

EAST AYRSHIRE LICENSING BOARD

Minute of the Meeting of East Ayrshire Licensing Board held within The Council Chambers, Council Headquarters, London Road, Kilmarnock on Tuesday 11 December 2018 at 10am.

SEDERUNT: Councillor Tom Cook (Chair), Councillor Fiona Campbell, Councillor William Crawford, Councillor Ian Grant, Councillor Claire Leitch, and Councillor Jacqui Todd.

ATTENDING: Mr S McCall (Depute Clerk to the Licensing Board), Mrs C McEwan & Mr I Hiles (Licensing Standards Officers) and Ms S Duncan (Licensing Board Administrator).

APOLOGIES : Councillor John Campbell, Councillor Drew Filson, Councillor Lillian Jones and Councillor George Mair.

1. SEDERUNT

Noted.

2. MINUTE OF MEETING

2.1 The Minute of the meeting of East Ayrshire Licensing Board held on 20 November 2018 was approved and noted.

3. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Depute Clerk provided details on the following applications, which were discharged by the Clerk under delegated authority from 12 November 2018 until 30 November 2018:-

Confirmation of Provisional Grant	:	1
Minor Variation	:	4
Variation on S33 Transfer	:	1
S33 Transfer	:	1
Small Lottery – Renewals	:	25
Small Lottery – Grant	:	2
Occasional Licences	:	50
Extended Hours	:	1

The Board noted the content of the report for information purposes.

4. GAMBLING POLICY STATEMENT

The Depute Clerk reminded Board Members that in terms of the Gambling Act 2005, all licensing authorities, which in Scotland continues to be the existing Licensing Boards, had to prepare and publish an appropriate Statement of Principles which the Board will thereafter apply under the statutory regime. This Statement of Principles requires to be published every three years. The Depute Clerk confirmed that the appropriate consultation had taken place and minor amendments had been made to the Statement taking account of responses received.

The Board Members unanimously agreed to approve the revised Statement of Principles and agreed to formally adopt this Statement of Principles for the purpose of discharging its future statutory responsibilities under the Gambling Act 2005.

5. PREMISES LICENCE REVIEW

5.1 Review of premises licence for premises at Bingham's Convenience Store, 97A Glaisnock Street, Cumnock in terms of the Licensing (Scotland) Act, 2005 for breach of mandatory licensing conditions.

The Depute Clerk advised that a Premises Licence Review request had been received from Ian Hiles, Licensing Standards Officer, in respect of premises at Bingham's Convenience Store, 97A Glaisnock Street, Cumnock, as the Premises Licence Holder had failed to comply with the licensing objectives, Preventing Crime and Disorder and Protecting Children and Young Persons from Harm.

Mr Abdul Karim Nasim, premises licence holder, was present at the meeting, together with his son, Mr Irfan Nasim and daughter in law, Parveen Nasim, who all addressed the Board in respect of the premises licence review.

Parveen Irfan advised the Board Members that they had instructed Andrew Hunter, Solicitor, to represent them but that Mr Hunter was unavailable to attend the Board Meeting due to other commitments. Mrs Irfan requested that the Review Hearing be continued to allow legal representation.

The Depute Clerk advised the Board Members that correspondence had been received from Mr Hunter that he had not formally agreed to represent the Premises Licence Holder. The Depute Clerk further advised that the premises licence holder had contacted two other legal firms, namely, TLT, Solicitors, Glasgow and Beltrami and Company, Glasgow. The Depute Clerk confirmed that correspondence had been received from both legal firms that they would not be representing the premises licence holder.

Mrs Irfan confirmed that they were unhappy with the advice received from Beltrami and Company.

The Depute Clerk asked the premises licence holder for confirmation that the premises were currently for sale for £150,000. Irfan Nasim confirmed that the premises had been on the market for sale for offers over £150,000, for one year.

The Chair asked the premises licence holder when he had first contacted a Solicitor and Irfan Nasim confirmed that he had contacted a Solicitor in November 2018 when the Premises Licence Review hearing had been received.

The Board Members adjourned to consider whether the Review Hearing could proceed without the applicant having legal representation.

Upon returning the Chair moved that the Review Hearing should proceed, which was seconded by Councillor Grant. Councillor Todd moved that the Review Hearing should be continued to allow legal representation, there was no seconder for this motion. Accordingly, it was agreed that the Premises Licence Review Hearing should proceed.

The Depute Clerk outlined the Review Hearing process.

Mr Ian Hiles, Licensing Standards Officer, reported that in terms of Section 36(1) of the Licensing (Scotland) Act 2005, any person may apply to the Licensing Board for a review of the Premises Licence on any of the grounds for review.

The grounds for review are:-

- (a) That one or more of the conditions to which the Premises Licence is subject has been breached, or
- (b) Any other ground relevant to one or more of the licensing objectives.

It was the Licensing Standards Officer's view that the Licence Holder, in failing to comply with Section 15(5) and Section 119 of the Act, had breached the licensing objective of preventing crime and disorder. It was also the view of the Licensing Standards Officer that the Premises Licence Holder, in failing to provide training to staff in respect of the Age Verification Policy in respect of the premises, had breached the licensing objective of Protecting Children and Young Persons from Harm.

Section 15 of the Act states

- (1) A Licensing Standards Officer for a council area may, for the purpose of determining whether the activities being carried on in any licensed premises in the area are being carried on in accordance with-
 - (a) The premises licence or, as the case may be, occasional licence in respect of the premises and
 - (b) Any other requirements of this Act
 exercise the powers specified in sub section (2).
- (2) The powers referred to in sub section (1) are-
 - (a) Power to enter the premises at any time for the purpose of exercising the power specified in paragraph (b), and
 - (b) Power to carry out such inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary.
- (3) Where a Licensing Standards Officer exercises either of those powers in relation to any licensed premises, the person specified in sub section (4) must-
 - (a) Give the Officer such assistance,
 - (b) Provide the Officer with such information, and
 - (c) Produce to the Officer such documents as the Officer may reasonably require.
- (4) The persons referred to in sub section (3) are-
 - (a) The holder of the premises licence, or as the case may be, occasional licence in respect of the premises,
 - (b) In the case of licensed premises in respect of which a premises licence has effect, the premises manager, and
 - (c) In any case, any person working on the premises at the time the Officer is exercising the power.
- (5) A person who-
 - (a) Intentionally obstructs a Licensing Standards Officer in the exercise of any power under sub section (2), or
 - (b) Refuses or fails, without reasonable excuse, to comply with a requirement made under sub section (3)
 commits an offence.

Section 119 of the Act states:

- (1) A person who, pursuant to a sale of alcohol by that person, delivers the alcohol from a vehicle or receptacle without the information mentioned in sub section (2) having been entered, before the despatch of the alcohol, in –
 - (a) A day book kept on the premises from which the alcohol is despatched, and
 - (b) A delivery book or invoice carried by the person delivering the alcohol, commits an offence.
- (2) The information referred to in sub section (1) is –
 - (a) The quantity, description and price of alcohol, and
 - (b) The name and address of the person to whom it is to be delivered.
- (3) A person who carries in a vehicle or receptacle in use for the delivery of alcohol pursuant to a sale of the alcohol by that person any alcohol the quantity, description and price of which was not entered as mentioned in sub section (1) commits an offence.
- (4) Any person who, pursuant to a sale of alcohol, delivers the alcohol to an address not entered as mentioned in sub section (1) commits an offence.
- (5) A person who refuses to allow a constable or a Licensing Standards Officer to examine –
 - (a) Any vehicle or receptacle in use for the delivery of alcohol, or
 - (b) Any-
 - (i) Day book kept as mentioned in sub section (1)(a), or
 - (ii) Delivery book or invoice carried as mentioned in sub section (1)(b),commits an offence.

The LSO reported that at a meeting of East Ayrshire Licensing Board on Tuesday 25 September 2018, a Premises Licence Review was requested in respect of the above premises due to the lack of training provided to staff and an additional alcohol display area that was present and had not been removed, despite several requests being made. The Premises Licence Holder, Abdul Karim Nasim, and his son, Irfan Nasim (Tony), were present at the meeting. The grounds for review were upheld by the Licensing Board.

At that meeting the Chair of the Licensing Board expressed very serious concern over the lack of training and lack of knowledge of the operation of the licensed premises. He moved that the premises licence be suspended with immediate effect, until 31 December 2018 or until such time as all staff involved in the sale of alcohol within the premises had undertaken a re-training programme with an external training provider, obtained a Personal Licence and evidence of same provided to the Board. In the event that this requirement was not complied with by 31 December 2018, the Board would consider the matter again at the earliest opportunity. The Board agreed unanimously with this decision.

Immediately following the Licensing Board Meeting, the Licensing Standards Officers spoke with both Abdul Karim Nasim and Irfan Nasim (Tony), at which time guidance was provided in relation to the action required in order for the premises to be permitted to sell alcohol again. It was also stressed that contact be made with the Licensing Standards Officers should guidance be required in respect of any licensing matter, to which both agreed.

The LSO further reported that on Friday 12th October 2018, the Premises Licence Holder, Abdul Karim Nasim attended at East Ayrshire Council Headquarters along with Irfan Nasim

(Tony), his son. He produced Personal Licences for Irfan Nasim and Parveen Irfan which contained details of refresher training, the Personal Licences having been granted since the Licensing Board meeting in September 2018. A Variation application to substitute the Designated Premises Manager to be Irfan Nasim was also submitted on the same date.

As the Licence Holder had complied with the requirements of the Board the Premises were permitted to start selling alcohol daily between 10am and 10pm, with the understanding and undertaking that one of the above named Personal Licence Holders would be present during the licensed hours.

The LSO further reported that on Wednesday 17th October 2018, the premises were visited and Irfan Nasim spoken with. It was noted that the unlicensed alcohol display area had been removed. There were other persons present within the premises at this time, including the Premises Licence Holder, Abdul Karim Nasim.

At approximately 1115hrs on Wednesday 24 October 2018, Police Scotland officers attended at the premises at which time neither of the Personal Licence Holders were present. Alcohol was on display however, no sales of alcohol were witnessed. The person working was Abdul Karim Nasim, the Premises Licence Holder, who was not in possession of a Personal Licence

On Thursday 25 October 2018, the premises were visited at which time Irfan Nasim was advised that the Licensing Board had been notified by Police Scotland that no Personal Licence Holder had been present during a visit the previous day. In explanation, Irfan Nasim advised that he had been delayed while on his way to the premises that morning. Mr Nasim was requested to play CCTV footage from the previous day between the hours of 10am and the time of his arrival, however, he advised that he did not know how to operate the system on play back. Mr Nasim was asked how he would burn off any discs in the event of any crimes within the premises, to which he shrugged his shoulders. He was reminded again that one of the two current Personal Licence Holders previously notified to East Ayrshire Licensing Board, should be working during licensed hours. He provided an assurance that this would not happen again.

Following the publication of a front page advertisement in the Cumnock Chronicle dated Wednesday 31st October 2018 advertising a Weekend Alcohol Delivery Service between 5pm and 10pm between Thursday to Sunday, a visit was carried out to the premises at approximately 1430hrs on Monday 5 November 2018 at which time Irfan Nasim was present. Copies of the records required under the terms of Section 119 of the Licensing (Scotland) Act 2005 were requested in respect of all deliveries that had been made that weekend. Training Record or Personal Licence in respect of the person who had made the deliveries was also requested.

Irfan Nasim stated that the male who did the deliveries was a local janitor and explained that he didn't realize the driver needed to be trained. Mr Nasim was reminded that at the Licensing Board Meeting in September, it was clearly explained that all staff involved in the sale of alcohol within the premises had to be trained and obtain a Personal Licence. Mr Nasim was asked as to whether the delivery driver had a Personal Licence or a training record to which Mr Nasim advised that he did not. The delivery book or a day book that should be kept on the premises as required by Section 119 of the Licensing (Scotland) Act 2005 was again requested. Irfan Nasim stated that he did not have one and further added that he did not know that he needed one. I also mentioned that the delivery of alcohol should ordinarily be on the Operating Plan of the premises which in the case of Bingham's, was not. I enquired how the orders were taken, to which Irfan Nasim picked up a credit/debit card reader and stated that orders were taken over the telephone. I enquired as to what steps he took to make sure the person ringing up to make an order for alcohol delivery was over 18 years old and that the alcohol wasn't being delivered to an underage person. He again advised that the driver he used knew everyone and would not deliver the alcohol to anyone under age. The driver had

received no training in respect of acceptable forms of age verification as required by Mandatory Condition 9 of the Premises Licence. Mr Nasim was again reminded that all staff should be Personal Licence Holders as per the Licensing Boards decision of September 2018.

Irfan Nasim then stated that there had not been any deliveries made the previous weekend and that the cost of placing the advert, had been a waste of £100. As there was no day book or delivery book on the premises, I could not ascertain if this was the case.

Irfan Nasim then enquired as to whether he could make the deliveries himself. On being asked which Personal Licence Holder would be working within the premises to make alcohol sales whilst he was making deliveries he acknowledged that this would not be possible. He then stated that he would stop all deliveries from now on as he had not realized the process involved. Mr Nasim was again reminded him that he should seek guidance from the Licensing Standards Officers as regards any queries in respect of alcohol sales.

On Tuesday 6 November, a telephone call was received from a resident of Cumnock who was enquiring as to the legality of the alcohol delivery service advertised by Bingham's, Cumnock. They advised that they had ordered a bottle of Glens Vodka and a bottle of Barr Cola totaling £18 and that this order had been delivered on Sunday 4th November at approximately 6-30pm. The caller also stated that the sale was made on the doorstep with cash being handed to the delivery driver, and confirming that payment had not been made at the shop at the time of placing the order.

On Thursday 8 November 2018 at 1000hrs, the commencement of the permitted licensing hours, LSO's attended the premises. We spoke with Abdul Karim Nasim who explained that his son Irfan was not at the premises however was expected at any time. He further added that his son travelled to the shop from Bearsden where his wife operated a guest house. He also stated when asked that he did not as yet have a Personal Licence however was waiting for it to be granted by Glasgow City Licensing Board. During conversation Abdul Karim Nasim was asked if he knew the name of the person who had been employed as the delivery driver within the premises at weekends, to which he responded that he did not.

At 1025hrs, Irfan Nasim arrived at the premises and was reminded of the conversation of Monday 5 November, three days previously, at which time he had assured that no deliveries of alcohol had been made the previous weekend. He was then made aware that a telephone call had been received by a member of the public seeking clarification with regard to the alcohol delivery service and that information had been received that an alcohol delivery had been made and a cash sale had taken place on the doorstep of the house. Irfan Nasim responded that he could not remember this sale. Mr Nasim was asked as to how many deliveries his delivery driver had made the previous weekend to which he responded that he could not remember.

Mr Nasim was advised that during a visit to the premises on 25 October 2018 at which time it was requested to view the CCTV footage of the previous day, he had informed that he did not know how to operate the CCTV system. Mr Nasim was advised that Police Scotland officers based at Cumnock had informed that this information was incorrect as he did know how the CCTV system operated. Mr Nasim responded that he would need to contact Fortress Security who would be able to talk him through the process. He was reminded that whilst in the premises on the 25 October, it was suggested that he should familiarize himself with how to operate the system.

A check of the alcohol display area behind the counter found that the Minimum Unit Pricing legislation was not being complied with. The following products were on display :

5 x One Litre Bottles of Glens Vodka. 37.5% ABV
Advertised as £17-50

MUP compliant price - £18-75

7 x 75CL Bottles of Glens Vodka. 37.5% ABV
Advertised as £13.00
MUP compliant price - £13-13

This was pointed out to the Premises Licence Holder, Abdul Karim Nasim who immediately took the price cards down and corrected them by hand.

On Tuesday 21st November 2018, I spoke with Mr Colin Elder, he admitted that he was the delivery driver employed at Bingham's over the weekend of Thursday 1st to Sunday 4th November, which was the weekend immediately after the advertisement appeared on the front page of the Cumnock Chronicle dated the 31 October 2018. He stated that he is a customer at the shop and that Irfan Nasim (Tony) had mentioned about the delivery service starting that weekend and asked if Mr Elder would be interested in being the driver. Mr Elder agreed and that he would start deliveries at 5pm until the end of licensed hours that weekend.

Mr Elder stated that he had a telephone call at about 2pm on Saturday 3rd November asking if he was free to carry out a delivery, he was not free as he understood that deliveries would start at 5pm. He went in to the shop later that afternoon and was told that the delivery order had been cancelled.

Mr Elder was asked to carry out a delivery on Sunday 4th November. He was asked to make a delivery of a bottle of alcohol and some other items to an address in Holmburn Road, Cumnock. He was given a bottle of vodka in a bag along with other items and was told by Irfan Nasim (Tony) that the cost of the order was £18 and that cash would be paid at the door. He was also given £15 to cover the cost of diesel for this delivery and any others that may be required that evening. Mr Elder admitted that he made the delivery and a cash sale of £18 at the door of the house, he was given £2 as a tip. This was the same information as provided by the person who made the initial telephone call and contrary to what Irfan Nasim has stated. He added that he did not make any further deliveries that weekend.

Mr Elder added that he was spoken to by Irfan Nasim's father the following Tuesday and told that the deliveries of alcohol had been stopped due to problems with licensing. Irfan Nasim (Tony) told him the same the following Thursday.

I asked Mr Elder if he had received a minimum of two hours training from Irfan Nasim in respect of the sale of alcohol prior to starting work at the shop as the delivery driver. He stated that he had not. I further asked if Irfan Nasim had given him any training in respect of the forms of identification acceptable for the sale of alcohol such as driving licences and passports and to challenge the age of anyone who appeared to be under the age of 25 years, he again replied that he had not. I also asked if Irfan Nasim had supplied him with a delivery book to record the sale, again, he replied that he had not been provided with a book.

Colin Elder also stated that he was not a Personal Licence Holder and had not undertaken a day's training course in respect of the sale of alcohol.

The LSO concluded that the Premises Licence in respect of Bingham's, 97A Glaisnock Street, Cumnock, was suspended until the 31 December 2018 to allow for the staff working within the premises to undertake further training. The suspension imposed by the Licensing Board on 25 September was lifted due to two persons having undertaken the required training and being in possession of a Personal Licence. As at the date of this report, the premises have been open for a period of just over three weeks and have already demonstrated that there are still shortfalls in the effective management of the premises, which include :

- a) Permitting the delivery of alcohol contrary to Section 119 of the Licensing (Scotland) Act 2005 and by using a member of staff who had not been trained in the sale of alcohol, the Premises Licence Holder has not taken sufficient steps to prevent the sale of alcohol to under age persons, in contravention of the licensing objective of Preventing Crime and Disorder and Protecting Children and Young Persons from Harm.
- b) Permitting deliveries of alcohol - The quantity, description and price of the liquor and the name and address of the person to whom it is to be delivered not being entered in a day book kept in the premises from which the liquor is dispatched, this being contrary to Section 119 of the Licensing (Scotland) Act 2005, in contravention of the licensing objective of Preventing Crime and Disorder.
- c) In respect of the sale of alcohol for deliveries, the Premises Licence Holder did not ensure that the sale took place within the premises that holds a Premises Licence and by allowing the sale of alcohol to be made on a doorstep, this is contrary to Section 1(3)(b) of the Licensing (Scotland) Act 2005, in contravention of the licensing objective of Preventing Crime and Disorder.
- d) Refusing or failing without reasonable excuse, to comply with a requirement made under Section 15(3) of the Licensing (Scotland) Act 2005 by a Licensing Standards Officer. This being that the Licensing Standards Officer wished to view the CCTV system within the premises to ascertain that the activities being carried on in the licensed premises were in accordance with the premises licence or any other requirements of the Licensing (Scotland) Act 2005. The Licensing Standards Officers were informed by the Personal Licence Holder, Irfan Nasim (the son of the Premises Licence Holder) that he did not know how to operate the CCTV system, this was subsequently found to be inaccurate. This is an offence under Section 15(5) of the Licensing (Scotland) Act 2005, in contravention of the licensing objective of Preventing Crime and Disorder.

Further identified breaches included:-

- a) On two visits, one made by Officers of Police Scotland and one by Licensing Standards Officers, the premises were open during licensed hours without a Personal Licence Holder working behind the counter, as per the requirement by East Ayrshire Licensing Board that all staff involved in the sale of alcohol undertaking a re-training programme, obtain a Personal Licence and providing evidence of such to the Licensing Board, following suspension of the Licence.
- b) Employing a delivery driver who had received no training in the sale of alcohol. This is again contrary to the requirement by East Ayrshire Licensing Board that all staff involved in the sale of alcohol undertaking a re-training program, obtain a Personal Licence and providing evidence of such to the Licensing Board.
- c) Failing to ensure that all products of alcohol on display were compliant with the legislation in respect of the Minimum Unit Pricing of alcohol despite guidance having previously been provided upon the commencement of the legislation.

The LSO reported that he had spoken with the Cumnock Town Police officers who visited Bingham's on the 24 October 2018 who advised that they knew Irfan Nasim (Tony) and also further advised that he knew how to operate the CCTV system having investigated incidents within the premises previously and could provide log in details and assist if required.

The LSO reported that there were serious concerns as to the management of the premises and felt that the management of the premises continued to fall short of the standard expected. After the Licensing Board Meeting in September 2018, it was stressed to the Premises Licence Holder and his son that if they had any questions or queries in respect of the sale of

alcohol, they should make contact with one of the Licensing Standards Officers. No telephone calls have been received by either of the Licensing Standards Officers.

The LSO respectfully requested that the Board Members considered the Premises Licence Review in respect of Bingham's, 97A Glaisnock Street, Cumnock, as he believed that the licensing objectives of Preventing Crime and Disorder and Protecting Children and Young Persons from harm had not been upheld. He further requested that the Licensing Board take whatever action they deemed necessary, to ensure the licensing objectives were upheld.

There were no questions for the LSO.

Parveen Irfan stated that they were unaware that the delivery driver was required to have a personal licence. In respect of the access to the CCTV they had been attempting to contact PC Lyndsay of Police Scotland to confirm that to access the CCTV you needed to contact Fortress to obtain a password which Irfan Nasim was unaware. Mrs Irfan confirmed that Abdul Karim Nasim had now obtained a Personal Licence.

Mrs Irfan further stated that the operation of the premises was taken over by Irfan Nasim due to his older brother being unable to continue operating the premises and that Abdul Karim Nasim had come out of retirement to assist in the operation of the premises. She further stated that they had a guest house business in Glasgow and between running the guest house and caring for their 5 children, it was difficult to find the time to operate the licensed premises. Mrs Irfan stated that they were looking to sell the premises and repay an outstanding loan.

The LSO referred to the LSO visit on 25 October 2018 and asked why Irfan Nasim didn't attempt to contact Fortress to obtain a password. Irfan Nasim confirmed that he was unable to work the CCTV. In respect of the telephone call received from a resident stating that a home delivery had been made on 4 November, the LSO asked if a sale of alcohol had taken place on that date and Irfan Nasim confirmed that an alcohol sale had taken place but that he was unaware that the delivery driver needed to have a personal licence. The LSO asked why no contact had been made to the LSOs and Parveen Irfan stated that they should have contacted the LSOs for advice. The LSO asked if the premises had been closed between the date of suspension from 25 September 2018 to 12 October 2018 when the suspension had been reversed. Irfan Nasim confirmed that the premises had been closed.

The Chair asked if they had been aware that they were asking the delivery driver to commit an offence and was this covered in Irfan Nasim's training for his personal licence. Irfan Nasim stated that this was covered in her personal licence training and that he had forgotten and apologised for his mistake.

Councillor Grant pointed out that the premises had been up for sale for 12 months and asked if there was a reason for this. Irfan Nasim confirmed that the companies that had been selling the property for them had had no interest but that the premises were now being sold by Christie and Co and that there was now a number of interested parties for the purchase of the premises. Irfan Nasim further confirmed that they had no interest in continuing to operate the premises and wanted to sell on the business to pay off an outstanding loan. Parveen Irfan also pointed out that Beltrami and Company, Solicitors, had provided them with advice but that they were unhappy with the advice given.

Councillor Leitch referred to the home delivery to an underage person and pointed out that if this became common knowledge that this type of sale would appeal to children and young persons under age of 18. Councillor Leitch asked if any advice had been given to the delivery driver on the sale to underage persons. Irfan Nasim confirmed that the delivery driver was a local school janitor and would not sell alcohol to persons underage.

The Depute Clerk asked for information in respect of the breach of the MUP. Irfan Nasim stated that he had wrongly tagged the alcohol but that when the alcohol would have gone through the till it would have shown the correct price. He confirmed it had been rectified as soon as it was pointed out.

The Depute Clerk asked if the previous reason for suspension had been understood by the Premises Licence Holder and asked when the DPM had been late attending the premises had the sale of alcohol been refused and recorded in the refusal book. Parveen Irfan confirmed that they had understood the previous suspension but that it was difficult to be on the premises due to their business in Glasgow. She confirmed that no alcohol had been sold when the DPM had been late but that they were unaware of the requirement for a refusal book.

The Depute Clerk asked why the premises had been closed during the suspension period as the suspension only related to the sale of alcohol and the premises could have continued operating as a convenience store. Irfan Nasim confirmed that it was not economical to keep the premises open as the sale of alcohol amounted to over 50% of the business and they could not afford to pay their staff.

The LSO summed up by stating that the facts presented to the Board Members showed that within a short period of time from the date of when the aforementioned suspension was reversed on 12 October 2018 to the submission of the Premises Licence Review request, there was a continued blatant disregard for the Licensing legislation. The Premises Licence Holder, Mr Abdul Nasim and his son Irfan Nasim were spoken to by both the Licensing Standards Officers upon suspension of the premises licence on 25 September 2018 and it was stressed at that time that contact should be made with either LSO in respect of any queries in respect of the sale of alcohol, but no contact had been made to the LSOs.

The LSO completed his summation by stating that as detailed in his review request that the Licensing Objectives of Preventing Crime and Disorder and Protecting Children and Young Persons from Harm had not been maintained and there had been a breach in the Minimum Unit Pricing.

The LSO requested that the Board Members take whatever appropriate action they deemed necessary to ensure that the Licensing Objectives were upheld.

Irfan Nasim summed up by apologising for the mistakes made in the operation of the premises.

The Depute Clerk confirmed that the Licensing Board had to decide whether the grounds for review had been established and what outcome the Licensing Board could take, namely:- written warning, variation of premises licence, suspension, revocation or no action.

The Depute Clerk advised the premises licence holder that the Board Members would now retire to consider the matter further and that he should consider what outcome they would want, if the grounds for review had been deemed to be established.

Upon returning the Chair moved that the grounds of review had been established, namely that the licensing objectives of Preventing Crime and Disorder and Protecting Children and Young Persons from Harm had not been upheld. This was unanimously agreed by the Board Members.

The Chair asked the premises licence holder if he had any comments to make on the outcome of the review hearing. Irfan Nasim asked that the premises licence be varied to enable Abdul Karim Nasim to become the Designated Premises Manager now that he had obtained his Personal Licence.

The Chair stated that there had been a catalogue of breaches of the licensing objectives in the operation of the premises and failure to implement the Minimum Unit Pricing and moved that the premises licence be suspended until such time as the premises are sold and also that a Personal Licence Review take place in respect of Irfan Nasim who was the DPM of the premises. Councillor Grant seconded the motion and it was unanimously agreed by the Board Members.

The Depute Clerk confirmed that the grounds of review had been established and that no alcohol could be sold from the premises until the premises had been sold. He further confirmed that the premises could remain open for business but that all the alcohol had to be removed from the premises.

The Depute Clerk stated that the Premises Licence Holder should liaise with the Licensing Standards Officers to advise when a Transfer of Premises Licence would be submitted. A motion would be put before the Board Members to recall the suspension and consider the Transfer of the Premises Licence at that time.

The Depute Clerk confirmed that a decision had been taken by the Board Members that a Personal Licence Review was required for Abdul Karim Nasim, Irfan Nasim and Parveen Irfan, due to their conduct being inconsistent with the Licensing Objectives of Preventing Crime and Disorder and Protection of Children and Young Persons from Harm.

Irfan Nasim thanked the Licensing Board for their decision and confirmed he would liaise with the Licensing Standards Officers.

6. APPLICATIONS

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

There being no further business, the meeting ended at 11.50am.

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR VARIATION OF PREMISES LICENCE

RAD Ltd.
c/o Lochside House Hotel
New Cumnock

Lochside House Hotel
New Cumnock

Details of the variation:-

Amend the licensed hours as follows:-

Current Hours - On Sale

Monday to Wednesday : 11am – 12 Midnight
Thursday to Sunday : 11am – 1am

Off-Sale

Sunday to Saturday : 11am – 10pm

Proposed Hours - On Sale

Sunday to Saturday : 11am – 1am

Off-Sale

Sunday to Saturday : 11am – 10pm

Thomas Stevenson, Finance Director for RAD Ltd appeared before the Board on behalf of the Premises Licence Holder.

The Depute Clerk outlined the terms of the application and confirmed that there were no objections or representations in respect of the application.

Mr Stevenson stated that the premises were a successful wedding and conference venue and that 180 weddings were booked for 2019 over the seven days of the week. Mr Stevenson stated that currently extended hours were applied for to extend the licensed hours until 1.00am at the start of the week. He also stated that the premises were used by businesses for team building events and normally these were booked for the beginning of the week. Mr Stevenson pointed out that the premises were situated on the outskirts of a town and would not constitute a noise nuisance. Mr Stevenson stated that the application was to regularise the 1am and asked that the Board grant the application.

The Depute Clerk confirmed that the premises had been granted 130 extended hours to 1am since 2009 with no adverse comments. The Depute Clerk also pointed out that the extension to 1am would not be affected by the overprovision statement within the Licensing Board's Policy Statement.

The Chair moved that the application be granted which was seconded by Councillor Jacqui Todd, this was unanimously agreed by the Board Members.

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LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR VARIATION OF PREMISES LICENCE

Mohammad Shoaib
c/o 25 Titchfield Street
Kilmarnock

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25 Titchfield Street
Kilmarnock

Details of the variation:-

Variation to increase the alcohol display area within the premises from 12.225m² to 15.6m².

Mohammad Shoaib, Premises Licence Holder was present along with a family friend.

The Depute Clerk outlined the application and advised that there were no objections in respect of the application but a representation had been received from NHS Ayrshire and Arran.

The Depute Clerk asked if the alcohol display area had already been amended and Mr Shoaib confirmed that it had been amended six months ago.

The Depute Clerk reminded Members that in terms of their Policy Statement, it had been determined that East Ayrshire was overprovided for in respect of off-sales and accordingly it was now incumbent on the applicant to provide a submission that would be sufficient to rebut the presumption of refusal of the application. This would have to be by reference to the licensing principles. He further pointed out to the applicant that if he had applied to the Licensing Board at the time of the amendment to the premises, the overprovision had not been approved at that time.

The Depute Clerk pointed out that this was the first application received since the new Policy Statement came into force and that it may be appropriate for the applicant to seek legal advice in respect of his application.

The Chair asked the applicant if he wanted to continue the application to seek legal advice and the applicant agreed for the application to be continued.

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