

## **EAST AYRSHIRE LICENSING BOARD**

**Minute of the virtual Meeting of East Ayrshire Licensing Board, held digitally through Microsoft Teams, on Tuesday 20 April 2021 at 10am.**

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

**ATTENDING:** Stuart McCall (Depute Clerk to the Licensing Board), Chief Inspector N Calderwood and Sergeant S Barrie (Police Scotland), 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 Lillian Jones.

### **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 The minute of the meeting of East Ayrshire Licensing Board held on 16 March 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 6 March and 9 April 2021:-

Minor Variation	:	4
S33 Transfer	:	2
Grant of Personal Licence	:	4
Renewal of Personal Licence	:	1
Small Society Lottery Renewals	:	8
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had not been included in this report as, due to the COVID-19 restrictions, many Occasional Licence applications were withdrawn or could not be granted.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 1169 Personal Licences and 300 Premises Licences in force.

The Board Members agreed to note the Report.

#### **4. OUTDOOR DRINKING AREAS**

The Depute Clerk to the Licensing Board referred to a recent announcement by the First Minister that licensed premises could potentially open from 26 April 2021, internally until 8pm to serve food, with no alcohol and outdoor drinking areas until 10pm, with alcohol. He advised however that a further announcement was anticipated which would change the opening times of outdoor drinking areas and, rather than being permitted to remain open until 10pm, the opening times would be subject to local licensing policies.

The Depute Clerk referred to a previous easing of restrictions in June last year whereby Members agreed to extend the 9pm curfew for outdoor drinking facilities until 10.30pm for suitable premises. He asked Members to delegate to the Clerk to the Licensing Board, in consultation with the Chair, permission to extend the 9pm curfew again for outdoor drinking facilities until 10.30pm for suitable premises on a temporary basis and only for as long as the Scottish Government emergency procedures were in place. He reminded Members that premises would require to operate in accordance with regulations in respect of social gatherings, social distancing etc.

The Depute Clerk advised that The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 had not been updated yet, but that updated regulations were expected within the next few days.

The Chair asked if the sale of alcohol for consumption off the premises would be permitted from these premises.

The Depute Clerk advised that alcohol could be sold for consumption off the premises, provided off-sale was permitted in terms of the individual premises licence operating plan. He reminded Members that the Board had recently granted a variation application to allow off-sale from a premises, subject to any sale being accompanied by food and only until such times as the Health Protection (Coronavirus) (Restrictions and Requirements) Regulations are repealed by the Scottish Government.

The Board agreed unanimously to delegate to the Clerk to the Licensing Board, in consultation with the Chair, permission to extend the 9pm curfew for outdoor drinking facilities until 10.30pm for suitable premises.

#### **5. APPLICATIONS**

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

## **6. PREMISES LICENCE REVIEW**

Review of premises licence for premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock following receipt of Premises Licence Review Applications in terms of Section 36(3)(ZA) of the Licensing (Scotland) Act 2005 from Police Scotland and from East Ayrshire Council's Trading Standards Service.

## **7. PERSONAL LICENCE REVIEW**

Review of personal licence GC11775 for Hamid Mahmoudi, in terms of Section 84A of the Licensing (Scotland) Act 2005, following receipt of a notice issued by Police Scotland and East Ayrshire Council's Licensing Standards Officer.

**The Depute Clerk advised that a Premises Licence Review Hearing had been requested in respect of premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock following receipt of premises licence review applications from Police Scotland and East Ayrshire Council's Trading Standards Service.**

**Police Scotland had lodged a premises licence review application on the basis that Mr Mahmoudi, as licence holder of AKO News Ltd., 97A Glaisnock Street, Cumnock, is not a fit and proper person to be the holder of a premises licence.**

**East Ayrshire Council's Trading Standards Service had lodged a premises licence review application on the basis that Mr Mahmoudi, as licence holder of the above premises, is not a fit and proper person to be the holder of a premises licence, having breached the licensing objectives of Preventing Crime & Disorder and Protecting & Improving Public Health.**

**The Depute Clerk also advised that a Personal Licence Review Hearing had been requested in respect of personal licence GC11775, which was held by Hamid Mahmoudi, following receipt of Personal Licence Review applications from Police Scotland on the basis that Mr Mahmoudi had acted in a manner which was inconsistent with the licensing objective, Preventing Crime and Disorder and from East Ayrshire Council's Licensing Standards Officer on the basis that Mr Mahmoudi had acted in a manner which was inconsistent with the licensing objective, Protecting & Improving Public Health.**

**Hamid Mahmoudi joined the meeting to address the Board in respect of the review applications, via an Interpreter.**

**Police Scotland was represented at the Review Hearing by Chief Inspector Nathan Calderwood.**

**East Ayrshire Council's Trading Standards Service was represented by Graham Morrison, Trading Standards Officer.**

**The Depute Clerk confirmed that Mr Mahmoudi had no preliminary matters to raise and the hearing proceeded in accordance with the agreed procedure for hearings. It was agreed that, as the Premises Licence Review applications and the Personal Licence Review applications detailed the same incidents, the hearings would be conjoined.**

**Chief Inspector Calderwood submitted that in terms of Section 36(1) of the Licensing (Scotland) Act 2005, the Chief Constable makes application for a review of the premises licence in respect of premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock. The application was made in terms of the grounds set out at Section 36(3)(ZA) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence.**

**Chief Inspector Calderwood reported that Mr Mahmoudi bought the premises known as AKO News Ltd., 97A Glaisnock Street, Cumnock from the previous owner, Hamid Karim Nasim. The sale agreement was signed on 26 July 2019. Mr Mahmoudi has been the premises licence holder and designated premises manager since 22 August 2019 when East Ayrshire Licensing Board granted the transfer and variation of the premises licence. Police Scotland made no comment regarding the transfer of the premises licence and there had been no premises licence reviews or personal licence reviews in relation to the premises since Mr Mahmoudi took ownership.**

**Chief Inspector Calderwood advised that under the Licensing (Scotland) Act the premises are permitted the sale of alcohol for consumption off the premises only and that the permitted trading hours for the premises were Monday to Sunday from 10am until 10pm.**

**In support of the review application, Chief Inspector Calderwood reported the following information for consideration:-**

**About 6.40pm on 9 October 2019 it is alleged that a male member of the public entered the premises at AKO News Ltd., 97A Glaisnock Street, Cumnock. The male selected items from an open display and made his way to the till area. He stood there for approximately five minutes with no sign of any staff member. The male then noticed the CCTV monitor which showed various images from cameras throughout the store. He observed a male lying on the floor in the store room on one of the images. The male made his way to the store room and observed a male (later identified as Hamid Mahmoudi) lying on a mattress. The male shook Hamid Mahmoudi vigorously in an attempt to wake him and was initially concerned that he may need an ambulance. Mr Mahmoudi appeared heavily intoxicated and was smelling of alcohol. He was helped to his feet and required assistance by the male customer to stand. There was vomit on the floor next to where Mr Mahmoudi had been lying. The male customer made his purchases and left the store. He returned home and contacted police to report the incident.**

**About 7.20pm that day police officers attended at AKO News Ltd. and observed Hamid Mahrnoudi behind the till area, heavily intoxicated and unsteady on his feet. He was informed that a report would be submitted to the Procurator Fiscal for the offence committed in terms of Licensing (Scotland) Act 2005 Section 114(1). He was also informed that the Licensing Department would be notified of the circumstances. The premises were closed by Hamid Mahmoudi as no other staff member was available to operate the premises. Arrangements were then made to have Mr Mahmoudi conveyed to his home address in Glasgow. The attending officers then submitted details of the incident to the Licensing Department at Kilmarnock Police Office and the report was then submitted to the Procurator Fiscal. On 18 November 2019, Hamid Mahmoud accepted his guilt and this was disposed of by means of a Procurator Fiscal fine.**

**On 10 October, 2019, PC Kerr contacted the Licensing Department, East Ayrshire Council and informed them that a review request would be submitted in relation to the Premises Licence and Hamid Mahmoudi's Personal Licence. PC Kerr then contacted Mr Mahmoudi the same day by phone and arranged a visit to the premises.**

**At 10am on 11 October 2019, Sergeant Dougan and PC Kerr attended at AKO News Ltd. and spoke with Hamid Mahmoudi. He was informed that a review of the premises licence and also his personal licence would be submitted to East Ayrshire Licensing Board. At the time of the visit, all documentation and relevant signage within the premises was in order.**

**Chief Inspector Calderwood concluded that the events detailed showed that Hamid Mahmoudi was not a fit and proper person to be the holder of a Premises Licence and requested that the Licensing Board considers the aforementioned grounds for review and takes such steps as it considers necessary or appropriate for the purposes of the licensing objectives under the terms of Section 39(2) or 39(24).**

**Mr Mahmoudi advised that the Procurator Fiscal fine had been paid and asked Chief Inspector Calderwood if any further incidents of a similar nature had occurred within the premises.**

**Chief Inspector Calderwood confirmed that no further incidents had been reported to Police Scotland.**

**Graham Morrison, Trading Standards Officer, submitted that, having regard to the licensing objectives, Mr Mahmoudi, as licence holder of the premises, is not a fit and proper person to be the holder of a premises licence as he has failed to meet the licensing objectives, Preventing Crime and Disorder and Protecting and Improving Public Health.**

**Mr Morrison reported that in August 2020, East Ayrshire Trading Standards Service received a complaint that the proprietor of U Save, 97a Glaisnock Street, Cumnock was selling illicit tobacco and cigarettes from the shop. On 3 September 2020, Trading Standards Officers visited the shop and seized 15,930 cigarettes and 3.2kg of hand rolling tobacco. Mr Hamid Mahmoudi was cautioned in relation to criminal offences under the Trade Marks Act 1994, the Tobacco & Related Products Regulations 2016 and the Standardised Packaging of Tobacco Regulations 2015.**

**Mr Morrison continued that in January 2021, East Ayrshire Trading Standards Service received two further complaints that the proprietor of U Save, 97a Glaisnock Street, Cumnock was continuing to sell illicit tobacco and cigarettes from the shop. On 18 March 2021, Trading Standards Officers visited the shop and seized 7240 cigarettes and 150g of hand rolling tobacco. Mr Hamid Mahmoudi was, again cautioned in relation to offences under the Trade Marks Act 1994, the Tobacco & Related Products Regulations 2016 and the Standardised Packaging of Tobacco Regulations 2015.**

**Mr Morrison advised that the Trading Standards Service intended to report this matter to the Procurator Fiscal as, in supplying counterfeit and non-compliant cigarettes and tobacco, Mr Hamid Mahmoudi has committed criminal offences under various pieces of legislation enforced by Trading Standards and has**

therefore failed to meet the licensing requirement of Preventing Crime and Disorder. By supplying counterfeit tobacco that is unregulated, he has exposed customers to the risks of smoking a product that has been shown to contain far higher levels of toxins than the legitimate product, therefore also failing to meet the licensing objective of Protecting and Improving Public Health.

Mr Mahmoudi had no questions for Mr Morrison.

The Depute Clerk reminded Board Members that in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005 it is a statutory requirement for Licensing Standards Officers to submit a report in respect of a premises licence review.

Mr Hiles, LSO, reported the premises are a single storey licensed convenience store located within a parade of commercial premises located in Cumnock Town Centre. The premises are permitted to sell alcohol from 10am until 10pm every day of the week. Mr Hamid Mahmoudi has traded from the premises since the Premises Licence transferred to him on 22 August 2019. He has also been the Designated Premises Manager from the same date.

Mr Hiles advised that he attended the premises on 26 September 2019 and carried out an inspection. Hamid Mahmoudi and Baghi Azarbad were present in the premises and advised that they were the only two persons who worked on the premises. Mr Mahmoudi produced his current Personal Licence issued by the City of Glasgow Licensing Board however, Mr Azarbad could not produce a training record.

During the inspection it was noticed that there was a poster in the front window and another poster in an advertising board outside the premises advertising a promotion of Blossom Hill wine, both of which were outside of the alcohol display area and in breach of Mandatory condition 13 of the Premises Licence. These were both removed with immediate effect.

On checking the alcohol display area for compliance of Minimum Unit Pricing, it was found that several Frosty Jack and Strongbow cider bottles were incorrectly underpriced by a few pence. These were immediately removed from display. The remaining products on display were Minimum Unit Price compliant. Guidance was provided to both persons present in respect of the above matters.

Following receipt of the Ayrshire Divisional Commander's review request on behalf of the Chief Constable of Police Scotland, a further visit was made to the premises on Tuesday 17 December 2019. At that time only Baghi Azarbad was present within the premises.

Mr Azarbad was unable to locate the training records or Premises Licence. Mr Azarbad made a telephone call to Mr Mahmoudi however was still unable to locate the relevant documents.

During this visit there were no posters outside the premises advertising alcohol, the alcohol display area was minimum unit compliant and the statutory notices were correctly displayed.

**The letter from East Ayrshire Licensing Board requesting Hamid Mahmoudi to attend a Premises Licence and Personal Licence Review hearing was hand delivered to the premises.**

**Mr Hiles concluded that the Licensing Standards Officers were not present and did not witness the events surrounding the incident detailed in the Ayrshire Divisional Commander's letter and as such were unable to offer any further information at this time.**

**Mr Mahmoudi had no questions for Mr Hiles.**

**Mrs McEwan, LSO reported that Licensing Officers have been involved in visiting licensed premises to ensure that the requirements in terms of The Health Protection (Coronavirus) (Restrictions (Scotland) Regulations 2020 were being complied with.**

**Whilst initially attention was mainly focused on on-sale premises, it was agreed that off-sale premises would benefit from the same guidance. Joint visits were arranged and carried out by Licensing Standards Officers, Environmental Health and Trading Standards Officers and Officers from Police Scotland.**

**Mrs McEwan advised that a visit was made by Officers to AKO News on Wednesday 4 November 2020. Mr Mahmoudi was present within the premises together with a male whose name was not known. Mr Mahmoudi was given guidance in respect of Covid procedures which he should have in place, for example increased hygiene procedures, limiting the number of people permitted to enter the shop at any one time, the requirement for customers and staff to wear a face covering, and other covid related matters.**

**Whilst in the shop it was noticed that Paragraph 6B of the Premises Licence was being breached. Paragraph 6B states:**

- (1) A package containing two or more alcoholic products (whether of the same or different kinds) may only be sold on the premises at a price equal to or greater than the sum of the prices at which each alcoholic product is for sale on the premises.**
- (2) Paragraph (1) applies:-**
  - (a) Only where each of the alcoholic products is for sale on the premises separately, and**
  - (b) Regardless of whether or not the package also contains any item which is not an alcoholic product.**

**It was noticed that 330ml bottles of Corona were being sold as a single item at a cost of £1.35 per bottle, while a pack of 20 x 330ml bottles was being sold for £15.50. To ensure compliance with Condition 6B of the Premises Licence, the minimum cost of the pack of 20 bottles should have been £27 (£1.35 x 20 = £27).**

**Mrs McEwan continued that whilst attempting to explain the breach to Mr Mahmoudi and advise that if he did not sell the bottles of Corona as a single unit, he would not be restricted in the price that he was able to charge for a pack of 20, Mr Mahmoudi quickly became aggressive. Mr Mahmoudi was having difficulty in understanding the guidance being provided to him and began removing bottles from the shelf and throwing them into the storeroom, bottles smashing as they hit the floor. Due to Mr Mahmoudi's aggressive behaviour, and as he was not prepared to listen to reason, Officers fearing for their safety, decided to leave the premises. Mr Mahmoudi was advised that the inspection would be concluded when Police Officers were in attendance.**

**A further visit was made to the premises on Wednesday 10 November 2020 by a Licensing Officer, together with an Officer from Police Scotland. Mr Mahmoudi was present and again guidance was provided in relation to the sale of single bottles of alcohol and the actions required in order to ensure compliance with the Mandatory Conditions. Mr Mahmoudi was able to understand the guidance being provided at this time and apologised for his conduct during the previous visit.**

**It was noted that single bottles of alcohol were not being displayed for sale.**

**Mrs McEwan concluded that Mr Mahmoudi had acted in an inappropriate manner towards Officers when they visited the premises to provide guidance in relation to coronavirus regulations. Officers left the premises due to Mr Mahmoudi's aggressive behaviour and a further inspection was undertaken in the presence of a Police Officer.**

**Mr Mahmoudi asked if, following the initial visit, procedures were put in place to prevent any breaches and Mrs McEwan confirmed that procedures had been put in place.**

**Mr Mahmoudi did not agree with the pricing of alcohol detailed by Mrs McEwan and disputed the report that he had been aggressive. He explained that he had removed the alcohol on the advice of officers and that some bottles had fallen by accident and smashed.**

**Mrs McEwan submitted that the atmosphere within the shop had been very tense and that the purpose of her report was in relation to Mr Mahmoudi's behaviour, not the breach of licence conditions.**

**Mrs McEwan reported that she had visited the shop on the afternoon of Wednesday 7 April to speak with Mr Mahmoudi to enquire if he was able to participate in the meeting on 20 April and to advise him that an interpreter had been arranged. The male in charge of the premises at that time advised that Mr Mahmoudi was not available and that he was not sure when Mr Mahmoudi would next be in the shop.**

**Mrs McEwan advised that she contacted Mr Mahmoudi by telephone that day at which time he advised that people were interested in taking on the shop and mentioned the names Shahram and Mansoor. Mr Mahmoudi was advised that a**



transfer would not likely be dealt with before 20 April and that it would be in his interest to participate in the meeting on 20 April.

Mrs McEwan advised that she attended at the premises again on the afternoon of Tuesday 13 April 2021, the purpose being to hand deliver paperwork in respect of the Licensing Board Meeting directly to Hamid Mahmoudi. Mr Mahmoudi was not present within the premises and a male individual, who was unknown to Mrs McEwan, was behind the counter and was in sole charge of the premises. The individual was reluctant to provide his name and in what capacity he was working within the premises but eventually advised that his name was Hugh Michael. Mr Michael was unable to provide a Training Record or Personal Licence. He was not aware of who Hamid Mahmoudi was and advised that his employer was called Alan but that he did not know his surname. He provided Alan's contact telephone number.

As there were concerns as to who was managing the shop, Mrs McEwan reported that she had contacted Hamid Mahmoudi by telephone. Mr Mahmoudi was unable to provide a name of the person he had left in charge of the shop during his absence. On being advised that she intended to return to the shop with a Police Officer to request that alcohol be removed from the shelves and the sale of alcohol to cease until such time as it was made clear who was in charge of the premises, Mr Mahmoudi began to shout in his own language. Mr Mahmoudi's daughter then came on the phone and the purpose of the call was explained to her. As it was difficult to have a conversation as Mr Mahmoudi continued to shout in the background, the call was eventually terminated.

Mrs McEwan submitted that she then contacted Alan, who advised that his name was Mansoor Nikham. Mr Nikham advised that he was working in the shop to help Mr Mahmoudi as he had taken time off due to his wife having just had a baby. Mr Nikham was asked if he intended to take on the premises and he explained that he was unsure as to whether he would be proceeding with this and was helping Mr Mahmoudi out. Mr Nikham was advised that Mrs McEwan intended to return to the shop to request that the sale of alcohol cease until confirmation had been received as to who was in charge of the premises as there was concern that Mr Mahmoudi was no longer operating from the premises.

Mrs McEwan advised that while on the phone with Mr Nikham, Mr Mahmoudi's daughter left a voicemail enquiring as to why she was bothering her father. Mr Mahmoudi continued to shout obscenities in the background, but this time in English.

Mrs McEwan reported that she attended at the shop at 4pm and was accompanied by Police Officers. Mr Michael was requested to remove alcohol from the shelves and refrain from selling alcohol until such time as the Licensing Board had received confirmation as to who was in charge of the premises. Whilst in the shop Mr Nikham phoned Mr Michael's mobile and asked to speak with her. Mr Nikham enquired as to why the alcohol was to be removed and the sale of alcohol to cease and again it was explained that this was to allow for confirmation to be provided to the Licensing Board as to who was in charge of the premises. Mrs McEwan reported that Mr Nikham stated during the telephone call that she "had it in for Mr Mahmoudi" and that she was a racist leading her to terminate the call.

**Mrs McEwan advised that Mr Mahmoudi's wife then telephoned her and again it was explained that confirmation of who was in charge of the shop required to be provided to the Licensing Board at which time the matter would be re-visited.**

**Mrs McEwan concluded that, as there were concerns as to who was operating and in charge of the shop, a request was made for the sale of alcohol to cease and for alcohol to be removed from the shelves until confirmation of who was in charge of the shop had been provided to the Licensing Board. At the time of writing the report no such confirmation had been received.**

**Mrs McEwan requested that Members take the above into consideration when determining the applications for Premises Licence Review in respect of the premises and the Personal Licence Review requests in respect of Mr Mahmoudi.**

**Mr Mahmoudi stated that he had been unaware of the voicemail left by his daughter.**

**Mr Mahmoudi asked Mrs McEwan what she thought Mr Nikham's statement had meant.**

**Mrs McEwan stated that she thought that Mr Nikham was insinuating that she had acted in a racist manner, which she found offensive and was the reason that she had terminated the telephone call.**

**Mr Mahmoudi asked why Mrs McEwan thought that the statement had been made to her and not to both officers.**

**Mrs McEwan explained that there was no other officer present and that she was the only officer speaking with Mr Nikham.**

**In Mr Mahmoudi's opinion, Mr Hiles, LSO conducted himself in a different manner.**

**In the Chair's opinion both LSO's always acted in an appropriate manner.**

**The Depute Clerk asked the last time that Mr Hiles had contact with Mr Mahmoudi.**

**Mr Hiles advised that the last time he had spoken with Mr Mahmoudi was the latter part of 2020.**

**The Depute Clerk asked if Mr Hiles had been in contact with Mr Nikham. Mr Hiles replied that he had not been in contact with and did not know Mr Nikham.**

**Chief Inspector Calderwood left the meeting due to other commitments.**

**Referring to the Review Application made by Police Scotland, Mr Mahmoudi submitted that the door to the shop had been locked and had been forced open by the male customer. He continued that on the day referred to he had received**

upsetting news and had learned that the Turkish Army had carried out an attack on Syria and that it was due to emotional stress that he had been drinking.

Addressing the Review Application made by East Ayrshire Council's Trading Standards Service, Mr Mahmoudi explained that he had bought cigarettes from a person who had purchased them while in Eastern Europe. As the cigarettes had travelled through the airport, Mr Mamoudi thought that the cigarettes could be sold in his shop.

Mr Mahmoudi explained that the shop had been broken into on three separate occasions and items to the value of approximately £10,000 stolen. He advised that these incidents would be on police records as one arrest had been made.

Referring to the second offence, Mr Mahmoudi explained that the roof of the premises had been damaged during the break in, which he had been unable to repair. Mr Mahmoudi claimed that a third party, unknown to him, had placed the cigarettes in his shop.

Mr Mahmoudi stressed that he was not an alcoholic and very rarely consumed alcohol. He hoped that Police Scotland could trace the person who had placed the cigarettes within his premises as it was doing damage to his business.

Mr Mahmoudi submitted that during his two years operating the business, regular Police checks had been carried out and there had been no sales to minors etc. He concluded that Hugh Michael had four years experience, working in a shop in Kilmarnock, has a licence to sell alcohol and had received training.

Sergeant Barrie referred to Mr Mahmoudi's claim that the door to the premises had been forced open by the male customer in October 2019. He advised that Police Scotland had no record of a break in on that date, or in the three days from that date.

Mr Mahmoudi stated that the door had been forced open and that Police Officers had been advised of this when they visited two days later.

Neither Mr Morrison, Mr Hiles nor Mrs McEwan had any questions for Mr Mahmoudi.

Councillor Grant asked if Mr Mahmoud could confirm that an unknown third party had placed the cigarettes in his premises, unknown to him.

Mr Mahmoudi explained that access to the premises could be gained through the ceiling, which had been damaged and confirmed that the cigarettes, which were past their sell by date, had been placed within the premises by an unknown third party.

Councillor Mair asked if Mr Mahmoudi was still in charge of the shop.

Mr Mahmoudi confirmed that he was in charge of the premises but that no alcohol was available for sale at present.

**Councillor Grant asked if the reported break in had been the subject of an insurance claim.**

**Mr Mahmoudi advised that he had been unable to insure the premises, due to the cost.**

**The Depute Clerk asked if it was Mr Mahmoudi's position that, on the first occasion, he believed that the cigarettes and tobacco had come from Eastern Europe through Glasgow Airport and therefore Mr Mahmoudi thought that it was legitimate to sell the cigarettes and tobacco in his shop.**

**Mr Mahmoudi advised that he had purchased the cigarettes from Eastern Europeans who had travelled and that he believed that the items had come through Glasgow Airport.**

**Mr Mahmoudi had nothing further to add to his submissions.**

**As there were no further questions, all parties were given the opportunity to sum up.**

**Sergeant Barrie submitted that the details in the review application were accurate. Several incidents had been reported by Mr Mahmoudi, all of which had been investigated however no report of the door being forced open had been received.**

**Neither Mr Morrison, Mr Hiles nor Mrs McEwan had anything to add to their earlier submissions.**

**Mr Mahmoudi expressed his concern regarding the thefts and the cigarettes being placed within his premises. He advised that he was having discussions to sell the property as he no longer felt safe there. Mr Mahmoudi asked if there would be any issues with the licence if the property were to be sold.**

**The Depute Clerk advised that Mr Mahmoudi had purchased the premises in 2019 under an agreement that he pay the purchase price in instalments. As the instalments had not all been paid, the title was not yet in name of Mr Mahmoudi. He advised Mr Mahmoudi that, as he did not own the shop as yet, he could not sell same as only the owner could make the sale.**

**Mr Mahmoudi advised that it had been agreed that the owner sell the property and that he would be reimbursed for the sums that he had already paid once the sale took place.**

**The Depute Clerk advised that no transfer application had been lodged.**

**Mr Mahmoudi stated that Mrs McEwan had advised that he should wait until after the Review Hearing to lodge a transfer application.**

**Mrs McEwan reminded Mr Mahmoudi that the advice given was that it was unlikely that any transfer application would be dealt with before the Review Hearing, not that a transfer application should not be lodged.**

**The Depute Clerk enquired as to the sale price of the property.**

**Mr Mahmoudi advised that the sale price would be the same as he paid for the shop, which was £50k and that he thought that he had to wait until after the Review Hearing to lodge a transfer application.**

**The Depute Clerk advised that, in the circumstances, any transfer application lodged would require to be considered by the Board.**

**Following an enquiry by the Depute Clerk, Mr Mahmoudi confirmed that he had been happy with the Interpreter Service provided, the procedures followed and had made all the submissions he wished to make.**

**The Board adjourned to consider the review applications.**

**Upon returning the Depute Clerk reminded Members of the options available to them, if the grounds for review were found to be established.**

**In respect of the Premises Licence Review, the Chair moved that the grounds for review had been established. The Board agreed unanimously.**

**Due to the serious nature of the events reported, the Chair moved that the Premises Licence be suspended with immediate effect, until such time as a Transfer of Premises Licence application had been lodged, considered by the Board and granted. Councillor Leitch seconded this motion. The Board agreed unanimously.**

**In respect of the Personal Licence Review, the Chair moved that the grounds for review had been established. The Board agreed unanimously.**

**The Chair moved that Mr Mahmoudi's Personal Licence be revoked with immediate effect. This motion was seconded by Councillor Crawford. The Board agreed unanimously.**

## **8. AOCB**

**The Depute Clerk referred to an e-mail, which had been circulated to Members advising that Alcohol Focus Scotland had been appointed by the Justice Directorate of the Scottish Government to review the qualifications for Licensing Board Members and Licensing Standards Officers in Scotland, as the current qualifications are due to expire in December 2021.**

**To ensure that the revised training meets the needs of Board Members, Alcohol Focus Scotland welcomed the views of Licensing Board Members on the revised training, as well as the LSO training and invited Members complete the two separate surveys mentioned in the e-mail, one on the content of the Licensing Board Member training, and one on the LSO training.**

**The Depute Clerk was of the opinion that a short refresher training session for Members would be worthwhile. He commended the LSOs for their work and,**

**given the important role the LSOs play, urged Members to complete the two separate surveys.**

**There being no further business, the meeting ended at 3pm.**

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

<u>Applicant</u>	<u>Name &amp; Address of premises</u>
Loudoun Gowf Club Newmilns Road Galston	Loudoun Gowf Club Newmilns Road Galston

Details of the variation:-

The premises are a golf club clubhouse containing a lounge bar & Members bar in addition to changing room facilities. The variation application is to form an outside seating area in front of the clubhouse on the existing putting green. The area will seat approximately 50 persons.

**As Loudoun Gowf Club were not represented at the meeting, the Depute Clerk outlined the application. He advised that comments had been received from Building Standards that a Building Warrant was required and that the applicants had been notified. No further objections or representations had been received in respect of the application.**

**The Board agreed unanimously to grant the variation and restricted the use of the outside drinking area to 9pm.**

**The Depute Clerk clarified that the use of the outside drinking area would be restricted to 9pm. Should the club wish to remain open beyond 9pm on a temporary basis during the current easing of restrictions, a request would require to be made for consideration.**

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

<u>Applicant</u>	<u>Name &amp; Address of Premises</u>
JD Wetherspoon (Scot) Limited c/o Brunton Miller, Sols 22 Herbert Street Glasgow	The Wheatsheaf Inn 72 Portland Street Kilmarnock

Details of the variation:-

Minor layout change to include an extended external area to the rear of the premises consisting of a total of 8 tables with 4 chairs each (32 covers in total). Increase of occupant capacity from 736 to 768.

**Mr MacIver, Solicitor, appeared on behalf of the applicants to speak in support of the application.**

The Depute Clerk advised that no objections or representations had been received in respect of the application, however noted that Planning Permission and a Building Warrant was required.

Mr MacIver submitted that the additional external area was required for extra space to allow for social distancing etc. during the current restrictions. He advised that the area, which was an extension of an existing outdoor drinking area, would be covered by CCTV and monitored by staff.

Mr MacIver advised that further information required to be submitted in respect of Planning Permission and that this was ongoing.

The Board agreed unanimously to grant the variation and restricted the use of the outside drinking area to 9pm, subject to Planning Permission being obtained.

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

<u>Applicant</u>	<u>Name &amp; Address of premises</u>
Di Vinci Ltd. 17 Strand Street Kilmarnock	Café Da Vinci

Details of the variation:-

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

Mr McGlinchey, Director of Di Vinci Ltd., appeared to speak in support of the application.

The Depute Clerk advised that these were long established premises in Kilmarnock and advised that no objections or representations had been received in respect of the application.

Mr McGlinchey advised that he had been approached by customers to include alcohol with their takeaway meal. He added that the request to permit off-sales was to provide this additional service.

The Chair asked if Mr McGlinchey intended to provide this service on a permanent basis. Mr McGlinchey replied that the service would only be offered during the current restrictions.

The Depute Clerk asked if it was intended to continue to offer takeaway food after the current restrictions were eased.



Mr McGlinchey was of the opinion that it would be difficult to offer a takeaway service once the restaurant was fully operational.

Councillor Leitch asked if Challenge 25 would be operated if off-sales were to be permitted and Mr McGlinchey confirmed that Challenge 25 would be operated.

The Chair asked if takeaway meals, including alcohol, would be collected from the premises.

Mr McGlinchey confirmed that collection would be required as he did not provide a home delivery service.

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

<u>Applicant</u>	<u>Name &amp; Address of premises</u>
Teresa Roy	Glens Bar 116 Castle New Cumock

Details of the variation:-

Change name of the premises to Munros of New Cumnock:

Live and recorded music to be permitted within the core licensed hours;

Permission for outdoor drinking – 6 tables to the front of the premises and 8 tables to the rear of the premises;

Amend the core licensed hours as follows:-

<u>Permitted Hours : On Sale</u>	<u>Proposed Hours : On Sale</u>
Sunday & Monday 11am – 12 Midnight	Sunday – Thursday 11am – 12 Midnight
Tuesday – Thursday 3pm – 12 Midnight	Friday & Saturday 11am – 1am
Friday & Saturday 11am – 1am	

Mr Alex Roy appeared on behalf of the applicant to speak in support of the application.

The Depute Clerk advised that the proposed variations were in line with policy and that no objections or representations had been received in respect of the application.

**Mr Roy submitted that he had only recently taken over the premises and intended to operate as a community pub. He advised that it was intended to use the outdoor space permanently and not just during the current restrictions. He continued that the amendment to operating hours was to bring the premises in line with other licensed premises in the area.**

**The Chair asked if Mr Roy was aware of the Board’s policy to restrict the use of outdoor drinking areas to 9pm each evening.**

**Mr Roy accepted that the outdoor drinking areas would be restricted to 9pm each evening and asked if the Board would consider allowing the areas to be used until 10pm during the current restrictions.**

**Councillor Todd asked if the proposed outdoor drinking area to the front of the premises would be on the public footpath.**

**Mr Roy explained that the area would not be on the public footpath as there was an area to the front of the premises which was within the grounds of the premises.**

**The Board agreed unanimously to grant the variation and restricted the use of the outside drinking areas to 9pm.**

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