

EAST AYRSHIRE LICENSING BOARD

Minute of the virtual Meeting of East Ayrshire Licensing Board, held digitally through Microsoft Teams, on Tuesday 24 August 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), Mrs C McEwan (Licensing Standards Officer), 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

Minute of the meeting of East Ayrshire Licensing Board held on 22 June 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 15 June and 13 August 2021:-

Minor Variation	:	13
S33 Transfer	:	1
Variation on Transfer (S34)	:	1
Grant of Personal Licence	:	16
Renewal of Personal Licence	:	2
Small Society Lottery Renewals	:	4

The number of Occasional Licence applications considered has not been included in this report as, due to the COVID-19 restrictions, many Occasional Licence applications were withdrawn or could not be granted.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 1207 Personal Licences and 297 Premises Licences in force.

The Depute Clerk reported that since the Scottish Government's relaxation of the covid restrictions on 9 August 2021, the Licensing Standards Officers, along with colleagues in Environmental Health had been having weekly meetings to discuss the impact on licensed premises and events. The Depute Clerk reported that licence holders and organisers were being very co-operative.

Noted.

4. OUTDOOR DRINKING AREAS

The Depute Clerk asked the Members to consider whether the relaxation of the 9pm curfew for outdoor drinking areas should continue and whether Occasional Licence applications should continue to be permitted for the use of outdoor drinking areas that do not form part of the premises licence.

After a full discussion it was unanimously agreed that the 9pm curfew should be reinstated for outdoor drinking areas. It was also unanimously agreed that premises who had submitted minor or major variation applications to add the outdoor drinking area to their premises licence, should continue to have any occasional licence applications dealt with by the Clerk to the Licensing Board until these applications were considered.

5. APPLICATIONS

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

As there was no further business the meeting ended at 11.10am.

LICENSING (SCOTLAND) ACT 2005
APPLICATION FOR OCCASIONAL LICENCE

Matthew McGowan

McLaren's Nurseries Ltd
Lochlibo Road
Uplawmoor
Glasgow

Off – Sales

Sunday – Saturday

10.00am – 4.30pm (for 14 days)

Sale of wines, beers and spirits within the farm shop from locally sourced producers where possible.

The Depute Clerk outlined the application and reminded Members that the application was contrary to the Board's Overprovision Policy on off-sales and could not be dealt with under delegated powers. The Depute Clerk reminded Members that the applicant would need to provide robust and reliable evidence to the Board why the benefit to the licensing objectives through the grant of the application outweighed the detriment to the licensing objectives and the Overprovision Policy.

The Depute Clerk confirmed that there were no objections or representations in respect of the application.

Mr McGowan joined the meeting in support of his application and stated that he was aware of the Board's overprovision policy in respect of off-sales but that his premises were in a rural area with the majority of customers coming from outwith East Ayrshire. He stated that the premises were primarily a garden centre with a farm shop and that he was considering widening his products by introducing upmarket spirits and wine. Mr McGowan stated that he would not be offering cut price alcohol and the premises would not be somewhere that customers would primarily visit to buy alcohol. Mr McGowan stated that all staff would be suitably trained in Challenge 25 and there would be CCTV installed. The premises would close at 4.30pm and he did not consider his premises to be similar to other off-sales. Mr McGowan did not think that provision of off-sales from his premises would have a negative impact on any of the licensing objectives.

The Chair asked for confirmation of the type of alcohol being provided and Mr McGowan confirmed that it would be specialist alcohol, sourced from local producers where possible. Mr McGowan further confirmed that the reason for an occasional licence application for 14 days was to ascertain the possibility of sourcing local small family business producers and assess the level of customers purchasing alcohol.

Councillor Mair asked for confirmation if more occasional licence applications would be submitted if this application was granted. Mr McGowan confirmed that the reason for submitting occasional licence applications was to ascertain whether the high cost of a premises licence application would be justified and that if this application was granted then further applications may be submitted.

The Members adjourned to consider the matter further.

Upon returning Councillor Mair moved that the application be refused. The motion was seconded by Councillor Crawford.

As there were no other motions, the Members unanimously agreed that the application be refused.

The Depute Clerk confirmed that the Board unanimously determined that the granting of the application would be inconsistent with one or more of the licensing objectives as detailed within Section 59(6)(c) of the Licensing (Scotland) Act 2005. Specifically the Board were of the view that the granting of the application would be inconsistent with the public health objective.

The Board also observed that the applicant confirmed that, if the application were to be granted, it would be followed by a full premises licence application and were of the view that in these circumstances the grant of an occasional licence could also be regarded as being inconsistent with the terms of their overprovision policy.

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

Sainsbury's SL Limited

Sainsbury's
Rigg Street
Stewarton

Details of the variation:-

Amend operating plan to include recorded music and live performances both within and outwith core hours. Recorded background and live performances may occur outwith core hours as ancillary to the general retail sale of groceries and other non food items. General retail sales will also occur outwith the core licensed hours, but not normally before 7am or after 11pm.

Other activities to include the sale of alcohol, groceries and other non-food items which occurs from the premises, which includes fulfilment of remote orders by home delivery and or "click and collect", subject to compliance with sections 119 and 120 of the Licensing (Scotland) Act 2005 as amended, or such law that may be enforced from time to time. The reference to live performances above is purely to capture very occasional fundraising events where there may be a performance element such as carol singers during the festive season. Parts of the premises may be operated by third party concessions, eg dry cleaners, shoe repair facilities. The premises may also, on occasion, be used to launch new products, have product sampling/tasting events and host community and charity events or events in conjunction with third party partners.

The name of the premises is to be amended from Sainsbury's to Sainsbury's Supermarket and the description of the premises is to be amended to:-

Sainsbury's Supermarket is a large format grocer and general retail store offering a wide range of products and services including groceries, alcohol, newsagent, general retail (including clothing, home and electrical) and food to go. The store may also be a platform for innovations including parcel and click and collect services and it may house sections dedicated to brands within the Sainsbury's group.

The Depute Clerk outlined the application and confirmed that there were no objections or representations.

Mr Niall Hassard, Solicitor, and Nick Wood, Sainsbury Store Manager, joined the meeting in support of the application.

Mr Hassard advised the Members that Sainsbury's internal Legal Department had reviewed the operation of the 100 Sainsbury premises and found that there were discrepancies in the operation of a number of premises. Mr Hassard continued that this application was to ensure the operation of these premises matched all the other premises. Mr Hassard stated that there was no change to the alcohol display area or capacity and requested that the application be granted as sought.

The Board Members agreed to unanimously grant the application as sought.

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

Lidl GB Ltd.

Lidl
38 High Glencairn Street
Kilmarnock

Details of the variation:-

The store is being remerchandised resulting in a change to the layout plan and increase in the alcohol display area.

Current Display - 46.46m² (with an additional seasonal display of 11.88m² to be used between 1 December and 2 January each year) = 58.34 m²

Proposed Display - 59.54m² (with an additional seasonal display of 11.88m² to be used between 1 December and 2 January each year) = 71.42m²

The Depute Clerk advised Members that the application was to increase the off-sales capacity and therefore the applicant would need to provide robust and reliable evidence to the Board why the benefit to the licensing objectives through the grant of the application outweighed the detriment to the licensing objectives and the Overprovision Policy. The Depute Clerk reported that there were no objections or representations in respect of the application.

Mr Andrew Hunter, Solicitor, joined the meeting along with Tracy Broomfield, Lidl Licensing Manager for Scotland.

Mr Hunter submitted that the variation was required due to the applicant company's national refurbishment process to provide more fresh produce into their premises. The layout of the premises required to be changed to provide more chiller cabinets and the premises was also increasing the alcohol display area to provide a full range of Beers and Wines to bring it in line with other Lidl premises. Mr Hunter also submitted that the premises intended to introduce bottle recycling.

Mr Hunter referred to the layout plan shown to the Members and stated that the red alcohol display area would be increasing from 4.3% of the premises to 5.6%. Mr Hunter stated that the Christmas display area would not change. Mr Hunter stated that 100 of Lidl premises had this size of alcohol display area and that it was less than the big supermarkets.

Mr Hunter went on to confirm that he was aware of the Board's Statement of Policy in respect of overprovision of off-sales but submitted that it was extremely difficult to present this type of application due to the wording of the policy that each application requires to be determined on its merits and that there may be exceptional cases where an applicant would be able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicant's operating plan were to be modified. Mr Hunter stated that this suggested that the premises were currently lacking in their operation. Mr Hunter stated that Lidl already had robust policies within their stores and met all the licensing objectives and that the increase in alcohol display area would not change this. The premises had 4 personal licence holders working there and an additional 16 employees. It was submitted that the granting of the application may result in the increase of employment but that any increase in staff numbers would not solely be due to the existence of increased alcohol display area. Mr Hunter advised the Board that his client fully complied with all the health objectives and contributed to local and national charities.

Mr Hunter completed his submission by stating that the overprovision policy within the Board's Statement of Policy related more to the new grant of off-sale premises and not a variation to current licensed premises. Mr Hunter further submitted that the variation was a small variation and was not doubling the size of the alcohol display area and would not have an adverse impact on the Board's Statement of Policy as the applicant was a responsible operator and only wished to increase the range of alcohol to customers. Mr Hunter moved that the application be granted and treated as an exception to the Board's Statement of Policy.

The Depute Clerk submitted that he did not agree with Mr Hunter's submission that the way the Policy was written in any way fettered the applicant's submissions or the Board's ability to reach a decision on such an application. He referred to the paragraph within the Board's Statement of Policy which stated:- "The Board recognises the positive health benefits associated with increased employment opportunities as a factor that applicants may use in support of their application and a factor that may in appropriate circumstances rebut such a presumption. In particular the Board will expect to be addressed on the benefits of granting the application in terms of each licensing objective." The Depute Clerk suggested that, on further consideration of the specific wording Mr Hunter may wish to add to his submission to the Board on the application.

The Chair also confirmed at this point that the premises currently adhered to the licensing objectives.

Mr Hunter went on to submit that the applicant was a responsible operator who adhered to the licensing objectives, did not offer the sale of cigarettes, did not offer sweets at its sales counters, recycled products that would go to waste, did not sell high energy drinks to persons under the age of 16 and did not offer a high volume of alcohol. Mr Hunter submitted that the change to the size of the alcohol display area would not have an

adverse affect on any of these and it was difficult to provide robust evidence when the premises licence holder was already adhering to the licensing objectives.

The Chair pointed out that there was voluminous health data available which supported the conclusion that an increase in availability of alcohol increased consumption.

In response Mr Hunter submitted that in his opinion the data referred to by CREESH was incorrect and that specifically his client in being able to offer a wider choice of alcohol within the store would not result in an increase in overall alcohol sales.

The Members adjourned to discuss the matter further.

After a short adjournment the Chair confirmed that there had been a full discussion taking account of Mr Hunter's submission and pointed out that the proposed increase in the size of the alcohol display area would result in 28% of the premises being for the sale of alcohol.

Councillor Mair moved that the application be refused as the submission did not provide enough robust evidence for the Licensing Board to deviate from its Statement of Policy on the issue of overprovision.

The motion was seconded by the Chair and as there were no other motions it was unanimously agreed to refuse the application.
