of Section 38 of the Licensing (Scotland) Act, 2005 from Strathclyde Police.**

The Depute Clerk advised that Strathclyde Police had applied for a review of premises licence for Gogy's Mini Market, 24-30 St Germain Street, Catrine.

Superintendent Fitzpatrick advised that a Review of the premises licence had been requested in terms of 36(3)(b) as the premises licence holder Iftikar Ahmed had failed to comply with the licensing objectives, namely:- 1. Protecting Children from Harm and 2. Preventing Crime and Disorder as detailed below:-

About 1945 hours on Wednesday 25 November 2009, police were contacted by a concerned mother whose 13 year old daughter had returned home under the influence of alcohol. The daughter stated that her 13 year old friend had

approached a 53 year old male outside Gogy's Mini Market in St Germain Street, Catrine, and asked him to buy alcohol for her. This male had just left the shop and was clearly drunk. He returned to Gogy's where an 18 year old female shop assistant was serving alone, and he bought two large bottles of wine. The shop assistant was overhead saying to the male "I thought you had spent all your money?", to which he replied that he had found more money in his pocket. The shop assistant had to assist the male in counting out his money as he could not select the appropriate coinage due to his state of intoxication. The male left the shop and handed over the alcohol to the 13 year old and her friend, who made their way to the local park to drink it before returning home. The 53 year old male is known to shop staff.

As a result of these actions a 53 year old male had been charged with contravention of the Licensing (Scotland) Act 2005, Section 105(4) and 111(2), and an 18 year old female with Section 113(1) of said Act.

About 1635 hours on Friday 27 November 2009, a 58 year old male was observed by police witnesses within Gogy's Mini Market, St Germain Street, Catrine. He was seen to be drunk. The male was seen to purchase four cans of Old English cider from an 18 year old female shop assistant. When interviewed under caution he admitted having bought three cans earlier that day from the same assistant.

As a result of these actions a 58 year old male was charged with a contravention of the Licensing (Scotland) Act 2005, Section 111(2), and an 18 year old female with Section 113(1).

It should be noted that in both these incidents the member of staff was 18 years of age. Their compulsory training was completed by personal licence holder Iftikhar Ahmed and the appropriate training records completed.

The Depute Clerk advised Board Members that in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005 it is a statutory requirement for Licensing Standards Officers to submit a report in respect of a premises licence review and Ian Hiles, LSO, reported as follows:-

The Transitional Premises Licence application submitted in terms of the Licensing (Scotland) Act 2005 in respect of the premises forming and known as Gogy's Mini Market, 24/30 St Germain Street, Catrine, was considered and granted by the Board at their meeting on 16 December 2008. The applicant was not present at the board meeting.

The premises known as Gogy's Minimarket were visited on Wednesday 16th September 2009 and Monday 7th December 2009 to ascertain that all statutory requirements in terms of the current legislation were being met.

During the first visit in September, the Summary Premises Licence and training records were not displayed or available. A relevant Notice in terms of S110 was properly displayed at that time. The Designated Premises Manager, Shabeena Ahmed was not present on this visit. The staff member working at the time was Manan Ahmed who is a Personal Licence Holder, he stated that all matters would be rectified immediately.

During the second visit in December, the Designated Premises Manager, Shabeena Ahmed was not present. The Premises Licence Holder, Mr Iftikhar Ahmed, who is also a Personal Licence Holder, was present. All training records were in order and it was ascertained that four Personal Licence Holders worked on the premises in addition to other staff. Mr Ahmed stated that a Personal Licence Holder would always be on the premises when alcohol was available for sale. Mr Ahmed also stated that Shabeena Ahmed usually worked between 16-20 hours a week. It was suggested to Mr Ahmed that he might wish to reconsider who is nominated as the Designated Premises Manager. The Summary Premises Licence and Section 110 Notice were still properly displayed at that time.

Gogy's Minimarket was re-inspected on 6th January 2010, the Designated Premises Manager, Shabeena Ahmed was not present. The Premises Licence Holder, Mr Iftikhar Ahmed was present and spoken to. He stated that both of the staff members who were involved in the alleged offences in November 2009 had been dismissed immediately for gross misconduct. The two male persons involved in the alleged offences were barred from entering his premises. There were five persons who worked in the premises, four of whom were Personal Licence Holders, the fifth person having attained a Scottish Certificate for Personal Licence Holders. Mr Ahmed stated that there would always be a Personal Licence Holder on the premises at all times alcohol was on sale. The Summary Premises Licence and Section 110 Notice were correctly displayed. In addition, the Premises Licence Holder was displaying notices informing customers that if they were to purchase alcohol for persons under 18 years of age, they would be reported to the police.

As the Licensing Standards Officers were not present and did not witness the events surrounding the alleged offences we are unable to offer any information at this time.

Mr Reid Hamilton, Solicitor, appeared before the Board on behalf of the licence holder Mr Iftikhar Ahmed.

The Depute Clerk asked Mr Hamilton if he wished to raise any preliminary issues.

Mr Hamilton referred to Section 36(6)(b) which stated that "the Licensing Board may reject a premises licence review application if the Board considers the application does not disclose any matter relevant to any ground for review". Mr Hamilton accepted that the Police's statement regarding the 58 year old male being drunk could relate to the objective "preventing crime and disorder" but did not agree that the Police's application disclosed any matter which related to "protecting children from harm".

The Board agreed to take account of all of Strathclyde Police's report.

Mr Hamilton requested confirmation from Strathclyde Police of details of how the conclusion had been made that the 53 year referred to in their report was drunk.

Superintendent Fitzpatrick replied that a statement had been taken from the shop assistant who had stated that the 53 year old man had been drinking but was not drunk. A statement was also taken from a 13 year old customer who was

within the premises at the time of the incident who stated he was drunk. A statement had also been taken from the 53 year old man who had admitted he was drunk. Superintendent Fitzpatrick further advised that a statement had been taken from nearby licensed premises in which they stated that the 53 year old had been refused the sale of alcohol as he was drunk. Superintendent Fitzpatrick was satisfied from the statements and the fact that the man required to be assisted to count his money that he was drunk.

Mr Hamilton stated that the case of “Dunning v Cardele 1981 Scots Law Times – Notes 107 stated that it was not sufficient to say that a person was drunk but that evidence was required to support the statement. Mr Hamilton suggested that there was no evidence to support that the 53 year old was drunk. Mr Hamilton stated that the man was a regular customer of the premises and was on permanent medication. Mr Hamilton suggested that due to the medication and the elderly age of the man that this was the reason for required assistance to count his money.

Mr Hamilton had been instructed by his client that no comments had been made by the sales assistant with regards to spending all his money previously and obtaining more money.

Mr Hamilton stated that there had been no previous problems with the employee but that they had been suspended as a result of this incident.

Mr Hamilton advised the Board that when Mr Ahmed was interviewed by Strathclyde Police he got the impression that they wanted Mr Ahmed to dismiss both the employees referred to in the report, which Mr Ahmed had done.

Mr Hamilton referred to the second incident on Friday 27 November 2009 when a 58 year old man had been sold alcohol when he was drunk even though Police Officers were present on the premises. Mr Hamilton stated that he found it hard to believe that an employee would sell alcohol to a drunk person in these circumstances.

Superintendent Fitzpatrick stated that the Police Officers observed that the male was red-eyed and had alcohol on his breath.

Mr Hamilton advised that in both cases the Procurator Fiscal did not proceed to Court as there was insufficient evidence to show that they were drunk but warning letters were issued.

Mr Hamilton concluded that there was insufficient evidence to show that both men were drunk and no evidence to show that alcohol had been passed to a child. Accordingly both licensing objectives referred to in Strathclyde Police’s Review had not been breached.

Superintendent Fitzpatrick assured Board Members that when the licence holder had been interviewed he would not have been pressurised to dismiss the employees concerned. Superintendent Fitzpatrick pointed out that the training provided to the employees should have included criteria to recognise a drunk person.

Superintendent Fitzpatrick further pointed out that the first male admitted he was drunk and the second male was identified to be drunk by Police officers who observed that he was red-eyed and had the demeanour of being drunk. Superintendent Fitzpatrick advised that the Procurator Fiscal had sufficient evidence to issue a written warning in both cases.

Superintendent Fitzpatrick stated that if alcohol was sold to a drunk person this could lead to further events happening and the Licensee had a responsibility when selling alcohol. He reminded Board Members that it was the 13 year old's mother who had brought the incident to Strathclyde Police's attention.

Councillor Ross stated that there were two issues, firstly were the males drunk and secondly how would the employee know that the alcohol would be passed on to a juvenile.

Superintendent Fitzpatrick stated there was no sure answer but in this instance alcohol was passed to a juvenile.

Councillor Dinwoodie pointed out that the Police Officers were in the shop at the time the sale took place to the second male and asked whether they could have stopped the sale taking place.

Superintendent Fitzpatrick stated that the Officers acted in good faith.

Councillor Cunninghame highlighted that the 53 year old male had previously been in the shop and the shop assistant had remembered he had spent all of his money but wondered where he had got the money to return for more alcohol. Councillor Cunninghame asked if the man was a regular customer.

Mr Hamilton confirmed that the 2 men were regular customers and as a result of the incidents they had both been banned from the premises. Mr Ahmed had got the impression when interview by the Police that this was the decision they wished him to take.

Mr Hamilton summed up by stating that the Licensee was 53 years old and had held a licence for 30 years, operating from the premises in Catrine since 2003. Mr Hamilton also advised that the premises had since passed a further Test Purchase. Mr Hamilton referred to 3.4 of the Licensing Standards Officer's report which showed that four of the five staff were personal licence holders, the fifth person had attained the Scottish Certificate for Personal Licence Holder and a personal licence holder would be present on the premises at all time. Mr Hamilton pointed out that this exceeded the statutory provisions and showed that his client took his responsibilities seriously. Mr Hamilton further pointed out that there was insufficient evidence to show that the men were drunk or that the objective of protecting children from harm had been breached.

The Depute Clerk reminded Members of the Case Law that Mr Hamilton had referred to but pointed out that in that case there would have been the requirement for proof beyond reasonable doubt which may be more than the required standards for the Licensing Board and invited Mr Hamilton to comment on the standard of proof required.

Mr Hamilton stated that the Licensing Board was a quasi-judicial court with the power to grant, revoke and submit sanctions. These decisions should be based on the facts which should be beyond reasonable doubt.

The Board Members adjourned to discuss the matter further.

Upon returning Councillor Ross moved that the first ground of Protecting Children from Harm had not been established but that the second ground of Preventing Crime and Disorder had been established.

The Board unanimously agreed that the only licensing objective which had been established was Preventing Crime and Disorder.

Mr Hamilton referred to the LSO's Report and the Licensees previous record and requested that in terms of Section 39, the Board impose the minimum sanction of issuing a written warning to the licence holder.

Councillor Dinwoodie proposed issuing a formal written warning which was seconded by Councillor Neil McGhee.

The Board Members unanimously agreed to issue a written warning to the premises licence holder and requested that the Depute Clerk arrange for the written warning to be issued.

- 3.3 Review of premises licence for premises at Meeloo Superstore, 59-61 West Main Street, Darvel in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition.

The Depute Clerk advised that a review of the premises licence was required due to the fact that the Annual Retention fee for these premises remained outstanding from October 2009, despite significant correspondence with the Licensee Mr Mohammad Akram.

The Depute Clerk advised Board Members that in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005 it was a statutory requirement for Licensing Standards Officers to submit a report in respect of a premises licence review and Ian Hiles, LSO, reported as follows:-

The Transitional Premises Licence application submitted in terms of the Licensing (Scotland) Act 2005 in respect of the premises forming and known as Meeloo Superstore, 59-61 West Main Street, Darvel, was considered and granted by the Board at their meeting on 2 December 2008. The applicant was not present at the board meeting.

Section 10 of the mandatory conditions of the Premises Licence states that it is a mandatory condition of a Premises Licence that the annual fee must be paid as per the terms of the Licensing (Fees) (Scotland) Regulations 2007.

The annual retention fee payable from the Meeloo Superstore, 59-61 West Main Street, Darvel was £176-00.

The Premises Licence was issued by hand delivery to the premises known as Meeloo Superstore, Darvel on the 14th September 2009. The covering letter

enclosed with the Premises Licence stated the annual retention fee of £176-00 was due to be paid by the 1st October 2009.

On the 27th October 2009, a reminder letter was sent to the Premises Licence Holder, Mr Mohammad Akram at his home address of 13 Torridon Avenue, Glasgow. The letter requested that the sum of £176-00 be paid by return, if the sum remained outstanding, the Licensing Board would make a Premises Licence review in terms of Section 38 of the Licensing (Scotland) Act 2005.

On the 20th November 2009, a further reminder letter was sent by Recorded Delivery to Mr Mohammad Akram at his home address.

On the 24th November 2009, a letter was received from Diane Limond, who was the Designated Premises Manager for Meeloo Superstore, Darvel. This letter stated that she no longer was the Premises Manager.

On the 3rd December 2009, a letter was sent by Recorded Delivery to the Premises Licence Holder, Mr Mohammad Akram at his home address, this letter notified Mr Akram of the Premises Licence Review hearing on the 12th January 2010 and cited him to appear on that date.

Throughout the above period, various messages were left for Mr Akram to make contact with the Licensing Board by telephone and by personal visit to the premises by Licensing Standards Officers. To date, Mr Mohammad Akram has not made contact with the Licensing Board.

As of the 6th January 2010, a visit by a Licensing Standards Officer found the premises to be closed and shuttered up with no obvious sign of the premises re-opening.

As of the 6th January 2010, the annual fee of £176-00 remains outstanding despite the above attempts to contact the Premises Licence Holder.

Mr Mohammad Akram was present at the meeting and stated that the premises were currently closed and the annual fee would be paid tomorrow Wednesday 13 January 2010. Mr Akram stated that he was trying to take back possession of the premises.

The Depute Clerk asked Mr Akram who had possession of the premises. Mr Akram advised that the premises had been re-possessed but he hoped to take them back.

The Depute Clerk advised Board Members that due to the re-possession, Mr Akram had no right to be in the premises and the annual fee could not be accepted from him.

The Depute Clerk further advised that the only option in these circumstances would be to revoke the licence and if Mr Akram was able to take back possession of the premises at a later date, a new grant of a premises licence would require to be applied for.

The Board agreed to revoke the licence.

4. APPLICATIONS

Consider applications received under the Licensing (Scotland) Act 2005, Licensing (Scotland) Act, 1976, as amended and the Gambling Act, 2005 – Appendix I.

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

LICENSING (SCOTLAND) ACT, 2005

APPLICATION FOR VARIATION OF PREMISES LICENCE

John Patrick
57a Longhill Avenue
Alloway
Ayr
KA7 4DU

Spar
19-21 Glencraig Street
Drongan
KA6 7AS

A brief overview of the premises licence:-

Premises consist of a licensed convenience store.

Details of the variation are as follows:-

The applicant has applied to vary the hours during which alcohol is to be sold. The premises may also close earlier than the stated, subject to customer demand.

<u>Current Licensing Hours:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Monday – Saturday		10.00am – 8.00pm
Sunday		10.00am – 2.00pm

<u>Licensing Hours Applied For:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Monday – Saturday		10.00am – 8.00pm
Sunday		10.00am – 6.00pm

The Depute Clerk reminded Members that this application had been continued from the last meeting of the Board as the applicant had failed to display the relevant notice in terms of article 7 of the Licensing (Procedure) (Scotland) Regulations 2007 at the premises for a continuous period of 21 days. He advised that the applicant had confirmed that the notice had now been displayed.

As the application was in order and no objections or representations had been received, the Board agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

Tho & J W Barty
Solicitors
61 High Street
Dunblane

Co-operative
4 Polwarth Street
Galston

A brief overview of the premises licence:-

The Premises are a licensed supermarket.

Details of the variation are as follows:-

The purpose of this application is to alter the alcohol display area.

As the application was in order and no objections or representations had been received, the Board agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Mr Alex Miller
Grapevine Ltd
33 Crofthead Avenue
Kilmarnock**

**Gordons Bar
17 Fowlds Street
Kilmarnock**

Brief overview of the premises licence:- The premises consist of single lounge bar.

Details of the variation are as follows:-

The applicant has applied to vary the hours during which alcohol is to be sold as detailed below:-

<u>Current Licensing Hours:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Monday – Thursday	11.00am - Midnight	10.00am – 10.00pm
Friday & Saturday	11.00am – 1.00am	11.00am – 10.00pm
Sunday	12.30pm - Midnight	12.20pm – 10.00pm

<u>Licensing Hours Applied For:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Monday – Wednesday	11.00am – Midnight	11.00am – 10.00pm
Thursday – Saturday	11.00am – 1.00am	11.00am – 10.00pm
Sunday	11.00am - Midnight	11.00am – 10.00pm

The premises also intend to remain open until 2.00am on 24th, 26th and 31 December and 2nd January each year.

The Depute Clerk explained that, in terms of the Licensing (Procedure)(Scotland) Regulations 2007, an applicant must display, at the application premises, a notice detailing the application for variation of premises licence for a continuous period of 21 days to allow any potential objectors the opportunity to do so. As the applicant had omitted to display the relevant notice, the Depute Clerk recommended that the Board continue consideration of the application to the Board meeting on 9 February 2010.

The Board agreed to continue consideration of the application to allow the licensee to display the site notice for the statutory 21 day period.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**West Netherton Bowling Club
West Netherton Street
Kilmarnock**

**West Netherton Bowling Club
West Netherton Street
Kilmarnock**

Brief overview of the premises licence:- The premises consist of a Bowling Club house with attached bowling green.

Details of the variation are as follows:-

The applicant has applied to vary the hours during which alcohol is to be sold as detailed below:-

<u>Current Licensing Hours:</u>	<u>On-Sale only</u>
Sunday & Monday	12.30pm – 11.00pm
Tuesday	6.30pm – 11.00pm
Wednesday	12.30pm – 11.00pm
Thursday	6.30pm – 11.00pm
Friday & Saturday	12.30pm – Midnight

<u>Licensing Hours Applied For:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Monday – Wednesday	11.00am – Midnight	11.00am – 10.00pm
Thursday – Saturday	11.00am – 1.00am	11.00am – 10.00pm
Sunday	11.00am - Midnight	11.00am – 10.00pm

It is intended to close the club early or open late, subject to customer demand.

It is intended to open reduced hours during the winter months.

It is intended to allow children and young persons aged between 5 and 17 years entry to the premises as club playing members, spectators and to attend a private function, for the duration of the function, supervised by an adult at all times.

It is intended to allow children and young persons aged between 8 and 17 years entry to the premises one hour prior to the commencement of any Kilmarnock Football Club home games when accompanied by an adult.

The Depute Clerk advised that the premises were inspected by Building Standards on 22 December 2009 and the following issues were identified:-

- 1. Parki flooring at the main door has still to be repaired**
- 2. Electrical test certificate required for the new emergency lighting that has been installed throughout**

As the application was in order and no objections or representations had been received, the Board agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**R & J M Hill Brown & Co
Solicitors
3 Newton Place
Glasgow**

**Morrisons
West Langlands St
Kilmarnock**

Brief over of the premises:-

The premises are a licensed supermarket.

Details of the variation are as follows:-

The purpose of this application is to alter the alcohol display area.

Mr Reid Hamilton, Solicitor, appeared on behalf of the licence holder.

Mr Hamilton advised that the variation was required to add an additional isle to the licensed area as the current area was not meeting customer demand. Mr Hamilton further advised that the application concurred with the current statutory provisions and if the Members were to refuse the application it would require to be on one of the grounds referred to in Section 30(5) of the 2005 Act.

Councillor Dinwoodie pointed out that increasing the area of alcohol for sale may be contrary to the objective of protecting and improving public health.

The Depute Clerk advised that as previously stated by Mr Hamilton the only grounds for refusal in respect of this application would be in terms of Section 30(5) of the 2005 Act, which states:- “The grounds for refusal are – (a) that the application must be refused under section 32(2), 64(2) or 65(3); (b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives; (c) that, having regard to – (i) the nature of the activities carried on or 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 or alcohol in accordance with the proposed variation; and (d) 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 (taking account of the proposed variation), 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.”

Mr Hamilton pointed out that if the application were to be refused in terms of overprovision that the Members would require to take account of the number of premises of same type and capacity and the number of persons frequenting the premises. Mr Hamilton stated that there were no grounds for refusal.

Councillor Cunningham asked if they removed non-alcoholic drinks from the area would this free up sufficient space to allow more alcohol to be displayed in these areas to stop the need for the additional aisle.

Councillor Ross asked Mr Hamilton if the additional area would increase the variety of products available as opposed to the amount being available not necessarily increasing the amount of sales.

Mr Hamilton stated that if the area increased there would a greater number of items displayed. Mr Hamilton further stated that there were no grounds to refuse the application and requested the application be granted.

Councillor Campbell moved that the application be granted.

As the application was in order and no objections or representations had been received, the Board unanimously agreed to grant the variation.

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Newmilns Bowling Club
20 Nelson Street
Newmilns**

**Newmilns Bowling Club
20 Nelson Street
Newmilns**

Brief overview of the premises:-

The premises area bowling club with clubhouse containing a lounge bar and function room with bowling green.

Details of the variation are as follows:-

The Club has requested an increase in occupant capacity from 60 persons to 100 persons and amendment to layout plan to include the addition of one toilet.

The Depute Clerk advised that the premises were inspected by Building Standards on 23 November 2009 and the following issues were identified:-

1. The original inspection of the premise showed there was sanitary provided for 75 Male and 25 Female. The current proposal to increase the male provision by adding one toilet will make no difference to the female provision.
2. It ought to be noted that the provision of an additional toilet is warrantable works, and as such a building warrant would be required.

Addressing the occupant capacity of the premises, the Depute Clerk stated that Building Standards had calculated the occupant capacity as follows:-

Applicants capacity:-	100	Total Building
Escape capacity:-	76	Spectators Lounge 38.5m²
	182	Main Hall 91m²
	258	Total
Sanitary facilities:- Existing		The current sanitary provision provides for 75 Male customers and 25 Female customers
Sanitary facilities:- Required	100 (50 Male/50 Female)	To accommodate 100 customers with a 50/50 split the female sanitary facilities are inadequate. There is no accessible toilet

within this premise. To achieve this capacity requires 2 additional whb's and 2 wc's.

Total Sanitary facilities required to accommodate operating capacity 100
Trading Operating Capacity:- 100

Barry Roy of Building Standards advised that the variation was to allow increased toilet provision which would require a building warrant. He further advised that as previously reported the additional male toilet would not increase the provision for female customers.

As the application was in order and no objections or representations had been received, the Board agreed to grant the variation.

APPLICATION FOR TRANSFER OF PREMISES LICENCE S33

**Oriental Ltd
175 Main Street
Prestwick**

**4b John Finnie Street
Kilmarnock**

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Urban Nightlife Kilmarnock Ltd
4b John Finnie Street
Kilmarnock**

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Kilmarnock**

Brief overview of nature of the business proposed to be carried on in the premises:-

The premises will cater for conferences, receptions and club meetings. Restaurant facilities and bar meals will be available. Recorded music and live performances, gaming and televised sport will be available. Activities such as pool, D.J., bands, comedians, live acts (such as open mic nights, talent contests etc) karaoke and poker will be available. When requested to cater for an early morning funeral, birthday or christening the premises will remain open from 10.00am. The premises will remain open until 2.00am on 24 December and 31 December each year. Children and young persons will be permitted entry, when accompanied by an adult, for the purposes of consuming a meal.

Details of the variation to licensed hours are:-

<u>Current Licensing Hours:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Monday – Friday	12 Noon – 11.00pm	
Saturday	12 Noon – 11.30pm	
Sunday	12 Noon – 11.00pm	
<u>Licensing Hours Applied For:</u>	<u>On-Sale</u>	<u>Off-Sale</u>
Sunday – Wednesday	12 Noon – Midnight	
Thursday – Saturday	12 Noon – 1.00am	

The Depute Clerk reminded Members that this application had been continued from the last meeting of the Board to allow a full legal analysis prior to considering the application.

Please note that at the time of the meeting the Agenda showed the Transfer application as being submitted by Urban Nightlife Kilmarnock Ltd, 4b John Finnie Street, Kilmarnock, but this was administrative error and should have shown Orientan Ltd, 175 Main Street, Prestwick.

The Depute Clerk further advised that these premises were inspected by Building Standards on 14 December 2009 and the following issues were identified:-

- 1. Emergency lighting has been upgraded throughout the premises and just requires a test certificate**
- 2. Signage still requires upgrading indicating emergency exits**
- 3. Management statement has not been received, a blank statement has been posted through letterbox**
- 4. Fire exit 'keep clear' sign still required at rear exit (external)**
- 5. New fire door required for top of escape stair although this was not previously asked for in the past.**

Ross Hendry, business advisor and Richard McDonald proposed premises manager appeared before the Board.

The Depute Clerk asked for the financial analysis to be circulated to the Board Members.

Ross Hendry stated that Scott Anderson had resigned from Urban Nightlight Kilmarnock Ltd. The Depute Clerk pointed out that the applications were continued for a full legal and financial analysis.

The Depute Clerk advised that there were outstanding rates issues relating to other properties but that no rates were owed on the premises at 4b John Finnie Street, Kilmarnock, as they were currently empty and therefore not liable to pay rates. The Depute Clerk further advised that rates would be payable as soon as the premises re-opened.

The Depute Clerk reminded Members that the transfer application had been continued to allow additional information regarding outstanding rates to be obtained but pointed out that outstanding rates was not an appropriate reason to object to the transfer. The Depute Clerk continued that if the licence was transferred the payment of rates for these premises would be closely monitored.

Brian Campbell, Environmental Health, and Barry Roy, Building Standards, both advised that numerous attempts had been made to gain access to the premises in relation to the provision of food and inspection of works carried out. Neither had been successful in gaining access to carry out an inspection.

Mr Hendry stated that the changes to the premises were cosmetic and as the premises were currently closed there was no requirement for someone to be present at all times. Mr McDonald advised that due to the recent bad weather there had been burst pipes within the premises. Mr Hendry stated that the burst pipes had been a set back in terms of the works required to be carried out. Mr McDonald and Mr Hendry were aware that both Environmental Health and Building Standards required entry to the premises prior to re-opening and gave assurances that access would be granted.

The Depute Clerk asked for clarification on why Scott Anderson had resigned from Urban Nightlife Kilmarnock Ltd and Mr Hendry advised that Scott Anderson had no involvement with the application.

The Depute Clerk pointed out that it was Mr Anderson who had handed in both the Transfer and Variation applications and telephone conversations were with Mr Anderson regarding applications.

The Depute Clerk asked for clarification on why 3 separate companies were registered to the premises address 4b John Finnie Street, Kilmarnock, when the transfer had not as yet taken place.

Mr Hendry stated that it was only Urban Nightlife Kilmarnock Ltd that was registered to that address and couldn't comment on why this was the case. Mr Hendry also stated that the e-mail from Joanna Brynes, Solicitor, who had been present at the previous licensing board meeting had stated that Scott Anderson had resigned from Urban Nightlife Kilmarnock Ltd and queried why reference was still being made to premises such as So Bar.

Councillor Campbell asked who currently held the licence for the premises and was advised by the Depute Clerk that it was Orientan Ltd (Mr Zhang) who currently held the licence.

The Depute Clerk asked for confirmation on what Mr McDonald's role was. Mr McDonald advised that he was a Director of Urban Nightlife Kilmarnock Ltd along with Debbie Anderson, who was not connected to Scott Anderson. The Depute Clerk asked Mr McDonald what connection he had to the companies shown on the analysis. Mr McDonald advised that he was a Director of Urban Nightlife Kilmarnock Ltd along with Debbie Anderson who was another Director. Mr McDonald advised that Sally Turner was to be the manager of the premises at 4b John Finnie Street, Kilmarnock. Mr McDonald stated that he had no involvement with the other companies.

The Board Members adjourned to discuss the matter further.

On rejoining the meeting the Depute Clerk asked for clarification on whether Mr McDonald's address was 35 Roffie Park Road, Paisley, to which he confirmed this was his address.

The Depute Clerk reminded Mr McDonald that he had previously stated he had no involvement with the other companies registered to the premises address and stated that Mr McDonald's name was shown as a Director of Urban Nightlife Ltd.

Mr McDonald confirmed that he was a Director and Secretary of Urban Nightlife Ltd and stated that the bottom level of the premises at 4b John Finnie Street, were currently being converted into offices.

Barry Roy stated that Building Control had no details of offices being converted in the bottom level of the premises.

The Chair proposed that the application should be continued to the Board Meeting on 9 February 2010 to allow Building Control and Environmental Health to gain access to carry out an inspection.

Councillor John McGhee seconded the proposal to continue the application to 9 February 2010.

The Depute Clerk confirmed that both the transfer and variation application would be continued to the Licensing Board Meeting on 9 February 2010 to allow for clarification on the proposals for the premises and to allow Building Control and Environmental Health to gain access.

APPLICATION FOR GRANT OF PREMISES LICENCE

Muhammad Saleem
153 Sutherland Drive
Kilmarnock

Crosshouse Post Office & Newsagent
7 Kilmarnock Road
Crosshouse

The sale of alcohol will be for consumption off the premises only.

Licensing Hours Applied For:

On-Sale

Off-Sale

Monday – Saturday
Sunday

10.00am – 10.00pm
10.00am – 9.00pm

The premises will be a post office and licensed convenience store.

The Depute Clerk advised that a notice of objection had been received in respect of this application but had subsequently been withdrawn.

The Depute Clerk further advised that these premises were inspected by Building Standards on 14 December 2009 and were found to be satisfactory.

Mr Hamilton appeared before the Board with the applicant Mr Saleem and moved as there were no objections that the premises licence be granted.

As the application was in order and no objections or representations had been received, the Board Members agreed to grant the premises licence.

GAMBLING ACT 2005

APPLICATION FOR LICENSED PREMISES GAMING MACHINE PERMIT

Lansmill Leasing Ltd.
c/o Young & Partners
126 West Regent Street
Glasgow

The Monkey Bar
3 St Marnock Place
Kilmarnock

3 Category C Machines

Granted

APPLICATION FOR CLUB GAMING PERMIT

Sorn Bowling Club
39-43 Main Street
Sorn

Granted

Ochiltree Bowling Club
Kay Park
Mill Street
Ochiltree

Granted
