

## **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 24 March 2018 at 10am.**

- SEDERUNT:** Councillor Tom Cook (Chair), Councillor John Campbell, Councillor William Crawford, Councillor Drew Filson, Councillor Ian Grant, Councillor Claire Leitch and Councillor George Mair.
- ATTENDING:** Mr S McCall (Depute Clerk to the Licensing Board), Mrs C McEwan and Mr I Hiles (Licensing Standards Officers) and Mrs P Duncan and Ms S Duncan (Licensing Board Administrators).
- APOLOGIES :** Councillor Fiona Campbell, Councillor Lillian Jones and Councillor Jacqui Todd.

### **1. SEDERUNT**

Noted.

### **2. MINUTE OF MEETING**

2.1 The Minute of the meeting of East Ayrshire Licensing Board held on 13 March 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 5 March 2018 – 16 April 2018:-

Minor Variation	:	3
Variation on Transfer	:	1
S33 Transfer	:	1
Grant of Personal Licence	:	20
Automatic Entitlement to Gaming Machines	:	2
Small Lottery – Renewals	:	9
Occasional Licence	:	91
Extended Hours	:	10

The Depute Clerk advised that an application for extended hours had been received in respect of the nightclub SOMA, 58 John Finnie Street, Kilmarnock, to increase the licensed hours from 6pm to 2.30am to 6pm to 3am to cater for the Scottish Grand National. The Depute Clerk further advised that the LSO's report recommended refusal as it was not a special event of local or national significance for premises that were opening as a night club. The extended hours application was refused.

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

### **4. UPDATE : REVISED STATEMENT OF LICENSING POLICY**

The Depute Clerk reminded Board Members that an informal consultation to obtain the views of as many interested parties as possible on the Board's existing Policy Statement, had been carried out with comments due not later than 22 December 2017. The Depute

Clerk advised that there had been a disappointing response to the consultation, with the main responders being the NHS and Alcohol Focus Scotland.

The Depute Clerk reported that detailed statistical information in respect of the Overprovision Assessment should be received by the end of May/beginning of June to allow a draft Policy Statement to be prepared and submitted for consideration by the Board at the Licensing Board meeting on 26 June 2018. A formal consultation on the Draft Policy Statement would then take place between 9 July and 3 September 2018 to enable the finalised Policy Statement to be considered at the October Licensing Board meeting.

It was agreed to note the updated position on the Statement of Licensing Policy and delegate to the Clerk to arrange meetings with interested parties to share their views on the draft Policy Statement.

## **5. BEST BAR NONE**

Carolyn McEwan, Licensing Standards Officer, updated Members on the recent awards presented to two Kilmarnock premises at the National Best Bar None Awards Ceremony held in Dunblane Hydro on Thursday 29 March 2018.

Ms McEwan reminded Members that Best Bar None was a National Award Scheme, administered by the Scottish Business Resilience Centre, and was aimed at raising standards and rewarding licensed premises who undertake positive management practices in support of a safe night out. The Scheme was supported by leading members of the alcohol industry who factor social responsibility as a key priority, namely Diageo, Molson Coors, Heineken, Maxxium, Tennents and Chivas Brothers. The Scheme was also supported by Police Scotland, Scottish Fire and Rescue and the Scottish Government.

The purpose of the Best Bar None Scheme is:

- To reduce alcohol related crime
- Promote social responsibility and duty of care
- Improves knowledge and skills to assist in responsible management
- Promotes partnership working to identify good practice and areas for improvement
- Supports due diligence
- Awards both locally and nationally to reward success

The Scheme gave each licensed venue the opportunity to prove it met a standard of operation and rewarded safe and well managed venues with the issue of a Bronze, Silver or Gold plaque which could be used to promote the venue.

Members, having previously agreed to support a Best Bar None scheme in East Ayrshire, were advised at a meeting on 24 October 2017 that nine premises within Kilmarnock Town Centre had applied to participate in the Scheme.

All participating premises were independently assessed and an Award Ceremony took place in WG 13 in December 2017. All nine premises were given official accreditation for ensuring they and their staff met a level of standard which assured the public they would be able to enjoy a safe and welcoming atmosphere.

Gold awards were presented to The Brass & Granite and Rock Diner for Independent Pubs Category while a gold award was also presented to WG13 for Specialist Entertainment Venue. Silver awards were presented to First Edition, The Clansman, Macks Bar and O'Shannons, with the Tartan Sheep and Wetherspoons attaining Bronze accreditation.

The National Best Bar None Awards Ceremony took place on Thursday 29 March 2018 at Dunblane Hydro, and 53 venues from across Scotland were competing for 11 Category Awards. WG13 and The Brass & Granite were shortlisted from the 53 venues competing to receive an award.

WG13 won Best Specialist Entertainment Venue and were crowned National Champion, which was an excellent achievement and a credit to East Ayrshire. While The Brass & Granite did not secure The Best Independent Pub Award they were hoping to obtain, they were awarded Best Newcomer, again an excellent achievement given the level of competition involved.

Ms McEwan stated that both premises were to be congratulated for their achievement and commitment to creating safe social spaces and providing a positive experience for their customers.

All nine premises have re-applied for this year and it was hoped that other premises outwith Kilmarnock Town Centre would apply to join this very worthwhile scheme.

The Board agreed that this was a worthwhile scheme and hoped that the wider communities would take part in the future. The Chair asked the Depute Clerk to send a congratulatory letter on behalf of the Board to the two winners.

## **6. APPLICATIONS**

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

There being no further business the meeting ended at 11.30am

**LICENSING (SCOTLAND) ACT 2005**  
**APPLICATION FOR PROVISIONAL PREMISES LICENCE**

Usman Bashir  
14 Ferguson Gardens  
Kilmarnock

News Express  
110 John Finnie Street  
Kilmarnock

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

Proposed Licensed Hours – Off Sale

Sunday – Saturday                      10am – 10pm

The premises will be licensed Newsagents. The proposed alcohol display area will be 16.38m<sup>2</sup>.

Disabled Access and Facilities Statement

The premises has disabled access – the door is wide enough for wheelchair access and the premises is on the ground floor. Assistance dogs will be permitted within the premises.

**The Depute Clerk advised Board Members that the application was for a provisional premises licence for an existing convenience store and that an objection in respect of this application had been received from NHS Ayrshire and Arran, in respect of the objectives of overprovision and protecting and improving public health.**

**Peter Lawson, Solicitor, appeared before the Board along with the applicant Usman Bashir.**

**Dr Joy Tomlinson, Interim Director of Public Health and Liam Wells, ADP Coordinator, appeared in support of the objection from NHS Ayrshire and Arran.**

**The Depute Clerk asked if there were any procedural issues. As there were none, the objection was circulated to the Members and the Hearing proceeded in accordance with the Hearing procedures.**

**Liam Wells submitted that there was robust evidence that the most disadvantaged people were likely to consume alcohol and experience the greatest health issues leading to hospitalisation and mortality. Mr Wells continued by stating that a recent article in the Herald by Stephen Naismith reported that the number of alcohol outlets within East Ayrshire were 5 times higher than the national average. Mr Wells pointed out that the applicant premises were situated within one of the most disadvantaged areas within East Ayrshire and that the Board Members should take account of this when making their decision.**

**Dr Tomlinson submitted that NHS Ayrshire & Arran had carried out a consultation on the connection between the number of alcohol outlets and increased health issues connected to alcohol. The consultation showed that the more that alcohol was available the higher risk to health. Dr Tomlinson stated that East Ayrshire had 7 communities significantly worse than the Scottish average, with Kilmarnock Town Centre area and Bonnyton being communities most affected. Dr Tomlinson further submitted that a report carried out by The Centre for Research on Environment Society and Health (CRESH) highlighted that the applicant's premises were within the most densely populated alcohol outlets. Dr Tomlinson stated that even though the Kilmarnock and Bonnyton area was particularly bad, alcohol was having a harmful affect over all of East Ayrshire.**

**Mr Lawson had no questions for the objector.**

Mr Lawson submitted that the premises were part of a family business, consisting of a convenience store, take-away food premises situated next door and properties above the premises. The upstairs premises used to be a night club. Mr Lawson advised that the alcohol licence was applied for to improve customer service by offering a licensed convenience store, newsagents, lottery machine, cash pay point and cash machine. The applicant had invested £20,000 in the refurbishment and it was intended to employ a further 2 staff. The licensed area would be a small area of 16.38sq.m. similar to other retail stores and would offer wines, craft beers. It was not intended to stock single bottles of beer or caffeine based drinks which would attract problem drinkers. Mr Lawson stated that there were a high number of vacant premises and that businesses were now required to provide as wide a service as possible to enable them to compete with other businesses. Mr Lawson pointed out that Kilmarnock had a problem sustaining business in the Town Centre.

Mr Lawson pointed out that the objection was submitted in terms of over provision and preventing and improving public health. Mr Lawson further pointed out that there was no overprovision policy within East Ayrshire and that the onus was on the objector to prove there was overprovision. Mr Lawson submitted that there was no evidence to support the Health Body's opinion that increased premises led to increased consumption of alcohol. If a person was going to buy a bottle of wine they would still buy it whether there was an increased number of premises. There was only one other alcohol facility within the vicinity of these premises.

Mr Lawson referred to the CRESH statistics which stated that the datazone area of Bonnyton and Town Centre had 6 off-sales alcohol outlets per km<sup>2</sup> around its population centre which was higher than the Scottish average of 2.5 outlets per km<sup>2</sup>, higher than the East Ayrshire average of 1.9 outlets per km<sup>2</sup> and was in the top 10% of neighbourhoods in Scotland and top 10% of neighbourhoods in East Ayrshire. Mr Lawson submitted that this was no surprise as town centres were normally where people shop. Smaller areas of condensed population resulted in higher number of outlets.

Mr Lawson completed his submission by stating that there was no evidence that these premises would be detrimental to the public's health. The applicant knew his customers and it was a small alcohol area of 16.38sqm. Mr Lawson stated that the applicant would give an undertaking not to provide caffeine based alcohol or individual bottles of beer and would be providing reasonably priced wine and craft beer. Mr Lawson proposed that the Board Members grant the provisional premises licence.

Dr Tomlinson pointed out that the statistics focused on population health harms in respect of availability, price and marketing and not individuals and asked Mr Lawson how the applicant would deal with a customer who had a drink problem.

Mr Lawson stated that Mr Bashir would be applying for a Personal Licence and that the current staff were trained and had a knowledge of alcohol sales. He also advised that the 2 new members of staff would have Personal Licences and any part-time staff would be trained. He reminded Members that an undertaking would be given not to sell caffeine based alcoholic drinks which would assist in deterring problem drinking customers.

The Chair asked how the 16.38sqm related to the whole of the premises and Mr Lawson confirmed that it was less than 10% of the area of the premises.

Councillor Grant pointed out that there were other alcohol outlets within the vicinity of these premises, namely Sinforiani Specialist and Morrisons Supermarket. Councillor Grant further pointed out that if these premises weren't licensed then customers would still be able obtain alcohol elsewhere.

**Dr Tomlinson stated that she welcomed the opportunity to debate this issue and pointed out that there was no other means to stop availability of alcohol. Dr Tomlinson pointed out that alcohol caused harm to people other than problem drinkers as people can develop liver disease over a length of time. Also problem drinkers were okay when they were in hospital but when they were discharged from hospital they were surrounded with alcohol outlets which were difficult to avoid. Dr Tomlinson stated areas require to be developed for the communities of the future.**

**Mr Lawson pointed out that the alcohol display area of the premises would be less than 10% of the whole of the premises.**

**The Depute Clerk asked for confirmation from Mr Lawson on whether the refurbishment would go ahead if the provisional licence was refused. Mr Lawson confirmed that the refurbishment would go ahead but not the extension, if the licence was refused.**

**Councillor Mair pointed out that if the licence was granted the Board would have no control over the type of alcohol that was being sold.**

**Mr Lawson reminded Members that an undertaking would be given on the types of alcohol sold and if this was broken then there were procedures in place that could be taken by the Board.**

**The Depute Clerk advised the Board that he was not aware of any undertakings previously given by other premises being broken at this Board. The Depute Clerk further advised that if the licence was granted the Members could potentially add a condition to the licence subject to the agreement of the applicant. Mr Lawson confirmed that the applicant would be happy for a condition to be added to the licence.**

**Councillor Mair pointed out that the licensed area was very small and asked whether the applicant was adding the facility to finance the refurbishment of the premises and employ additional staff.**

**Mr Lawson answered Councillor Mair's question by stating that the premises wanted to offer a mixed business to attract customers and that the provision of alcohol would add to the profits of the premises.**

**Councillor Leitch asked Dr Tomlinson if there was a desensitisation to alcohol if birth to 23 year olds were increasingly exposed to alcohol through the increased number of alcohol outlets.**

**Dr Tomlinson stated that education and information doesn't work when attempting to alter individual behaviour and that it was the socially normal perceptions that require to be altered. Dr Tomlinson stated that alcohol advertising and access to alcohol does alter behaviour and that there was robust evidence that the reduction of the availability, pricing and marketing of alcohol would lead to the change in behaviour.**

**Councillor Mair asked if the take-away was part of the premises and Mr Lawson confirmed that it was adjacent to the premises although not part of the proposed licensed premises and were not internally linked.**

**Councillor Filson asked the LSOs if there were any issues that the Board should be aware of in respect of John Finnie Street. The LSOs confirmed there were no issues in John Finnie Street.**

**The Depute Clerk confirmed that there were no other premises on John Finnie Street that were solely off-sales premises. The nearest being Sinforianis on West George Street.**

**Mr Wells summed up by stating that emphasis was being put on the premises only stocking craft beer and fine wine but Mr Wells pointed out that all alcoholic products from Champagne to caffeine based alcohol caused problems. He further stated that even though the proposed**

licensed area of these premises was small it would add to the significant high level of licensed areas which currently exist within East Ayrshire.

Mr Lawson summed up by stating that the Scottish Government had not set an overprovision policy for the full of Scotland and that overprovision had to be dealt with on a local basis. Mr Lawson pointed out that there were no other dedicated off-sale premises on John Finnie Street. He finished by stating that the premises were a responsibly operated convenience store attempting to increase business and attract customers by adding the off-sale facility and that the provisional premises licence should be granted.

The Board Members adjourned to consider the matter further.

Upon returning the Chair moved that the application be refused on the basis that it was inconsistent with the objective of protecting and improving public health. The motion was seconded by Councillor Grant.

Councillor Campbell moved that the application be granted. There was no seconder for this motion.

The Board Members agreed that the application be refused.

The Depute Clerk confirmed that the application had been refused solely on the objective of protecting and improving public health and not overprovision.

Mr Lawson requested a Statement of Reasons.

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**GAMBLING ACT 2005**  
**APPLICATION FOR CLUB MACHINE PERMIT**

Stewarton Bowling Club  
1B Dunlop Street  
Stewarton

Permission to make available for use, up to three gaming machines of Category B3A, B4, C or D (category B3A machines may not be made available for use in commercial clubs).

The Depute Clerk advised that no objections or representations had been received in respect of this application.

The Board agreed unanimously to grant the permit.

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