

EAST AYRSHIRE LICENSING BOARD

Minute of the Meeting of East Ayrshire Licensing Board, held within meeting room at East Ayrshire Council Headquarters, London Road, Kilmarnock and digitally through Microsoft Teams, on Tuesday 23 August 2022 at 10am.

SEDERUNT: Councillor Drew Filson (Chair), Councillor Graham Barton, Councillor Lillian Jones, Councillor June Kyle, Councillor Claire Leitch, and Councillor David Richardson.

ATTENDING: David Mitchell (Clerk to the Licensing Board), Mrs Carolyn McEwan and Mr Ian Hiles (Licensing Standards Officers), Ms Margaret Anne Arnott (Environmental Health Officer), Ms Sheila Duncan (Licensing Board Administrator).

APOLOGIES : Councillor Stephen Canning, Councillor William Crawford, Councillor Elaine Cowan and Councillor Kevin McGregor.

1. SEDERUNT

Noted.

2. MINUTE OF MEETING

The Minute of the meeting of East Ayrshire Licensing Board held on 28 June 2022 was agreed and noted.

3. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Clerk reported on the applications discharged under delegated authority between 20 June and 15 August 2022:-

Minor Variation	:	9
S33 Transfer of Premises Licence	:	1
S34 Transfer of Premises Licence	:	1
Grant of Personal Licence	:	10
Renewal of Personal Licence	:	2
Renewal of Small Society Lottery Registration	:	10
Extended Hours Licences	:	4
Occasional Licences	:	94

The Clerk reported that of the 94 Occasional Licences granted, 21 were granted to Club premises, 45 to Personal Licence holders, 16 to Premises Licence holders and 12 to Voluntary Organisations. As of the date of the Report there were 1120 Personal Licence holders and 296 Premises Licence holders.

The Board Members noted the content of the Report.

4. APPLICATIONS

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

5. PREMISES LICENCE REVIEW

Review of premises licence for premises known as Portmann Hotel, 42 Portland Road, Kilmarnock following receipt of a Premises Licence Review Application in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005.

The Clerk advised that a Premises Licence Review Hearing had been requested in respect of premises known as Portmann Hotel, 42 Portland Road, Kilmarnock, following receipt of a premises licence review application from Mr David Gordon, a neighbour of the premises stating that the premises licence holder had breached the preventing public nuisance licensing objective.

Mr David Gordon and Mrs Claire Gordon were present to speak in support of the Premises Licence Review application.

Mr MacIver, Hill Brown, Solicitors, was present representing the premises licence holder, Oxford Hotels & Inns Management along with Robert Robb and Jim Rooney who were Tenants of the premises.

The Clerk outlined the hearing procedure and asked if there were any preliminary matters. As there were no preliminary matters the hearing proceeded in terms of the hearing procedure.

Mr Gordon's premises licence review application stated as follows:-

"The Board's Statement of Licensing Policy under the Licensing (Scotland) Act 2005 stated that there should be no noise audible in the nearest neighbouring property detailed in sections 17.6, 17.8 and 29.

Following previous engagement with East Ayrshire Council (Environmental Protection) throughout 2021 we have again this year began compiling a diary on noise nuisance (which has been shared with Margaret-Anne Arnott and Carolyn McEwan) and would provide these as examples where the Portmann Hotel have failed to comply with the required conditions.

18/6/22 - 23.50 Party with music audible throughout the evening and singing captured in video evidence.

4/6/22 - 10.30pm my wife returned home after being out for the evening to music "blaring" from the Portmann back function room, door and windows open. She phoned and asked that the music be turned down and the response was "It's not us, it's a private function". Reminded them as it's in their premises it's their responsibility she also asked that they closed windows and doors to which they said they weren't open. She advised they were as she could see they were open. We have video evidence taken before and after the phone call showing no difference/no action taken as music just continued on until

midnight. Video evidence also shows people in the beer garden drinking after it should be closed which may also be a further breach of policy.

29/5/22 - Party during the day (approximately 12 noon till 6pm) with excessive noise audible in my property. Music was coming from the conservatory and the door and windows were left open. I had to call the hotel to ask them to address the noise and requested they closed doors/windows to avoid disturbance. While they advised they would address no change was evident.

7/5/22 - Hotel had a "Northern Soul Night" and the extremely loud music was audible inside my property. After phoning 39 times (without answer) I was called back by a mobile number. I asked for the music to be turned down and windows closed. I was told it wouldn't last that much longer ! (Video evidence available)

22/4/22 - Excessive Football singing from the beer garden at 6pm which was audible inside my property (video evidence available)

Easter Sunday - Was spoiled by the constant music being blasted from the Portmann Hotel. There were two DJ's on the premises; one in the conservatory and one in the bar area. The size and capacity of the sound system was completely excessive for the surroundings. It went on the full day and even when the beer garden was supposed to be closed and the customers moved inside the music just got louder. I phoned to ask them to turn the music down and close the windows and doors but was forced to phone back 2 further times when there was no difference. Even trying to get through to them was difficult as they weren't answering the phone and it took 42 calls with only 3 of them being answered. On the last call the response from the manager left me completely in despair; she said that one of the DJ's had stopped playing and the other one only had an hour left! Other than saying they had closed windows and doors there was no attempt to reduce the base and noise level (video evidence available).

9/4/22 - 11.30pm – Music was loud again, my son phoned and asked them to turn it down. They turned it down a bit however it was still audible in our house.

5/3/22 - 11.40pm – Music had been loud in the conservatory since 9.30pm but got noticeably louder, my wife phoned and asked them to turn it down.

13/2/22 - (after 11pm) Man in beer garden/ smoking area singing "The Gambler" at the top of his voice, my son phoned as he was working at 5am the following morning. The response from the hotel was they never knew there were people out there.

Previous Engagement with Portmann Hotel

Margaret-Anne Arnott and Carolyn McEwan visited Portmann Hotel 29 September 2021 to address the noise nuisance issue that we had reported over the year in 2021 (full noise nuisance and video evidence provided to East Ayrshire Council) and were advised that the mitigation measures that they currently have in place were as follows: Last orders being called at 8pm for beer garden so completely cleared by 9pm; Staff routinely monitoring noise levels from beer garden and alerting Premises Manager or Duty Manager if

unruly customers within; Beer garden not being used at present due to weather – proposals for early spring for consideration of acoustic barrier; Karaoke on a Friday evening moved from function suite to main bar to avert noise nuisance from entertainment; Staff encouraging customers to smoke at front of premises when beer garden not being used.

The view was that the Portmann had until 18 October 2021 to confirm these were in place and would be operating to this. Beyond that date Margaret Anne advised that if no improvement there would be an option for her to serve notice under the Environmental Protection Act 1990 and if non-compliance with this she would then seek to raise a premises review. On the subject of sound proofing which was also advised as an option the advice from the Portmann Hotel was that it would not be looked into at the moment but will be looked at again early spring/summer.

Mr Gordon completed his submission by stating that there had been noise issues from April 2021 to April 2022 and continued to be noise nuisance from the premises. Mr Gordon stated that they had followed all the advice provided by the Council and the Police and wanted measures put in place to alleviate the noise issues from the premises.”

All video evidence referred to above was played at the Board Meeting.

It was ascertained prior to the submissions by the Environmental Health Officer and the Licensing Standards Officer that Mr Gordon had not previously had sight of these Reports. Mr Gordon stated that he was happy for the premises licence review hearing to proceed without have had previous sight of the Reports.

Margaret Anne Arnott, Environmental Health Officer, stated that the purpose of this report was to update Members of Licensing involvement, following receipt of a Premises Licence Review request made by Mr David Gordon, in terms of Section 36(3)(b) of the Licensing Scotland Act 2005.

The basis of the Premises Licence Review request was that the licensing objective of preventing public nuisance had been breached.

It was recommended that Members consider the contents of the report when determining the Premises Licence Review request made by Mr Gordon.

In terms of Section 38(5)(a) of the Licensing (Scotland) Act 2005, it is a statutory requirement for the Environmental Health Service as statutory consultee to provide a report on receipt of a Premises Licence Review application.

A Premises Licence Review Application was received by the Licensing Section from Mr David Gordon, in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005, on 17 July 2022.

The premises consisted of a public bar and lounge located at the front of the premises, a dining room, conservatory and beer garden to the rear of the premises and seven letting bedrooms which are located on the first floor.

The total capacity figure contained within the Premises Licence, and which includes the beer garden area, is 220 and is split as follows: Public Bar/Lounge 120; Dining Room 50; Conservatory 50.

Mr Gordon's property bounds the beer garden at the rear of the premises.

The Premises Licence had been held by Oxford Hotels and Inns Management since the introduction of the Licensing (Scotland) Act 2005 on 1 September 2009.

The current designated Premises Manager, Alexandra Morton, had been managing the premises since 19 August 2021. The previous Manager, Jacqueline Keane, was the named manager from 7 March 2013 until the position of Manager transferred to Alexandra Morton on 19 August 2021. Jacqueline Keane was still employed within the premises.

The Environmental Protection Act 1990 places a duty on all Local Authorities to investigate any potential statutory nuisance concerns raised within their area. The Environmental Health Service was tasked with enforcement of this piece of legislation.

The main legislative provisions are contained in Part III of the Environmental Protection Act 1990 (the Statutory Nuisance provisions) which define those conditions which can be considered to give rise to the existence of Statutory Nuisance.

Where a local authority is satisfied that a statutory nuisance exists or is likely to occur or recur, it is legally bound to take action using the powers contained in the Environmental Protection Act 1990 Act. This is carried out informally with official enforcement action taken as a last resort.

World Health Organisation (WHO) 'guidelines for Community Noise' 1999 is also relevant as it states that in order to prevent sleep disturbance noise levels LAeq should not exceed 30 dB (A) internally from 2300 to 0700 hours. LAeq should not exceed 35dB (A) 0700 hours to 2300 hours

The WHO guideline values are appropriate to what are termed "critical health effects". This means that the limits are at the lowest noise level that would result in any physiological or sociological effect.

To achieve this standard, the World Health Organisation states that outside sound levels at night, measured 1 meter from the façade of the nearest residential property should not exceed 45dB LAeq. This is to ensure that people who sleep with bedrooms' windows open will be able to achieve a recommended internal noise level of 30 dB (so as to avoid sleep disturbance).

To protect the majority of people from being seriously annoyed during the daytime the WHO recommendation is that outdoor sound level from steady, continuous noise should not exceed 55 dB (A), LAeq on balconies, terraces and in outdoor living areas. Whilst to protect the majority of people from being moderately annoyed during the daytime the recommendation is that the outdoor sound level should not exceed 50dB LAeq.

Ms Arnott stated that Mr. Gordon first contacted the Environmental Health Section on 4 June 2021 regarding noise coming from the beer garden, advice

was provided to Mr Gordon to fill in a noise diary over a period of a few weeks. The diary was returned and indicated noise affecting them at weekends and any events such as football match games. It was agreed that some evening visits would take place to witness the noise that Mr. Gordon was experiencing.

On 23 July 2021 Officers from Environmental Health visited the garden of Mr Gordon's property from 1930 hours – 2130 hours. The Officers witnessed very loud background hum with a regular outburst of shouting. It was a very warm night and the beer garden was very busy.

On 31 July 2021 – Officers from Environmental Health 1915 hours – 2115 hours – Again beer garden very loud at the start of the visit however, the weather went colder and all patrons went in to the pub. At this point Officers went upstairs and witnessed audible the music in the back bedroom.

On 2 August 2021 Officers from Environmental Health received video evidence from Mr. Gordon of loud anti-social noise in the beer garden, this then prompted a visit to be completed by myself and an officer from Licensing service.

On 6 August 2021 diary entries were received marking the worst affected dates from inside the property on 29 June 2021, 30 June 2021, 2 July 2021, 3 July 2021 and 4 July 2021. Noting that in the garden it was even louder and they could not sit in their garden, unable to hear their TV, concentrate on work, open windows on warm days.

A visit to the premises was carried out on 6 August 2021 together with an Officer from Licensing at which time both Mr Robert Robb and Mr Jim Rooney, both tenants of the property, were present. An Officer provided guidance from Environmental Health regarding noise mitigation measures, which could be implemented and included suggestions of an acoustic noise consultant being appointed, additional supervision by staff on busy days and re-arranging of benches nearest to the boundary fence adjoining Mr Gordon's property.

On 6 August 2021 email correspondence was sent with the following:

"I will contact the complainants by way of mediation and reassurance that when the noise is excessive that if they make contact with the bar that the matter will be investigated as soon as is reasonably practical. I will let you know the outcome of that.

I would ask that you verify that there is enough supervision during busy periods, warmer days and events such as the football matches etc.

I also would ask if it could be considered to re arrange benches to increase the distance from the nearest noise sensitive receptor. I had thought to move the 4 benches that are nearest the fence to see how things went. However you know the layout and area better than me.

It is recommended that an acoustic noise consultant, registered with the Institute of Acoustics (IOA), be consulted for advice on how to reduce noise transmission. My thoughts as we discussed would be noise could escape through the gaps in the fence and would urge that this matter be looked into

with a consultant. This is clearly a very last step at this point as I would hope that we could mediate between both parties regarding the matter as in point 1.”

Ms Arnott reported that on 6 August 2021 Officers from Environmental Health provided an update to Mr Gordon with the above mitigation measures for it to be monitored and to provide an update to myself on his findings

On 30 August 2021 Officers from Environmental Health received update from Mr Gordon to advise that none of the above mitigation measures were being adhered to and reference was made to contact with the Premises regarding noise from the beer garden and amplified music most of the night.

On 22 September 2021 further e-mail correspondence was sent to Mr Robb requesting information in respect of mitigations being considered following Officers last visit on 6 August 2021 in light of the above information received.

A visit was made to the premises on 29 September 2021. Mr Robb was not available at that time, however a member of staff in charge of the premises advised of procedures which had been implemented. This included last orders being called at 8pm in the beer garden, staff routinely monitoring noise levels and reporting to Manager if deemed to be excessive, karaoke moved from conservatory to main bar area in an attempt to alleviate noise, customers being encouraged to smoke at the front of the premises, written procedures of all of the above to be incorporated into staff training.

On 30 September 2021 email correspondence was sent to Mr Robb with the above mitigation measures stated and an officer from Environmental Health asked for a response to the email by 18 October 2021.

On 22 October 2021, Officers from Environmental Health received a letter from Mr Robb advising that they had done what they could to help the matter. The letter was provided to the Board Members.

On 2 November 2021, email correspondence was sent from an officer from Environmental Health to Mr. Gordon advising that now the mitigation measures were in place and that having spoken with Ms. Morton who reassured us that all measures would be enforced, that he continue to monitor and for Officers from Environmental Health to re assess noise levels with the mitigation measures in place closer to Spring/Summer 2022.

Following further contact being made by Mr Gordon expressing concern regarding continuing noise nuisance a visit to the premises was made on 11 May 2022 together with an Officer from Environmental Health. The Premises Manager, Alex Morton, advised of procedures which had been implemented since being made aware of the noise complaints which included:- further staff on duty during match days; staff regularly monitoring noise levels from beer garden; staff monitoring noise levels from outside the premises when entertainment provided; Karaoke no longer available on Friday evenings; unless private party or Soul Night the only entertainment provided was by a musician on the occasional Saturday evening; contact numbers provided to complainer to contact staff direct; customers encouraged to smoke at front of premises; last orders in beer garden called at 8pm; and regular staff training to cover the above.

It was suggested that consideration be given to installing insulation within the conservatory in an effort to contain noise and obtaining the services of an Acoustic Noise Consultant, registered with the Institute of Acoustics (IOA) to obtain guidance on how to reduce noise transmission. Ms Morton was reminded that staff must regularly ensure that windows and doors within the conservatory remained closed at all times entertainment was being provided and that consideration be given to moving the speakers from the conservatory into the dining room area which was located within the main body of the building.

It was noted that tables and chairs in the beer garden were still positioned close to the boundary fence and it was again suggested that these be moved further away from the fence in an effort to reduce noise transmission.

It was suggested that Officers from Environmental Health would visit over the next few months when there were events occurring, Ms Morton agreed with this.

Officers from Environmental Health on 23 July 2022, the Mod Ball event - carried out a visit 2130 hours to 0015 hours in which amplified music was clearly audible in the back bedroom of Mr. Gordon's property throughout the night. There were periods where the noise was quieter; this was due to the rain. In addition, there were two events where a group of people went into the beer garden. The amplified music increased considerably when the door was open. Around 2230 hours one of the hopper windows were open slightly ajar. Music was continuing when we left at 00:15.

A visit was carried out by 2 officers from Environmental Health on 6 August 2022, Northern Soul Night event- 2030 hours to 0030 hours in which the music was clearly audible at a level which in my opinion was unacceptable and likely to cause sleep disturbance within the complainant's home.

Ms Arnott reported that unfortunately, despite efforts by Council Officers, which involved numerous visits to the premises, it has not been possible to reach a satisfactory conclusion to this matter which has in turn led to a Premises License Review being sought.

Officers from Environmental Health have witnessed the noise nuisance from the premises on 23 July 2022 and 6 August 2022 and intend to serve an Abatement Notice under the terms of section 80 of the Environmental Protection Act 1990.

Ms Arnott reported that it was noted with disappointment that the premises were not willing to move benches around, look at some form of acoustic barrier or seek advice and guidance from a noise consultant. Add that into the amplified music and noise from beer garden it was her duty to take official enforcement action to resolve the matter.

Ms Arnott reported that the above information, which provided details on the Environmental Health Officer's involvement with the premises, has been provided for the purpose of assisting Members when determining what action should be taken, if any, when considering the Premises Licence Review request submitted by Mr David Gordon.

Mrs McEwan, Licensing Standards Officer, reported that the purpose of this report was to update Members of the LSO's involvement with The Portmann Hotel, following receipt of a Premises Licence Review request made by Mr David Gordon, in terms of Section 36(3)(b) of the Licensing Scotland Act 2005.

Mrs McEwan recommended that Members consider the contents of the Report when determining the Premises Licence Review request made by Mr Gordon.

In terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005, it is a statutory requirement for a Licensing Standards Officer to prepare and submit a report on receiving a copy of a Premises Licence Review proposal or application.

A Premises Licence Review Application was received by the Licensing Section from Mr David Gordon, in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005, on 17 July 2022.

The Premises Licence Review request was based on the allegation that the licensing objective of preventing public nuisance has been breached.

Mrs McEwan stated that the background information in her Report was the same as previously stated in the Environmental Health Officer's Report but added that the Premises Licence had been held by Oxford Hotels and Inns Management since the introduction of the Licensing (Scotland) Act 2005 on 1 September 2009. The current designated Premises Manager, Alexandra Morton, had been managing the premises since 19 August 2021. The premises were tenanted by Mr Robert Robb and Mr Jim Rooney and details of tenants were not included in the Premises Licence.

Mrs McEwan reported that the Licensing Section was first contacted by Mr Gordon on 26 March 2021, at which time he enquired about the capacity limit in respect of the beer garden. He expressed concern that additional tables and chairs were being placed within the garden area in preparation of the beer garden re-opening following lockdown restrictions easing and whether this would comply with social distancing requirements applicable at that time. He also enquired about the hours during which customers were permitted to use the beer garden area and expressed concern about potential noise nuisance and disorder from the premises when they re-opened, which he advised he had experienced prior to lockdown.

Mr Gordon was advised that the capacity for the whole of the premises was 220 and that this figure included the beer garden area. Mr Gordon was also advised that although the Licensing Board's policy was to permit the beer garden area to be used up until 9pm, the coronavirus legislation current at that time permitted external areas to be used up until 10.30pm. The Portmann Hotel were given permission to operate the beer garden until 9.30pm, due to the close proximity to residential premises.

Mr Gordon was advised to report matters of anti-social behaviour and noise nuisance to Police and to log details of calls made. It was also suggested that he

make contact with Officers in Environmental Health for further guidance in relation to noise disturbance.

A visit was made to the premises on 12 April 2021, together with an Officer from Environmental Health, at which time Mr Robert Robb, tenant of the premises, and Alex Morton were present. An inspection of the beer garden revealed that tables were placed in such a way as would allow for social distancing. Covid procedures and requirements in terms of the coronavirus legislation were discussed with Mr Robb. He was also made aware that a neighbour had raised concerns about noise nuisance from the premises and he was encouraged to put measures in place in an effort to prevent further complaints from being made.

Following this inspection, contact was made with colleagues in Building Standards to obtain a maximum capacity for the beer garden as a separate capacity figure was not detailed within the Premises Licence. Having reviewed the plans attached to the Premises Licence, Building Standards advised that the capacity figure at that time should be restricted to 60 persons owing to there only being one means of escape from the garden, however, advised that this capacity figure could be increased substantially if an additional means of escape was formed.

Following receipt of this information a further visit was made by Officers to the premises on 2 June 2021 at which time Jacqueline Keane, the Designated Premises Manager at that time, was present. During discussion, Ms Keane advised that she was of the opinion that 150 persons could be accommodated in the beer garden at any one time and she was advised that following calculations having been undertaken by a Building Standards Officer based on the approved plans, the maximum capacity for the beer garden should be restricted to a maximum of 60 persons. She was also advised that in terms of the Fire (Scotland) Act 2005 a Fire Risk Assessment should be undertaken which would inform the fire evacuation strategy covering all areas of the premises.

A further visit to the premises was carried out on 6 August 2021 together with an Officer from Environmental Health at which time both Mr Robert Robb and Mr Jim Rooney, both tenants of the property, were present. Guidance was provided by the EH Officer regarding noise mitigation measures which could be implemented and included suggestions of an acoustic noise consultant being appointed, an acoustic barrier being placed on the fencing within the beer garden, additional supervision by staff on busy days and re-arranging of benches nearest to the boundary fence adjoining Mr Gordon's property by moving them further away.

As Mr Robb had not responded to e-mail correspondence requesting information of mitigations considered and implemented following Council Officers last visit, a visit was made to the premises on 29 September 2021. Mr Robb was not available at that time however a member of staff in charge of the premises advised of procedures which had been implemented since the last visit, which included last orders being called at 8pm in the beer garden, staff routinely monitoring noise levels and reporting to Duty Manager if deemed to be excessive, karaoke moved from conservatory to main bar area in an attempt

to alleviate noise and customers being encouraged to smoke at the front of the premises.

Following further contact being made by Mr Gordon expressing concern regarding continuing noise nuisance a further visit to the premises was made on 11 May 2022 together with an Officer from Environmental Health. The Premises Manager, Alex Morton, advised of procedures which had been implemented since being made aware of the noise complaints.

Mrs McEwan stated that the implementations and considerations had been reported within the Environmental Health Report submitted prior to this submission.

Following receipt of the Premises Licence Review request a further visit to the premises was made on 26 July 2022. The person in charge of the premises at that time was Eka Wilson.

During discussion Mr Wilson advised that he was not aware that a Premises Licence Review had been requested in respect of the premises but was aware of a complaint of noise nuisance having been made by a neighbour. Mr Wilson advised that he would be taking on the role of Manager from 8 August 2022 as the current manager, Alex Morton, was no longer going to be involved in the day to day management of the premises from that date. Paperwork to vary the Manager had not as yet been received by the Licensing Section as at the date of this Report.

An inspection of the beer garden revealed that an additional means of escape had been formed. Signage was displayed in the beer garden reminding customers that as they were in a residential area, consideration should be given to neighbours and requesting that noise be kept at an acceptable level.

It was noted that tables and chairs were still positioned close to the boundary wall and had not been moved, as had been suggested by an Environmental Health Officer during previous visits.

The beer garden consists of 15 tables at the bottom end of the garden, with a children's play area in the middle, and a further 14 tables are located at the top end of the garden.

Unfortunately, despite efforts by Council Officers, which had involved numerous visits to the premises, it has not been possible to reach a satisfactory conclusion to this matter which has in turn led to a Premises Licence Review being sought by Mr Gordon.

Licensing Officers had not witnessed the noise nuisance from the premises but were aware that video evidence had been produced by Mr Gordon in support of his Premises Licence Review request.

The above information which provided details on the Licensing Standards Officer's involvement with the premises had been provided for the purpose of assisting Members when determining what action should be taken, if any,

when considering the Premises Licence Review request submitted by Mr David Gordon.

Mrs McEwan reported that since the submission of her Report an application had been received to change the Designated Premises Manager to Alex Morton, the application had not as at the date of the Board meeting been granted due to the non payment of the application fee.

There were no questions from either Mr Gordon or Mr MacIver in respect of the Environmental Health and Licensing Standards Reports.

Mr MacIver commenced his submission by stating that the premises had operated as a Hotel since 1960. Mr MacIver confirmed that Mr Rooney and Mr Robb had been Tenants for 3 years and had undertaken a major refurbishment of the premises at a cost of £200,000, which was still ongoing. The fundamental operation of the premises had remained the same with the bar, function room and external area. Mr MacIver reminded Members of the damage the coronavirus pandemic had made to the hospitality trade and advised that the tenants had continued to PAYE their 30 employees to protect their employment. Mr MacIver further advised that staff levels had risen from 5 to 30 employees in the 3 years that Mr Robb and Mr Rooney had been Tenants. He further advised that the premises regularly held charity events, supported food banks and donated any excess food to the local children's nursery and nursing home.

Mr MacIver produced 6 letters from neighbours in support of the premises along with photographs of where their houses were in relation to the Portmann Hotel. These were distributed to the Members within the meeting room and Members joining remotely through Teams. Mr MacIver pointed out that there was only one neighbour who had complained about noise nuisance.

Mr MacIver pointed out that the Hotel had been on the site for 60 years and that Mr Gordon had moved into his house as the first owner in 2019. Mr MacIver stated that the developers of the new house in terms of Planning should have made provisions to alleviate any noise emitting from the adjoining licensed premises and that the new building should not have detriment to the operation of the business already situated on the site.

Mr MacIver pointed out that the first complaint from Mr Gordon was prior to the premises re-opening from the coronavirus pandemic. Mr MacIver confirmed that the coronavirus mitigating measures were all in order.

Mr MacIver stated that private functions were not every weekend and were normally 20 – 25 each year.

Mr MacIver stated that noise mitigation measures had been put in place as follows:- music, apart from functions, now in front bar; boundary fence increase from 2.5 feet to 6 feet; sound equipment in function room moved from glass wall to solid wall; notices in beer garden requesting patrons to respect neighbouring properties; smoking area moved to opposite side of beer garden after Police Scotland had asked the smoking area to be moved from the front of the premises; noise limiter to be installed; staff rota set up to ensure hopper

windows remain closed; air conditioning to be installed at a cost of between £4000 and £10000.

Mr MacIver referred to the video clip showing the football chanting on 22 April 2022 and confirmed that Kilmarnock football club had been promoted to the Premier League and a number of regular customers were Kilmarnock Football Club supporters. The customers in the beer garden had been asked reduce the noise from their celebrations.

Mr MacIver completed his submission by reminding Members that the Hotel had operated for 50-60 years without any problems. Mr Gordon's property was a new building and he had chosen to live next to adjoining licensed premises with a beer garden. Mr MacIver submitted that the proprietors were unable to appoint an acoustic specialist due to the cost but that they were continuing to address the matters raised and happy to enter mediation with Mr Gordon. Mr MacIver stated that the premises had a good reputation and that the Tenants would continue to improve the premises.

Mr Gordon had no questions for Mr MacIver.

The Chair pointed out that there had previously been a noise complaint from a neighbour in South Hamilton Street in 2001.

The Clerk asked for confirmation from Mr Gordon that he had been the first owner of the property which Mr Gordon confirmed.

The Clerk stated that reputable builders should have ensured that the property was environmentally friendly and fit for purpose.

The Chair pointed out that the football chanting may have been a one off due to the circumstances of Kilmarnock Football Club celebrations.

Mr Gordon stated that football chanting was a regular occurrence and phone calls were made to the premises to complain.

The Clerk asked if the noise improved after the phone call and Mr Gordon confirmed it did improve.

Mr Gordon summed up by stating that his property was a modern property with double glazing and was environmentally friendly. Mr Gordon confirmed that he did not want the licensed premises to close but wanted to live amicably with his neighbours and the licensed premises to meet the conditions of the Statement of Licensing Policy. Mr Gordon stated that there had previously been issues with noise from the premises. Mr Gordon stated that Environmental Health Officers had identified noise nuisance and he asked that the Board Members take this into account when considering the review.

The Clerk asked Mr Gordon if there were any specific measures that he would wish the Board Members to take. Mr Gordon stated that he was not aware of the measure that the Board Members could take.

Mr MacIver referred to the previous noise nuisance complaint and advised that this was in respect of footballs going into a neighbour's garden from the rear children's play area. The children's play area had been removed to avoid this problem.

Mr MacIver summed up by asking the Board Members to take account of the measure the proprietors were taking to reduce the noise nuisance and dismiss the complaint.

Mr MacIver asked that if the Board came to the decision that the grounds of review had been established that out of the options available to them in terms of Sct 39(1) of the Act, as follows:- (a) issue a written warning; (b) make a variation of the licence; (c) suspend the licence for such period as the Board may determine; and (d) revoke the licence, that the Board issue a written warning.

Councillor Barton asked Mr MacIver for confirmation of the cost of a noise limiter and he confirmed that they were approx. £700. Mr MacIver confirmed that a DJ would plug in the limiter and if the music went above the set level it would cut off. Mr MacIver further confirmed that the proprietors would liaise with the Environmental Health Officers to set the appropriate noise level.

The Chair asked if the tables and chairs would be moved away from the boundary as suggested in the Environmental Health Officer's report but Mr MacIver stated that this would increase the noise levels.

The Board Members adjourned to further consider the Review application.

Upon returning the Board Members were advised that Mr & Mrs Gordon had a prior appointment and were unable to remain to hear the outcome of the Review.

The Chair confirmed that after a lengthy discussion it had been agreed to continue the Review application for a maximum period of six months to enable the proprietors to continue with the measures to be put into place to address noise nuisance from the premises.

The Chair confirmed that Environmental Health Officers would assist the proprietors in setting the noise limiter once it was received and monitor the premises along with the LSOs to ascertain whether the noise issue had been addressed.

The Clerk confirmed that written confirmation of the decision to continue the Review Hearing would be provided to Mr and Mrs Gordon.

There being no further business the meeting ended at 1.50pm

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

Motor Fuel Limited

Kilmarnock Service Station
165 Riccarton Road
Kilmarnock

Details of the variation:-

Extensive refurbishment of convenience shop resulting in a wider shop range/products and an increase in the alcohol display area from 8.6m² to 15.775m²

The 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 of the licensing objectives through the grant of the application outweighed the detriment to the licensing objectives and the Overprovision Policy. The Clerk confirmed that there were no objections or representations in respect of the application.

Mr Andrew Hunter, Solicitor, was present along with Stuart Allan, Area Retail Manager for Motor Fuel Limited.

Mr Hunter stated that the premises were a service station situated on the A77 roundabout within a small commercial area containing a Travel Lodge and McDonalds Restaurant. The premises were a Londis convenience store and Sub-way and had recently undertaken a refurbishment of £75,000 with a further £35,000 of works pending. Mr Hunter further stated that as part of the refurbishment it was intended to increase the alcohol display area to 15.775m². Mr Hunter was aware that the increase was out with the Board's overprovision policy and advised that the applicant had proposed a smaller increase to 10.66m² if the Board Members considered the original size too great an increase. Mr Hunter confirmed that the size of alcohol display area proposed was consistent with similar Londis convenience store premises. Mr Hunter stated that the alcohol display area would be situated furthest away from the entrance and close to the sales till to enable sufficient monitoring. Mr Hunter stated that since the refurbishment the premises sales had increased by 3% which had assisted in the recovery of the premises from the coronavirus pandemic and had increased employment opportunities. Mr Hunter stated that it was proposed to install Electric Car charging points as a future investment.

Mr Hunter completed his submission by stating that the premises were not part of a large commercial area and would not be competing with other retail stores in respect of alcohol pricing. Mr Hunter further submitted that the majority of customers were commuters and guests from the Travel Lodge. Mr Hunter pointed out that there were no objections or adverse comments in respect of the application.

Mr Hunter requested that the Board Members take account of his submission and grant the variation as sought.

The Clerk asked for confirmation from Mr Hunter the percentage of the increase in the alcohol display area compared to the total retail area. Mr Hunter confirmed that it was an increase from 8% to 14% of the total retail area. Mr Hunter pointed out that small convenience retail premises would normally have an alcohol display area of between 15% and 20% of the total premises.

The Clerk asked the Licensing Standards Officers if there had been any problems with the premises and Mrs McEwan confirmed that there had been no issues with the premises.

The Board Members adjourned to continue consideration of the application.

Upon returning Councillor Claire Leitch moved that the application be refused based on the Board's overprovision policy.

The motion was seconded by Councillor Lillian Jones.

As there were no other motions it was unanimously agreed that the application be refused.

The Clerk confirmed that the Board Members had considered the area of 15.775m² and reduced area of 10.66m² and had concluded that there was insufficient evidence for them to deviate from the Board's overprovision policy. The Members agreed that they should remain consistent with previous decisions made in respect of increased off-sales capacity.

Mr Hunter requested a Section 32(3)(a) directive to permit the applicant to submit a subsequent application for variation within one year of the refusal.

The Board Members unanimously agreed to grant the directive as requested.

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

David Miller
Sorn Inn
35 Main Road
Sorn

Details of the variation:-

Change to core on-sale licensed hours:-

Current Hours

Sunday – Thursday	:	12 Noon – 10pm
Friday & Saturday	:	12 Noon – 12 Midnight

Proposed Hours

Sunday – Wednesday	:	11am – 12 Midnight
Thursday - Saturday	:	11am – 1am

Young Persons aged 16 and 17 years will be permitted access to all public areas of the premises for the purpose of having a meal, unaccompanied by an adult.

Children and Young Persons will require to vacate the premises by 9pm.

The proposed occupant capacity of the premises is 40.

The premises will have disabled access – access to the premises is via a ramp and through a 900mm wide door with a touch pad to enable automatic opening of the door. All public areas of the premises are ground level. The premises have an accessible toilet; all tables will have easy access for wheelchairs; large print menus can be provided; assistance dogs will be welcome; any additional needs can be met with prior notification; staff will be trained on how to assist any customer with additional needs.

Councillor June Kyle declared a connection to the applicant for this application but it was deemed insufficient to exclude her from taking part in the consideration of the application.

Leisa Hall, Sole Director of the applicant company appeared before the Board to speak in support of the application.

The Clerk confirmed that this application was for a Provisional Premises Licence, that there were no objections or representation and that the application was within the Board's policy.

Ms Hall stated that the premises were to be a small intimate restaurant of 40 covers with table service only and no bar. Ms Hall further stated that the restaurant would provide Mediteranian tapas style food and that the premises would not open in the morning. Ms Hall further stated that even though live music had been requested it was only envisioned on an occasional basis to cater for events such as the Cumnock Tryst.

The Chair asked for confirmation if children and young persons would vacate the premises by 9pm and Ms Hall confirmed this.

The Board Members agreed to unanimously grant the provisional premises licence as sought.

The Clerk reminded Ms Clerk that a Confirmation of Premises Licence would require to be submitted and granted by the Board prior to the operation of the premises.

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

The Jaggy Nettle Bistro Ltd.

The Loudoun Arms
69 Main Street
Newmilns

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

Licensed Hours Applied For:-

Licensed Hours Applied For:-

On Sale

Sunday – Wednesday	:	11 am – 12 Midnight
Thursday – Saturday	:	11 am – 1 am

The premises are a single lounge bar.

The premises will cater for conferences, weddings, funerals, birthdays, club and group meetings etc.; recorded music, live performances, indoor/outdoor sports, televised sport, open mic nights, singers, karaoke, quiz and pool tournaments may be provided within the premises, all within the core hours.

Children and Young Persons will not be permitted entry to the premises.

The proposed occupant capacity of the premises is 50.

The premises will have disabled access – entrance to the premises is at ground level; tables suitable for wheelchairs, wider doors to allow wheelchair access; subtitles on televisions and large print menus available; assistance dogs welcome.

Councillor Claire Leitch declared an interest in the application and took no part in the consideration of the application.

Rachael McRoberts, Sole Director of the applicant Company, was present at the meeting to speak in support of the application.

The Clerk reminded the Board Members that these premises had previously held a premises licence but at the meeting of the Licensing Board on 14 December 2021, it had been unanimously agreed by the Board to revoke the premises licence due to the non payment of the annual fee.

The Clerk confirmed that there were no objections or representations in respect of this application and that it was within the Board’s policy.

The Board Members unanimously agreed to grant the premises licence as sought.
