

## **EAST AYRSHIRE LICENSING BOARD**

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

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

**ATTENDING:** Stuart McCall (Depute Clerk to the Licensing Board), Mrs Carolyn McEwan and Mr Ian Hiles (Licensing Standards Officers), Inspector Iain Farmer and PC Kathyne Lorimer\_(Police Scotland), Mrs Patricia Duncan (Licensing Board Administrator).

**APOLOGIES :** Councillor Drew Filson, 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 8 February 2022 was agreed and noted.

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

The Depute Clerk reported on the applications discharged under delegated authority by the Clerk to the Licensing Board between 29 January and 28 February 2022:-

Minor Variation	:	7
Grant of Personal Licence	:	5
Renewal of Personal Licence	:	1
Small Society Lottery - Renewal	:	15
Small Society Lottery - Grant	:	1
Occasional Licences	:	19

The Depute Clerk advised that of the 19 Occasional Licences granted, 6 were granted to Club premises, 6 to Personal Licence holders and 7 to Voluntary Organisations. As of the date of the Report there were 1076 personal licence holders and 295 premises licence holders in force.

The Depute Clerk advised that staff had also been heavily involved in the processing of applications submitted for Taxi/PHC support grants provided by the Scottish Government, working in conjunction with colleagues in Finance.

The Chair thanked staff for undertaking this important task and Members agreed to note the report.

#### **4. APPLICATIONS**

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

Councillor Crawford joined the meeting.

#### **5. PREMISES LICENCE REVIEW**

Review of premises licence for premises known as The Doon Tavern, 1 High Street, Dalmellington following receipt of a Premises Licence Review Application in terms of Section 36(3)(b) of the Licensing (Scotland) Act 2005 from Police Scotland.

#### **PERSONAL LICENCE REVIEW**

Review of personal licence EA/PL/2017/19 for Kevin Boyd, in terms of Section 84A of the Licensing (Scotland) Act 2005, following receipt of a notice issued by Police Scotland.

The Depute Clerk advised that a premises licence review application had been received from the Chief Constable, Police Scotland in respect of premises known as The Doon Tavern, 1 High Street, Dalmellington, that the licence holder, Kevin Boyd, had failed to comply with the licensing objectives, preventing crime & disorder, securing public safety and preventing public nuisance. A personal licence review application had also been received from the Chief Constable, Police Scotland that Kevin Boyd, as a personal licence holder and designated premises manager of the premises had conducted himself in a manner which was inconsistent with the Licensing Objectives, preventing crime & disorder, securing public safety and preventing public nuisance.

Stephen McGowan, Solicitor, joined the meeting, together with Kevin Boyd.

Police Scotland were represented at the review hearing by Inspector Iain Farmer.

After Mr McGowan confirmed that he had no preliminary matters to raise, the hearing proceeded in accordance with the agreed procedure for hearings.

In support of the premises licence review application, Inspector Farmer reported that a review application was made to East Licensing Board in terms of section 36(1) of the Licensing (Scotland) Act 2005 for a review of the premises licence in respect of the premises known as The Doon Tavern, 1 High Street, Dalmellington,

The application for review was 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 and Preventing Public Nuisance.

In support of the personal licence review application, Inspector Farmer reported that a personal licence review application was made to East Ayrshire Licensing Board in terms of Section 84A of the Licensing (Scotland) Act 2005, that Kevin Boyd had

acted in a manner which is inconsistent with the Licensing Objectives, Preventing Crime and Disorder, Securing Public Safety and Preventing Public Nuisance.

In support of both review applications, Inspector Farmer provided the following information for the Board's consideration:-

Kevin Boyd has held the Premises Licence for The Doon Tavern, 1 High Street Dalmellington since 15 October 2020. The Designated Premises Manager for the Premises is also Kevin Boyd, Personal Licence number EA/PL/2017/19. His licence was granted by East Ayrshire Council on 2 April 2019. The premises consists of a bar and restaurant/function room.

The first incident on Sunday 2 December 2021 has not yet been heard before a court and as such can be treated 'sub judice'.

At about 2230 hours on Sunday 2 December 2021 Elvis Smith, Personal Licence Holder reference GC12976, was on duty within the premises. He phoned 999 to report an intoxicated, aggressive male that he had requested to leave had assaulted him and was behaving in a disorderly manner and had also damaged the property. Elvis Smith contacted Kevin Boyd and made him aware of the foregoing.

About 2248 hrs Kevin Boyd attended at the premises and made a further 999 call reporting that the male was outside and attempting to gain entry to the premises. Police officers thereafter attended.

On Tuesday 14 December police officers were carrying out enquiries into the incident, they viewed public space East Ayrshire Council CCTV and observed at 2238 hrs Sunday 2 December 2021 Kevin Boyd arriving at the premises in his motor vehicle, thereafter pushing the male to the ground and assaulting him by kicking him twice to the head.

At 1009 hrs on 17 January 2022 police officers attended at the premises and Kevin Boyd was cautioned and charged with the following offence:- Offence date – 2 December 2021 – Common Assault.

About 2350 hrs on Sunday 26 December 2021 officers attended at the premises regarding a report of a serious assault that had occurred outside, all persons involved were extremely intoxicated and had been consuming alcohol within the premises since 1300 hrs. Staff member Elvis Smith was the responsible person on duty. He was clearly observed on CCTV witnessing the assault however stated to the police that he had not witnessed anything.

About 1100 hrs on Monday 27 December 2021 PC Lorimer, Divisional Licensing Department, attended at the premises and spoke to DPM Kevin Boyd who was aware that Elvis Smith had not provided a statement to police. Elvis Smith was also present. PC Lorimer enquired into his reluctance to provide a statement to which he intimated that he was now willing to provide one.

PC Lorimer reminded both Kevin Boyd and Elvis Smith of the licensing objectives and the conditions of their licence to monitor the levels of intoxication of patrons within the premises.

About 0130 hrs on Saturday 1 January 2022 police officers attended at the premises regarding a report of a disturbance. Enquires were carried out and it was established as a result of the disturbance two males had seriously assaulted each other, one of which was a male who had been assisting with the collecting of glasses within the premises, he is not the holder of a training record or a personal licence.

About 1355 hrs on Wednesday 4 January 2022, a report was received regarding a male who had been within the premises on 25 December 2021 and who was found behind the premises with his trousers at his ankles heavily intoxicated. On Monday 27 December the male attended hospital due to an injury he had sustained. Enquiries were carried out and no crime was established.

An intervention was considered, however due to the frequency and severity of the incidents and the clear disregard for the advice given to the Designated Premises Manager and staff, the decision was made to submit a review application, as Kevin Boyd appears to have little or no control over the day to day running of the premises or the patrons that are frequenting the premises.

It has therefore been deemed necessary to bring this review application before the Board as there is clear evidence that the premises are being operated in a manner inconsistent with aforementioned Licensing Objectives and with no adherence to the conditions of the licence issued to him.

With regards to his Personal Licence, the Chief Constable considered that Kevin Boyd had acted in a manner inconsistent with the aforementioned Licensing Objectives and shown a flagrant disregard to the conditions of the licence that has been granted to him

Inspector Farmer concluded that the Chief Constable requests that the Licensing Board consider the aforementioned grounds for review and takes such steps as it considers necessary or appropriate for the purposes of the Licensing Objectives under terms of Sections 39(2) and 84(3)(b) of the Act.

Mr McGowan had no questions for Inspector Farmer.

The Depute Clerk reminded Board Members of the requirement, in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005, for Licensing Standards Officers to submit a report in respect of a premises licence review.

Mr Hiles, LSO, reported the following:-

The premises consist of a bar and lounge with a small outdoor drinking area and are situated in the centre of Dalmellington town. They are permitted to sell alcohol on-sale between the hours of 11am and Midnight Sunday to Wednesday and 11am until 1am Thursday to Saturday. Off-sales are permitted 11am until 10pm daily.

Kevin Boyd has been the Licence Holder since the 15 October 2020 and Designated Premises Manager since 15 May 2019.

Mr Hiles reported on visits carried out at the premises since May 2019 when Kevin Boyd became the Designated Premises Manager.

On 6 June 2019, a visit was made by Licensing Standards Officers to the premises. The Designated Premises Manager Kevin Boyd was not present. During the visit, it was ascertained that the sole female staff member working had not been trained and was not aware of such matters as the terms of entry for Children & Young Persons to the premises.

As a result of the above visit, a Compliance Notice was issued under the terms of Section 14 of the Licensing (Scotland) Act 2005 to the then Premises Licence Holder and a copy was also sent to Kevin Boyd. The notice required that all staff be trained for a minimum of two hours and a training record be completed and made available for inspection.

On 20 June 2019, a further visit was made to the premises and the same female member of staff from the 6 June visit was present. She was unable to produce a training record and in fact left the premises prior to it being established if training had been given, as required. Another male staff member was present who was the holder of a Personal Licence.

Consideration was given by the Licensing Standard Officers on whether to request a Premises Licence Review but a transfer of Premises Licence application was received very soon afterwards before the review request was made.

On 25 September 2020, an inspection of the premises was carried out by a Licensing Standards Officer/Environmental Health Officer to ensure that Covid procedures were being applied. Guidance was provided on the first visit. A follow up visit was made on 29 September 2020 when Kevin Boyd was present to ensure that the guidance had been complied with and all was found to be in order.

On 2 June 2021, a visit was made to the premises following a complaint that Covid procedures were not being complied with. Kevin Boyd was present and guidance was provided in respect of some issues identified.

On 22 September 2021, a visit was made to the premises following a complaint that under age persons were being served alcoholic drinks in the premises. The staff member present was a Personal Licence Holder and explained all procedures in place to check a customer's age, such as the Challenge 25 policy, ID checks, No ID, no service. There were no concerns about the procedures in place and no further action was taken.

On 2 February 2022, a visit was made to the premises prior to the submission of this report. All staff training records were available and correctly completed as well as Age Verification Policy declaration forms. All statutory notices were correctly displayed and Covid procedures were in place. Kevin Boyd was not present but contact was made with him by telephone the next day when he advised that 8 CCTV cameras were to be installed within the next two weeks. These were due to be installed before Christmas 2021 but had been delayed. When the CCTV is installed, he will make sure that all staff know how to operate the system in case viewing is needed by Police. He further added that all of his staff who did not hold a Personal Licence will have undertaken a Personal Licence Holder training course and will be applying for a Personal Licence. Also, any new staff will either need to be the holder

of a Personal Licence or be expected to attend the training and apply for a Personal Licence. He added that staff now monitor how much alcohol is consumed by customers and if customers arrive at the premises after they have been drinking elsewhere and appear to be drunk, they are not permitted entry to the premises and a taxi home is arranged, if required.

Mr Hiles reported that Kevin Boyd previously held a Personal Licence issued by East Ayrshire Licensing Board under reference EA/PL/387/09. This Personal Licence was revoked at a meeting of East Ayrshire Licensing Board on the 24 April 2013 for conduct inconsistent with the Licensing Objectives following a Premises Licence Review submitted by the then Strathclyde Police following an incident at a premises known as Boyds Bar, Dalmellington on the 23 February 2013.

Mr Hiles concluded that, Licensing Standards Officers were not present and did not witness the events detailed in the Divisional Commander's report in respect of The Doon Tavern and as such were unable to make comment.

Neither Mr McGowan nor Inspector Farmer had any questions for Mr Hiles.

Mr McGowan commenced his submission by providing background information, advising that Mr Boyd's family had a history with the premises, the licence previously being held by Mr Boyd's mother. The family then sub-let the premises to Mr Swan who moved on in October 2020 and the licence was transferred to Kevin Boyd.

He explained that Mr Boyd had licensing experience, having operated these premises and previously another premises in Dalmellington.

Mr McGowan submitted that Mr Boyd had taken over the operation of The Doon Tavern during lockdown and had invested in the premises. The premises had been renovated, replacing the dance floor within the premises with a games room, installing new windows, a cellar and piping, all as part of a long term plan to make the premises work. He continued that 8 CCVT cameras had now been installed at the premises, 4 within the premises and 4 outside the premises and advised that Police Scotland had looked over the system and were satisfied with its operation. Mr McGowan stated that Mr Boyd wanted to make The Doon Tavern a better place and to focus on post COVID recovery.

Addressing the incidents reported by Police Scotland, Mr McGowan submitted that the first incident was sub judice and that his client had instructed a criminal Solicitor to act on his behalf in this regard. He stated that it was impossible to comment on the offence, as the CCTV footage of the incident had not been seen. He explained that a customer had been drinking within the premises and had become a nuisance. When asked to leave, the customer had assaulted the member of staff, Elvis Smith. As the customer continued to assault Mr Smith, other customers within the premises had assisting in removing the assailant from the premises.

Mr McGowan explained that Mr Smith had telephoned the Police to report and matter. He had also telephoned Mr Boyd, who had been asleep in bed, however on receiving the message from his partner, had immediately drove to the premises to assist. Mr McGowan advised that, as a result of the incident, the individual had

been charged with the assault of Mr Smith. He also advised that the brother of the individual involved had thereafter visited the premises to apologise and pay for any damages.

In Mr McGowan's opinion, as the incident was sub judice, the matter should be set aside as it would be prejudicial for the Board to consider same. He reminded Members that, if Mr Boyd were to be convicted of the offence, the matter would come back to the Board for consideration in terms of the Licensing (Scotland) Act 2005. He concluded that those involved had co-operated with the Police in relation to the incident.

Addressing the incident on 25 December 2021, Mr McGowan questioned why this incident had been mentioned. He stressed that this painted a negative picture of the premises and, as no crime had been committed, this incident should not have been included in the review application.

With regards to the incident which took place at 11.50pm on 26 December 2021, Mr McGowan advised that his client disputed that the customers had been within the premises from 1pm. He explained that the incident had occurred as the result of a fall out between a male and his partner and the mother of the female had become involved. The argument continued as they crossed the road to the bus stop and the male pushed the mother of his partner and she had fallen and broken her wrist.

Referring to the Police report that Elvis Smith had failed to provide a statement, Mr McGowan advised that Mr Smith had spoken with the Police and reported the incident, which could be confirmed by Police telephone records, and he had also telephoned for an ambulance. He explained that Mr Smith had returned to the premises, not because he did not want to provide a statement to Police Scotland, but because he had been in charge of the premises. He continued that Mr Smith had not been asked for a statement at the time of the incident but had provided a statement when asked and was upset at that inference that he had not co-operated.

Mr McGowan addressed the incident on 1 January 2022, where police reported that, as the result of a disturbance, two males had seriously assaulted each other, one of whom was a male who had been assisting with the collecting of glasses within the premises and was not the holder of a training record or a personal licence. He submitted that an inference had been made that the person collecting glasses was a random customer and he confirmed that the person collecting glasses was a member of staff, Kevin Davis, who had worked for Mr Boyd for approximately 5 years.

With regards to the incident, Mr McGowan explained that Mr Davis had approached a female customer who was attempting to leave the premises with a glass and had been struck with a glass by the female's partner. As a scuffle had ensued, Elvis Smith, who had been on duty, had telephone both the Police and Mr Boyd.

Mr McGowan failed to see what could have been done differently to prevent the incident from happening as it had been an unprovoked assault and stressed that this should not be held against Mr Boyd.

Mr McGowan submitted that there were elements of the Police Scotland letter that had unfortunate language and unhelpful statements. He noted that no disposal had

been proposed by the Chief Constable and advised that that he had attended over 150 licence review hearings throughout Scotland and that it was not unusual for the Chief Constable to be clear on what disposal was appropriate. He stated that this had not been the case and that the disposal had been left for the Board.

Mr McGowan submitted that four incidents had been reported by Police Scotland, all of which had been entered in the premises incident book, there had been no attempt to hide any information and all staff had assisted Police Officers. In Mr McGowan's opinion there had been a lost opportunity for an intervention by Police Scotland, with a plan of action, which would have given the opportunity for the Police and Mr Boyd to work together and could have been carried out without the need for a review hearing.

Addressing the LSO report, Mr McGowan pointed out that the report had concluded on a positive note. He stated that it was important to see that there had been positive progress with the operation of the premises and that Mr Boyd was a willing participant with both Police Scotland and the LSO's and he wanted to have a good relationship with both.

Mr McGowan submitted that Mr Boyd accepted that there were lessons to be learned and had taken steps to assist by introducing a 12 midnight curfew, which had started in February. He advised that Mr Boyd had 9 members of staff, 2 of which held personal licences and 3 of which had applied for personal licences. All remaining staff were to undertake the SCPLH training with a view to applying for personal licences, all of which was being funded by Kevin Boyd.

CCTV cameras had been installed both inside and outside the premises and the system could be accessed from Mr Boyd's phone. Mr McGowan advised that Mr Boyd wanted to take the premises forward and would engage with the LSO's with a view to joining the Best Bar None Scheme. He continued that Mr Boyd had arranged increased toilet checks and would not seek to operate additional hours over the festive period.

Mr McGowan referred to the first incident reported by Police Scotland and which was sub judice and concluded that this matter should be set aside as it was not for the Board to decide whether Mr Boyd was innocent or guilty. If Mr Boyd was convicted, the matter would come back to the Board for consideration.

The Chair referred to the Police visit to the premises on 1 January 2022 and asked who had provided the information that the person collecting glasses was not the holder of a training record or a personal licence. Inspector Farmer advised that the Police Officers in attendance had reported that the person had no training record or personal licence.

The Chair asked how often Mr Boyd was involved in the operation of the premises. Mr Boyd advised that he worked three or four shifts per week on various days.

The Depute Clerk referred to the Police report that customers within the premises had been intoxicated and asked what steps had been taken to ensure customers were not becoming intoxicated.



Mr McGowan advised that Mr Boyd had introduced a 12 midnight curfew to prevent customers from entering the premises later at night after they had been drinking in other premises, in an effort to monitor any customers' level of intoxication.

Referring to the incident which took place on 26 December 2021, Mr McGowan reiterated that Mr Boyd disputed that the customers had been within the premises from 1pm.

Mr McGowan submitted that Mr Boyd had invested in the premises and that it was in his best interest to ensure that the premises operated well.

The Depute Clerk confirmed that Members had received a copy of the character reference provided for Mr Boyd and that he had sight of the documents referred to by Mr McGowan in his submission, being the incident book and Mr Davis' training record.

The Depute Clerk asked the approximate age of the clientele frequenting the premises. Mr Boyd advised that there was a small bar to the front of the premises, which attracted an older clientele and a cocktail area which attracted younger customers.

The Chair asked why Police Scotland had included the incident, which had taken place on 25 December 2021, when no crime had been committed.

Inspector Farmer replied that all incidents were included within the review application to paint a complete picture of the premises.

There being no further questions, the parties were given the opportunity to sum up.

Inspector Farmer appreciated Mr McGowan's submission on behalf of his client however stressed that the incidents reported by Police Scotland were accurate. He advise that it was not uncommon for Police Scotland to report matters to the Board that were sub judice.

Mr McGowan submitted that there had been a lost opportunity for an intervention to be arranged and felt that there would have been merit in that approach. He concluded that Mr Boyd had invested in the premises, had taken steps to improve the building and the training of staff and wanted to continue to have a good working relationship with both Police Scotland and the LSOs.

The Board adjourned to consider the matter.

Upon returning the Chair moved that he was satisfied that the grounds for review had been established in respect of both the Premises and Personal Licence in that Kevin Boyd had failed to comply with the licensing objectives namely preventing crime & disorder and preventing public nuisance only. He was not satisfied that Mr Boyd had failed to comply with the licensing objective, Securing Public Safety. This motion was seconded by Councillor John Campbell. The Board agreed unanimously.

The Depute Clerk invited Mr McGowan to address the Board in respect of the disposals open to the Board.

Mr McGowan reminded Members that any sanction should not be punitive but to ensure the protection of the licensing objectives.

Addressing the options available to the Board, Mr McGowan submitted that it was acceptable for the Board to take no action, even when grounds of review had been established. Given the steps already taken by Mr Boyd to improve the operation of the premises, he suggested that an intervention be arranged and for the premises to be monitored over a 3/6 month period, which, in his opinion was proportionate.

If the Board were not minded to take this option, Mr McGowan suggested that a written warning be issued to Mr Boyd and his personal licence endorsed. In Mr McGowan's view no other option available to the Board would be proportionate.

The Board adjourned to consider the matter.

Councillor Fiona Campbell was unable to join the meeting due to technical difficulties.

Upon returning the Chair moved that Mr Boyd be issued with a warning letter in respect of the premises licence and also participate in an intervention process with Police Scotland. In respect of his personal licence, the Chair moved that the personal licence be endorsed. This was seconded by Councillor John Campbell. The Board agreed unanimously.

Mr McGowan submitted that his client would contact PC Lorimer with a view to arranging the intervention.

There being no further business the meeting ended at 12.05pm.

## APPENDIX 1

### GAMBLING ACT 2005

### APPLICATION FOR GRANT OF BINGO PREMISES LICENCE

Fraser Capital Management Limited  
t/a Club 3000 Bingo

Club 3000 Bingo  
74 Portland Street  
Kilmarnock

Julie Sullivan, Solicitor, appeared before the Board to speak in support of the application, together with Brian Fraser of the applicant company.

The Depute Clerk reminded Members that the premises had previously held a Bingo Licence but had been closed for some time. He advised that no objections or representations had been received in respect of the application.

Ms Sullivan submitted that the application had been lodged by Fraser Capital Management Limited, trading as Club 3000 Bingo, who had held an operating licence with the Gambling Commission since 2006 and operated 21 premises throughout the UK, 2 in Wales, 6 in Scotland and 13 in England. She continued that Mr Fraser had good experience, operating bingo premises.

With regards to the building, Ms Sullivan explained that the premises was purpose built and had been purchased by her clients in June 2021. She submitted that the premises was large, with a capacity of 1200 and if it re-opened would create 40 new jobs, which could only benefit the local economy. The premises would be finished to a high specification and if the licence were to be granted, it was intended to open late summer/early autumn.

Ms Sullivan advised that, should the Board be minded to grant the Bingo Licence, it was her clients' intension to apply for an on sale premises licence in terms of the Licensing (Scotland) Act 2005.

Mr Sullivan continued that her clients were familiar with the Board's Policy Statement and that systems would be in place, such as challenge 25.

Mr Fraser confirmed that thorough systems would be in place with regards to age checks. All staff would be fully trained and if a customer looked under the age of 25 years of age, a form of identification would require to be produced. Mr Fraser advised that he had never experienced any issues with the operation of any of the company's premises.

Referring to Challenge 25, Councillor Leitch asked when ID checks would be carried out.

Mr Fraser explained that age checks would be carried out as soon as a customer came through the door, as membership cards provided personal details. He advised that checks would continue to be carried out throughout the premises and if a staff member thought that a customer was under the age of 25, ID would be requested.

The Depute Clerk asked if the refurbishment of the premises had started.

Mr Fraser confirmed that work had started within the premises, however only repairs to the building were being carried out. He stress that this was not an assumption that the licence would be granted, as repairs were required.

The Depute Clerk asked if the applicant company had purchased the premises and Mr Fraser confirmed that Fraser Capital Management Limited had purchased the property.

There being no objections or representations to the application, the Chair moved that the licence be granted. This was seconded by Councillor Jones. The Board agreed unanimously.

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