

## **EAST AYRSHIRE LICENSING BOARD**

**Minute of the virtual Meeting of East Ayrshire Licensing Board, held digitally through Microsoft Teams, on Tuesday 8 February 2022 at 10am.**

**SEDERUNT:** Councillor Tom Cook (Chair), Councillor John Campbell, Councillor William Crawford, Councillor Drew Filson, Councillor Lillian Jones, Councillor Claire Leitch and Councillor Jacqui Todd.

**ATTENDING:** Stuart McCall (Depute Clerk to the Licensing Board), Mrs Carolyn McEwan (Licensing Standards Officer), Mrs P Duncan and Ms S Duncan (Licensing Board Administrators).

**APOLOGIES :** Councillor Fiona Campbell, Councillor Ian Grant and Councillor George Mair.

### **1. SEDERUNT**

Noted.

### **2. MINUTE OF MEETING**

2.1 The Minute of the meeting of East Ayrshire Licensing Board held on 14 December 2021 was noted and agreed.

### **3. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY**

The Chair noted the applications discharged under delegated authority by the Clerk to the Licensing Board between 7 December 2021 and 28 January 2022:-

Minor Variation	:	7
S33 Transfer	:	1
Confirmation of Provisional Licence	:	1
Grant of Personal Licence	:	10
Renewal of Personal Licence	:	4
Small Society Lottery Renewals	:	14
Automatic Entitlement to Gaming Machines	:	1
Occasional Licences	:	40
Extended Hours	:	21

The Chair noted that of the 40 Occasional Licences granted, 17 were granted to Club premises, 11 to Personal Licence holders, 6 to Voluntary Organisations and 6 to Premises Licence holders. The Chair also noted that as of the date of the Report there were 1173 personal licence holders and 295 premises licence holders in force.

The Depute Clerk confirmed to Members that the variation to The Royal Hotel, 1 Glaisnock Street, Cumnock, could be dealt with as a minor variation due to the whole of the premises currently being covered by the premises licence. The Depute Clerk also confirmed that the premises known as Bakers, 17 Fowlds Street, Kilmarnock, were currently closed and that it was the intention to re-open them as a Tempura Restaurant, but it needed to be established if there was an operational

kitchen on the premises. The Depute Clerk confirmed that colleagues in Environmental Health were dealing with this matter.

The Depute Clerk advised Members that the Scottish Government had created The Public House Table Service Restriction Fund which would provide financial support to businesses that were public houses, as the most affected group during the Omicron variant in January 2022. The Depute Clerk reminded Members that a Public House did not exist under the Licensing (Scotland) Act 2005 and that clarification was required from the Scottish Government as to which type of premises would be eligible for this funding.

The Chair asked if any progress had been made in respect of the amendment to the occasional licence application fee. The Depute Clerk confirmed that there had been no progress in this matter.

The Members agreed to note the Report.

#### **4. APPLICATIONS**

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

There being no further business the meeting ended at 11.45am.

**APPENDIX 1**

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

Usman Rashid

Cessnock Superstore  
6A Cessnock Drive  
Hurlford

Details of the variation:-

Increase size and amend the layout of the premises (no increase to alcohol display area); amend operating plan to include the delivery of alcohol; and amend core licensed hours of the premises as follows:-

Current Hours

Monday to Saturday : 10am – 9pm  
Sunday : 10am – 7pm

Proposed Hours

Sunday – Saturday : 10am – 10pm

**The Depute Clerk outlined the application and pointed out that even though the application was to increase the layout of the licensed premises, the alcohol display area had slightly decreased. The Depute Clerk confirmed that there had been no objections or representations in respect of this application.**

**Usman Rashid, premises licence holder, joined the meeting via the MS Teams link.**

**The Chair asked Mr Rashid how he was going to operate the alcohol delivery.**

**Mr Rashid confirmed that ID checks would take place on the doorstep of the delivery address and that records would be kept. Mr Rashid confirmed that he would be the person delivering the alcohol.**

**The Depute Clerk asked for confirmation from Mr Rashid that he was aware of his statutory responsibilities in respect of alcohol delivery. Mr Rashid confirmed that he was aware of his responsibilities.**

**The Chair moved that the application be granted which was seconded by Councillor John Campbell.**

**There being no other motions, the Board Members unanimously agreed to grant the application as sought.**

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

Imran Akhtar

41A Cessnock Avenue  
Hurlford

Licensed Hours applied for

Sunday – Saturday

Off Sale

10am – 10pm

The premises is a single storey convenience store.

Recorded background music may be played both within and outwith the core licensed hours. In addition to the sale of alcohol, groceries and non-food items may occur from the premises including fulfilment of remote orders by home delivery and/or 'click and collect'.

The proposed alcohol display area will be 14.94m<sup>2</sup>.

Disabled access and facilities :- Accessible ramp to the front of the premises, signage and width of isles all accessible. Accessible toilet also available. Staff available to assist.

**The Depute Clerk outlined the application and confirmed that there was a considerable distance between the previous application premises 6A Cessnock Drive and the proposed premises 41A Cessnock Avenue. The Depute Clerk confirmed that there were no objections to this application.**

**Mr Dunlop, Solicitor, and Mr Akhtar, applicant, joined the meeting via MS Teams link.**

**Mr Dunlop provided some background to the Members on why Mr Akhtar had applied for this premises licence. Mr Dunlop stated that the applicant had leased and operated the premises at 41 Cessnock Avenue, Hurlford, for 7 years and had attempted to purchase those premises from the owner with no success. Mr Dunlop stated that Mr Akhtar had decided to purchase adjoining ground at 41 Cessnock Avenue, Hurlford, from East Ayrshire Council to build new licensed premises and car park.**

**Mr Dunlop reminded Members that 6 individual letters of support had been lodged with the application stating that he was an asset to the community. A petition in support of the application containing 600 local resident signatures was also submitted. Mr Dunlop reported that Mr Akhtar had been nominated for an award by East Ayrshire Council for his outstanding service to the community, especially during the Covid-19 pandemic.**

**Mr Dunlop referred to the overprovision section of the Board's Statement of Policy which states that there is a rebuttable presumption of refusal of a new off-sales application unless the applicant can persuade the Members to grant and that each application has to be considered under its own merits. Mr Dunlop stated that 2 off-sale licensed premises had closed in Hurlford. Mr Dunlop stated that these premises were a high specification new build and that the floor area of the premises had doubled compared to 41 Cessnock Avenue. Mr Dunlop stated that the alcohol display area would be 14.94 square metres which was a slight increase from the premises at 41 Cessnock Avenue. Mr Dunlop stated that the premises would offer a wider selection of products.**

**Mr Dunlop stated that Mr Akhtar was not in a position to surrender the Premises Licence at 41 Cessnock Avenue but that he had 8 years remaining on his lease. Mr Dunlop confirmed that Mr Akhtar would continue paying the rent on the property at 41 Cessnock Avenue but would not be operating these premises.**

**Mr Dunlop confirmed that during the 7 years Mr Akhtar had operated the premises at 41 Cessnock Avenue, he had complied with all the licensing objectives and there had been no agency or underage sales recorded. Mr Dunlop confirmed that the premises at 41a Cessnock Avenue would employ 12 staff which was an increase from 6 staff at 41 Cessnock Avenue.**

**Mr Dunlop stated that these premises was a substantial investment and asset to the community and would not result in an increase of off-sales. Mr Dunlop stated that the applicant had the support of the local community and the local Councillor.**

**The Chair asked Mr Dunlop to clarify what would happen to the premises at 41 Cessnock Avenue if this application was granted.**

**Mr Dunlop stated that the premises at 41 Cessnock Avenue would be used as a store.**

**The Depute Clerk pointed out to Mr Dunlop that the applicant would only be in control of the premises at 41 Cessnock Avenue for the remainder of his lease and that if the premises were leased to a new tenant there was nothing stopping the new tenant operating as licensed premises.**

**Mr Dunlop confirmed that the applicant would retain the lease and attempt to convince the owner to sell or he could extend the lease.**

**The Chair pointed out that if the applicant purchased the premises at 41 Cessnock Avenue he could operate these as licensed premises in addition to 41a Cessnock Avenue.**

**Mr Dunlop referred the Members to the layout plan of the new premises at 41a Cessnock Avenue and pointed out that there was no storage area within those premises and confirmed that the applicant intended using the premises at 41 Cessnock Avenue as storage.**

**The Members adjourned to consider the application further.**

**Upon returning the Chair stated there had been a bit of confusion in the way the applicant had progressed the building of the new premises and he may have been better seeking legal advice earlier in the process.**

**The Chair moved that the application be granted subject to a condition being added to the licence that for as long as Mr Akhtar remained the tenant of the premises at 41 Cessnock Avenue that they would not be used for the sale of alcohol. Councillor John Campbell seconded the motion.**

**There being no other motion, the Members agreed unanimously to grant the provisional premises licence subject to the condition stated above.**

**The Depute Clerk pointed out to Mr Dunlop and Mr Akhtar, that if the condition was breached then a review of the premises licence would be brought before the Board.**

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

McLaren's Nurseries Ltd.

The Farm Shop  
McLaren's Nurseries  
Lochlibo Road  
Uplawmoor

Licensed Hours applied for  
Sunday – Saturday

Off Sale  
10am – 4.30pm

The premises is a farm shop within the grounds of McLaren's Nurseries.

Group meetings, conferences, weddings, funerals, birthdays, group meetings, etc. recorded music and live performances may take place within the premises all within and outwith the core hours, however no alcohol will be provided for consumption on the premises.

The proposed alcohol display area will be 20.8m<sup>2</sup>.

Disabled access and facilities :- Access into the premises is on ground level with no steps or ramps; Disabled toilets are provided on site; Assistance dogs are welcome; Staff can be made available to help customers on a 1:1 basis if required.

**The Depute Clerk outlined the application and advised that there were no objections or representations received in respect of the application. The Depute Clerk also reminded Members that an occasional licence had previously been considered and refused for these premises but the previous refusal of the occasional licence would have no bearing on the decision made in respect of this application.**

**Matthew McGowan, proposed DPM of the premises and Christine Roberts, Northstar Consultancy, joined the meeting via MS Teams link, to speak in support of the application. It was agreed that both Mr McGowan and Ms Roberts would provide a submission.**

**Ms Roberts confirmed that she had assisted Mr McGowan in submitting the application and had provided him with the personal licence training to allow him to obtain a Personal Licence and become the DPM of the premises.**

**Ms Roberts submitted that McLaren's Nurseries wished to operate a Premises Licence in their Farm Shop, to sell a range of small batch craft beers, wines and spirits, off-sales only. This would complement the provision of local farm produce and organic foodstuffs sold within the Farm Shop, in addition to a selection of high-end gifts, which run alongside the Garden Nursery Sales. Ms Roberts referred to Section 11 (OVERPROVISION) of the East Ayrshire Licensing Board's Statement of Licensing Policy, the Board had determined there was an overprovision of off-sales premises within the locality of East Ayrshire as a whole. However, the Policy also stated that each**

application required to be determined on its own merits and there may be exceptional cases in which an applicant was able to demonstrate that the grant of the application would not undermine the licensing objectives, or the objectives would not be undermined if the applicants operating plan were to be modified. The Policy further stated that applicants for an Off-Sales premises Licence should “provide robust and reliable evidence to the Board why the benefit to the licensing objectives through the grant of their application outweighs the detriment to the licensing objectives and the Overprovision Policy.”

Ms Roberts provided a statement in respect of each licensing objective as follows:-

**Protecting Children from Harm – “House rules” state that children are only permitted in the shop accompanied by an adult; farm shop staff will receive regular training regarding “Challenge 25”; all alcohol products would be displayed out of reach of small children and only in the designated alcohol sales areas, which are located in the food section of the Farm Shop.**

**Protect and Improve Public Health - The licensed hours would be 10am to 4.30pm daily, restricting the opportunity for alcohol purchase; only small batch craft alcoholic drinks will be sold, attracting a higher price point, designed for gifting or a luxury “treat”, not for regular consumption; farm shop fosters a sense of community among our customers and we actively work to encourage this; we are a rural area, where residents travel several miles to purchase fresh, healthy food, we are in a position to positively impact the health and diet of the local community by providing access to a wide variety of fresh, healthy produce. We believe that by attracting customers with an increased range of products, we can influence healthier food choices and encourage exercise through gardening. We can encourage and educate our customers to make healthy choices by providing signage advocating “Low-Risk Alcohol Consumption”. Our friendly service, healthy produce in the fresh air, promotes a sense of well-being in our customers which is beneficial to mental health. By expanding our range of products and increasing profitability, we can continue to provide additional local job opportunities.**

**Prevent Public Nuisance - We are aware that we have a duty to monitor any perceived nuisance to the public by our Nursery operation and Farm Shop sales, and will react to any issues promptly and effectively.**

**Prevent Crime & Disorder - Our Farm Shop staff will receive regular training regarding “Challenge 25”. This training will be refreshed on a regular basis to ensure staff continue to be informed and motivated. Our Farm Shop staff will receive the appropriate minimum 2-hour Alcohol training covering the 16 points set out by the Scottish Government. This training will be refreshed on a regular basis to ensure staff awareness is optimised.**

**Secure Public Safety - Access to local, fresh healthy food in the open air is such a positive resource for consumers as the battle against COVID-19 continues. Customers can feel safer with us than in supermarkets, which can be busy and intimidating. Our Farm Shop provides an ideal ventilated place away from crowded supermarkets to pick up plentiful fresh food. We will constantly monitor the safety of our customers in our Farm Shop and ensure that all areas are appropriately sanitised on a regular basis.**

Ms Roberts submitted that there were several villages within 2.5 miles of the Farm Shop which have no shops at all (Lugton, Uplawmoor and Shillford) but they are well served

by other larger villages and towns which have off-licences selling cheaper off-licence items. Ms Roberts submitted the following information - Dunlop, in East Ayrshire, is 3.5 miles away and has a bakery, farmhouse restaurant and a post office which operates as an off-licence, selling both standard cheap off-licence items as well as higher price point items. Nielston, in Renfrewshire, is 4.7 miles away, with a Co-operative and another shop, both operating as off-licences selling standard cheap off-licence items. There are also several on-sales bars & restaurants. Stewarton, in East Ayrshire, is 6.1 miles away and has several large supermarkets selling alcohol off-sales, in addition to two dedicated off-sales. There are also several bars and restaurants selling alcohol on-sales.

Ms Roberts submitted that it was likely that customers would continue to make any regular alcohol purchases from the off-licences and supermarkets where they buy their household shopping, probably in one of the towns listed above. All of these named villages and towns were within a convenient commute distance to the Farm Shop and would benefit from the opportunity to purchase fresh local and organic produce, giving them a greater sense of community and well-being. They may also prefer to buy good quality alcohol products as gifts or as an occasional luxury treat, and it was hoped to educate them to appreciate quality over quantity.

Ms Roberts completed her submission by stating that research issued late in 2021 by NFU Mutual had shown that people increasingly preferred to use Farm Shops as they provided friendly service, great locally-grown produce and a relaxed atmosphere. There is evidence that this also benefits the local economy. Ms Roberts submitted that the applicant strongly felt that selling small batch, craft alcohol alongside local and organic produce would not cause detriment to the local community and respectfully requested that the Board look favourably on the application for a premises Off-Sales Licence.

Mr McGowan submitted that during the pandemic, the premises were used as a community based centre for Covid-19 testing. Mr McGowan further submitted that the products to be sold would be small batch, craft products along with high-end gifts or treats. The premises would not be open after 4.30pm. Mr McGowan stated that he had a good relationship with Police Scotland. Mr McGowan stated that the premises licence would be ancillary to the main use as a Garden Centre and Farm Shop. Mr McGowan completed his submission by stating that the addition of the alcohol licence would bring more people to the area and provide benefits to the wider community.

The Chair asked Mr McGowan what effect would it have on the business if the premises licence were to be refused. Mr McGowan confirmed that the premises would continue to be operated as a Garden Centre and Farm Shop providing healthy produce.

The Board Members adjourned to consider the matter further.

Upon returning the Chair confirmed that the submissions of both Ms Roberts and Mr McGowan and the letter received in support of the application were taken into account when determining the application.

Councillor Lillian Jones moved that the evidence provided was insufficient for the Board to depart from their Policy and that the application be refused. The motion was seconded by Councillor John Campbell.



**There being no further motion the Board Members unanimously agreed to adhere to their Policy in respect of overprovision and refused the application.**

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