

EAST AYRSHIRE LICENSING BOARD

Minute of the meeting of East Ayrshire Licensing Board held within The Council Chambers on Tuesday 31 August 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 J MacKay.

ATTENDING : Mr S McCall (Depute Clerk to the Licensing Board), Divisional Commander Fitzpatrick and Sergeant Menzies (Strathclyde Police), Mr W Gilchrist (Environmental Health), Mrs C McEwan and Mr I Hiles (Licensing Standards Officers), Mrs P Duncan and Ms S Gillies (Licensing Board Administrators).

APOLOGIES : Councillor G Cree and Councillor H Ross.

1. SEDERUNT

Noted

2. LICENSING BOARD MEETINGS : 2011

The dates for Licensing Board Meetings for 2011 were approved and noted.

3. GAMBLING ACT 2005 : STATEMENT OF PRINCIPLES

The Depute Clerk advised Members that it is a requirement of the Gambling Act 2005 for all Licensing Boards to publish a Statement of Principles. The Statement of Principles requires to be approved every three years by the Licensing Board.

The Depute Clerk further advised that the Statement of Principles had been circulated to the relevant consultees as noted in Appendix A of the Report and confirmed that the comments received were of a minor nature as highlighted in bold within the Report.

The Depute Clerk asked the Members to approve and formally adopt the revised Statement of Principles for the purpose of discharging its statutory responsibilities under the Gambling Act 2005.

The Licensing Board Members agreed to approve and adopt the Statement of Principles as revised.

4. ALCOHOL AWARENESS WEEK

Carolyn McEwan, Licensing Standards Officer, provided Members with a background report on the Alcohol Awareness week due to run from 4 October 2010 until 10 October 2010, and invited them to partake in the Designated Driver Initiative by approaching on-trade premises to ascertain if they would be interested in participating in the Scheme.

The Depute Clerk confirmed that the cost of £500 to implement the scheme would be met from the current Licensing Board budget and pointed out that this was the first time any Initiative had required funding.

The Chair stated that this was a worthwhile Initiative which should be supported and the Members agreed that the Licensing Standards Officers should contact all on-trade Licence holders within East Ayrshire.

5. APPLICATIONS

It was unanimously agreed to change the order of the agenda and now consider the application for Provisional Premises Licence for 8 Vennel Street, Stewarton.

APPLICATION FOR GRANT OF A PROVISIONAL PREMISES LICENCE

**Celine Davenport
Licensed Consultants
1070 Cathcart Road
Glasgow
G42 9XW**

**8 Vennel Street
Stewarton
KA3 5HL**

Details of the application are as follows:-

Licensed Hours Applied for:-

On-Sale – Ground Floor

Monday – Wednesday	11.00am – Midnight
Thursday	11.00am – 1.00am
Friday and Saturday	11.00am – 2.30am
Sunday	11.00am – 2.00am

On-Sale First Floor

Monday – Wednesday	6.30pm – 2.00am
Thursday - Saturday	6.30pm – 2.30am
Sunday	6.30pm – 2.00am

Alcohol will not be sold from off-sale from the premises.

The premises consist of a 3 storey building. The ground floor will consist of a bar and restaurant, offering full menu to 9.30pm with the provision of light bites and Pizza's for the duration of the licensed hours Friday to Sunday, and there will be internal access to the first floor. The first floor will provide nightclub entertainment Thursday to Sunday with a further entrance to the rear of the building, and will be available for private function hire during all other evenings. The third floor will not form part of the licensed area and will be used for storage only.

Ground Floor – Restaurant facilities and bar meals will be available. Social functions including weddings, funerals etc., will be catered for together with club or other group meetings. Recorded music and live performances will be available. Gaming, indoor/outdoor sports and televised sport will be available. Quiz nights will be available. Children and young persons will be permitted access for the purpose of having a meal, when accompanied by an adult, and will be permitted to remain on the premises until 10.00pm.

First Floor – Social functions including weddings, funerals etc., will be catered for together with club or other group meetings. Recorded music, live performances and dance facilities will be available. Gaming and televised sport will also be available. Children and young persons will not be permitted entry to the first floor.

The premises will operate extended hours as per the Board policy on 24th, 25th and 31st December and 1st January each year.

The Depute Clerk advised that Building Standards had reviewed the operating plan on 5 March 2010 and were unable to make any comments in relation to this application at this stage as the building warrant applications applied for had not been determined. Planning Permission under the Town & Country Planning (Scotland) Act 1997, Reference No 09/0598/PP was granted on 1st February 2010 for the change of use of vacant building to form a bar/restaurant & Disco.

<u>Warrant Ref No</u>	<u>Applied</u>	<u>Approved</u>
10/00265/ALTCONVEXT/S1	26/04/10	05/05/10
10/00265/ALTCONVEXT/S2	30/07/10	
10/00265/ALTCONVEXT/S3	30/08/10	

The Depute Clerk reminded Members that as this application was for a Provisional Premises Licence in terms of the Licensing (Scotland) Act 2005 there was only a requirement to obtain a Section 50 Provisional Planning Certificate at this stage.

The Depute Clerk advised that there had been 16 letters of objection received in respect of this application. The Depute Clerk further advised that a discussion had taken place with the objectors prior to the meeting and it had been agreed that there would be 2 representatives who would speak on behalf of the 16 objectors.

Suzanne Brown and Gavin Niven appeared before the Board as representatives of the 16 objectors.

Celine Davenport, Licensing Consultant, appeared before the Board along with the applicant Tony Brown, Director of Montgomeries (Stewarton) Ltd.

The Depute Clerk asked Ms Davenport if there were any preliminary points to be raised regarding the objections. Ms Davenport confirmed that there were no preliminary points.

Suzanne Brown stated that she was representing the residents immediately surrounding the proposed premises and pointed out to Members that when the planning application for the premises was dealt with the applicant indicated that the premises would not open on a Sunday but the premises licence application showed that the premises would be open on a Sunday until 2.00am. Suzanne Brown further stated that the 2.30am closing time would have a detrimental effect on local residents and residents of the nearby sheltered housing complex.

Suzanne Brown submitted that the objectors understood that there was a certain level of anti-social behaviour attached to all types of licensed premises but that the proposed 2.00am close on a Monday to Wednesday would have an effect on local residents due to the locality of the premises on a busy road with limited parking and double yellow lines on roads. She further stated that this would lead to cars stopping to uplift patrons from the premises. Ms Brown pointed out that the occupant capacity of the premises was 300. Ms Brown further pointed out that Strathclyde Police did an excellent job but due to the current economic climate and the possibility of reductions in Police numbers there would be an added burden on their service.

Suzanne Brown further submitted that Stewarton had a population of approximately 7,000 and there were an adequate number of licensed premises open until 2.00am to cater for the population.

Suzanne Brown stated that one of the objectors Mr and Mrs Campbell were situated directly next to the premises and their garden was adjacent to where the smoking area was to be situated. Mr & Mrs Campbell were concerned that it would have a detrimental effect on their granddaughters when they were in the garden. They were also concerned about patrons leaving the premises at 2.00am on a Sunday as they would be preparing for work at 6.00am on the Monday.

Suzanne Brown confirmed that the main concerns regarding the proposed premises was the premises remaining open until 2.00am on a Monday, Tuesday and Wednesday.

Mr Niven submitted that the points he wished to raise had been covered by Suzanne Brown but he added that the last train leaving Stewarton on a Sunday was 11.00pm and highlighted that there may be insufficient Taxi's to support the number of patrons leaving the premises. Mr Niven also pointed out that Stewarton had a large secondary school and was seeking assurances that there would be measures in place to stop underage drinking. Mr Niven stated that people were entitled to enjoy themselves but regard should be taken to ensure the wellbeing of the community and he would be happy to work with the applicant to achieve this.

The Chair requested confirmation from Mr Niven of the basis for his objection.

Mr Niven confirmed that the opening times of the premises were his main concern and he wanted assurances on how the premises would be operated.

Celine Davenport submitted that Tony Brown was the sole Director of the applicant company Montgomeries (Stewarton) Ltd. Ms Davenport further submitted that Mr Brown, along with his brother, Peter Brown, was involved with Travis Homes, who had made a significant investment within Stewarton by providing quality housing costing £350,000 plus at Lainshaw Estate which had won several accolades within the building industry. Ms Davenport pointed out that the provision of this housing had been significant in the regeneration of Stewarton and attracted residents to the area.

Ms Davenport further submitted that there were 19 licensed premises within Stewarton, comprising of 7 off-sales, 7 public houses, 3 members clubs and 2 restaurants. Ms Davenport pointed out that there was only one late hours opening premises which would compare to her client's proposed premises.

Ms Davenport submitted that as at 2008, Stewarton had a population of 6,379 and demographics showed that 39% were 23 years and above, female within a higher earnings bracket, whose custom her clients would be targeting. She also submitted that the regeneration of the currently derelict property would be a landmark within Stewarton and may also attract customers from outwith Stewarton. The regeneration of the property would also include the vacant property behind the premises that would be used for parking which would alleviate the problems of parking at the front of the premises.

Ms Davenport stated that the applicant intended to provide a modern purpose built high quality establishment which would offer high quality modern European food within a 40 seater restaurant and if customers wanted to extended their evening they could proceed to the first floor entertainment part of the premises by way of an

internal access minimizing having to go outside to access the upper part of the premises. The last orders for the restaurant would be 9.30pm. Ms Davenport further stated that patrons would require to access the premises by the rear entrance after 12 Midnight. Ms Davenport advised that the premises would only be used for private functions until 2.00am Monday – Thursday and would not operate as a nightclub and again reiterated that the premises would be for older clientele.

Ms Davenport pointed out that there had been an error in the application submitted and the opening time on a Sunday should state 12 Midnight and not 2.00am as applied for.

Ms Davenport submitted that Mr Brown had consulted on how the premises would be soundproofed. Mr Brown had also consulted with Mr McPhee of APM Stewarding who was a well known figure within Stewarton, on how best to manage the premises in terms of noise nuisance. Ms Davenport confirmed that if the premises licence was granted Mr McPhee would manage the stewarding for one year, with a minimum of one steward sited at the Vennel Street entrance to ensure the movement of patrons and avoid any noise nuisance. Ms Davenport confirmed that any patrons who did not show due respect to residents within the locality would be barred from the premises.

Ms Davenport advised that her client had contacted a local taxi operator Bobby McLean of Kelly Cabs who would provide a taxi service pick up point at Rigg Street which would limit disruption on Vennel Street. Signs would be provided within the premises advising customers accordingly.

Ms Davenport stated that the premises were historically known as The Hub and her client was hoping that the new premises would attract customers from Glasgow and bring back regeneration to the area.

Ms Davenport reminded Members that the premises were not to be operated as a nightclub but a restaurant facility with prolonged entertainment and respectfully requested that the provisional premises licence be granted.

The Depute Clerk advised that the opening times for the ground floor premises of 2.30am on Friday and Saturday were outwith the Board's policy. The Depute Clerk asked for confirmation of Sunday opening times for the first floor premises from 6.30pm until 12 Midnight and ground floor premises 11.00am until 12 Midnight. Ms Davenport confirmed that these were the correct opening times.

Suzanne Brown asked Ms Davenport how much control a door steward would have on patrons leaving the premises.

Ms Davenport replied that the door stewards would advise patrons leaving the premises that they should respect the surrounding area.

Ms Brown asked if it should be the Police who should deal with patrons leaving the area.

Ms Davenport replied the Police would only deal with some matters but that it would be the responsibility of stewards to disperse patrons and reminded Members that the patrons would be older.

Ms Brown asked how the applicant would attract the older clientele as long established premises were closing. Ms Brown agreed that the restoration of the

building and provision of a restaurant would be welcome but had reservations on how the premises could survive in the current climate.

Ms Davenport submitted that not all licensed premises were closing and that some premises were thriving. She continued that the premises would operate a capacity of 86 within the ground floor and 146 within the first floor and not a capacity of 300. She reminded that the premises were restaurant facilities with added on entertainment facility and not all patrons would be leaving the premises at 2.30am at the same time. Ms Davenport continued that there were other premises within Stewarton but these premises would be targeted at upper earnings bracket.

Ms Brown asked if the exit from the premises could be other than Vennel Street.

Peter Brown replied that the vacant ground next to the premises was being targeted for future regeneration of The Cross and not an exit from the proposed premises.

The Chair asked Ms Brown to confirm if the main objection point was the opening times of the proposed premises.

Ms Brown confirmed that the opening hours were the main point of the objections.

The Depute Clerk reminded Members that a Building Warrant had not been issued and Building Standards would assess the occupant capacity for the premises at the confirmation stage, which may not agree with the occupant capacity requested by the applicant. The applicant accepted that the occupant capacity may change.

Ms Davenport advised that the smoking area would not be at the residential side of the premises.

Councillor Campbell asked if the first floor premises would be for over 21 years of age only.

Ms Davenport confirmed that over 21 years for the first floor was not currently the premises policy but the applicant would be happy to build this in to operation of the premises if required.

Ms Brown confirmed that the restaurant was a good idea and the only concern was noise and operating hours.

Mr Brown confirmed that he had been in discussions with Alex McPhee of APM Security and local taxi companies and gave assurances that stewards would move patrons exiting the premises to the taxi pick up point at Sainsbury Supermarket to limit noise nuisance.

Billy Gilchrist of Environmental Health had no objections to the application but had concerns regarding the position of the smoking area as it was close to residential properties in Lainshaw Street. Mr Gilchrist pointed out that the balcony would be partly open and there were concerns with the hours it would be used and the management control.

Mr Brown confirmed that there was to be a smoking area on the first floor of the premises and there had been a wall built and everything possible had been done to minimize noise to local residents.

Mr Gilchrist stated that the wall would require to be inspected to ascertain if it met the criteria for a smoking area and suggested that the smoking area could operate restricted hours to minimise noise nuisance to local residents.

Ms Davenport advised that the smoking area would be re-assessed and if possible minimise the use of the area on the first floor in addition to the use of the rear entrance.

Ms Davenport confirmed that the applicant took all the points raised seriously and again stated that the regeneration of the premises would attract patrons from outwith Stewarton, create 20 jobs and moved that the provisional premises licence be granted.

The Board adjourned to consider the application.

Upon returning the Depute Clerk confirmed that the Board had carefully considered all the issues and objections in relation to the application and were minded to refuse the application. He stated however that the Board were minded to grant a modified operating plan. The suggested amendments were:-

Ground Floor

Sunday – Thursday	11.00am until Midnight
Friday and Saturday	11.00am until 1.00am

First Floor

Sunday – Wednesday	6.30pm until Midnight
Thursday – Saturday	6.30pm until 2.00am

Ms Davenport, on behalf of the applicant, accepted the amendments to the operating plan as stated and accordingly the Board Members unanimously agreed to grant the provisional premises licence as amended.

The Chair left the meeting at 11.30am.

The Depute Clerk advised that a new Chair required to be appointed.

Councillor Cunningham moved that Councillor Campbell take the Chair, seconded by Councillor N McGhee, accordingly Councillor Campbell took the Chair.

6. REVIEW OF PREMISES LICENCE

4.1 Review of premises licence for premises known as The Wheatsheaf Inn, 72 Portland Street, Kilmarnock, following receipt of a notice in terms of Section 43 of the Licensing (Scotland) Act, 2005 from the Agents for the Licence Holders.

The Depute Clerk reminded the Board that, in terms of Section 44 of the Licensing (Scotland) Act 2005, where a Licensing Board receives notification of a conviction from a licence holder, the Board must make a premises licence review proposal in respect of the premises licence. He advised that Strathclyde Police had confirmed that J D Wetherspoon Plc had been convicted of the undernoted relevant offence:-

Harrow Magistrates – 14 June 2010:- Section 136(1)(a) of the Licensing Act 2003 – Fine £3330; Victim Surcharge £15; Costs £3844.02.

Mr McIvor, Solicitor, appeared on behalf of the licence holder.

Mr McIvor submitted that the licence holder operated 780 premises throughout the UK with 52 being in Scotland and that none of the premises in Scotland had been convicted of any offences.

Mr McIvor further submitted that the offence took place in premises in Harrow, London, where the Designated Premises Supervisor had been suspended pending an internal disciplinary investigation and during this investigation a new Designated Premises Supervisor had been put in place without the relevant paperwork being submitted to the relevant Licensing Board.

Mr McIvor advised that new procedures had been put in place whereby the HR department of the Company would deal with the replacement of Supervisors to ensure that this offence did not happen again. He stated that the conviction was relatively minor as shown by the fine of £3330 and requested that the Board Members take no further action and note the conviction on their records.

The Depute Clerk reminded the Members that due to statutory legislation the Board were required to hold a review hearing even though the premises were licensed under the 2003 Licensing Act and advised that the steps open to the Members were (a) to issue a written warning to the licence holder, (b) to make a variation of the licence, (c) to suspend the licence for such period as the Board may determine, (d) to revoke the licence, or take no action.

The Board Members unanimously agreed to take no action.

4.2 Review of premises licence for premises known as News 4 U, 7 Welbeck Street, Kilmarnock, following receipt of a notice in terms of Section 38(3)(b) of the Licensing (Scotland) Act 2005 from HM Revenue & Customs.

The Depute Clerk advised that HM Revenue & Customs had applied for a review of the premises licence for News 4 U, 7 Wellbeck Street, Kilmarnock, on the grounds that the premises licence holder had failed to comply with the licensing objective of preventing crime and disorder.

HM Revenue & Customs were represented at the review hearing by Special Investigations Officer, Simon Pettigrew who submitted to the Board the following information in support of the premises licence review application:-

Inland Detection Scotland has responsibility for detecting and seizing contraband cigarettes, tobacco and alcohol. They carry out regular visits to retail premises such as newsagents, off licenses and convenience stores. They have powers to inspect such premises under Section 112 of the Customs and Excise Management Act, 1979 because those shops sell goods which are subject to excise duties.

On 22 January 2010, Mr Pettigrew and a colleague visited News 4 You to carry out a routine inspection. In the rear of the premises, there were found 9 cases of Drops vodka and 49 cases of Italian wine. These goods were believed to have been smuggled into the UK without the requisite excise duties being paid. They would then have been sold on through several wholesalers before being sold through retailers such as News 4 You.

Mr Rasheid was interviewed under caution with regards to the wine and vodka. He admitted that he knew it was an offence to stock or sell non-duty paid alcoholic products. He then stated that he had bought the wine and vodka from an individual who had come into the shop offering to sell it at a cheap price. He also admitted he would not be able to provide receipts to support the purchase. The wine and vodka were seized under Section 139 of the Customs & Excise Management Act (1979).

It was Mr Pettigrew's view that an experienced retailer should have questioned the legitimacy of alcohol offered to him at a cheap price without any corresponding receipt/invoice.

Under Section 154(2) of the Customs & Excise Management Act (1979), it is the responsibility of the retailer to provide evidence of the duty status of the wine/vodka. Mr Rasheid would have been unable to do this as he had no purchase invoice. In total, 54 litres of vodka and 220.5 litres of wine were seized. The excise duty evaded on this alcohol was £910.07.

Mr Hamilton, Solicitor, appeared along with the licence holder of the premises Mr Mazher Rasheid.

Mr Hamilton asked Mr Pettigrew if the bottles of vodka and wine ceased by them had the duty paid stamp.

Mr Pettigrew confirmed that the bottles of vodka had the duty paid stamp but that as the wine had a lower alcohol content there was no need for them to have a duty paid stamp.

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 News 4 U, 7 Welbeck Street, Kilmarnock, was considered and granted by the Board at their meeting on 13 January 2009. There have been no previous Premises Licence Review applications or hearings.

The premises known as News 4 U were visited on Monday 5th October 2009 and Tuesday 12th January 2010 to ascertain that all statutory requirements in terms of the current legislation were being met.

During the visit in October 2009, the Premises Licence Holder and Designated Premises Manager, Mr Mazher Rasheid was present. It was ascertained that all of the staff at the premises had received their minimum two hours training. The Summary Premises Licence and a relevant Notice in terms of Section 110 were not properly displayed at this time. Mr Rasheid was advised to rectify the problem prior to the next inspection.

During the visit in January 2010 and the Premises Licence Holder and Designated Premises Manager, Mazher Rasheid was present. Personal Licences & training records for three staff members were seen and found to be in order. The display of the Summary Premises Licence and relevant notices in terms of Section 110 were found to correctly displayed within the premises.

The premises were re-inspected on Wednesday 4th August 2010, the Premises Licence Holder and Designated Premises Manager for the premises Mazher Rasheid was present. The Summary of Premises Licence and notices in terms of Section 110 were found to be correctly displayed within the premises. The alcohol display was as per the approved layout plan. It was noticed that the bottles had not been marked as per the Strathclyde Police bottle marking initiative, Mr Rasheid stated this was due to the fact he had run out of marker pens and was awaiting some to be sent to him by the Police.

Mr Rasheid also produced his Personal Licence and the SCPLH training certificate for the staff member working at the time, he informed me that the only other person who worked in the premises was the holder of a Personal Licence issued by East Ayrshire Licensing Board.

Mr Rasheid was asked about the visit by HM Revenue & Customs Officers in January 2010. He stated that the HMRC Officers had visited with Police Officers and seized the bottles of vodka and wine on the date of their visit. He had subsequently received a written warning letter from the HM Revenue & Customs Office and as far as he was concerned, that was the end of the matter.

Mr Rasheid also stated that he only purchases his alcoholic products for sale in his shop from two wholesale cash and carry outlets and he will not deal with any persons entering his shop who are trying to sell cheap items, this includes non alcoholic related products.

The Licensing Standards Officers were not present and did not witness the events surrounding the detection and seizure of the non-duty paid alcohol by officers from HM Revenue & Customs, as such, were unable to offer any information at this time.

Mr Hamilton respectfully adopted the contents of the LSO's report which confirmed that the licence holder had been complying with the terms of the Licensing Act, such as correct display of notices and training of staff.

Mr Hamilton stated that the licence holder was 31 years of age, had no previous convictions and had traded from the premises since 2007. He further stated that the alcohol had been bought from a trader who had called at the premises in a van selling Vodka and Wine and stated that he had wholesale cash and carry premises in Motherwell. Mr Hamilton stated that the cost of a case of wine from the trader was £14.50 which is similar to special price offers at wholesalers. Mr Hamilton advised that the licence holder normally bought his alcohol stock from Booker Cash & Carry and United Cash & Carry.

Mr Hamilton reminded Members that the bottles of Vodka had been marked with the duty paid stamp and as previously stated there was no need for the wine bottles to be marked with the stamp. Mr Hamilton stated that the licence holder should have realised that due to the reduced price of the alcohol that duty may not have been paid.

Mr Hamilton pointed out to Members that the licence holder had lost the alcohol stock, the purchase price of the alcohol and been brought before the Licensing Board for a Review Hearing. Mr Hamilton confirmed that Mr Rasheid would no longer buy alcohol from traders who appeared at his premises.

Mr Hamilton reminded Members that the premises licence holder had no previous convictions, and if they found that the objective of crime and disorder had been established the steps open to them were:- (a) to issue a written warning to the licence

holder, (b) to make a variation of the licence, (c) to suspend the licence for such period as the Board may determine, (d) to revoke the licence, or take no action. Mr Hamilton stated that he could see no benefit from going further than issuing a warning letter as suspension of the premises licence may result in the licence holder going out of business and the revocation of the licence would certainly result in the licence holder going out of business. Mr Hamilton respectfully requested the issue of a warning letter highlighting that there should be no repetition of the incident.

Councillor J McGhee asked Mr Hamilton if the licence holder knew that the £930 duty had not been paid.

Mr Hamilton confirmed that there is nothing to show that the duty had been paid other than the duty paid stamp on the Vodka bottles, as the wine bottles did not require to be stamped and reminded that his submission had stated that the licence holder should have realised that the cost of the alcohol raised doubts on whether the duty had been paid.

Councillor J McGhee asked Mr Pettigrew if they looked for particular brands of alcohol.

Mr Pettigrew confirmed that there are particular brands of alcohol they look for, particularly some brands of Italian Wine. Mr Pettigrew explained that the Vodka would be produced in Italy where it would have the duty stamp attached then shipped to the UK to a bonded warehouse where the duty would be paid. He further explained that it is possible that out of 3 trucks destined for the UK only one would go through the bonded warehouse for the duty to be paid and the other one distributed throughout the country with no duty paid. Mr Pettigrew confirmed that if the customer could not produce paperwork to show that the duty had been paid the stock would be seized.

Councillor J McGhee asked Mr Pettigrew for confirmation that it would be difficult for the customer to ascertain if the duty had been paid if there was a duty stamp on the alcohol. Mr Pettigrew confirmed that it would be difficult but the fact that they were being offered it at their shop for a substantial reduction in price should highlight the possibility it was not paid.

Councillor N McGhee asked for confirmation of Mr Pettigrew if a written warning was the normal outcome in these circumstances.

Mr Pettigrew confirmed that HM Revenue and Customs had powers to impose a fine but normally the seizure of the goods was sufficient.

The Depute Clerk asked Mr Pettigrew for confirmation of the amount of duty that would have been paid on the 6 bottles of wine and Mr Pettigrew confirmed that the duty on 6 bottles of wine would be approximately £8. The Depute Clerk accordingly pointed out to Members that if the duty had been paid on the case of wine it would only have cost £6.50.

Mr Hamilton pointed out that his submission did not indicate that the duty had not been paid as there was no need for a duty stamp on wine and the vodka did have a duty stamp.

Councillor Campbell asked for confirmation of the licence holder on whether he had dealt with the supplier before and the licence holder confirmed that he knew the persons name but had not seen him since he bought the alcohol that had been seized.

At the time of the transaction the supplier had stated that his printer was not working and he was unable to provide an invoice.

Councillor Cunninghame asked for confirmation of how much of the alcohol had been sold before it was seized and Mr Hamilton stated that there was no paperwork to show how much had been sold.

The Chair asked the licence holder if he had checked the alcohol for a duty stamp when purchasing it and the licence holder stated that he had checked for a duty stamp.

The Board adjourned to consider the matter.

Upon returning the Chair confirmed that they had fully considered the matter and the Members unanimously found that the ground of preventing crime and disorder had been established.

Councillor Dinwoodie moved that the premises licence be suspended for 4 weeks. This was seconded by Councillor Mackay. There were no other motions.

The Board agreed unanimously to suspend the premises licence for 4 weeks effective immediately.

4.3 Review of premises licence for premises known as Woodstock Stores, 18 West Woodstock Street, Kilmarnock, following receipt of a notice in terms of Section 36(1) of the Licensing (Scotland) Act 2005 from HM Revenue & Customs.

The Depute Clerk advised that HM Revenue & Customs had applied for a review of the premises licence for Woodstock Stores, 18 West Woodstock Street, Kilmarnock, on the grounds that the premises licence holder had failed to comply with the licensing objective of preventing crime and disorder.

The Depute Clerk also advised that Strathclyde Police had applied for a review of premises licence for Woodstock Stores, 18 West Woodstock Street, Kilmarnock, on the grounds that the premises licence holder had failed to comply with the licensing objective of preventing crime and disorder.

The Depute Clerk reminded Members that the Strathclyde Police Review had been continued from the Board meeting on 22 June 2010 to enable both the Reviews to be heard at the same time.

HM Revenue & Customs were represented at the review hearing by Special Investigations Officer, Simon Pettigrew who submitted to the Board the following information in support of the premises licence review application:-

Inland Detection Scotland has responsibility for detecting and seizing contraband cigarettes, tobacco and alcohol. They carry out regular visits to retail premises such as newsagents, off licenses and convenience stores. They have powers to inspect such premises under Section 112 of the Customs and Excise Management Act, 1979 because those shops sell goods which are subject to excise duties.

On 2nd April 2010, Mr Pettigrew and a colleague visited the above store to carry out a routine inspection. A quantity of Italian wine was on display in the shop. The brands being sold were well known to us as our team had seized large quantities of it in the preceding months. The wine had been smuggled into the UK without having

UK duty paid on it. It would then have been sold on by several wholesalers before ending up on the shelves of retailers such as Woodstock Stores.

Mr Ahmad was interviewed under caution. He admitted that he knew it was an offence to sell non-duty paid wine, although he did insist he was certain this wine was legitimate. He stated that the wine had been purchased from an Edinburgh cash & carry. He was unable to produce any supporting paperwork, however, and the wine was detained. Mr Ahmad contacted Mr Pettigrew several days later to say the wine had actually come from a London based cash and carry. He accepted the wine was liable to seizure but claimed that he had not knowingly purchased non-duty paid goods.

In such circumstances, it is the responsibility under Section 154(2) of Customs & Excise Management Act 1979 for the retailer to provide HM Revenue and Customs with proof of duty payment. Mr Ahmad was unable to do this and the goods were seized. In total 167.25 litres of Italian wine was seized. The duty evaded on this amount of wine was £375.25.

The supplier of this wine turned up at the shop unannounced offering the product for sale at a cheap price. It was Mr Pettigrew's view that an experienced shop keeper should know that such wine is likely to come from an illegitimate source.

The Divisional Commander Fitzpatrick submitted that at 17.30 hours on Friday 19 March 2010 a Test Purchase Operation was conducted at the premises and a test purchaser was sold 1 bottle of Blue WKD without being asked for identification or being challenged as to their age. Consequently, a sales assistant was now the subject of a report to the Procurator Fiscal at Kilmarnock regarding the contravention of Section 102 of the Licensing (Scotland) Act 2005.

On Friday 26 March 2010 a second Test Purchase Operation was conducted at the premises. On that occasion alcohol was not sold to the test purchaser.

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 Woodstock Stores, 18 West Woodstock Street, Kilmarnock, was considered and granted by the Board at their meeting on 6 May 2008. The applicant, Nisar Ahmad was not present at the board meeting. There have been no previous premises licence review applications or hearings.

The premises known as Woodstock Stores were visited on Monday 5th October 2009 and Monday 11th January 2010 to ascertain that all statutory requirements in terms of the current legislation were being met.

During the first visit in October, the training records were checked and it was found that they had not been completed in full, the Summary Premises Licence was not correctly displayed as only the front page out of the six was on display. It was seen that the relevant Notice in terms of Section 110 was properly displayed at this time. The Designated Premises Manager, Nisar Ahmad was not present during the visit and the staff member on duty stated that the outstanding points would be addressed.

During the second visit in January, the Designated Premises Manager, Nisar Ahmad, was not present. The staff training records were checked and found to be correctly completed. The Summary Premises Licence and Section 110 Notice were correctly displayed at this time.

Woodstock Stores was re-inspected on 9 June 2010 and the Owner/Designated Premises Manager, Nisar Ahmad was present and spoken to. Training records for five staff members were seen and found to be in order. The display of the Summary Premises Licence and a relevant notice in terms of Section 110 were still correctly displayed within the premises.

The alcohol display was checked against the approved layout plan and was found to be correct. It was also noticed that various bottles had been marked as part of the participation in the Strathclyde Police bottle marking scheme. The refusals book was in the hands of Mr Ahmad's solicitor and could not be checked.

Mr Ahmad stated that the staff member involved in the alleged incident was not authorized to serve behind the counter in any capacity as it was his second day working. Mr Ahmad further stated that he was present in the premises but was in the stockroom at the time of the incident and not able to monitor the CCTV system or he would have prevented the untrained staff member from serving, the other trained member of staff working that day was outside the front of the shop at the time moving on a group of youngsters when the test purchaser entered the premises and the alleged offence took place.

Mr Ahmad stated that the staff member involved in the alleged offence was dismissed with immediate effect after the incident and all other staff were subsequently given refresher training. Mr Ahmad further stated that only passports or driving licences are now the only forms of identification accepted at the shop from that date.

A further visit was made to the premises on Monday 9th August 2010. The Premises Licence Holder and Designated Premises Manager Nisar Ahmad was present. Mr Ahmad was asked about the visit in April 2010 by HM Revenue & Customs Officers. Mr Ahmad stated that he had purchased approximately twenty cases of wine in good faith from a supplier who had called in to his premises and stated the he worked at a cash and carry in Edinburgh. Mr Ahmad stated that he was given an invoice upon completion of the sale.

Mr Ahmad stated that when he was visited by the HM Revenue & Customs Officers, the wine was seized as the relevant duty had not been paid. Mr Ahmad stated that he asked how he could verify if duty had been paid on alcoholic products but was informed that there was no means of checking. Mr Ahmad has subsequently received a letter from HM Revenue & Customs informing him that they would be taking no further action.

Mr Ahmad further stated that the supplier had not been back in his shop and is not contactable on the telephone number on the invoice. As a result of this incident, Mr Ahmad does not purchase anything from people who call in to his shop selling products of any nature.

The Licensing Standards Officers were not present and did not witness the events surrounding the test purchase, as such, were unable to offer any information at this time.

The Licensing Standards Officers were not present and did not witness the events surrounding the detection and seizure of the non-duty paid alcohol by officers from HM Revenue & Customs, as such, were unable to offer any information at this time.

Mr Hamilton, Solicitor, appeared before the Board along with the Premises Licence Holder Mr Ahmad.

Mr Hamilton stated that he would address the HM Revenue & Customs review first then Strathclyde Police's review.

Mr Hamilton submitted that the premises licence holder was 54 years of age, was a personal licence holder and had held 6 different off-sales licences since 1992. Mr Hamilton confirmed that Mr Ahmed had no previous convictions.

Mr Hamilton further submitted that the alcohol was purchased from a Mr Barber who normally supplies the premises with sweets and crisps. Mr Hamilton stated that the licence holder normally purchased his alcohol stock from either Booker Cash & Carry or United Cash & Carry. Mr Hamilton further stated that the Italian wine was offered at a similar cost to special prices offered by wholesalers. Mr Hamilton had produced a VAT Invoice for the alcohol which showed that it had come from Edinburgh but the company was London based.

Mr Pettigrew confirmed that following receipt of a copy of the VAT invoice further investigation had shown that the company had been de-registered for VAT prior to the alcohol being sold.

Mr Hamilton confirmed that the premises licence holder would no longer purchase alcohol from a trader at his premises and only use his normal wholesale suppliers.

Mr Hamilton submitted that the circumstances were similar to the previous review hearing and that the price of alcohol should have alerted the licence holder to the possibility of the duty not being paid. Mr Hamilton pointed out that the premises licence holder had lost the purchase price of the alcohol and also the remaining stock and had learned his lesson.

Mr Hamilton then addressed the matter of the review by Strathclyde Police.

Mr Hamilton submitted that the premises licence holder was in the back of the premises at the time of the failed test purchase and his assistant who had obtained the relevant alcohol training certificate was outside the premises attempting to disperse a crowd of youths who had been attempting to buy alcohol. Mr Hamilton further submitted that the remaining staff member in the premises was not authorised to sell goods as they were only employed to stack shelves. Mr Hamilton confirmed that this was the person who had sold the alcohol to the test purchaser and that this person was instantly dismissed.

Mr Hamilton advised that the premises licence holder had installed a new cash register in the premises which required a code to be entered before a transaction could be processed and that each authorised person had a different code.

Mr Hamilton completed his submission by stating that in respect of the HM Customs review there had been no contravention of the Licensing (Scotland) Act 2005 and that as there had been an Invoice produced for the sale it would only have been the price of the alcohol that would have alerted the premises licence holder. Mr Hamilton respectfully requested that due to the circumstances a warning letter would be sufficient.

Councillor Cunninghame requested confirmation as to the amount of the wine which had been sold prior to it being seized by HM Customs & Excise.

Mr Hamilton stated that the wine had been purchase in January and seized in April and there were no records as to the amount sold between these dates.

The Depute Clerk requested confirmation from Mr Pettigrew whether this was the same make of wine which was referred to in the previous Review. Mr Pettigrew confirmed that it was the same wine and stated that there were problems with other Italian brands.

The Board adjourned to consider the matter.

Upon returning the Chair confirmed that they had fully considered the matter and the Members unanimously found that the ground of preventing crime and disorder had been established in both the HM Customs & Revenue review and the Strathclyde Police review.

Councillor N McGhee moved that the premises licence be suspended for 4 weeks. This was seconded by Councillor Cunningham. There were no other motions.

The Board agreed unanimously to suspend the premises licence for 4 weeks effective immediately.

Mr Hamilton requested confirmation on the time when the premises licence holder could resume selling alcohol and the Depute Clerk confirmed that the Licensing Standards Officer would liaise with the premises licence holder.

Councillor J McGhee left the meeting at 12.40pm.

7. APPLICATIONS

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

There being no further business the Licensing Board Meeting ended at 1.05pm

LICENSING (SCOTLAND) ACT, 2005

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Brunton Miller
Solicitors
Herbert House
22 Herbert Street
Glasgow**

**45 – 47 Main Street
Dunlop**

Details of the application are as follows:-

The purpose of the application is to amend the layout plan and alter the alcohol display area which will result in an increase of capacity from 9.1 square metres to 12.36 square metres.

The Depute Clerk advised that Building Standards had reviewed the operating plan on 28 July 2010 and found it to be satisfactory.

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

APPLICATION FOR VARIATION OF PREMISES LICENCE

**Mauchline & District Kilmarnock
FC Supporters Social Club
8-12 Earl Grey Street
Mauchline
KA5 5AD**

**Mauchline & District Kilmarnock
FC Supporters Social Club
8-12 Earl Grey Street
Mauchline
KA5 5AD**

Details of the application are as follows:-

The purpose of the application is to amend the operating plan to permit Indoor/Outdoor Sports such as pool, darts and dominoes. The operating plan is also to be amended to permit the playing of Poker.

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 28 September 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 GRANT OF A PROVISIONAL PREMISES LICENCE

**Messrs Trainor Alston
Solicitors
18 Academy Street**

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

**Coatbridge
ML5 3AU**

Details of the application are as follows:-

The premises will be a licensed convenience store.

Licensed Hours Applied for:-

Monday – Sunday 10.00am – 10.00pm

The Depute Clerk advised that Building Standards had reviewed the operating plan on 5 March 2010 and the following issues were identified:-

- 1. A Building Warrant 10/00268/ALT, was applied for on the 27th April 2010 and approved on the 24th May 2010. The completion certificate and Section 50 certificate for these works was accepted and issued on the 13th July 2010.**

The Depute Clerk advised Members that there were 2 letters of objection in respect of this application.

Mr Alexander Mair of Andely Winestores Ltd was present to speak in support of his objection.

The second objector was not present or represented.

Fransceca Trainor of Trainor Alston Solicitors appeared with the applicant.

Ms Trainor had no preliminary matters to raise with regard to the intimation of the objections.

The letters of objection were circulated to the Members of the Board and the hearing proceeded in accordance with the procedure for hearings previously agreed by the Board.

Mr Mair submitted to Members that he had been born and remained a resident of Darvel all his life and cared for the welfare of the community. He further submitted that Scotland had a huge problem with alcohol and that his premises did not sell to young people without photographic ID but did not use the Young Scott card as there was a problem with the production of fake cards. He advised that his premises did not stock alcohol which targeted young people. Mr Mair submitted that Darvel was a small town and there were already sufficient alcohol outlets within the town.

Ms Trainor submitted that the basis of Mr Mair's objection was overprovision. Ms Trainor pointed out that even though Darvel was a small town it was situated in a position to attract passing trade and was close to Loudoun Castle Theme Park.

Ms Trainor further submitted that the premises were proposing to operate from 7.00am until 10.00pm which would offer a service to the community outwith the opening times of other premises within Darvel as follows:- Bill and Davina Kerr – 9.00am – 1.00pm and 3.00pm – 8.00pm; Andely Winestores – 2.00pm – 10.00pm; Spar closing time 8.00pm.

Ms Trainor further submitted that the applicants would comply with all the licensing objectives and had a good working relationship with PC Muirhead of Strathclyde Police and the staff within Darvel Police Station. She further advised that the applicant had installed a finger print system within the premises which allowed customers to have their finger prints and dates of birth stored within the system to ensure no alcohol sold to persons under the age of 18 years. She advised that 45 customers had already taken part in this scheme and that there were posters within the premises advertising the scheme. Ms Trainor further advised that the

applicant would be operating the Challenge 25 scheme. She further advised that CCTV had been installed in the premises.

Ms Trainor summed up by stating that there was no reason to refuse this application as it would not result in overprovision and that the applicant was providing a service to the community by operating opening times outwith current premises. She submitted that it would provide a service to elderly people who were unable to access premises on the opposite side of the town. She further submitted that customers should have a choice of premises with competitive prices. Ms Trainor advised that the applicant Glenford Ltd had invested a considerable sum of money in re-furbishing the premises with the intention of bringing new people to the area and the premises licence was an important part of achieving this. She stated the applicant was aware of their responsibility as premises licence holders and had put procedures in place to combat underage drinking and would not sell to drunk customers. Ms Trainor reminded Members that these premises had previously had a liquor licence but this had lapsed.

Ms Trainor advised that a petition had been submitted to Licensing Board staff supporting the application for a premises licence which had been signed by 300 customers over the last couple of months. The Depute Clerk circulated the petition to Members.

Mr Mair stated that he had not seen this petition and asked for sight of it to ensure that all the persons contributing were over the age of 18. Mr Mair was given sight of the petition and he stated that some of the names were known to him and were not over the age of 18.

The Board adjourned to consider the application.

Upon returning the Chair confirmed that there had been a full discussion and asked if there were any motions.

Councillor McKay moved to grant the provisional premises licence.

This was seconded by Councillor Coffee.

There being no other motions the Board unanimously agreed to grant the provisional premises licence as sought.

GAMBLING ACT 2005

APPLICATION FOR CLUB MACHINE PERMIT

Caprington Golf Club
Ayr Road
Kilmarnock

Granted

Riccarton Bowling Club
18 Craigie Avenue
Kilmarnock

Granted
