

EAST AYRSHIRE LICENSING BOARD

Minute of the virtual Meeting of East Ayrshire Licensing Board, held digitally through Microsoft Teams, on Tuesday 16 March 2021 at 10am.

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

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

APOLOGIES : Councillor Fiona Campbell and Councillor Drew Filson.

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 2 February 2021 was agreed and noted.

3. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Chair noted the applications discharged under delegated authority by the Clerk to the Licensing Board between 23 January and 5 March 2021:-

Minor Variation	:	5
S34 Transfer	:	1
Grant of Personal Licence	:	5
Renewal of Personal Licence	:	3
Small Society Lottery Renewals	:	5
Small Society Lottery Grants	:	2

The number of Occasional Licence applications considered had not been included in this report as, due to the COVID-19 restrictions, many Occasional Licence applications were withdrawn or could not be granted.

The Chair noted that as of the date of the Report there were 1163 Personal Licences and 301 Premises Licences in force.

The Board Members agreed to note the Report.

4. APPLICATIONS

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

5. PREMISES LICENCE REVIEW

5.1 Review of premises licence for Cafe Koko, 4 Nelson Street, Kilmarnock in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk confirmed that the Premises Licence holder of Café Koko had paid the annual fee prior to the meeting and that there was no longer a requirement for the Review.

The Depute Clerk pointed out to Members that the Premises Licence holder routinely paid the annual fee late and had previously received a written warning regarding this.

It was unanimously agreed by the Members that a further written warning be issued regarding the late payment of the annual fee, including a request that the Premises Licence holder attend a meeting with the Depute Clerk regarding the late payment.

5.2 Review of premises licence for Peking House Restaurant, 25 Wallace Street, Galston in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised Members that the Premises Licence holder for the Peking House Restaurant had surrendered the premises licence and that there was no requirement for the Review.

5.3 Review of premises licence for Dagmar, 18 Glaisnock Street, Cumnock in terms of Section 38 of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely non payment of the annual licensing fee.

The Depute Clerk advised Members that on 1 September 2020 a letter was issued to Dagmar Scot Ltd, the Premises Licence holder of the above premises, reminding them that the annual fee of £280 was due to be paid on or before 1 October 2020. The annual fee was not received by that date. The position regarding the Premises Licence holder was checked on Companies House and it was established that Dagmar Scot Ltd had been dissolved on 20 October 2020.

In terms of Section 28(5)(e) of the Licensing (Scotland) act 2005, a premises licence ceased to have effect if the Premises Licence Holder was dissolved. However, the licence did not cease to have effect if, within 28 days of the date of dissolution an application for transfer of the licence was made. The period of 28 days was extended in terms of The Coronavirus (Scotland) Act 2020 where any delay was for a reason relating to coronavirus.

The Licensing Section received an email on 21 January 2021 from Bryce Johnston, requesting details of East Ayrshire's bank account to enable the annual fee to be paid. Mr Johnstone was advised at that time that the Licensing Section were aware that Dagmar Scot Ltd had been dissolved on 20 October 2020 and a request had been made to him to provide information which he would like the Licensing Board to take into consideration, given the circumstances. Despite a reminder email being issued, no response was received and no transfer application was received. Licensing staff attempted unsuccessfully to contact Mr Johnston on his mobile phone and a voicemail message was left requesting that contact be made with the Licensing Section as soon as possible. No contact was made.

On 26 February 2021 a letter was posted to Lewis Johnston as former Director of Dagmar Scot Ltd., giving a period of 14 days to lodge a transfer application and explaining that if no application was received, the licence would be treated as having ceased to have effect. Again, no application was received.

On 4 March 2020 a telephone call was received from Patricia Lawrie who advised that she was employed as a Broker by Messrs. Johnston and intended to lodge a transfer application in the name of Glaisnock Holdings Ltd.

The Depute Clerk advised that as of the date of this meeting, no company named Glaisnock Holdings Ltd. had been registered with Companies House and no transfer application had been received.

The Depute Clerk stated that the first option for Members due to the current difficulties of the COVID pandemic, would be to allow more time for a Transfer application to be submitted. The Depute Clerk reminded them that there was a Review application outstanding for these premises which would require to be heard prior to the premises re-opening. The second option for Members would be to determine that the licence should be treated as having ceased to have effect, in terms of Section 28(5)(e) of the Licensing (Scotland) Act 2005.

Councillor Todd stated that she was aware of the background of these premises and requested that the Members take the second option of the premises licence ceasing to have effect.

The Chair and Councillor Crawford agreed with Councillor Todd's request.

After full consideration of the matter, the Board determined that the licence should be treated as having ceased to have effect, in terms of Section 28(5)(e) of the Licensing (Scotland) act 2005.

6. AOCB

The Depute Clerk advised Members that it had been brought to the Licensing Section's attention that Andy Dunlop who lives in Darvel, had created a "virtual pub" in his loft during the period of lockdown to host regular quiz nights, raise awareness for local causes, raise funds for charities and carry out random acts of kindness. The Facebook page was named "The Stayin Inn" and had more than 16k followers. The Depute Clerk advised that 17 March 2021

was the 1st year anniversary of the creation of the “virtual pub” and that as part of the celebrations it was requested whether the Licensing Board could recognise the achievement of this individual.

It was unanimously agreed by Members that an unofficial Certificate for Virtual Pub of the Year, which was produced by staff within the Licensing Section, be issued as part of the 1st year anniversary celebrations.

There being no further business the meeting ended at 10.55am

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

Balram Bhatia

21 Portland Street
 Kilmarnock

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

Proposed licensed hours:-

	<u>On Sales</u>	<u>Off Sales</u>
Sunday – Saturday	12 Noon – 11.00pm	12 Noon – 10.00pm

Restaurant facilities will be available within the premises; the premises will cater for weddings, funerals, birthdays, group meetings, etc.; recorded music may be provided; all to be available within the core hours.

The proposed occupant capacity of the premises is 50.

Children and young persons will be permitted access to the premises for the consumption of a meal. Children aged 0 – 15 years must be accompanied by an adult. Young persons aged 16 and 17 years may be unaccompanied.

The restaurant part of the premises is fully on the ground floor and access is level with the street, with access being available without aid. The floor level internally is on the same level which includes the separate disabled toilet which is easily accessible. There is good open circulation between all tables. It is proposed that assistance dogs be allowed and large print menu available.

The Depute Clerk reminded Members that the application was continued from the previous Board Meeting to allow the applicant or his representative to join the meeting to answer any questions in respect of the application.

The Depute Clerk advised that the premises had previously been a licensed Indian Restaurant and that the premises licence had ceased to have effect. This application was to apply for a new premises licence with on and off-sales.

The Depute Clerk further advised Members that there were no objections or representations in respect of the application but that the off-sales part of the application was contrary to their Statement of Policy.

Mr Keith Edward, the applicant's agent, joined the meeting via the MS teams link.

Mr Edward's stated that there had been no internal changes to the premises and it would operate as an Indian Restaurant. Mr Edwards further stated that the off-sales part of the application should be removed.

The Chair asked for clarification on access by children and young persons as the application stated that 0 – 15 years, accompanied by an adult could have access from 12 Noon until 11.00pm and that 16 and 17 years could have access unaccompanied from 12 Noon until 11.00pm.

Mr Edwards stated that children aged 0 – 15 years accompanied by an adult would have access from 12 Noon until 8pm and that 16 and 17 years would have access from 12 Noon until 8pm unaccompanied by an adult and from 8pm until 11pm accompanied by an adult.

The Depute Clerk clarified that the off-sales part of the application was deleted and the terms of access by children and young persons be amended as stated by Mr Edwards.

The Board Members unanimously agreed to the grant of the application subject to the deletion of off-sales and amendment to the terms of access by children and young persons as stated above.

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GAMBLING ACT 2005
APPLICATION FOR GRANT OF ADULT GAMING CENTRE PREMISES LICENCE

Mega Leisure (Scotland) Ltd

**41 King Street
Kilmarnock**

The Depute Clerk confirmed that the application was in order and that there were no objections or representations.

Mr Stephen Magowan, TLT Solicitors, joined the meeting via the MS Teams link along with Mr Garry Graham, Managing Director of Mega Leisure (Scotland) Ltd.

Mr Magowan submitted that the applicant had 12 premises mainly in the West of Scotland and that he had 10 years experience. Mr Magowan further submitted that the premises were an Adult Gaming Centre and that no persons under the age of 18 years would be permitted and that all risk assessments would be carried out to ensure compliance with all gambling legislation. Mr Magowan pointed out that these premises previously had an AGC licence operated by a different company and that this was a like for like application and requested that the application be granted.

The Chair asked if the previous licence holder had moved to different premises further along the same street from the applicant's premises.

Mr Magowan confirmed that was correct and that there would be the usual Mega Leisure signage placed on the applicant premises.

Councillor Leitch asked if the premises were a gaming arcade or if the premises would be used for gambling. Councillor Leitch pointed out that gambling had an adverse effect on persons of low income and that the area had a low income demographic.

Mr Magowan confirmed that there was no differentiation between gaming and gambling under the Gambling legislation, and that these premises would only operate Category B gaming machines, described as spinning of reels.

Mr Magowan further submitted that the premises would be supervised at all times by trained staff and that the Operator would build relationships with his clientele and

ensure their welfare. Mr Magowan pointed out that the premises were also covered by a Gambling Commission Premises Licence and was required to comply with all of the Gambling legislation.

It was noted that Councillor Mair left the meeting prior to the start of the AGC application.

The Board unanimously agreed to grant the application as sought.

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