

EAST AYRSHIRE LICENSING BOARD

Minute of the virtual Meeting of East Ayrshire Licensing Board, held digitally through Microsoft Teams, on Tuesday 22 June 2021 at 10am.

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

ATTENDING: Stuart McCall (Depute Clerk to the Licensing Board), Chief Inspector N Calderwood and Ms D Hastings (Police Scotland), Mrs C McEwan and Mr I Hiles (Licensing Standards Officers), Mrs P Duncan and Ms S Duncan (Licensing Board Administrators).

APOLOGIES : Councillor George Mair 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

Minute of the meeting of East Ayrshire Licensing Board held on 18 May 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 10 May and 14 June 2021:-

Minor Variation	:	9
S33 Transfer	:	1
Grant of Personal Licence	:	9
Small Society Lottery Renewals	:	5
Small Society Lottery Grants	:	1
Entitlement to have Gaming Machines	:	1

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had not been included in this report as, due to the COVID-19 restrictions, many Occasional Licence applications were withdrawn or could not be granted.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 1187 Personal Licences and 298 Premises Licences in force.

The Depute Clerk reminded Board Members of the current level of restrictions in place for licensed premises and confirmed that the LSOs along with colleagues from Environmental Health and Police Scotland, had been visiting licensed premises to ensure the guidelines were being adhered to, with no major issues being reported.

The Board Members agreed to note the Report.

4. APPLICATIONS

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

5. PREMISES LICENCE REVIEW

Review of premises licence for premises at:-
Tesco Store, Main Street, Auchinleck;
Tesco Store, 112 Glasgow Road, Kilmarnock;
Tesco Extra, West Shaw Street, Kilmarnock; and
Tesco Superstore, Polwarth Street, Galston
following receipt of a notice in terms of Section 44 of the Licensing (Scotland) Act, 2005 from the Licence Holders.

The Depute Clerk reported that a Notice of Conviction had been received, in terms of Section 44 of the Act, from the Agents for the licence holders.

The Depute Clerk reported that at Birmingham Magistrates on 19 April 2020, Tesco Stores Limited were convicted of a breach of Regulation 178/2002 of Schedule 2 of the Food Safety & Hygiene (England) Regulations 2013. They were fined £7,560,000, a Surcharge of £170,00 and costs of £95,500.

As the incident which led to the conviction did not relate to the sale of alcohol and did not take place in any premises within East Ayrshire, the Board unanimously agreed to take no action in respect of this notice of conviction.

6. PREMISES LICENCE REVIEW

Review of premises licence for premises known as The Railway Inn, 26-28 East Main Street, Darvel following receipt of a Premises Licence Review Application in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005 from Police Scotland.

The Depute Clerk advised Members that a Premises Licence Review Hearing had been requested in respect of premises known as The Railway Inn, 26-28 East Main Street, Darvel, following receipt of a premises licence review application from Police Scotland.

Joanne Haining, the Premises Licence Holder, joined the meeting.

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

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

In support of the review application, Chief Inspector Calderwood, reported as follows:-

The Premises Licence Holder and Designated Premises Manager for these premises is Joanne Haining, EA/PL/2021/19, who was granted her licence by East Ayrshire Council on 10 April 2019.

There were no issues in granting said licence raised by Police Scotland at that time.

The Review application is made in terms of Section 36(3)(b) on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely:_

- Preventing crime and disorder**
- Securing Public Safety**
- Protecting and Improving Public Health**

As of 26 April 2021 Scottish Government guidelines changed restrictions of licensed premises allowing mainland Scotland to adhere to Level 3 restrictions. The key objectives of these restrictions prohibits persons from consuming alcohol within the inside of licensed premises and that the consumption of alcohol should only be permitted within designated outdoor areas.

Prior to the easing of the restrictions, Licensing Standards Officers from East Ayrshire Council carried out a number of support visits to licensed premises to offer guidance on the conditions for reopening. The Railway Inn was visited on 27 April 2021 as part of this initiative and no issues were identified. The Premises Licence Holder agreed that she was aware of the relaxation of restrictions and that provisions had been put in place for trading to restart.

On Sunday 2 May 2021 organised visits to licensed premises were conducted by Police Scotland officers throughout Ayrshire. A routine visit to the Railway Inn was carried out around 16.30 hours on the same day.

At this time, police officers attending The Railway Inn found the front access door to be locked however persons could be heard within the premises. After repeated knocking, access was gained and a male staff member clearly stated that he wasn't in charge.

On entering the premises the police officers observed a towel had been placed over the window that would not allow a view into the bar area. On entering the bar, officers found four patrons consuming alcohol within the interior bar area of the premises. On inspection of the beer garden area approximately 30 persons were present. The Designated Premises Manager was not within the premises at that time.

The Police officers were informed that there was a one way system that had been put in place but it was noted that there was no signage to denote this provision.

Training records were examined and it was noted that the four present staff members had had their two hour training to work within the bar and one of the members of staff had their own personal licence.

The staff on duty within the premises advised officers that they were collectively in charge of the premises. Due to the patrons being found consuming alcohol within the bar of the premises all four staff members were cautioned and charged by the police officers with the Health Protection Coronavirus (R&R)(Local Levels) 202s R5(1) and informed that a report would be submitted in relation to the offence.

Coronavirus has undoubtedly impacted on the licensing trade since March 2020 and since that time a number of restrictions and guidelines have been introduced to ensure public safety. Similarly, there have been a wide variety of sources of sources of information available to the licensing trade to allow them to adapt and open premises in a manner that ensures the safety of their staff and the public alike. During the police visit to the Railway Inn, Officers identified a clear breach of the regulations with patrons being served alcohol and consuming same within the interior bar area of the premises. This is in direct conflict with current regulations and comes on the first weekend following premises being allowed to trade.

Chief Inspector Calderwood requested that the Licensing Board considered 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(2A) of the Act.

Ms Haining had no questions for Police Scotland.

Ms Haining submitted that they were in unprecedented times and the restrictions had been difficult. Ms Haining stated that she had been working Monday to Saturday of the week when the incident took place and was off on the Sunday due to a headache. Ms Haining stated that the customer and his carer had been permitted inside the premises because he had been unwell. The alcohol had been sold to him outside and that he had brought his drink with him when he went into the premises. Ms Haining further stated that the door had been locked to stop any further customers coming in but that the Police would have had access from the rear. Ms Haining further stated that the towel had been placed above the door to catch water drips but had fallen down and covered the window.

Ms Haining stated that all staff had been re-trained and were in the process of obtaining personal licences.

Police Scotland had no questions for Ms Haining.

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.

Carolyn McEwan, LSO, reported that the premises consisted of a bar and lounge with beer garden and were situated in Darvel Town Centre. They were permitted to sell alcohol on-sale only between the hours of 11am until Midnight Sunday to Wednesday and 11am until 1am Thursday to Saturday. Joanne Haining had been the Licence Holder and Designated Premises Manager since the Premises Licence transferred to her on 10 June 2019.

A visit to the premises was made by Officers on 11 July 2019, following the Licence being transferred. It was noted that there was a gaming machine on the premises, however as there was no permit in place Joanne Haining was advised to switch the gaming machine off until such time as a permit had been applied for and granted. A gaming machine permit was thereafter granted on 23 July 2019. All else was found to be in order.

From 26 April 2021 relaxation of the coronavirus legislation permitted hospitality premises to open and trade from licensed external areas. Licensing Officers carried out visits to on-sale premises who had external areas included in their Licence to offer guidance in respect of procedures which would require to be in place in order to ensure compliance with the Coronavirus legislation. A visit was made to The Railway Inn on 27 April 2021 and guidance was provided in relation to the required covid procedures. A capacity Notice was required at the entrance to the premises, a Notice advising customers that they were entering a 1 metre socially distanced zone was required and signage restricting the number of customers using the toilet accommodation was also required.

It was noted that the pool table and gaming machine were available for use. As the coronavirus legislation prohibited the use of such equipment at that time, guidance was provided.

Following information being received by Police Scotland that during a visit to the premises on Sunday 2 May, Police Officers had observed 4 people consuming alcohol within the bar area, a joint visit to the premises was carried out by Licensing and Police Officers on 5 May 2021.

Details of the police allegations were discussed with the Licence Holder and Premises Manager Joanne Haining and she was advised that it was the intention of Police Scotland to request a Premises Licence Review. She was also made aware of the sanctions available to Officers to issue a Prohibition Notice for a breach of the coronavirus legislation.

An inspection of the premises was carried out at that time to ensure that covid procedures were being applied. Guidance was provided in relation to signage restricting the number of customers using toilet accommodation at any one time. Customers within the beer garden were socially distanced, track and trace records were being completed and enhanced cleaning procedures were being implemented.

It was suggested to Joanne Haining that she may wish to consider re-training staff, particularly in relation to covid procedures. It was also suggested that staff consider undertaking Personal Licence training and that Joanne nominated one person to be in charge of the premises in her absence, to prevent any future confusion.

The premises were re-visited on 17 May 2021 by Ian Hiles, LSO, together with Sgt Barrie from Police Scotland. The Premises Licence Holder Joanne Haining was present. She produced a licensing file which contained two Personal Licences and seven staff training records. Also included within this file was certification that showed all staff had received recent training in Covid-19 awareness and procedures. A check of the premises showed that the guidance provided had been actioned upon with increased signage at the front of and throughout the premises.

Neither of the LSOs witnessed the events of Sunday 2 May 2021, as detailed within the Divisional Commander's report and were therefore unable to offer any further comments.

The Chair asked for clarification on the number of customers within the premises and consuming alcohol as the Divisional Commander's report stated there were 4 customers within the premises consuming alcohol.

Ms Haining confirmed that her staff stated that there were only 2 customers within the premises. Ms Haining stated there was no CCTV installed at the time of the incident. Ms Haining stated that CCTV had now been installed.

Councillor Leitch asked the Police if there had been any record of the customer becoming ill or of the customer being in possession of alcohol or consuming it.

Chief Inspector Calderwood stated that there was no record of the customer being ill. He further stated that there had been sufficient evidence to merit a report to the Procurator Fiscal that there had been a contravention of the Act.

The Chair asked Ms Haining if the staff had had additional training.

Ms Haining confirmed that all staff had been retrained and were in the process of obtaining personal licences and that a personal licence holder would be on the premises at all times.

Chief Inspector Calderwood concluded that at the time of the incident a towel had been placed over the window to conceal the activity within the premises and that Police Officers had to knock several times before being admitted entry to the premises. He further added that there had been sufficient evidence for a report to be submitted to the Procurator Fiscal.

Mr Haining summed up by stating that she had made a big mistake and that all procedures were now in place and were being adhered to and there would be no further incidents.

The Members adjourned to consider the matter further.

Upon returning it was unanimously agreed that only one of the grounds for review had been established, namely Protecting and Improving Public Health.

The Chair moved that as the Licence Holder had re-trained staff and implemented procedures, that the sanction should be a written warning.

Councillor Filson seconded the motion.

As there were no other motions it was unanimously agreed to issue a written warning.

There being no further business the meeting ended at 12.20pm

LICENSING (SCOTLAND) ACT 2005
APPLICATIONS FOR OCCASIONAL LICENCE

The Park Hotel Ayrshire Limited
External Licensed Area at The Park Hotel
Rugby Park
Kilmarnock

From 21 June – 4 July : 11.00am until 9.00pm (on sale)
From 5 July – 18 July : 11.00am until 9.00pm (on sale)
From 19 July – 1 August : 11.00am until 9.00pm (on sale)
From 2 Aug – 15 August : 11.00am until 9.00pm (on sale)

The Depute Clerk advised Members that the occasional licence applications were submitted in respect of an additional external area at the front of The Park Hotel, to assist with social distance measures introduced due to the coronavirus pandemic.

The Depute Clerk confirmed that four occasional licences had already been granted under delegated powers for the external area, covering the period from 26 April to 20 June 2021. The Depute Clerk confirmed that the objector, Alastair Patterson, was unhappy that the first four occasional licences had been granted. The Depute Clerk had advised Mr Patterson that if any further occasional licence applications were submitted that they would not be considered under delegated powers but would be put before the first available Licensing Board meeting.

The Depute Clerk advised members that an objection had been received from Alastair Patterson, in respect of the applications covering the period from 21 June – 15 August 2021.

Gordon Anthony appeared on behalf of the Park Hotel.

Mr Patterson was unable to attend due to a family emergency but wished his objection to be considered by the Licensing Board.

The Depute Clerk arranged for the objection letter and photographs of the area proposed to be licensed, to be displayed to the Board Members. The objection letter read as follows:-

I refer to the email sent to me by Stuart McCall on 2 June 2021 advising that an application had been received for a further 4 occasional licenses, running concurrently, in respect of an area to the front of the Park Hotel which, as previously stated in a number of representations made by me is overlooked by a large number of residential properties.

The area in question was first used as an outside licensed area last year and at that time I expressed concern that this would be a continuing use and although I was assured otherwise, the “astro turf” remained in place, as did all of the tables, throughout the winter until a few days before the application in April of this year. In my view it was always the intention to create a semi-permanent arrangement.

In April of this year, the Board granted consent for four 14 day temporary consents running concurrently taking in the period 26 April – 20 June. In my view this was a consent for 56 days. On 27 April, I received an e-mail from you stating “At the end of the period of the four occasional licences I would not be expecting the submission of any further applications”.

It should have been extremely clear that a further application would be made.

Grounds for Objection

I would question the relevance of the legislation quoted covering 14 day consents. If four applications are made at the same time running concurrently then it is effectively an application for a 56 day consent. We are now in the situation that there is another application covering 56 days with a two day gap meaning consent would be granted for 112 days out of 114. The legislation is simply not intended to be used in this way.

The explanation given to me previously was that it was the Council’s policy to assist the hospitality industry at a time of restriction on indoor use. Your email referred to above states “hopefully by that time” i.e now “all licensed premises in Scotland will hopefully be operating much more in line with what may be categorised as normally”. Since we have been at that stage for a number of weeks now I cannot see the need for the assistance already given, particularly when the residents have to deal with the eyesore which has been created.

At a Licensing Board meeting on 15 December, consent was granted to an application for major variation of premises licence. The application involved extending the licensed area into the recently created hotel extension and alterations to “Blues” restaurant thereby increasing capacity by 100 persons. This area has never been opened, despite the furniture being in place. Why on earth would the Board take the view that assistance is needed when the Hotel is not fully using the fully licensed areas, all to the detriment of the visual amenity of the area?

The screening which has been referred to as being “efforst have been made to screen a large part of the area” is, in fact, three portacabins and an oversized pick up truck. I attach photographs of the area and I think it is fair to say that the screening at best is ineffective and the area at the main entrance has very little screening.

The Building (Scotland) Act 2003 state that planning consent is required for buildings in temporary occupation/use for more than 28 days. The portacabins are already way past this time limit. The buildings therefore require consent to be there. I cannot see that the Licensing Board has the power to relax this planning requirement. Reference has been made to the portacabins being moved thereafter to “some other part of the football stadium”. I have already made the point that The Park Hotel is owned by a separate company from Kilmarnock Football Club and does not form part of the football stadium. In any event I cannot see why this would justify the use of the temporary buildings in this way.

Summary

The Board is being asked to allow 112 days of almost uninterrupted use based on 8 x 14 day temporary consents running concurrently and in my view the legislation was never intended to be used in this manner.

The justification of granting these consents is the need to assist the hospitality industry to trade during restrictions when, in fact, the Hotel is not using existing, permanent facilities when it is already entitled to.

Information previously provided relative to screening and minimising visual impact is incorrect.

The temporary buildings used for screening require planning consent for use of over 28 days.

The Depute Clerk provided Members with the extract from the Coronavirus (COVID-19): Licensing (Scotland) Act 2005 Section 142 – statutory guidance, which stated “The Scottish Government is committed to seek to assist the licensed trade to recover from the effects of the coronavirus outbreak. New flexibility and discretion was added to the operation of the alcohol licensing system under the 2005 Act through the Coronavirus (Scotland) Act 2020. The guidance further stated that “Given the requirements for physical distancing, it can be expected that some licensed premises will explore maximising the use of their available space for the sale of alcohol in innovative ways that may not even have seemed apparent or possible prior to the coronavirus outbreak. For example, repurposing the use of garden space or car park space may be possible for some on-sale establishments. Boards will need to consider the individual circumstances of each application and, where appropriate, consider whether conditions may be attached to ensure the licensing objectives can be met. For example, the location of a car park directly accessing a busy main road may mean that securing public safety is difficult; it might be appropriate to limit some repurposed spaces to adults only to protect children and young persons. In considering applications for occasional licences to use such space in this way, the Scottish Government expects Licensing Boards to approach decision-making with a keen and focused sense on the needs of the on-sales business to seek to recovering from the coronavirus outbreak”.

The Depute Clerk also provided the Members with details from the Scottish Government Planning and Covid-19: Use of Outdoor Spaces and the 28-Day Rule, which states that a supportive, pragmatic and flexible approach to temporary developments and changes of use which would enable businesses to diversify or adjust the way they operate as the lockdown eases and many people can get back to work. The guidance refers specifically to uses of land which can already happen in line with time-limited permitted development rights, and also in recognition of current interest in temporary outdoor uses such as the provision of outdoor seating by pubs, cafes and restaurants, including beer gardens. As the hospitality industry re-opens with physical distancing measures, the Scottish Government wanted to encourage the sector to take steps to provide a safe and pleasant environment for customers. The guidance further stated that the most appropriate, straightforward and efficient way planning can allow for reasonable temporary changes of use during this period was through informally relaxing planning controls; particularly by agreeing not to take enforcement action against acceptable planning breaches that will allow for businesses to operate and for some normality to return to life within communities.

The Depute Clerk referred to Mr Patterson’s point in respect of the consecutive use of occasional licence applications and stated that the statutory provisions of the Licensing (Scotland) Act 2005 do permit premises to operate under consecutive dates.

Mr Anthony spoke in support of the applications by stating that he had been advised by the LSOs that it was acceptable to submit four 14 day occasional licence applications at the same time. Mr Anthony stated that the premises were only operating at a 50% turnover and that the additional external area was a means of creating revenue and retaining their employees. Mr Anthony further stated that the new extension was not currently being used due to some outstanding works but it was hoped that it would be open by the end of July, but only at a 50% capacity due to physical distancing rules. Mr Anthony stated that if planning permission was required for the additional external area, that an application would be submitted but that it was intended that the portacabins would be moved mid-September.

The Chair asked Mr Anthony what external areas were currently being used and if disabled parking spaces had been removed at the front of The Park Hotel to accommodate the additional licensed area.

Mr Anthony confirmed that the only permanent external licensed areas were the rear garden and covered canopy at the front of the premises. Mr Anthony further confirmed that temporary disabled parking spaces had been created at the side of The Park Hotel to replace the ones lost at the front. He further confirmed that these would be reinstated once the temporary licensed area was removed.

The Depute Clerk advised Members that The Park Hotel was surrounded by residential areas and that this was the only objection to the applications.

The Chair pointed out that the applications were only until 9pm.

It was unanimously agreed that the applications be granted as sought.

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR PERSONAL LICENCE

Connell J Morton

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

Mr Morton joined the meeting via MS Teams link to speak in support of his application.

The Depute Clerk confirmed with Mr Morton that there were no procedural issues.

Chief Inspector Calderwood advised that on 18 June 2019 at North and West Cumbria Magistrates Court, Mr Morton was convicted of driving a motor vehicle with the proportion of specified controlled drug and was fined £244 with costs of £85 and victim surcharge of £30 with costs of £85. Mr Morton was also disqualified from driving for 12 months.

Chief Inspector Calderwood further advised that the circumstances surrounding the above were that on 31 January 2019 at Carlisle in the County of Cumbria, Mr Morton drove a motor vehicle, namely Ford Focus index SC60 JNZ, on a road, namely M6 Northbound, Carlisle, when the proportion of a controlled drug, namely delta-9-tetrahydrocannabinol, in his blood, namely 2.4, exceeded the specified limit, contrary to Section 5A(1)(a) and (2) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

Chief Inspector Calderwood reported that it was considered necessary for the purposes of the preventing crime and disorder licensing objective, that the application be refused and made that recommendation in terms of Section 73(4) of the 2005 Act.

Mr Morton had no questions for Police Scotland.

Mr Morton stated that the offence happened 2 years ago and that he had not been in trouble since. Mr Morton explained that he had been returning to Scotland with a friend and that he had no intentions of driving but his friend had become too tired to drive and he had taken over. Mr Morton confirmed that he had previously taken the drug and that it was still in his system.

Councillor Leitch asked Mr Morton if he still used drugs and could he see this being a problem if he was granted the Personal Licence.

Mr Morton confirmed that he no longer used drugs.

The Chair asked Mr Morton if he currently worked within the licensed trade.

Mr Morton confirmed he did not currently work within the licensed trade but had applied for a Personal Licence to increase his chances of obtaining a job.

Police Scotland had no questions for Mr Morton.

The Members adjourned to consider the matter further.

Upon returning the Chair moved that the Personal Licence be granted which was seconded by Councillor Leitch. There being no other motion the Board unanimously agreed to grant the Personal Licence.

The Chair reminded Mr Morton that if there were any further incidents then his Personal Licence would be reviewed.

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

Star Pubs & Bars Ltd.

The Kings Arms
89 Main Road
Fenwick

Details of the variation:-

Change description of the premises to – Family friendly premises with external customer areas and offering a quality selection of food and drinks.

Amend on sale hours on a Sunday from 12.30pm until 11pm to 11am until 11pm.
Amend off sale hours on a Sunday from 12.30pm until 10pm to 11am until 10pm.

Add seasonal variation – the premises management will operate all general extension to core hours offered by the Licensing Board including without prejudice to the annual festive period of extended hours.

Conference facilities, films and indoor/outdoor sports are to be available both within and outwith the core hours; Theatre to be available within the core hours; Bar meals, receptions and other club or group meetings, recorded music, televised sport and outdoor drinking facilities to be available outwith the core hours. All activities outwith the core hours will commence from 8am but not after core hours and to operate during all opening hours including general extension of core hours or other extended hours granted.

Additional activities to include provision of breakfast, tea, coffee, snacks and meals, conferences/films for business meetings, theatre, comedians, magicians, poetry and literary readings and other arts activities; food and drink matchings and tastings and promotions, cocktail making experiences, takeaway and delivery of food and drink, including alcohol.

Amend children and young persons access terms to – Children and young persons from 0 – 17 years will be permitted access to all public parts of the premises with an adult for the consumption of a meal or to attend a pre-booked private function. Children and young persons will leave the premises within a reasonable time after the consumption of a meal and, if attending a pre-booked private function, may remain on the premises until the end of the function.

Extension of outdoor drinking area.

The Depute Clerk outlined the application and confirmed that there were no objections or representations in respect of the application. The Depute Clerk pointed out that the Board’s policy for the festive period was for four extensions and they had not previously granted general extensions.

Campbell Dorward, representing the applicant company, and Gareth Kelly were present at the meeting via MS Teams link.

Mr Kelly stated that the premises were changing to become a more family friendly, food led restaurant. Mr Kelly stated that the external area was currently being operated under occasional licences and that there had been no complaints from neighbours.

The Chair requested clarification on what a reasonable time was for children and young persons leaving the premises after the consumption of a meal. He also pointed out that the Board’s Statement of Policy stated that there was a rebuttable presumption against the grant of off-sales or extension of current off-sales, and that it would be up to the applicant to provide robust and reliable evidence why the Board would go against their Policy. The Chair also pointed out that the Board’s current policy on outdoor drinking was until 9pm, although the Scottish Government emergency regulations in terms of the

COVID-19 pandemic had temporarily extended this to 10.30pm. The Chair also asked for clarification on the delivery of alcohol.

Mr Kelly confirmed that 8pm would be a reasonable time for children and young persons to leave the premises after the consumption of a meal. Mr Kelly further confirmed that the off-sales request was to provide a service to the community as there were no shops open at that time in the vicinity but that it was not an issue if this part of the application was not granted. Mr Kelly confirmed that the delivery of alcohol would only be with food and that Challenge 25 would be operated by experienced staff. Mr Kelly clarified that the reason for the addition of home delivery was to in case another pandemic lockdown was to take place.

The Depute Clerk asked for clarification from Mr Kelly if children and young persons would be off the premises by 8pm after consuming a meal and if he was happy for a condition to be added to the premises licence to reflect this. Mr Kelly confirmed that both children and young persons would be off the premises by 8pm and that he was happy for a condition to be added to the premises licence.

The Depute Clerk pointed out to Mr Kelly that there was insufficient evidence provided by him to make the Board Member's deviate from their policy in terms of extending the times for off-sales. The Depute Clerk also pointed out that Mr Kelly had stated that this was not an important part of the application.

Mr Kelly confirmed it was not an important part of the application.

Councillor Filson asked for clarification from Mr Kelly regarding the capacity of the premises. Mr Kelly confirmed that even though the beer garden had a capacity of 120, they were not looking to increase the current occupant capacity of 150.

The Board Members adjourned to consider the matter further.

Upon returning the Chair moved that the application be granted subject to the retention of the current off-sales hours, that children and young persons were required to be off the premises by 8pm following the consumption of a meal, that a condition be added to the operating plan to reflect this, and that the beer garden be licensed until 9pm.

Councillor F Campbell seconded the motion.

There being no further motions it was unanimously agreed that the application be granted subject to the above amendments.

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR PROVISIONAL PREMISES LICENCE

Centrestage Communities Ltd.

Centrestage Communities Ltd.
15 Elmbank Drive
Kilmarnock

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

Licensed hours applied for:-

On Sale

Sunday - Saturday : 12 Noon - 12 Midnight

The premises will be multi purpose, mainly dedicated to the arts. There will be a seated auditorium, studios, café/kitchen as well as some space available to rent to tenants.

Conference facilities, restaurant facilities and bar meals will be available within the premises; the premises will cater for conferences, weddings, funerals, birthdays, group meetings, etc.; recorded music, live performances, dance facilities, theatre, films, indoor/outdoor sports, televised sport and outdoor drinking facilities may be provided. Some activities may take place outwith the core hours however no alcohol will be available. The premises may remain open until 1am on Christmas Eve, Boxing Day, Hogmanay and 1 January each year.

Children and young persons from 0 – 17 years will be permitted access to all public areas of the premises during the core hours. Alcohol will be a very small part of what Centrestage offer and it is not intended to operate as a pub. The proposed occupant capacity of the premises is 2450.

The premises will have disabled access – every entrance/exit has an accessible ramp; all internal floors are accessible by a lift; all floors will have directional colour signage; there are automatic doors at the main entrance and many assistance call points throughout the building; there will be accessible desks/tables inside and outside the premises; assistance dogs are welcome; hearing loop system installed and large print menus.

The Depute Clerk reminded Members that the applicant had previously had a premises licence at John Little Street, Kilmarnock, but that this licence was no longer in force. The Depute Clerk stated that this application was for new premises. He outlined the application and confirmed that there were no objections or representations.

Paul Mathieson joined the meeting on behalf of Centrestage Communities Ltd.

Mr Mathieson stated that the premises should be ready to open at the end of August 2021. Mr Mathieson stated that the premises would cater for a wide range of customer and would mainly focus on the Arts. He stated that alcohol would be a small part of their business model and was ancillary to what they would be offering.

The Chair asked for clarification of where alcohol would be available within the premises as children and young persons were being permitted access during the core hours.

Mr Mathieson confirmed that alcohol would mainly be sold in the main restaurant but could also be available in the lounge, outside patio area and the auditorium.

Mr Mathieson stated that the reason for children and young persons being permitted within the premises for the core hours was to offer as wide a time as possible to accommodate customers who might want to eat in the restaurant after a show which might not finish until 10pm.

The Members adjourned to consider the matter further.

Upon returning the Chair advised that there had been a full discussion, particularly with regards to children and young person's access and that it had been agreed that the

premises would be operating similar to a Theatre bar style premises. The Chair reminded the applicant that the Challenge 25 policy should be adhered to.

The Chair moved that the application be granted as sought, this was seconded by Councillor Crawford.

As there were no other motions it was unanimously agreed to grant the premises licence as sought.

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR PROVISIONAL PREMISES LICENCE

OMOA Limited

Tony Macaroni
1 Queens Drive
Kilmarnock

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

Licensed hours applied for:-

On Sale

Sunday - Thursday : 11am - 12 Midnight
Friday & Saturday : 11am – 1am

Off Sale

Sunday – Saturday : 11am – 10pm

The premises will be a family friendly restaurant situated in Kilmarnock.

Restaurant facilities and bar meals will be available within the premises; the premises will cater for conferences, weddings, funerals, birthdays, group meetings, etc.; recorded music, live performances, dance facilities, televised sport and outdoor drinking facilities may be provided. A takeaway and home delivery service may be provided. Services or activities may take place outwith the core hours but only with the sale of alcohol where extended hours have been permitted in terms of S67 or S68 of the Act.

Children and young persons from 0 – 17 years will be permitted access to all public areas of the premises during the core hours for the purpose of having a light snack or meal, or to attend a private function. Children will require to be supervised by a responsible adult after 10pm. The proposed occupant capacity of the premises is:- Internal 166, External 50

The premises will have disabled access – there is clear access from the car park to inside the restaurant; there is a ramp for wheelchair access from the car park which is signposted; the premises has fully compliant disabled WC provision and table service for food and drink only; Staff are trained and can offer assistance where required.

The Depute Clerk reminded Members that these premises were previously operated by Frankie and Benny’s and had a premises licence for on-sales only. The premises licence holder allowed the premises licence to lapse during the coronavirus lockdown.

The Depute Clerk pointed out to Members that the applicant was asking for off-sales which was contrary to the Board’s Policy Statement. The Depute Clerk confirmed that there were no objections or representations in respect of this application.

Audrey Junner, Solicitor, and John Miller from the applicant Company joined the meeting to address the Board.

Ms Junner pointed out to Members that if the previous premises licence holder had submitted a transfer of the premises licence there would be no requirement for this application.

Ms Junner submitted that the applicant company was a part of Viva Italia Ltd and had invested £200,000 in the premises, creating 20 – 30 jobs and that the operating plan would mirror the previous operating plan of Frankie and Benny's. Ms Junner pointed out that children and young person's access to 10pm was more restrictive than the previous premises licence. Children and Young Persons would also have access for a private function until the end of the function.

Ms Junner continued by stating that she appreciated that the Board had an overprovision of off-sales but that the off-sales would only be ancillary to the take-away food service. The type of alcohol provided for off-sale along with the delivery of food would be Wine and Beer and would cost the same as the on-sale menu which would be significantly more than supermarket prices. Ms Junner stated that the off-sales would not cause any health harm and that all alcohol delivery procedures would be in place. Delivery drivers would be trained and if there was any doubt to the age of the person receiving the alcohol, it would be returned to the premises. No alcohol would be left in a safe place. The delivery of alcohol would stop at 10pm.

Ms Junner stated that off-sales was a small part of the business but that it was offered in all of the applicant's premises.

Ms Junner completed her submission by stating that it was a positive application which would open up a closed site and off-sales was a small part of the business. Ms Junner moved that the application be granted.

The Chair asked for clarification on the proposed access by children and young persons.

Ms Jenner confirmed that the application could be amended to show children and young persons being supervised during the core hours.

The Depute Clerk asked for confirmation that if the Members were not convinced to go against their Policy Statement for off-sales, if the applicant would be agreeable to that part of the application being deleted. Ms Junner confirmed that would be acceptable.

The Depute Clerk asked for confirmation that conditions could be added to premises licence in respect of the access of children and young persons. Ms Junner confirmed that would be acceptable.

The Members adjourned to discuss the matter further.

Upon returning the Depute Clerk confirmed that the Members were not convinced that enough evidence had been provided for them to go against their Policy Statement in respect of off-sales, and that this part of the application be deleted.

The Depute Clerk confirmed that it was agreed that children be permitted access to the premises accompanied until 9pm and that young persons be unaccompanied until 10pm. Children and Young Persons would permitted access to the premises for a private function until the end of the function.

The Chair moved that the application be granted subject to the above amendments. The motion was seconded by Councillor Todd.

There being no further motions, the application was unanimously granted subject to the removal of off-sales and amendment to the access of children and young persons.
