

## **EAST AYRSHIRE LICENSING BOARD**

**Minute of the Special Meeting of East Ayrshire Licensing Board, held within the Council Chambers at East Ayrshire Council Headquarters, London Road, Kilmarnock and digitally through Microsoft Teams, on Wednesday 2 November 2022 at 12 Noon.**

**SEDERUNT:** Councillor Drew Filson (Chair), Councillor Graham Barton, Councillor Stephen Canning, Councillor Elaine Cowan, Councillor Lillian Jones, Councillor Claire Leitch and Councillor Kevin McGregor.

**ATTENDING:** David Mitchell (Clerk to the Licensing Board), Craig Young, Team Leader – Litigation and Advice, Ian Hiles (Licensing Standards Officer), Mrs Patricia Duncan and Ms Sheila Duncan (Licensing Board Administrators).

**APOLOGIES:** Councillor William Crawford, Councillor June Kyle, Councillor David Richardson.

### **1. SEDERUNT**

Noted.

### **2. DECLARATIONS OF INTEREST**

It was noted that there were no declarations of interest by any of the Board Members.

### **3. APPLICATION DECISION**

Consider request received from the Agent for the applicant for reconsideration of the decision taken by the Board on 23 August 2022 in respect of the undernoted variation application.

Motor Fuel Limited	Kilmarnock Service Station 165 Riccarton Road Kilmarnock
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Details of Variation - Due to extensive refurbishment of convenience shop resulting in a wider shop range/products and an increase in the alcohol display area from 8.6m<sup>2</sup> to 15.775m<sup>2</sup>, or alternatively a smaller increase to 10.66m<sup>2</sup>.

**The Clerk reminded Board Members that at the Licensing Board meeting on 23 August 2022, the Board Members unanimously agreed to refuse the above variation application as there was insufficient evidence for them to deviate from the Board's overprovision policy. The Members had agreed that they should remain consistent with previous decisions made in respect of increased off-sales capacity.**

**The Clerk confirmed that on 11 October 2022 correspondence and documentation had been received from the Applicant's Agent confirming that an appeal against the Board's decision of 23 August 2022 had been lodged with Kilmarnock Sheriff Court.**

**The Clerk further confirmed that the Agent had indicated that his clients would be willing to resolve matters, should the Board be prepared to reconsider their earlier decision and grant a variation of the premises licence by increasing the alcohol floor space from 8.6m<sup>2</sup> to 10.66m<sup>2</sup>. The Agent had indicated that the variation application was for a small increase in floor space and referred to relevant case law, particularly BP Oil UK Limited v Dundee City Licensing Board and Aldi Stores Ltd v Dundee City Licensing Board.**

**The Clerk pointed out that when the Board Members had originally considered the application, the previous Board decisions to refuse similar applications should have been discussed, taking account of the Board's Statement of Policy that each application should be considered on its own merits.**

**The Clerk advised that the Sheriff could look at the variation as being de minimus and that it would not have had an impact on the overprovision policy as referred to in the case law of BP Oil UK Limited v Dundee City Licensing Board. The Sheriff could overturn the decision and possibly grant the increased area of 15.775m<sup>2</sup>. The Clerk further advised that the Aldi Stores Ltd v Dundee City Licensing Board dealt more with the locality for overprovision. The Clerk pointed out that the Agent had not referred to the case law in his original submission but would refer to it in the Appeal.**

**The Chair asked if there was a time limit on making a decision to reverse the refusal, as a discussion was due to take place at the January Board meeting in respect of the overprovision policy.**

**Craig Young advised that the Procedure Hearing was due to take place on 16 November 2023, when a date for the Appeal would be set.**

**The Clerk respectfully asked that the Board reconsider the variation application at this time and take account of the case law when reviewing the Licensing Board Statement of Policy.**

**Councillor Jones stated that she was not aware of de minimus decisions or the case law at the original consideration of the application and stated that this could have assisted in the decision making process. Councillor Jones agreed with the Clerk's comments about granting the lower increase of 10.66m<sup>2</sup>.**

**Councillor Leitch confirmed that de minimus had not been taken into account when previously making decisions relating to overprovision. Councillor Leitch asked if reconsideration would now be required for all of the previous refusals and pointed out that all of the increases added together may have an impact on health.**

**The Clerk confirmed that the Agent had not referred to the case law in his original submission even though it preceded consideration of the application. The Clerk confirmed that applicants who had previously been refused would require to submit a new application.**

**Councillor Cowan stated that even though the increase was small, if this was repeated in other premises throughout the Licensing Board area, this could have an impact on health.**

**Councillor McGregor agreed with the Clerk's comments regarding de minimus increase.**

**Councillor Barton confirmed that he had agreed with the refusal of the original application because of the Board's previous refusal decisions in respect of similar applications but was in agreement with the position now being presented.**

**Councillor Canning pointed out that the Agent had given the Board an opportunity to reconsider the application before it proceeded to Appeal.**

**The Board reconsidered the Licensing Board's decision of 23 August 2022 to refuse the application, and unanimously agreed to grant the smaller increase of 10.66m<sup>2</sup>.**

**There being no further business the Board meeting ended at 12.25pm.**