

EAST AYRSHIRE LICENSING BOARD

Minute of the meeting of East Ayrshire Licensing Board held within The Council Chambers on Tuesday 14 December 2010 at 10am

SEDERUNT : Councillor J Buchanan, Councillor J Campbell, Councillor G Cree, Councillor R Cunninghame, Councillor J McGhee, Councillor N McGhee, Councillor J MacKay and Councillor H Ross.

ATTENDING : Mr S McCall (Depute Clerk to the Licensing Board), Divisional Commander Thomson and Sergeant Menzies (Strathclyde Police), Mr B Roy (Building Standards), Mr P Brennan (Environmental Health Noise Team), Mrs C McEwan and Mr I Hiles (Licensing Standards Officers), Mrs P Duncan and Ms S Gillies (Licensing Board Administrators).

APOLOGIES : Councillor Dinwoodie and Councillor H Coffey.

1. SEDERUNT

Noted.

2. MINUTES OF MEETINGS

2.1 The Minute of the Licensing Board meeting held on 23 November 2010 was approved and noted.

2.2 The Minute of the Joint Meeting with East Ayrshire Licensing Forum held on 23 November 2010 was approved and noted.

3. PREMISES LICENCE REVIEW

3.1 Review of premises licence for premises known as The Hansons Bar & Snooker Club, 31-37 Titchfield Street, Kilmarnock in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised that these premises had ceased to operate in March 2009 and that the premises licence holders, Global Gaming Corporate Limited, had gone into liquidation. The Depute Clerk stated that the Liquidators had advised that they had no interest or input in the property as the premises had been leased and therefore would revert back to the owners.

As the annual licensing fee had not been paid, the Depute Clerk advised that this was a breach of a condition of the licence and accordingly it would be appropriate to revoke the premises licence.

The Board Members agreed unanimously to revoke the premises licence.

3.2 Review of premises licence for premises known as Townholm Bowling Club, Old Townholm, Kilmarnock, following receipt of notices in terms of Section 38(3)(b) of the Licensing (Scotland) Act 2005 from Mr MacDougall, "The Bungalow", 2b

Townholm, Kilmarnock, Mr Turnbull, 11 The Bungalow, Townholm, Kilmarnock and Mr Robertson, 2 Townholm, Kilmarnock.

The Depute Clerk advised that three premises licence review applications had been received in respect of Townholm Bowling Club, Old Townholm, Kilmarnock : - Mr MacDougall, “The Bungalow”, 2b Townholm, Kilmarnock had applied for a review of the premises licence on the ground that the premises failed to comply with the licensing objective, preventing public nuisance; Mr Turnbull, 11 The Bungalow, Townholm, Kilmarnock, applied for a review of the premises licence on the ground that the premises failed to comply with the licensing objectives, preventing crime and disorder, securing public safety, preventing public nuisance and protecting children from harm and Mr Robertson applied for a review of the premises licence on the ground that the premises failed to comply with the licensing objectives, preventing public nuisance and protecting children from harm.

Mr Sean Lynch, Solicitor, appeared on behalf of Townholm Bowling Club.

As Mr Lynch had no preliminary matters to raise, the premises licence review applications and a report supplied by Townholm Bowling Club on Noise Insulation Upgrade Options, were circulated to Board Members and the hearing proceeded in accordance with the agreed procedure for hearings.

Mr Robertson and Mr MacDougall were present at the meeting and apologies were given on behalf of Mr Turnbull who could not be present due to ill health. It was agreed that Mr Robertson would speak on behalf of all three review applicants.

Mr Robertson submitted that he had moved into his dwelling in December 2009 and initially the noise from the premises was acceptable. Mr Robertson further submitted that in April and May 2010 the noise levels increased due to audio entertainment inside the premises, patrons using the smoking shelter outside and patrons leaving when the premises closed. Mr Robertson advised that after a particularly noisy night in May 2010 the next morning he contacted the bowling club and requested that someone from the Club who dealt with complaints contact him. Later that day two ladies from the Bowling Club visited his dwelling but only his wife was there. One of the ladies, who introduced herself as Margaret Oxenham, was sympathetic to his complaint but the other lady was less sympathetic and stated that “she had to live with noise where she lived”. Mr Robertson stated that when his wife passed on this information it did not alleviate his concerns as no solution was suggested to limit the noise.

Mr Robertson stated that on 29 May he contacted the noise team as the noise from the premises that evening had become totally unacceptable from music within the premises and also from numerous patrons congregating outside to smoke. He stated that members of the noise team arrived and after listening to the noise coming from both his front and back doors informed him that this warranted their involvement. He further stated that the noise team entered the Club and within a few minutes came outside with a member of the Club who protested numerous times that he “did not think it was too loud”. Mr Robertson stated that he and his partner could clearly view the meeting between the noise team members, the club member and several patrons of the club and stated that the atmosphere of the meeting looked intimidating.

Mr Robertson confirmed that the next day he again contacted the Club and handed contact details to a club member and requested that the president of the Club contact him regarding the noise the previous night. He stated that the member claimed that the music had stopped before Midnight but Mr Robertson disagreed and requested that the relevant club person contact him. Margaret Oxenham contacted Mr Robertson later that day and he again raised concerns about the level of noise coming from the Club and the number of patrons using the smoking shelter at one time as there were no fewer than 12 patrons in the shelter at 11.30pm. Mr Robertson also made Ms Oxenham aware that one of the patrons had been using a mobile phone and due to the noise levels had walked to the very edge of the club car park next to his back door and proceeded to have a loud conversation with total disregard for the environment he was in. Mr Robertson also raised concerns with Ms Oxenham that the majority of patrons when leaving the premises at the end of the night were oblivious to the fact that they were in a residential area and were not in a hurry to vacate the car park after the premises closed. Mr Robertson pointed out that Ms Oxenham seemed to have a genuine sympathy for him and his family and he advised her that he wanted to work towards a solution and was prepared to have a meeting with the club committee but stressed that if a solution could not be reached he would take a more formal route of complaint with the local authority. Mr Robertson stated that Ms Oxenham would be in touch regarding a date and for a meeting with the committee but pointed out that some of the members may be “stuck in their ways”. Mr Robertson advised that no contact was made by the Club to arrange a meeting.

Mr Robertson further submitted that during the months of June, July, August and September 2010 he had contacted the Out of Hours Noise Team as there had been no improvement in the levels of noise coming from the premises. Mr Robertson stated that the noise team had assured him that his concerns were valid. Mr Robertson advised that he had to call the noise team again on 6 November 2010 who used a noise measuring device to determine that the noise was unacceptable. Mr Robertson further advised that he had to again call out the noise team later that same night as the noise level had increased. Mr Robertson stated that it was at this point he realised that he would have to take further steps to ensure the wellbeing of his family. Mr Robertson stated that the last call made to the noise team was on 20 November 2010 as the noise was unacceptable from 9pm until after midnight. He further stated that the noise team arrived that night at 11.45pm and determined that the noise levels were again unacceptable.

Mr Robertson advised that he and his partner worked with vulnerable members of society and were required to work weekends and take part in an on-call emergency system. Mr Robertson stated that they needed to be rested and in a good frame of mind to deal with their work commitments.

Mr Robertson added that his infant daughter had been woken on numerous occasions due to the noise coming from the premises and referred to the Children (Scotland) Act 1995. The main principles of which are that each child is protected from all forms of abuse and that the welfare of the child is a paramount consideration.

Mr Robertson completed his submission by stating that he had tried to explore avenues to seek a solution to this matter with the Club without going down a formal route but felt that due to the welfare of his family the only solution was to seek a formal review of the premises licence.

Mr MacDougall stated that he had nothing further to add to Mr Robertson's submission.

Mr Lynch stated that he would prefer to hear the Out of Hours Noise Team and Licensing Standard's Reports before delivering his submission.

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 premises are a single storey detached Bowling Club clubhouse consisting of a lounge/function room and quiet lounge. There is one outdoor bowling green. The premises are surrounded by Kilmarnock College Centre of Sporting Excellence, grassland / small wooded area and three occupied residential properties. Across the road is a small industrial premise. There is a smoking shelter outside the front door of the club.

The Transitional Premises Licence application submitted in terms of the Licensing (Scotland) Act 2005 in respect of the premises forming and known as Townholm Bowling Club, was submitted by the Club Secretary and thereafter considered by the Board at their meeting on 17 March 2009. The application was granted.

From the 1st September 2009 until the 31st December 2009, Townholm Bowling Club made no applications for an Occasional Licence for functions within the premises.

From the 1st January 2010 until the current date, Townholm Bowling Club had submitted applications for twelve Occasional Licences for functions within the premises, this is the maximum amount permissible within a twelve month period in the terms of the Licensing (Clubs) (Scotland) Regulations 2007.

On the 6th April 2009, East Ayrshire Licensing Board received a letter from Mr Alec MacDougall from 2B Townholm, Kilmarnock. This property was one of the three residential properties adjacent to Townholm Bowling Club. Mr MacDougall was complaining about the behaviour of members and guests of the club and detailed problems of anti-social behaviour such as drunken shouting and swearing, sectarian singing and persons urinating in the resident's properties and the street. Mr MacDougall also enclosed a copy of the letter he had sent to the Committee members of the club. Mr MacDougall further stated that he had approached Committee members of the club to raise his concerns, but he felt that no action had been taken. Mr MacDougall had therefore complained to the Licensing Board

On the 8th April 2009, East Ayrshire Licensing Board received an Online Complaint Submission via the East Ayrshire Council website from Mr Jamie Turnbull of 11 Townholm, Kilmarnock. This property was one of the three residential properties adjacent to the Bowling Club. The complaint was of anti social behaviour by the persons at Townholm Bowling Club. Mr Turnbull quoted incidents of drunken shouting and singing within the smoking shelter and front gate, sectarian singing and persons urinating in his front garden and pavement. Mr Turnbull also mentioned a specific incident on Friday 3rd April 2009 when a male person was openly exposing himself and urinating on Mr Turnbull's driveway in front of his seven year old son. Mr Turnbull also stated that he had approached members of the club to complain about the behaviour of

persons visiting the club but the incidents had continued and as such, Mr Turnbull had complained to the Anti Social Behaviour Department and the Licensing Board of East Ayrshire Council.

On the 13th April 2009, a letter was received from Mrs Jacqueline Longrigg from 2 Townholm, Kilmarnock. This was the residential property right next door to the Bowling Club clubhouse. Mrs Longrigg made complaint of the noise coming from the clubhouse and the behaviour of members and guests from Townholm Bowling Club. Mrs Longrigg stated that she had witnessed shouting, singing, the singing of sectarian songs and persons urinating in her property and on the street in front of her house. Mrs Longrigg also made a specific allegation that on Saturday 11th April 2009, a named male person who was a club member, was seen looking over her wall and making threatening comments. This was also witnessed by three other persons who were within her premises. Mrs Longrigg stated that she had contacted the Police and the Club to make her complaint but decided to write a letter to the Licensing Board in addition. Mrs Longrigg no longer resides at the property having moved out in the last year.

Following receipt of the three above letters, a meeting was held at Townholm Bowling Club on the 15th April 2009. Present at the meeting were Mr Graeme Crossley (Club Secretary), Mr David Irvine, the Club President for 2009 as well as three Committee members. The Committee members were advised of their responsibilities in ensuring that there was no nuisance from the premises to neighbouring properties and various solutions to the ongoing problems were discussed including re-siting the smoking shelter, limiting the amount of patrons using the shelter at any one time, the type of events held and to remind members and guests on leaving the premises to be considerate to neighbours. The Committee members were further reminded that details of all guests entering the premises must be entered in the registration book and signed by the member accompanying the guest.

The Committee members were also advised on the procedures available to neighbours including how to initiate a review of the Premises Licence and the courses of action available to the Licensing Board should such a review take place after the introduction of the Licensing (Scotland) Act 2005 on the 1st September 2009. The Committee members were urged to ensure no further nuisance occurred.

Subsequent to the above meeting in April 2009, the Licensing Board received a copy of a response by the Club Secretary, Mr Graeme Crossley to Mr Alec MacDougall's letter. The response addressed particular points raised by Mr MacDougall. The response stated that the committee constantly reminded people when leaving the club to keep the noise down. Mr Crossley further stated in the response that it would be hard to prove that the people using Mr MacDougall's garden as a toilet came from Townholm Bowling Club as people on the way to the New Farm area of Kilmarnock passed his house. Mr Crossley also stated that when people left Townholm Bowling Club, they were out of the Club's control and became Police business. The response further stated that sectarian singing was prohibited and members and guests would be barred from the premises if that was the case. The response also stated that the committee were looking at the position of the smokers shelter and that 18th Birthday parties would not be catered for to assist in solving the problems.

As a follow up to the above meeting where suggestion was made by the Club Secretary Mr Crossley that the wooded area across from the premises was being used by youths as a drinking den, East Ayrshire Council Community Wardens

were asked to pay attention to this area. To date, no reports had been received of any youths being found in the area.

At 1505hrs on Wednesday 21st October 2009, Ian Hiles attended Townholm Bowling Club to ascertain if the terms of the Licensing (Scotland) Act 2005 were being complied with following the introduction of the new Act. On entering the premises, Mr Hiles witnessed that there was an indoor/carpet bowling game taking place and there were approximately twelve persons in the club. He saw that the bar was open and witnessed a male person serving alcoholic drinks to one of the players and receiving payment. Mr Hiles identified himself to the person behind the bar and asked if there were any Committee members present, and was informed that there were none present in the premises. Mr Hiles carried out an inspection of the premises and saw that only the front page of the Summary of Premises Licence was on display, this should have been a six or seven page document that included all the mandatory and local conditions attached to the Premises Licence. Mr Hiles saw that there was a Section 110 notice on display but no Children & Young Persons access notice. He asked the male person behind the bar for the training records for the club and was informed that two club members had been on a training course but none of the club members had been given any training. The male person serving behind the bar admitted he had not been trained. Mr Hiles explained that it was one of the mandatory conditions of the Premises Licence that all staff whether paid, unpaid or voluntary had to receive at least two hours training before they could supply or sell alcohol and that the Club were breaching these conditions. The Club member immediately offered to close the bar in order that the club did not get into any trouble.

At 1640hrs on the same day, Mr Graeme Crossley (Club Secretary) and Mr David Irvine (Club President) attended Council HQ in London Road, Kilmarnock. Mr Hiles explained the reason for his visit to the club and further explained the training requirements under the terms of the Licensing (Scotland) Act 2005. He further mentioned that on a previous visit to the club in early 2009, he had explained the training requirements to Mr Crossley and other committee members. Mr David Irvine stated that he thought Townholm Bowling Club were being unfairly targeted by East Ayrshire Licensing Board and asked how many other bowling clubs in the town had been visited. Mr Hiles informed him that all members clubs, not just bowling clubs, were being visited and subjected to the same checks and given the same guidance if needed. Mr Crossley stated that two Personal Licence applications would be lodged and club members and staff would be trained immediately after the Personal Licences were received. Mr Crossley further stated that the full Summary Premises Licence and Children & Young Persons entry notice would be displayed correctly as soon as possible. Mr Crossley was informed that a Licensing Standards Officer would re-visit the premises in due course to check the notice display and staff training.

On Thursday 22nd October 2009, two Personal Licence applications were received from two committee members of Townholm Bowling Club.

On the 3rd May 2010, East Ayrshire Licensing Board received a further online complaint submission via the East Ayrshire Council website from Mr Jamie Turnbull of 11 Townholm, Kilmarnock. The complaint had also been sent to the East Ayrshire Council Anti Social Behaviour Service. The complaint was of continued anti social behaviour over the preceding 18 month period including drunken shouting and swearing within the smoking shelter and front gate, urinating in the front driveway and pavement. The complaint further stated that

the committee members of the Club had been approached and spoken to in relation to the problems, but nothing seemed to have changed.

On the 11th May 2010, upon receipt of the above complaint, a meeting was arranged to discuss the incidents and work towards a resolution. Present were Ian Hiles and Carolyn McEwan, Licensing Standards Officers. Mr and Mrs Turnbull from 11 Townholm and Mr David Robertson from 2 Townholm. Mr Robertson had recently moved into the premises with his family. Mr Turnbull stated that there appeared to be frequent functions and parties at the premises and when this was the case, music was very loud and there had been groups of persons outside smoking, shouting and on occasions arguing and fighting in the car park or on the street outside their houses. This was disturbing the sleep of both young children and adults in both of their houses. Mr Turnbull and Mr Robertson both stated that they had spoken with Committee members who had stated that the disturbances would stop and the music would be kept to an acceptable level but despite the promises, nothing had changed and they felt they had no other option other than to make a complaint to the Licensing Board. The various courses of action open to both complainants were explained including contacting the Ayrshire Environmental Health Noise Team and the Police. Both complainants were also made aware that they could make a request for a Premises Licence Review. Mr Turnbull and Mr Robertson were both keen to try and resolve the problems before considering such a request for review.

On Wednesday 19th May 2010, a meeting was arranged at Townholm Bowling Club in relation to the ongoing problems. Present were Ian Hiles and Carolyn McEwan, Licensing Standards Officers. Sgt Alistair Kelly from Strathclyde Police Licensing Department, Kilmarnock Police Station. In addition, the following Office Bearers from the club were present. Mrs Margaret Oxenham (Club President for 2010), Mr Jim McCrumb (Club Vice President) and Mr Graeme Crossley (Club Secretary).

The object of the meeting was to bring the complaint to the attention of the Committee members and see what courses of action the club could take to remedy the problems. The Committee members were reminded that this was the second complaint made by neighbours in relation to noise nuisance. The Committee members were further reminded that their neighbours could request a review of the Club's Premises Licence if any of the licensing objectives were being breached. Mr Crossley advised that the recommendations made during the last meeting had been implemented and 18th Birthday parties were no longer to take place within the premises. Mr Crossley further stressed that the road in the front of the club was used as a shortcut by members of the public and suggested that the noise nuisance could be created by them. The Committee members were asked why the club had not applied for any Occasional Licences within the premises for functions. Mr Crossley admitted that he had misunderstood the new legislation and was not aware that an Occasional Licence could be applied for. Mr Crossley further stated that he thought that clubs could now allow non-members entry to the premises as long as they were signed in. A further discussion took place during which the committee members were advised on the procedures in relation to the use of Occasional Licences. The signing in book was then examined and it was noted that members were signing in as many as ten guests. The Committee members were reminded that the member should personally know and be in the company of the guest for the duration of the function. They were further advised that it was not sufficient for a member to just sign in guests, who they wouldn't be accompanying, to enable a guest to attend a particular function. Committee members were also made aware of

complaints of foul language from persons playing bowls on the bowling green, they agreed that they would deal with this issue.

The above meeting concluded with the Committee members agreeing that in order to address the issues raised by neighbours they would :-

- Liaise with Building Control to establish if it would be possible to move the smoking shelter to the rear of the premises in an effort to alleviate noise from persons smoking (This suggestion had also been made following the meeting in April 2009)
- Call a special meeting for members to raise awareness with regard to noise nuisance

The Committee further agreed to issue members with membership cards, amend the constitution to limit the amount of guests a member could sign in and operate a new signing in register and ensure correct completion.

Following the above meeting with the Committee members, an inspection of the premises was carried out in the presence of the Committee members. It was observed that the Summary of Premises Licence was not correctly displayed, only the first page was displayed and the remaining pages of conditions were not displayed. This was the same as on Mr Hiles previous visit on the 21st October 2009. Mr Crossley was again advised that the full Summary of Premises Licence should be displayed. Mr Crossley was unable to locate the Premises Licence within the premises, he was further advised that the Premises Licence should be kept on the premises and be available for inspection. All other signage was correct and it was observed that notices were displayed at the front of the premises requesting members and guests to be considerate to neighbours by keeping noise to a minimum. The training records were checked and it was found that there were training documents for 16 staff and 2 Personal Licence Holders.

The Licensing Board were advised that a special general meeting took place within Townholm Bowling Club on Tuesday 8th June 2010. The Licensing Standards Officers were not requested to attend.

On the 30th September 2010, the premises were visited by Ian Hiles and Carolyn McEwan, Licensing Standards Office. The reason for the visit was to carry out an inspection to ascertain that the terms of the Licensing (Scotland) Act 2005 were being complied with. Present during the visit was Mrs Margaret Oxenham, the Club President and Personal Licence Holder. It was again observed that the front page only of the Summary of Premises Licence was displayed with the pages of mandatory conditions still not displayed. This was the same on previous visits on the 21st October 2009 and 19th May 2010, on both previous occasions, the Club Secretary, Mr Crossley was requested to arrange for correct display of these documents but this request had not been complied with. The Section 110 Notice and Children & Young Person's entry notice were clearly displayed along with extra notices on exit doors reminding members and guests to consider neighbours.

On the 1st December 2010, the premises were visited by Ian Hiles and Carolyn McEwan. Present during the visit was Mrs Margaret Oxenham, the Club President and committee members Peter Brown and Eric Barrowman. An inspection of the premises was carried out and it was observed that the Summary of Premises Licence was now complete and displayed correctly. The Section 110 Notices and Children and Young Persons entry notices were also

clearly displayed along with further notices on the exit doors reminding members and guests leaving the premises to consider neighbours. A check of the staff training records found that there was one Personal Licence Holder and nineteen trained staff who work at the premises. A further check of the guests signing in book found that entries were being correctly completed and a refusals book showed that bar staff had refused service to persons over recent months for various reasons including persons being drunk.

Mr Hiles reported that the Ayrshire Environmental Health Noise Team had advised the Licensing Board that they had attended Townholm Bowling Club on several occasions in recent months having been requested to attend by residents in adjoining properties, further details of these visits would be provided by an Officer from the Ayrshire Environmental Health Noise team.

Mr Hiles reported that on the 16th November 2010, Colin Thom from East Ayrshire Council Building Standards Department advised that he had attended Townholm Bowling Club earlier in the year. He had advised the club that they did not need a building warrant to re-locate the smoking shelter. He further stated that there was no discussion in connection with re-locating or re-designing the rear door. He also confirmed that the club had not approached Building Standards Department with any building warrant applications.

As the Licensing Standards Officers were not present and did not witness the events detailed by the Ayrshire Environmental Health Noise Team, they were unable to provide any further information.

The Licensing Standards Officers had not witnessed any of the events detailed in the Premises Licence Review applications made by Mr MacDougall, Mr Robertson and Mr Turnbull, however, Mr Hiles had made a visit to the residential properties at Townholm, Kilmarnock and had seen for himself the close proximity of their premises to Townholm Bowling Club and the location of the smoking shelter in proximity to the residential properties. A copy of the location plan was attached to this report which shows the locations of the residential properties in relation to the bowling club.

Since April 2009, Senior Office Bearers from Townholm Bowling Club had received guidance on several occasions by the Licensing Standards Officers in connection with issues such as noise complaints, the conduct of members and guests and administrative issues such as the display of mandatory notices in terms of the Licensing (Scotland) Act 2005, training of staff and the completion of the Guest Signing in book. The Senior Office Bearers had made several assurances that they would address the various issues and complaints brought to their attention. Whilst some of the above issues have been addressed, subsequent visits to the premises have shown that the administrative issues have not been entirely complied with. The number of complaints that have been made to the Ayrshire Environmental Health Noise Team demonstrate that the noise emanating from the club had not been reduced to an acceptable level as the complaints continued.

Mr Hiles summed up his report by stating that the events detailed in each of the Premises Licence Review applications and the report supplied by the Ayrshire Environmental Health Noise Team suggested that the complaints arose from events that occurred during the evening time predominantly on a Friday, Saturday and occasionally a Sunday evening when the Bowling Club held a club function, hosted a private function or provided live music, disco or similar entertainment for club members. There had been no recent complaints made

about the premises during the daytime or early evening when bowling matches or tournaments were taking place, this included the Glasgow v Ayrshire tournament on Thursday 1st July 2010 where the premises opened at 9:00am.

Paul Brennan of the Environmental Health Noise Team reported that the Noise Team had received complaints from occupiers of three residential properties in relation to noise from amplified music and voices emanating from Townholm Bowling Club between May 2010 and November 2010.

During several of these complaints the noise being complained of was witnessed by officers and found to be justified and on those occasions the club were advised to take measures (turn volume and /or bass down, close doors, assess noise from outside etc.) to ensure that noise from the club was not affecting nearby residential properties.

On 26th June 2010 a complaint had been received at 23:30 hours regarding loud music emanating from the Club. Officers arrived at the locus at about 23:45 hours when loud music could be heard in the street. Officers visited the complainant's property and music and voices emanating from the club could be heard in the complainant's living room. The officers then went to the Bowling Club to speak to someone regarding the level of noise. Due to the level of noise inside the premises officers asked that the discussions take place outside. The officers spoke with the President (Margaret Oxenham).

Due to interruptions by other members during the visit and the fact that the music had subsequently stopped it was arranged that officers would return the following evening to discuss the noise emanating from the club.

On 27th June 2010 officers met at the Club with Margaret Oxenham (President) and Margaret Keen (Treasurer). Officers explained why they had visited the premises the previous night. It was suggested to the office bearers that if there was entertainment taking place it would be advisable for someone to take a walk outside and listen at the boundary of the Bowling Club. If they could hear music it was too loud and the band should be told to turn the music down. They were also advised to seek advice from an Acoustic Consultant.

On 17th July 2010 a complaint had been received at 23:20 hours regarding loud music from the club and officers visited the complainant's property at 23.30 hours. Noise from the club could clearly be heard at the complainant's property. Officers visited the club and spoke to the Bar person who got the person in charge. The discussion then had to take place outside as the music was so loud inside the premises. Officers tried to explain the situation and asked that the music be turned down. However some of the patrons from the club who were outside were dismissive of the complaint and the conversation got quite heated at times. Officers advised that a letter would be sent out. A letter of warning dated 23rd July 2010 was sent to Margaret Oxenham, Club President

On 19th September 2010 a complaint was received at 23:13 hours regarding loud music emanating from the Club. Officers visited the complainant's property at 23:55 hours and witnessed loud music in the bedroom. A measurement was taken and the noise level was found to be 36dB(A) and the underlying noise level was 21dB(A). The underlying noise level is the level that the complainant would normally enjoy in their property in the absence of the excessive noise from the club. Officers visited the Bowling Club and spoke to the Vice President in the lobby of the premises regarding the level of noise. At the end of the conversation the Officers were approached by a male who claimed to be the Secretary of the

Club. This gentleman was under the influence of alcohol and officers found him very argumentative and dismissive.

On 23rd September 2010, Mrs Oxenham, Club President called the Environmental Health Noise Team and spoke to an officer concerning the visit made on 19th September to the Bowling Club. During the conversation the following matters were re-emphasised to her: - employment of an acoustic consultant, noise breakout from the premises and the attitude of some of the club members to authorised officers.

On 6th November 2010 a complaint was received at 21:52 hours regarding loud music emanating from the club. Officers visited the complainant's property at 22:15 hours and witnessed loud music in the living room. A measurement was taken and the noise level was found to be 43.6dB(A) (2 minute reading). Officers visited the Bowling Club and spoke to Margaret Oxenham, President, who was outside at the time. She was advised of the complaint and asked to get the band to turn the volume down in particular the bass. It was also suggested to the President that during the rest of the night it would be advisable to take a walk around the perimeter of the club and if she could clearly hear music then it was too loud.

A further complaint was received at 23:31 hours regarding loud music. Officers once again could clearly hear the music from the club on arrival at the locus. Officers visited the Bowling Club at 00:15hours on 7th November and again spoke to the President. The officers asked that she accompany them to the side of the building and listen. The music could once again clearly be heard. The officers asked again that the music be turned down and advised the President that there was a possibility of formal action being taken by Environmental Health.

On 20th November 2010, 3 complaints were received from 3 separate households regarding loud music coming from the club. Officers visited one of the complainant's at around 2345 hours and annoying bass sounds could clearly be heard in their living room. No visit was made to the club as this was deemed to be one of the last songs being played.

On 22nd November 2010, having satisfied herself of the existence of a statutory noise nuisance and it being likely to recur from the bowling club, Celia Anderson prepared and served by recorded delivery on the 3 office bearers of the club formal noise abatement notices in terms of Section 80 of the Environmental Protection Act 1990.

Mr Brennan reported the following recommendations:

- 1. There were no objections from Environmental Health to a review of the licence being undertaken and revised as appropriate.**
- 2. The Bowling Club required to arrange for an Acoustic Consultant to carry out an inspection of the premises and form a report outlining the works required to prevent noise breakout from the premises. Thereafter such works would require to be undertaken within a reasonable period of time.**
- 3. In the interim the volume of the music required to be kept at a reasonable level to ensure it did not cause a nuisance within any neighbouring property. The noise from these premises should be assessed from outside and should blend in with the surrounding area.**

4. **Environmental Health would continue to investigate any complaints regarding these premises and report back to the Licensing Board as appropriate. In addition, should excessive noise be witnessed again and officers be of the opinion that the club had failed to comply with the prohibitions imposed by the abatement notices then a report could be prepared for the Procurator Fiscal. Alternatively, a fixed penalty of £400 may be offered.**

Mr Brennan further reported that on 3 December 2010 a complaint was received at 22.35 hours regarding loud music emanating from the club. Officers visited the complainant's property at 23:00 hours and witnessed loud music in the bedroom. A measurement was taken and the noise level was found to be 36dB(A) and the underlying noise level was 23dB(A). Celia Anderson visited the premises and advised the President, Vice-President and Treasurer that the noise level in the bedroom was a breach of the Noise Abatement Notice issued on 22 November 2010 and accordingly a report would be sent to the Procurator Fiscal or a Fixed Penalty for £400 would be discharged.

The noise team met with the President, Vice-President and Treasurer on 5 December 2010 and the office bearers were firmly cautioned and issued with a notice of opportunity to discharge any liability of conviction for the offence by paying a fixed penalty of £400 and advised if this was not paid by 20 December 2010 a report would be sent to the Procurator Fiscal.

A further meeting was arranged between the noise team and office bearers of the Club on 10 December 2010 where the £400 fixed penalty was paid. The noise team set a noise level of less than 89dB(A) within the club premises and advised that the external noise should blend in with the surrounding area.

Superintendent Thomson, Strathclyde Police advised that within the previous three months there was one complaint and one disturbance reported within the vicinity of the premises and that the police had no involvement with the premises.

Mr Lynch advised that the President, Vice-President, Treasurer and Committee Members of the Club were present within the public gallery.

Mr Lynch submitted that the Club currently had 165 Members and 9 Junior Members who regularly played bowls within the bowling season. He further submitted that the Club provided sporting and social activities within the community.

Mr Lynch pointed out that all the administrative points highlighted in the Licensing Standards Report had now been dealt with and the delay had been caused by Mr Crossley, the Club Secretary, being in and out of hospital with ill-health.

Mr Lynch submitted that in relation to the problem of noise the Club was situated on a short-cut route through to New Farm Loch and suggested that the nuisance may be caused by persons using this route.

Mr Lynch further submitted that the Club were aware that they needed to address the issue of how many guests were signed in by members. He submitted that the Club had looked at moving the smoking shelter and advised that the only appropriate place to reposition it was unsuitable due to health and safety issues.

Mr Lynch highlighted the comment made in the LSO's report at 3.17 that additional notices were clearly displayed on exit doors reminding members and guests to consider neighbours when leaving the premises. He also confirmed that the office bearers would patrol the perimeter of the premises and monitor noise levels when patrons leave.

Mr Lynch referred to the Noise Insulation Upgrade Options Report produced by McIntyre Acoustics in relation to Townholm Bowling Club which had been circulated to the Board Members, Mr Robertson and Mr MacDougall.

In Mr Lynch's referral to the Noise Insulation report he pointed out that the Consultants had indicated that the noise team's request that office bearers walk the perimeter of the club to assess noise would not provide an accurate noise level in the upstairs rooms of the neighbouring properties as the majority of the noise emanated from the roof.

Mr Lynch further referred to the Noise Insulation report and pointed out that the Consultants recommended that sound reduction at source should be the first consideration in order to lessen any perceived specific noise impact and stated that points 1-5 as undernoted had already been completed with point 6 being further investigated due to cost implications:-

1. volume should be kept to the minimum required to allow reasonable enjoyment of the licensed premises and nearby residential properties. This volume should be set at a level acceptable to the occupier of the closest residential property to the licensed premises. The person in control of music on the premises should, at all times, be clear on what level of sound is acceptable.
2. in addition to overall volume, the type and frequency content of music could affect perceived annoyance. Low frequency sound tended to penetrate building materials more effectively than mid-high range frequencies. Therefore, the use of a graphic equalizer to preferentially reduce low frequency sound could help lessen the subjective impact of any sound transmitted.
3. speaker systems should be isolated, as far as possible, from the building structure. On no account should they be mounted directly onto, or recessed into, walls or ceilings. Wall mounted speakers should be fixed on resilient mounts to minimise sound/vibration transfer into the walls.
4. distance separation and directionality were also important – speakers should be located as far from the receptors as possible (in this case, towards the “green” rather than bar area) and pointed away from the ceiling. Ideally they should also be some distance from the walls to minimise the risk of flanking transmission via the walls to the roof above. During the initial site visit it was apparent that bands/performers tended to bring in their own sound equipment, the speakers closest to the residential properties. It was stressed to the club management that they need to be in control of noise levels during functions.
5. preferably the speakers should sit on suitable thick resilient pads on the floor. This would reduce the potential transmission of sound through the floor to the roof via the framing structure of the wall.

6. once the sound attenuation issues of the building fabric are considered, the addition of decorative sound absorbent panels on the walls and near the ceiling could also be considered to reduce the reverberant sound field within the premises.

Mr Lynch advised that the consultants had recommended roof insulation to permanently reduce the risk of noise but that the Club were not in a position at present to financially carry out this work and would be looking at the possibility of obtaining a grant from the Energy Fund.

Mr Lynch further advised that the Club had purchased a sound measurement device and a meeting had taken place with Celia Anderson where it was agreed that a level of 89 decibels was the acceptable level within the Club. Ms Anderson had attended a function at the Club on 10 December and there was no problem of noise emitting from the function.

Mr Lynch submitted that although the Club were initially slow to react to the situation they now realised the seriousness and were taking steps to alleviate the noise issue. He further submitted that the money generated by the bar of the Club helped to provide the sporting activities and the loss of the bar would be catastrophic to the Club.

Mr Lynch pointed out that if the Board were to agree that the grounds for review had been established then the least sanction they could impose would be a written warning. Mr Lynch also pointed out that they could continue consideration of the matter to a future Board meeting to allow the premises to be monitored for improvement.

Mr Lynch confirmed that all the outstanding administrative matters had now been dealt with and Mr Hiles, LSO, stated that the premises had been visited on 1 December 2010 and confirmed this was accurate.

A short discussion took place regarding the route past Townholm Bowling Club being used as a short-cut to New Farm Loch.

Councillor J McGhee asked for confirmation of the most recent function after the noise monitor had been bought.

Mr Lynch confirmed that Celia Anderson and a colleague attended the function at the request of the Club and ascertained there to be no noise nuisance.

Councillor Cunninghame referred to the point that the Club had used their 12 occasional licences for the year and asked if they intended to have any festive events.

The Depute Clerk confirmed that one of the 12 granted occasional licences had been cancelled which allowed one more occasional licence to be applied for in 2010.

Councillor H Ross asked for confirmation if 18th birthday parties were catered for in the Club and Mr Lynch confirmed these types of parties were not permitted as they were felt to be one of the sources of difficulties for the Club.

The Chair ascertained that the Club had amended their signing in policy from 10 guests being signed in to 8 guests. Mr Lynch advised that the Club would again look at reducing this number.

Councillor H Ross pointed out that it took the Club one year to put administrative matters in order and that only one recent event had caused no problems.

Mr Lynch again assured Members that the Club were now taking matters very seriously and attempting to take steps to rectify the noise nuisance and again pointed out that the Secretary of the Club had been suffering from ill-health.

Councillor Cree accepted that the Club had initially not taken the events seriously but were now taking steps to resolve matters.

The Depute Clerk asked for clarification that items 1-5 of the Noise Insulation Upgrade Options Report had been implemented.

Mr Lynch confirmed that items 1-5 had been completed and point 6 was being further investigated to ascertain if the Club could obtain an interest free loan of £5,000 from the Energy Saving Trust.

Mr Robertson summed up by stating that he had not wished matters to progress to a review of the premises licence but felt that he had been given no other choice.

Mr Lynch summed up by stating that the Club had regretted matters coming to this stage and were attempting to put matters right.

The Board adjourned to consider the matter.

Upon returning Councillor J McGhee moved that the ground of preventing public nuisance had been established and this was seconded by Councillor Cunningham.

For the avoidance of doubt, the Board agreed unanimously that the ground of review preventing public nuisance had been established but that the grounds of review, preventing crime and disorder, securing public safety and protecting children from harm had not been established.

Councillor Cree moved that the matter be continued until the Board meeting on 8 February 2011 to allow the premises to be monitored and this was seconded by Councillor N McGhee. This motion was unanimously agreed by the Board.

The Chair stated that the Members were concerned that the Club had not initially taken the matter seriously and had not adhered to the administration of the 2005 Act. He also stated that the Board would not tolerate noise nuisance and that the Club's were being given one last chance to address this issue. He also recommended that the Club readdress the relocation of the smoking shelter.

The Depute Clerk confirmed that the ground of preventing public nuisance had been established and the premises would be monitored until the meeting of the Board on 8 February 2011 where a full update would be provided to the Board Members. He further confirmed that the LSO's would keep in touch with the complainers over this period to ascertain if matters had improved.

- 3.3 Review of premises licence for premises known as Little Fat Buddha, 4b John Finnie Street, Kilmarnock following receipt of notices in terms of Section 38(3)(b) of the Licensing (Scotland) Act 2005 from the Chief Constable, Strathclyde Police.

The Depute Clerk confirmed that the Chief Constable, Strathclyde Police had applied for a review of the premises licence on the ground that the premises licence holder had failed to comply with the licensing objectives of preventing crime and disorder and securing public safety.

Joanna Brynes, Solicitor, appeared on behalf of the applicant and requested that the review be continued as she had been informed by Miss Anderson, Director of Urban Nightlife Kilmarnock Limited, that the only issue to be addressed was the confirmation of the Companies registered address and had not advised her that a review was to take place. Ms Brynes stated that she had only had sight of Strathclyde Police's review letter and the Licensing Standards Officer's Report that morning and did not feel she had sufficient information to adequately deal with the review application. She stated that she understood that Strathclyde Police were present at the meeting to address the matter but requested continuation of the review to have adequate time to address the points raised in the review request.

Carolyn McEwan, LSO, stated that the letter advising of the review hearing had been hand delivered to Debbie Anderson and confirmed that Ms Anderson was aware of the review.

Ms Brynes did not dispute the delivery of the letter to Ms Anderson but again stated that she had insufficient time to address the points in the review request.

The Depute Clerk advised Members that the statutory provisions for notifying of the premises licence review had been met. He also advised that the provision of a copy of Strathclyde Police's review letter and the Licensing Standards Officer's Report had been adequately provided to enable Ms Anderson to instruct a solicitor and the fact that this had not been done was a matter for the licence holder.

The Chair proposed that the premises licence review continue to be heard as the licence holder had been given sufficient time to instruct a solicitor. The Board unanimously agreed to hold the premises licence review hearing.

Ms Brynes stated that she had taken some instructions for the licence holder but may not be able to provide answers to all questions asked.

Strathclyde Police was represented at the review hearing by Divisional Commander Thomson, who submitted to the Board the following information in support of the premises licence review application:-

About 2115 hours on Sunday 3 October 2010 an anonymous phone call was made to police stating that two males were refusing to leave the subject premise and had been arguing and fighting for two to three hours. The reporter further stated that the two males had threatened to throw glasses. A further update was received stating the two males concerned had an 8pm curfew. Police officers attended and found no disturbance within and two males were arrested for breach of curfew. The Designated Premises Manager, Debbie Anderson, was on duty at that time.

About 2132 hours on Wednesday 20 October 2010 a member of staff from the subject premises contacted police stating a patron had broken a pool cue and was threatening staff and customers. During the call the member of staff stated that the male had put the pool cue down and was slamming the premises door.

The police attended but the male had already left the premises. The Designated Premises Manager was not on duty at that time.

About 2135 hours on Tuesday 26 October 2010 staff at the subject premises contacted police stating a male had entered the premises and thrown a bottle at a member of staff before running outside. Police officers attended and traced the male nearby and he was subsequently issued with a fixed penalty notice for being drunk in a licensed premise. Staff stated this male had not been drinking in the premises, was not a regular and was unknown to them. Immediately after this incident patrons were asked to leave and the premises were closed. The Designated Premises Manager was not on duty at that time.

About 0030 hours on Saturday 30 October 2010 police officers attended the subject premises on a routine visit. They found patrons within hostile to their presence. The on-duty door steward was not registered with the Security Industries Authority. Debbie Anderson, who employed the door steward had held a non-front line SIA licence which had expired a short time previous. A report was subsequently submitted to the Procurator Fiscal with regard to these offences. The report was currently still pending. The Designated Premises Manager was on duty at that time.

About 1735 hours on Tuesday 2 November 2010 a male contacted police stating that he was within the subject premises and that another male had tried to stab him and had thrown a glass at him. A member of bar staff also spoke to the police controller and confirmed that a large group had been causing problems within. She stated the group had left the locus and were loitering nearby. Police attended and a crime report was raised with regard to the assault on the reporter. Police officers requested CCTV footage of the incident be made available however staff failed to provide this. The Designated Premises Manager was not on duty at that time.

At 2355 hours on Friday 5 November 2010 police officers observed persons smoking inside the main door of the subject premises, obstructing the entry/exit. They were required to move. On entering officers found a small group of patrons within who were behaving in a rowdy manner. The patrons were warned and staff advised. The Designated Premises Manager was not on duty at that time.

About 2355 hours on Saturday 6 November 2010 officers attended the subject premises on a routine visit. Officers stated they found patrons' attitude towards them verging on being hostile. A staff member in charge appeared uninterested and unhelpful. The Designated Premises Manager was not on duty at that time.

On Tuesday 9 November 2010 Divisional Licensing Staff contacted Debbie Anderson with regard to the incidents on 5 and 6 November 2010. She stated she would put up signage to help prevent patrons from smoking within the doorway. On checking training records it transpired there were no records for the member of staff left in charge on 6 November 2010. Debbie Anderson was advised and reminded of her responsibilities and informed that the premises would be put on the Police Monitored Premises List for extra police attention.

At 0115 hours on Saturday 13 November 2010 police were flagged down by patrons of the subject premise stating there had been a fight outside. Police entered the premises and were approached by a male who identified himself as the premises DJ. This male was abusive towards the police and warned regarding his behaviour and language. Patrons were being allowed to continue to

drink and police had to inform them to leave their drinks and vacate the premises. The Designated Premises Manager was on duty at that time.

At 2342 hours on Saturday 13 November 2010 the CCTV controller from East Ayrshire Council informed police that a female had been punched in the face outside the subject premises. CCTV footage confirmed that both the assailant and the victim had been within the premises prior to the assault outside. Groups of patrons were going in and out of the premises both before and after this event. The assailant was apprehended by the police nearby. The assaulted female was subsequently arrested for her behaviour after the event. The Designated Premises Manager was not on duty at that time.

At 1530 hours on Tuesday 16 November 2010 Divisional Licensing Staff attended the subject premises and spoke to Debbie Anderson regarding issues raised from both the incidents on 13 November 2010. With regard to the incident at 0115 hours she excused her DJ's behaviour because he was off duty and was "a bit drunk". Regarding the incident at 2345 hours she stated that two females had been arguing and fighting within the female toilets. One of her bar staff separated the females but allowed them to remain within the premises. Both females continued to argue near the pool table before their respective friends joined in and then all parties moved outside where the assault occurred. At no time did staff contact police for assistance. It also transpires that there were no training records for one of the members of staff on duty that night. Debbie Anderson was again reminded of her responsibilities and advised accordingly.

About 1700 hours on Friday 19 November 2010 police officers made a routine visit to subject premises and took details of the person in charge for submission of police form 1:19:3. The Designated Premises Manager was not present at that time.

About 2150 hours on Saturday 20 November 2010 bar staff at the subject premises asked a 20 year old male patron, who was a regular, to leave as he had enough to drink. The male left the premises but returned a few minutes later. He entered into conversation with three other males which quickly became heated. A fight broke out with blows exchanged by all parties. The fight was allegedly split up by patrons before the 20 year old male was removed from the premises. The three suspects were also allowed to leave and a further fight erupted outside during which time the 20 year old was seriously assaulted. A staff member then contacted police stating a fight had broken out inside and outside the premises and alleged someone had been bottled. The group of three suspects made off from the locus. Nearby the suspects seriously assaulted a male and assaulted another two males. The Designated Premises Manager was not on duty at this time.

About 1625 hours on Sunday 21 November 2010 police officers attended the premises with regard to enquiry to the incident on 20 November 2010 and found staff unable to operate the CCTV adequately and unable to supply any of the footage requested. The Designated Premises Manager was not on duty at that time.

On Monday 22 November 2010 police attended the premises on three separate occasions to carry out routine visits. Details of the sole member of staff on duty were obtained for submission of police Form 1:19:3. The Designated Premises Manager was not on duty at that time.

At 1400 hours on Tuesday 23 November 2010 Divisional Licensing Staff attended the subject premises and spoke to Debbie Anderson with regard to her continued failure of her responsibilities. She was requested to replay CCTV footage of the incident of 20 November 2010, but was unable to do so and stated she would have an engineer attend. It transpired there were no training records held for the members of staff left in charge on either 19 or 22 November 2010. Debbie Anderson admitted that the female left in charge on 19 November 2010 was the DJ's assistant and had no training. Debbie Anderson further stated she had left the premise to attend the local supermarket, leaving two regulars and the DJ's assistant within and unsupervised.

On the evening of 22 November 2010 police attended the subject premises on three separate occasions to carry out routine visits. Details of the member of staff on duty were obtained for submission of police Form 1:19:3. The Designated Premises Manager was not on duty at that time.

At 1240 hours on Thursday 25 November 2010 Divisional Licensing Staff re-attended the subject premises. Debbie Anderson stated the engineer had failed to download CCTV footage. She also stated that the premises CCTV system only records for four days and footage from 02.11.2010, 13.11.2010 and 20.11.2010, which had been requested by police, had been overwritten.

The Divisional Commander submitted that the Designated Premises Manager, Debbie Anderson, had failed in her responsibilities to achieve the Licensing Objectives namely:- preventing crime and disorder and securing public safety due to 1) failure to keep training records for all bar staff; 2) failure to keep and maintain incident, refusals and barring books; 3) failure to contact emergency services when required; 4) failure to have a trained member of staff on duty during opening hours; 5) failure to employ SIA licensed door stewards; 6) failure to employ a door steward whilst not licensed with SIA herself; and 7) failure to take on board any recommendations or advice offered by police and Divisional Licensing Staff.

It was the Divisional Commander's submission that the events detailed in this letter showed that there had been a repeated shortfall in the duty of care, raising concerns for public safety and a total disregard to the Licensing Objectives, namely:- preventing crime and disorder and securing public safety.

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 Carolyn McEwan, LSO, reported as follows:-

The Transitional Premises Licence application submitted in terms of the Licensing (Scotland) Act 2005 was lodged by Orientan Limited of 175 Main Street Prestwick, with Mr Hua Zhang being the sole Director. This application was thereafter considered by the Board and granted at their meeting on 23 September 2009. At that time the premises operated as a restaurant providing oriental cuisine and had an operating capacity of 40 persons.

An application for Transfer was lodged in terms of Section 33 of the Act by Hua Zhang on 16 November 2009, to transfer the Licence to Urban Nightlife Kilmarnock Ltd., 4b John Finnie Street, Kilmarnock.

This application, together with an application for variation which was lodged by Urban Nightlife Kilmarnock Limited, were considered by the Board and granted

at their meeting on 9 February 2010. The variation application was to change the operation of the premises from a restaurant to a bar with food, with children and young persons being permitted entry, when accompanied by an adult, for the purpose of consuming a meal. Permission was also granted to amend the occupant capacity from 40 persons to 100 persons.

The premises were visited on 12 May 2010. Although not trading at that time, Debbie Anderson advised that the premises would be open in 7 days time. It was ascertained during that visit that staff had not as yet been trained, however two Personal Licence Holders would be working within the premises, namely Debbie Anderson and Richard McDonald. Ms Anderson advised that training would be provided to all staff prior to opening. Guidance was provided at that time in relation to training and the siting of the Summary, Children and Young Persons Notice and S110 Notice.

The premises were re-visited on 1 June 2010. Training Records were checked and it was ascertained that there were four members of staff together with one Personal Licence Holder, namely the Premises Manager Debbie Anderson.

It was observed during that inspection that a gaming machine was sited on the premises, although not switched on, without the relevant permission having been obtained. Advice was given to Debbie Anderson as to how to proceed to obtain the relevant permission and a permit was thereafter issued.

Following verbal notification from the Police that an incident had occurred outside the premises on Saturday 20 November 2010 a further visit was made to the premises on 24 November 2010. Debbie Anderson was present within the premises at the time of the visit however advised that she was not working and was there simply to re-set the heating as the member of staff on duty was unable to operate the system. Ms Anderson's baby daughter was also within the premises at that time and it was stressed that the child should not be within the premises.

When asked about the incident on 20 November Ms Anderson advised that she had not been on duty that evening and thereafter supplied the names of the two members of staff who had been on duty. It later transpired that the names provided by Ms Anderson were not the same as the names she had previously supplied to Licensing staff of Strathclyde Police.

Ms Anderson was then asked to produce training records for all staff members. It was noted that there was a training record for one member of staff who had been on duty on the evening of 20 November however there was no training record for the other member of staff. Ms Anderson explained that the other member of staff had received the relevant training, however did not have a training record as she had used her supply of training books. Blank training records were provided to Ms Anderson with a request that she ensure that all staff received the relevant training and were provided with a Training Record which they would be able to produce when requested to do so.

Ms Anderson also advised that following the incident on 20 November she would be employing door stewards every Friday and Saturday evening. She advised that the door stewards would be supplied by Dunedin Security Limited, who were an Edinburgh based stewarding company.

Verbal notification was also received by the licensing staff of Strathclyde Police that on the evening of Friday 19 November 2010, Police Officers had entered the

premises and found that the person who was in charge at the time of the visit could not produce a training record when requested to do so. When asked as to how an untrained person had been left in charge of the premises Ms Anderson explained that she had nipped out of the premises for 10 minutes and that this could be evidenced from the CCTV. It was stressed to Ms Anderson that the premises should never be left unattended at any time and that she should ensure that only trained members of staff were on duty. It was stressed to Ms Anderson that by leaving a person in charge of the premises who had not received the relevant training, irrespective of the period of time, was a breach of the conditions attached to the Premises Licence.

The Operating Plan currently allowed children and young persons to enter the premises, when accompanied by an adult, for the purpose of consuming a meal. Ms Anderson advised that the premises did not currently provide food and that she did not intend to serve food in the near future. Ms Anderson was advised that a variation application should be lodged to remove children and young persons from the Operating Plan until such time as food was available.

The premises were re-visited on Thursday 2 December to ascertain if Training Records had been completed for all members of staff. Debbie Anderson was present at the time of the visit and produced training records for 8 members of staff. The Summary and Notices were correctly displayed at that time and Ms Anderson was again reminded that a variation application was required to omit children and young persons from the Operating Plan as meals were not being served from within the premises. To date no application had been received.

As the Licensing Standards Officers did not witness any of the events detailed in the Premises Licence Review application made by the Chief Constable, Strathclyde Police, they were unable to offer any information at this time.

Ms Brynes, spoke on behalf of the applicant and submitted that the incidents reported in the police letter on 3 October, 20 October and 26 October had all been reported by a member of staff of the premises to Strathclyde Police.

Ms Brynes stated that Debbie Anderson had been on maternity leave from 27 July 2010 and had returned to work at the premises 7 weeks later. She further stated that Ms Anderson's SIA licence had expired on 20 October and she had forgotten to renew it. Ms Brynes advised that the door steward employed by Ms Anderson on 30 October had told Ms Anderson that he was SIA licensed but had forgotten to bring his badge. Ms Brynes stated that Ms Anderson accepted that she should not have employed him but had been lied to and the steward was no longer involved with the premises.

Ms Brynes advised that when the incident took place at the premises on 2 November, Ms Anderson was not on duty but that the group involved had been ejected from the premises. A further assault had taken place outwith the premises.

With reference to persons smoking within the door area, Ms Brynes advised that the premises had notices displayed at the door prohibiting smoking but that additional signage would be displayed.

Ms Brynes advised that she was not in a position to respond to the incident on 6 November without interviewing staff who were working in the premises on that date.

Ms Brynes stated that she had been advised by Ms Anderson that the training of staff members was now up to date and that training records were available of inspection.

With regards to the events of 13 November, Ms Brynes advised that the DJ was not on duty that night. Ms Brynes also advised that the premises had closed at the correct time and the premises would normally have been cleared. The reason patrons were still within the premises was because of the incident taking place outside and that staff had taken the decision that it was safer for customers to remain within the premises until the incident had been cleared.

Ms Brynes referred to the events of 16 November and advised that the DJ had not been drinking on the premises but had called in to the premises for a lift home by a member of staff. Ms Brynes stated that there had been no physical assault in the premises as when the girls started to argue they were asked to leave as they were causing a disturbance. She further stated that when the assault took place outside the premises the staff did not ignore the situation but called for assistance from Strathclyde Police. She stressed that the assault outside the premises had happened quickly and could not have been foreseen.

With regards to the incident which took place on 20 November, Ms Brynes advised that the 20 year old male had been asked to leave the premises and that staff had not noticed that he had returned.

Ms Brynes submitted that there was an inference in the review request that there had been some cover up with regard to the CCTV footage. She stated that the CCTV footage had not deliberately been withheld from the police but that there had been a problem retrieving the information. She advised that it was an elaborate CCTV system supplied by Clyde Coin CCTV and more than adequately covered the premises. Clyde Coin had been contacted regarding the problem with the CCTV and had attended at the premises to transfer the footage onto a computer pen but this had not worked and the relevant time period had been overwritten. Clyde Coin had apologised for the mistake.

With reference to the untrained member of staff working on the premises on 23 November, Ms Brynes advised that the staff member had not been trained by Ms Anderson but had received the relevant training elsewhere, although she did not have any training records for her.

Ms Brynes referred to the Licensing Standards Officer's report and pointed out that the training records had been available from June 2010. She further pointed out that with regards to the gaming machine not having a permit, the machine was not switched on at the time of the LSO visit and was not switched on until the relevant permit was obtained.

With regard to Ms Anderson's child being within the premises, Ms Brynes advised that Ms Anderson had made a brief visit to the premises to fix the heating and her taken her child with her. She stated that there had been some confusion as the child would have been permitted within the premises in terms of the 1976 Act. Ms Anderson was now aware that she should not have had her child with her on the premises and assured that this would not happen again.

Ms Brynes advised that the previous two Fridays and Saturdays prior to the Board meeting, the premises had operated two registered door stewards provided by G20, a local company.

With regards to children and young persons being permitted within the premises, Ms Brynes stated that even though food was not being provided there was no requirement for a variation to the licence as in the event of a private function taking place within the premises, a private caterer could provide the food.

Ms Brynes submitted that the premises had operated well from June 2010 until October 2010 and she had asked the Police prior to the commencement of the meeting if any problem premises had closed recently within the vicinity of the premises which can sometimes cause undesirable clientele. Ms Brynes advised that no premises had recently closed but the current DJ employed at her client's premises provided Techno music which had caused a change in the dynamic of her customers. She further advised that this DJ was no longer employed at the premises and that persons wearing hoodies, track suits or football colours were no longer permitted into the premises. This change had encouraged the regular customers of the premises to return.

Ms Brynes advised that Ms Anderson disputed that she failed as the Designated Premises Manager as training records, incident records and records of customers who had been banned from the premises had been available from 9 August 2010 to 4 December 2010. She further advised that the refusal book entries had increased in September but the problem customers had now gone. Ms Brynes highlighted that Ms Anderson had contacted the Police for assistance when required and had re-applied for her SIA licence. Ms Brynes further advised that the police had requested that the premises used toughened glass and this was now being used. Ms Brynes pointed out that all notices were in place and training of staff had been carried out.

Ms Brynes completed her submission by stating that the reported incidents were caused by a specific customer element who now had life-time bans and that Ms Anderson had increased her hours at the premises on Fridays and Saturdays. Ms Brynes continued by pointing out that Members could suspend or revoke the licence but as the premises were now running well and the incidents had been dealt with that they could issue a written warning or continue the review to monitor the premises and assess if they had improved.

Divisional Commander Thomson advised Members that there had been a further incident at the premises on 11 December 2010. The Divisional Commander continued to advise that there had been an 8.8% decrease in disruptive behaviour within Ayrshire and his officers continued to liaise with the community to ensure this continued but that these premises were the single most problematic premises within the whole of Ayrshire. The Divisional Commander also stressed that the failure to produce the relevant CCTV footage had reduced the ability to find and identify persons involved in a very serious incident.

Councillor N McGhee asked for clarification on whether the CCTV footage could have been removed manually from the CCTV machine to stop it being overwritten and Ms Brynes confirmed that had been the problem that the footage could not be removed to CD.

Ms Anderson stated that the Police had viewed the CCTV footage on the screen but the footage could not be copied to disk. She further advised that Clyde Coin had tried for a few days to retrieve the information but were not able to do so and she had telephoned the Clyde Coin company in the presence of the licensing police staff who heard on speaker phone that they could not retrieve the footage.

Ms Brynes summed up by stating that the premises had previously operated well and Ms Anderson had taken on board the Police comments and she felt that the premises were back to their regular customers and would return to normal. Ms Brynes pointed out that her client would be unable to prove this if the premises had no licence. Ms Brynes also reminded Members that Ms Anderson had increased her hours of working at the premises.

The Members adjourned to consider the matter.

Upon returning Councillor J McGhee moved that the grounds of review had been established, namely Preventing Crime and Disorder and Securing Public Safety which was seconded by Councillor Cunninghame. The Board unanimously agreed that these grounds had been established.

Councillor McKay moved that the premises licence be suspended for 6 months and this was seconded by Councillor J Campbell. The Board unanimously agreed to suspend the premises licence for a period of 6 months, with immediate effect.

The Chair stated that the most telling statement of the hearing had been the Divisional Commander's comment that these were the single most problematic premises in the whole of Ayrshire.

The Chair also advised that the Members had determined that Debbie Anderson had acted in a manner which was inconsistent with the licensing objectives in terms of Section 84 of the Licensing (Scotland) Act 2005 and the Board had requested that a Personal Licence Review Hearing be set regarding Ms Anderson's personal licence.

The Depute Clerk confirmed that Debbie Anderson's conduct was inconsistent with the licensing objectives preventing crime and disorder and securing public safety and the Board had requested that a Personal Licence Review Hearing be set regarding Ms Anderson's personal licence. It was agreed that the Depute Clerk would refer the matter to North Ayrshire Licensing Board and request a Personal Licence Review Hearing.

Ms Brynes requested a statement of reasons which was agreed by the Board.

Councillor Cree and Councillor J McGhee left the meeting prior to the determination of the applications at Appendix I.

4. APPLICATIONS

Applications considered under the Licensing (Scotland) Act 2005 – Appendix I.

There being no further business the meeting ended at 1.50pm

LICENSING (SCOTLAND) ACT, 2005

APPLICATION FOR VARIATION OF PREMISES LICENCE

Asda Stores Limited
Asda House
Great Wilson Street
Leeds

Asda
Townhead Street
Cumnock

Details of the application are as follows:-

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

Mr Roy, Building Standards advise that the following three Building Warrants remained outstanding in relation to the premises;

- **Building Warrant application (10/00004/ALT: Alterations to change existing supermarket to Asda store, relay existing sales, carry out internal demolitions to accommodate proposed layout). Any outstanding issues should be cleared on acceptance of the Completion Certificate in relation to this application.**
- **Building Warrant application (10/00651/EREC) has been approved to erect palisade fencing to service yard perimeter with entrance and exit gates with acoustic fencing to plant at entrance.**
- **Building Warrant (10/00703) for the proposed changes to the shop floor layout as per the application for the variation is pending consideration.**

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

APPLICATION FOR VARIATION OF PREMISES LICENCE

Fahid Amin
1 Katrine Place
Irvine
KA12 9LU

Mirza Stores
50 Blair Avenue
Hurlford
KA1 5BE

Details of the application are as follows:-

The purpose of the application is to amend the layout plan, alter the capacity and increase the alcohol display area by 0.66m.

Building Standards had no comments to make in respect of the proposed variation.

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

LICENSING (SCOTLAND) ACT, 2005

APPLICATION FOR PROVISIONAL GRANT OF PREMISES LICENCE

T J Morris Ltd.
Axis Business Park
Portal Way
Gillmoss
Liverpool

Home Bargains
Unit B
21 Burns Precinct
Kilmarnock

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

Mr David Crank, Solicitor, appeared on behalf of the applicants and moved that the licence be granted as no objections or representations had been received.

The Board agreed unanimously to grant the licence.

APPLICATION FOR PROVISIONAL GRANT OF PREMISES LICENCE

Messrs Young & Partners
Solicitors
126 West Regent Street
Glasgow

Spar Store
18 Barbieston Road
Dalrymple

Details of the application are as follows:-

The premises will be a licensed grocery and general store.

Licensed Hours Applied For:-

Monday – Sunday

10.00am – 10.00pm

The Depute Clerk advised that two Notices of Objection had been received in respect of this application, one from The McKinstry Company on behalf of Mr & Mrs John Murphy, 5 Barbieston Road, Dalrymple and one from Ms Tami Stobbs, 26 Barbieston Road, Dalrymple.

Ms Joanna Brynes, Solicitor, appeared to speak in support of the application.

Mr Graeme McKinstry, appeared on behalf Mr & Mrs John Murphy, to speak in support of their objection.

Ms Tami Stobbs appeared to speak in support of her objection.

As a preliminary matter, the Depute Clerk stated that the requisite seven days notice of receipt of Notices of Objection had not been given to the applicant, however understood that Ms Brynes was happy to continue on this basis. Ms Brynes agreed.

After confirming that there were no further preliminary matters, both Notices of Objection were circulated to Board Members. The Hearing then proceeded in accordance with the agreed procedure for Hearings.

The Depute Clerk stated that this application was for the grant of a premises licence for premises which were currently under construction on a former garage site at 18 Barbieston Road, Dalrymple.

Mr Roy, Building Standards advised that officers had inspected the premises on 26 November 2010 and reported the following:-

- Building Warrant reference number 09/00806/EREC (Former garage site, Barbieston Road, Dalrymple – Erection of 3 no. shop units and parking facilities), was applied for on 17 December, 2009 and approved on 7 October, 2010.
- As the above Building Warrant is only for the construction of the building shell, a Building Warrant is required to carry out the fit-out works proposed in the information supplied.
- As of 7 December, 2010, Building Standards have not received a Building Warrant application for the proposed fit-out works.

On agreement with Ms Brynes, Mr McKinstry circulated a plan of Dalrymple detailing the licensed premises in the village. He submitted that Mr & Mrs Murphy were residents and licence holders in the locality and that their premises, 5 Barbieston Road, was shown as numbered 5 on the plan circulated.

Referring to the plan, which showed a 300m and 500m radius from the application premises, Mr McKinstry stated that there were already 4 licensed premises within a 200m radius, or less, from the application premises, 2 which provided off-sales and 2 which provided on and off-sales. The capacities for the on sales premises were 120 and 165.

Mr McKinstry submitted that the application premises would be a carbon copy of the 2 current licensed premises offering off-sales. He continued that Mr & Mrs Murphy's premises operated from 8am until 8pm on Sundays and from 6am until 10pm from Monday to Saturday and offered a full range of products and facilities sought in the village.

Mr McKinstry stated that Dalrymple was very much green belt with no significant growth over the years. In his opinion the competition that the application premises would bring would be excessive and, as a result, prices would be driven down which would cause problems in the area.

Mr McKinstry stated that the granting of the licence would not only lead to over provision, but to saturation point and invited the Board to refuse the licence. He advised that a similar application for these premises had been refused in the past and urged the Board to be consistent.

Ms Stobbs agreed that the granting of the licence would result in over provision.

Ms Stobbs advised that she owned a house and shop at 26 Barbieston Road, Dalrymple and stated that the granting of the licence would cause her business to close.

Ms Stobbs stated that her business operated without complaint. She advised that she had invested £40,000 into the business approximately 2 years ago and was advised at that time that the application site would be developed for housing.

Ms Stobbs concluded that her shop currently provided services for the elderly and that she employed 4 part time staff who lived locally.

Ms Brynes had no questions to put to the objectors.

Addressing over provision, Ms Brynes stated that the applicants, C J Lang & Son Ltd. would not be considering opening premises in the area if they thought that the business would not be viable. She submitted that the application premises would be 3000sq ft., including offices and would not be a carbon copy of existing licensed premises as the application premises would offer more choice.

Ms Brynes addressed concerns regarding promotions advising that the applicants were a family business who operated approximately 50 stores throughout Scotland and took their responsibilities very seriously. She advised that extensive training would be provided to all staff and that the company operated a challenge 25 policy and have internal mystery shoppers for all age restricted products as well as using external companies to provide a similar service.

Ms Brynes stated that the company intended to employ 4 full time staff and 16 part time staff. She advised that the intended Premises Manager lives in Dalrymple and that that local people would be employed as there were benefits to having local employees.

Ms Brynes submitted that the application premises would be a fully serviced convenience store, that the application company were very serious operators and that all the licensing objectives would be met. She concluded that the granting of the licence would not result in over provided and that the premises would bring more competition to the area.

Ms Brynes pointed out that planning consent had been granted and that the applicants could still open as an unlicensed convenience store.

Mr McKinstry had no questions for Ms Brynes.

Ms Stobbs had no questions for Ms Brynes.

All parties were given the opportunity to sum up.

Ms Stobbs stated that Spar had approached her sometime ago with an offer to purchase her premises but at the time she had been advised by East Ayrshire Council that the application site would be developed for housing and had therefore kept her business. She submitted that the current licensed premises provided everything that would be offered in the application premises.

Referring to the map previously circulated, Ms Stobbs commented on the close proximity of licensed premises and stated that a person could walk from the first premises shown on the map to the last one shown within five minutes.

Mr McKinstry questioned why, if planning permission had already been granted, no construction work had started on the site.

Mr McKinstry stressed that his clients had no criticism of the applicants. He stated that Mr & Mrs Murphy had already sold their home due to increased costs and questioned what else the applicants had to bring to the locality.

Referring to the location of the application premises, Mr McKinstry pointed out that the application site was in the middle of the other premises already licensed.

Ms Brynes advised that C J Lang & Son Ltd. did not own the building but would lease the building when complete. She stated that any delays in starting the building lay with the developer.

Ms Brynes stressed that all licensing objectives would be met and that the application premises would be a larger shop which would provide more choice.

Ms Brynes concluded that there was no over provision and moved that the licence be granted.

The Board adjourned to consider the application.

Upon returning Councillor Campbell moved that the licence be granted. This was seconded by Councillor MacKay. There being no further motions, the Board agreed unanimously to grant the licence.

Mr McKinstry requested a Statement of Reasons which the Depute Clerk undertook to provide.

GAMBLING ACT 2005

APPLICATION FOR VARIATION OF BINGO PREMISES LICENCE

Gala Leisure Ltd.
Glebe House
Vicarage Drive
Barking
Essex

Gala Club Kilmarnock
74 Portland Street
Kilmarnock

Details of the application are as follows:-

To reinstate within this licence, the area that was removed from it to form a separate licence known as Area 2, 74 Portland Street, Kilmarnock.

Building Standards had no comments to make in respect of this application.

The Depute Clerk explained that these premises had previously been split into two bingo premises. This application was sought to reinstate the premises to one licence.

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

GAMBLING ACT 2005

APPLICATION FOR CLUB MACHINE PERMIT

Cumnock Bowling Club
Car Road
Cumnock

Granted
