

EAST AYRSHIRE LICENSING BOARD

Minute of the virtual Meeting of East Ayrshire Licensing Board, held digitally through Microsoft Teams, on Tuesday 20 October 2020 at 10am

SEDERUNT: Councillor Tom Cook (Chair), Councillor Fiona Campbell, Councillor William Crawford, Councillor Ian Grant, Councillor Lillian Jones, Councillor Claire Leitch and Councillor George Mair.

ATTENDING: Mr S McCall (Depute Clerk to the Licensing Board), Inspector J Peter (Police Scotland), Mrs C McEwan and Mr I Hiles (Licensing Standards Officers) and Mrs P Duncan (Licensing Board Administrator).

APOLOGIES : Councillor John Campbell, Councillor Drew Filson and Councillor Jacqui Todd.

1. SEDERUNT

Noted.

1.1 Exclusion of Press and public

The Licensing Board resolved that the press and public be excluded from the meeting for the following items of business on the grounds that if members of the public were present, there would be a real and substantial risk to public health due to infection or contamination with coronavirus.

2. MINUTE OF MEETING

2.1 Minute of the meeting of East Ayrshire Licensing Board held on 22 September 2020 was agreed and noted.

3. APPLICATIONS

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

There being no further business the meeting ended at 12.20pm

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR PERSONAL LICENCE

Gordon Bell

The Depute Clerk advised that Gordon Bell had been convicted of a relevant offence in terms of the Licensing (Scotland) Act 2005.

The Depute Clerk advised that Mr Bell had accepted an invitation to participate in the meeting, however had failed to join the meeting.

The Board agreed to continue consideration of the application in Mr Bell's absence.

Inspector Peter confirmed that Gordon Bell was convicted at Paisley Sheriff Court on 14 August 2015 of the offence, assault to injury AGG: bail domestic. Sentence was deferred to 18 December 2015 when Mr Bell was fined £150.

Inspector Peter advised that he had been unable to obtain full details of the charge from Court.

Councillor Leitch expressed her concern regarding the charge.

The Depute Clerk reminded Members of the options available to them when considering the application.

Councillor Crawford asked if Mr Bell had any other convictions. The Depute Clerk reminded Members that only relevant convictions in terms of the Licensing (Scotland) Act 2005 were brought before the Board.

Councillor Mair moved that the application be continued to a future meeting of the Board to allow Mr Bell an opportunity to appear and address the Board on the conviction and to allow Inspector Peter time to obtain further details of the charge from Court.

The Board agreed unanimously to continued consideration of the application to the next meeting of the Board.

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

Martin Boyle

The Oven
8 Vennel Street
Stewarton

Details of the variation:-

Permission for alcohol to be sold for consumption off the premises (off-sales).

The Depute Clerk advised that the proposed variation was a request to permit off-sales from the premises, which was contrary to the Board's policy.

The Depute Clerk advised that an objection had been received from NHS Ayrshire & Arran in respect of the application.

Mr Boyle appeared before the Board to speak in support of the application, together with Leona Young.

Due to the current workload in relation to COVID-19, NHS Ayrshire & Arran were unable to be represented at the meeting.

The Depute Clerk confirmed with Mr Boyle that there were no procedural issues and the hearing proceeded in accordance with the agreed hearing procedure.

The objection letter from NHS Ayrshire & Arran was made available to Members and read as follows:-

NHS Ayrshire & Arran Public Health Department and East Ayrshire Alcohol & Drug Partnership fully support the Licensing Board's overprovision policy and consider that this application provides a clear instance of the type of situation where this policy is relevant.

The premises currently operate as a restaurant with an on-sales licence and is situated within the Stewarton West neighbourhood of East Ayrshire. We attach the most recent traffic light alcohol harm chart which illustrates the rates of alcohol related harm. The Stewarton West neighbourhood rate of alcohol related harm is not significantly different from the Scottish average. In terms of East Ayrshire, Stewarton West is the neighbourhood with the sixth highest rates of alcohol related harms. This neighbourhood is also statistically worse than the Scottish average for the number of the population who are income deprived.

Research undertaken by Alcohol Change UK and Alcohol Focus Scotland (AFS) highlights that although the majority of individuals are drinking the same as before or less, 27% self-report drinking more during lockdown and half of those report drinking to cope with stress and anxiety.

There is robust evidence which shows that limiting further alcohol availability will have a positive impact on reducing health harms from alcohol and this premises is situated in close proximity to already established off-sales premises. In light of the above and appended information, we would offer our support to East Ayrshire Licensing Board upholding the overprovision policy.

Mr Boyle pointed out that the statistical information provided by NHS Ayrshire & Arran was from 2017. Mr Boyle advised that he was familiar with the area as had lived in Stewarton all of his life. Referring to the Stewarton West area mentioned in the objection, Mr Boyle advised that new social housing had recently been built and that the restaurant delivered takeaway meals far wider than the Stewarton West area.

Mr Boyle continued that the company had invested significantly in the premises and were looking at ways to survive in the current circumstances. He explained that IT systems

had been installed to allow all aspects of ordering to be contactless. The premises had its own App. for ordering meals, deliveries could be tracked, if in doubt about a customer's age, ID could be captured at delivery and delivery drivers would complete two hours training.

Mr Boyle stressed that he did not intend to offer an off-sales service, nor would he permit large quantities of alcohol to be delivered. It was the intention to supply alcohol with a meal in an attempt to give customers a restaurant feeling in their own home.

Referring to the coronavirus pandemic, Mr Boyle advised that he followed the regulations and guidelines issued by the Scottish Government however had concerns for the business. He explained that permitting off-sales may assist in the financial crisis as there was currently approximately £2,000 worth of stock at the premises which, with each day that passed, was going out of date.

Mr Boyle advised that the company had 4 Directors, all of whom were local to Stewarton and the Stewarton West area. He concluded that Stewarton had increased in population, that he had over 20 local employees, that the company sponsored local events and that the request to include off-sales was an attempt to allow the business to survive in these difficult times and to keep customers safe in their own homes.

The Depute Clerk asked if Mr Boyle wished to address Members on the Board's overprovision policy and in particular the Board's expectation that applicants who are seeking the grant of a new off-sales premises licence would provide robust and reliable evidence to the Board on why the benefit to the licensing objectives through the grant of their application outweighs the detriment to the licensing objectives.

Mr Boyle submitted that the current situation was one that no one had faced before and that he was trying to save the business. He pointed out that local pubs and restaurants were closing and people were losing jobs, all of which was detrimental to people's mental health, and that he was trying to stay positive in a difficult situation.

The Chair reminded Members that, although the NHS referred to the Stewarton West area, the overprovision policy applied to the whole of East Ayrshire and hoped that the difficult times everyone was currently facing would be short term.

The Chair asked if Mr Boyle would still arrange deliveries of food if permission for off-sales was not granted.

Mr Boyle did not think that that deliveries would be financially viable without off-sales. He advised that the company had a three year business plan, which had not factored in COVID-19 and was currently trying to keep the business going, keep staff and continue to provide a service.

Councillor Leitch asked if he intended to provides takeaway food and alcohol beyond COVID-19.

Mr Boyle responded that post CODIV-19, the plan was to bring customers back to the restaurant but meantime he was trying to save the business.

Councillor Jones asked if customers could order alcohol only for delivery.

Mr Boyle explained that any order taken would be via the App. If the order did not include food, the order would not be accepted as the main focus of the business was food.

Councillor Jones asked what percentage of the business' income came from takeaways.

Ms Young advise that takeaway sales had gone down by approximately 60% and was very much borderline at the moment.

Councillor Campbell asked if being permitted off-sales would be instrumental in saving jobs and Mr Boyd confirmed that it would be instrumental in saving jobs.

There being no further questions, the Board adjourned to consider the application.

Upon returning the Chair moved that the variation be granted, subject to the following conditions:-

- 1. any sale of alcohol for consumption off the premises must be accompanied by food;**
- 2. permission for off-sales is granted only until such times as the Health Protection (Coronavirus) (Restrictions and Requirements) Regulations are repealed by the Scottish Government.**

This motion was seconded by Councillor Grant. The Board agreed unanimously.

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

IP Partnership Limited
70 Hamilton Drive
Glasgow
G2 8DR

Bakers
17 Fowlds Street
Kilmarnock

Details of the variation:-

Change of description on the Premises Licence from nightclub/entertainment to lounge bar serving bar meals, amend the licensed hours and amend the operating plan, as follows:-

Current Hours – On Sales
Sunday – Wednesday 6.30pm – 2am
Thursday – Saturday 6.30pm – 2.30am

Off-Sales – N/A

Proposed Hours – On Sales
Sunday – Wednesday 11am – 12 Mid
Thursday – Saturday 11am – 1.00am

Proposed Hours – Off Sales
Sunday – Saturday 11.00am – 10.00pm

The premises will provide bar meals, receptions including Weddings, funerals, birthdays, retirements etc, club or other group meetings etc, recorded music, live performances, dance

facilities, gaming, indoor/outdoor sports, televised sport, quiz nights, Clairvoyant, Poker Nights (as per current legislation), Karaoke, DJs, Theme Nights, Race Nights (as per current legislation), playing of musical instruments.

The premises may cater for funeral parties, breakfast/brunch, club or group meetings outwith the core licensed hours, but no alcohol will be served.

Seasonal variation - the premises may operate additional licensed hours in accordance with the Licensing Board's Policy.

Children and young persons between the ages of 0 – 17 years will be allowed entry to all parts of the public area when accompanied by an adult until 9pm for the consumption of a meal or to attend a private function, for the duration of the function.

The premises will have outdoor drinking facilities.

The Depute Clerk outlined the proposed variation and advised that the variation included a request to allow off-sales from the premises, which was contrary to the Board's policy. No objections or representations had been received in respect of the application.

Mr Andrew Morgan, Business Development Manager with IP Partnership Limited, appeared before the Board to speak in support of the application.

The Depute Clerk confirmed with Mr Morgan that there were no procedural issues and the hearing proceeded in accordance with the agreed hearing procedure.

Mr Morgan explained that permission for off sales was required to keep the premises in line with the majority of other licensed premises in the area. He submitted that Challenge 25 would be operated and that staff would be fully trained in respect of off-sales.

The Depute Clerk asked if Mr Morgan would be prepared to amend the application if the Board were not minded to grant the off-sales part of the variation. Mr Morgan confirmed that he would be prepared to amend the application to remove the request for off-sales.

The Chair noted that the premises had operated as a nightclub and that the variation was to revert back to a public house type premises and asked if the premises had been operational.

Mr Morgan advised that IP Partnership Limited were looking for a new tenant. The conversion back to a public house type premises was due to the coronavirus pandemic as it was thought that it would be a long time before nightclubs would be permitted to open.

The Chair moved that the variation be granted, subject to the removal of the request for off-sales. This motion was seconded by Councillor Jones.

Mr Morgan agreed to the amendment. The Board agreed unanimously to grant the application, as amended.

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

Ayrshire Sports Bars Ltd.

Shooters Pool & Sports Bar
27A Portland Street
Kilmarnock

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

Licensed hours applied for :-

On Sale

Sunday – Wednesday : 11am – 12 Midnight

Thursday – Saturday : 11am – 1am

The premises will operate as a pool and sports bar.

Bar meals will be available within the premises; the premises will cater for conferences, weddings, funerals, birthdays, group meetings, etc.; recorded music, live performances, gaming, indoor/outdoor sports and televised sport may be provided, all within the core hours.

Children and young persons will not be permitted entry to the premises. The proposed occupant capacity of the premises is 100.

Disable access and facilities :-

As the premises are located on the first floor, a lift is available to take customers to the main bar area; a section of the bar has been lowered for wheelchair users; disabled toilets are available; assistance dogs will be welcome; larger print menus will be available.

The Depute Clerk advised that these premises previously held a premises licence and operated as a Chinese banquet, however the licence had lapsed. No objections or representations had been received in respect of the application.

Gary Cunningham and Brian Garrick, Directors of Ayrshire Sports Bars Ltd. appeared before the Board to speak in support of the application.

The Depute Clerk confirmed that there were no procedural issues and the hearing proceeded in accordance with the agreed hearing procedure.

Mr Cunningham submitted that the premises would operate as a pool and sports bar, that the premises had been renovated to a high standard and that there would be 8 high class pool tables and a mix of 70 inch and 90 inch TVs within the premises. He advised that there were Scottish Pool Teams within Kilmarnock and that it was the intention to bring pool competitions to Kilmarnock.

Mr Cunningham continued that it was intended to provide food within the premises which, in his opinion, would be a great venue for Kilmarnock. Although no children or young persons would be permitted entry to the premises, consideration may be given in the future to arranging pool coaching sessions for children.

Mr Cunningham explained that while Brian was new to the licensed trade, he had 18 years experience as he currently operated Bar Luca in Kilmarnock, a premises which had never attracted any problems.

Mr Cunningham concluded that 7 or 8 experienced staff would be employed and that Spears Security would be employed at weekends.

The Chair noted that it was intended to provide breakfasts at the premises but reminded Mr Cunningham that the requested licensed hours were from 11am.

Mr Cunningham explained that it was intended to offer all day breakfasts at weekends from 11am.

Councillor Leitch commended the proposal to have coaching sessions for children within the premises.

The Chair moved that the licence be granted, which was seconded by Councillor Jones. The Board agreed unanimously.

The Depute Clerk reminded the applicants that, if it was the intention to permit children within the premises in the future, a major variation application would require to be submitted.

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LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR PROVISIONAL GRANT OF PREMISES LICENCE

Aldi Stores Limited
Aldi
Ayr Road
Cumnock

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

Licensed hours applied for :-

Off Sale

Sunday – Saturday : 10am – 10pm

The premises will be a purpose built supermarket with car park.

The proposed alcohol display area within the premises will be 31.51426m² and recorded music may be played during the opening hours. Other activities will include the sale of other goods consistent with the business of a supermarket both during and outwith the core hours as well as home deliveries, click and collect service and on line sales.

Disable access and facilities :-

Access to the premises is via an automatic door entrance approached normally from a level or ramped surface; The entrance door features an assistance bell positioned at a low level for a disabled person to summon help if necessary; The width of the aisles are appropriate to allow free movement and safely accommodate electric scooters and wheelchairs; All customer areas

are on the ground floor; The premise has a disabled toilet on the ground floor, which can be made available to any disabled customer should the need arise; Assistance dogs are welcome and a sign to this effect is displayed at the store entrance; Some products may be displayed in cabinets or on shelving which may not be easily accessible to wheelchair users. Staff are available to assist customers as required; The premises will have at least 1 fire exit route which is suitable for persons with mobility issues. An Evac Chair will be provided where no level escape route can be provided; Price Tickets and Point of Sale material has appropriate colour contrast and font size of at least 14 point where practical.

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

Mr Michael McDougall, Solicitor, appeared on behalf of Aldi Stores Ltd. to speak in support of the application, together with Laura Beattie, Area Manager for Aldi Stores Ltd.

The Depute Clerk confirmed that there were no procedural issues and the hearing proceeded in accordance with the agreed hearing procedure.

Mr McDougall submitted that the proposed store would be to the west side of Cumnock, currently Thistle Business Park. Aldi currently operate 2 stores in East Ayrshire and 94 stores throughout Scotland. The company provide good quality produce at a fair price and supported local producers e.g. Browning The Bakers.

Mr McDougall advised that alcohol would take up only 4.4% of the store and the company did not sell chilled alcohol or alcopops. The off-sales licence was required to allow customers to complete a full shop in the one place.

Addressing Members on the Board's overprovision policy and why the benefit to the licensing objectives through the grant of the application outweighs the detriment to the licensing objectives, Mr McDougall referred to the positive health benefits that employment brings. He submitted that the proposed premises would bring real employment opportunities to Cumnock.

Referring to the Cumnock Action Plan 2016-2021, which sets out the priorities for the development of Cumnock over the next 5 years, Mr McDougall pointed out that one of the priorities set out in the plan was for a new supermarket.

Mr McDougall continued that the proposals would create 35 jobs at various grades, from sales staff to managers, all of which would be advertised in the local press. A training program would also be in place as well as an apprenticeship scheme and that local firms would be used for the construction of the premises.

Advising that his clients had invested £4m in the project, Mr McDougall submitted that this would be a modern supermarket which would boost other businesses in Cumnock by keeping customers in the area who would normally travel to Ayr or Kilmarnock to shop.

Mr McDougall concluded that Aldi had robust policies in place to ensure that the licensing objectives were complied with and that Aldi operated other stores within East Ayrshire with no problems.

The Chair asked, if the Board were minded to refuse the licence, what impact this would have on the construction of the supermarket.

Mr McDougall explained that the construction of the supermarket was conditional on obtaining a licence and that the proposals would not go ahead if the licence was not granted. He stated that customers want to do a complete shop in the one supermarket and if the store had no licence they may go elsewhere. A modern supermarket with no licence would not be viable.

The Chair asked if the proposed premises manager would be experienced in the sale of alcohol. Mr McDougall advised that the post would be advertised and given to an experienced person.

The Chair asked if the LSOs had any issues with the operation of the other Aldi stores in East Ayrshire and Mrs McEwan advised that there were no issues.

Councillor Grant expressed his concern that if a supermarket were to open, jobs may be lost in some of the smaller local businesses.

Mr McDougall reiterated that, in his opinion, a modern supermarket would benefit other businesses in Cumnock by keeping customers in the area who would normally travel to areas such as Ayr or Kilmarnock to shop.

The Board adjourned to consider the application.

Upon returning the Chair stated that Mr McDougall had provided sufficient evidence to persuade him to deviate from policy on this occasion and moved that the application be granted. This was seconded by Councillor Jones. The Board agreed unanimously to grant the licence.

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GAMBLING ACT 2005
APPLICATION FOR RENEWAL OF CLUB GAMING MACHINE PERMIT

Townholm Bowling Club
Old Townholm
Kilmarnock

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 the application.

The Board agreed to renew the permit.

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