

EAST AYRSHIRE LICENSING BOARD

Minute of the Meeting of East Ayrshire Licensing Board held within the Council Chambers, Council Headquarters, London Road, Kilmarnock, and digitally through Microsoft Teams, on Tuesday 11 June 2024 at 10am.

SEDERUNT: Councillor Stephen Canning, Councillor Elaine Cowan, Councillor William Crawford, Councillor June Kyle, Councillor Clare Maitland, Councillor Kevin McGregor and Councillor David Richardson

ATTENDING: David Mitchell (Clerk to the Licensing Board), Ms Carolyn McEwan and Mr Ian Hiles (Licensing Standards Officers) Mrs Patricia Duncan and Mrs Alison Hewitson (Licensing Board Administrators).

APOLOGIES: Councillor Drew Filson, Councillor Lillian Jones and Councillor Claire Leitch.

1. SEDERUNT

Noted.

In the absence of the Chair, Councillor Richardson was nominated to Chair the meeting. Councillor Richardson took the Chair.

2. DECLARATIONS OF INTEREST

In relation to the variation application for The Village Store, Drongan, Councillor Crawford declared a non-financial interest, being a friend of the applicant, and intimated that he intended to withdraw from the meeting for that item of business in accordance with paragraph 5.6 of the Councillors' Code of Conduct.

3. MINUTE OF MEETING

3.1 The Minute of the meeting of East Ayrshire Licensing Board held on 14 May 2024 was approved and noted.

4. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Clerk reported on the applications discharged under delegated authority between 7 and 31 May 2024, namely:-

Minor Variation	:	12
S33 Transfer of Premises Licence	:	2
Grant of Personal Licence	:	23

Renewal of Personal Licence	:	1
Renewal of Small Lotteries Registration	:	5
Grant of Small Lotteries Registration	:	2
Extended Hours	:	1
Occasional Licences	:	53

The Clerk reported that of the 53 Occasional Licences granted, 25 were granted to personal licence holders, 17 to club premises, 7 to premises licence holders and 4 to voluntary organisations.

It was noted that, as of the date of the report, there were 977 Personal Licences in force, an increase of 18 since the last report and 294 Premises Licences in force, the same number as the last report.

5. APPLICATIONS

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

6. ANNUAL FINANCIAL AND FUNCTIONS REPORT

The Clerk reminded Members that in terms of Section 56 of the Air Weapons and Licensing (Scotland) Act 2015, Licensing Boards must prepare and publish an Annual Financial Report.

The Clerk outlined the contents of the report and recommended that Members approve and authorise the publication of the Annual Financial and Annual Functions Report.

The Board Members unanimously agreed to approve the Annual Financial and Annual Functions Report and authorised the Clerk to proceed with the publication.

The Chair noted that there was deficit of £64,611 in 2023/24 and stated that the Board may have to review application fees.

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

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

Henry Fitzsimmons

The Fenwick Hotel
Junction 8, M77
Fenwick

Details of variation:-

To amend the activities provided at the premises to include craft fayres, indoor markets, bingo nights, race nights and dog shows.

Ms Carol Brownlie appeared before the Board, on behalf of the applicant, to speak in support of the application.

The Clerk outlined the application and advised that no objections or representations had been received.

Ms Brownlie confirmed that the variation was sought to allow craft fayres, indoor markets, bingo nights, race nights and dog shows to take place within the premises.

There being no objections or representations in respect of the application, the Board agreed unanimously to grant the variation.

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

Ryan McCubbin

The Boolers
Milmannoch Avenue
Drongan

Details of the variation:-

To amend the operating plan of the premises as follows:-

The addition of activities to include, the hosting of community and public organised events, including the use of inflatable structures, marquees and other fairground rides or equipment.

To add to the terms in which children and young persons are permitted entry to the premises to include:-

Children aged 0 – 15 years, when accompanied by a responsible adult, and young persons aged 16 and 17 years, unaccompanied by an adult, will be permitted access

to the premises, during the core hours, to attend community and public organised events.

Children will be permitted entry to the function hall and gym area, when accompanied by a responsible adult, for the purpose of having a meal, until 9pm. Young persons will be permitted entry to the function hall and gym area unaccompanied by an adult, for the purpose of having a meal, until 9pm.

Children and young persons will be permitted entry to the outdoor drinking area.

The applicant, Ryan McCubbin appeared before the Board to be speak in support of the application.

The Clerk outlined the application and advised that no objections or representations had been received.

In relation to the hosting of community & public events including the use of inflatable structures, marquees and other fairground rides and equipment, Mr Hiles, LSO, reported that the applicant will require to adhere to The Purple Guide, a document designed to provide guidance for event organisers, suppliers, local authorities and others involved in the outdoor events industry to establish consistently safe standards for the running of outdoor events.

He continued that the applicant has a general duty to ensure, so far as reasonably practicable, the health, safety and welfare of anyone involved or attending an event at The Boolers. In addition, the applicant will be responsible for ensuring that others, including volunteers, patrons, and spectators etc., are not exposed to risks arising from the operation of the event, and take into account the capacity of any temporary infrastructure/equipment etc.

Mr Hiles submitted that when a community and/or public event is planned for the venue, the Event Organiser would require to complete an event management plan, medical plan, site specific risk assessment, fire risk assessment and a security plan (where applicable) to cover the event, as well as completing checks on ADIPS/PIPA certification and ensuring that the premises public liability insurance has sufficient cover for the additional activities provided.

The Clerk suggested that, should the Board be minded to grant the variation, an arrangement could be put in place whereby Mr McCubbin would advise the Licensing Section of any proposed event to allow support/guidance to be issued.

Mr McCubbin explained that over the last two years events had been organised at The Boolers, which had required a public entertainment licence. As the outdoor drinking area now formed part of the licensed premises, the variation was required to include such events. Should the variation be granted, this would allow more community events to be arranged.

Mr McCubbin advised that there was currently no operational kitchen at the premises, however moving forward, he intended to install a kitchen and provide bar meals.

The Board agreed unanimously to grant the variation, subject to the applicant notifying the Licensing Section prior to any community and/or public events taking place to allow support/guidance to be provided.

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

Mitchell's Stores Ltd.

The Village Store
72-74 Mill O'Shield Road
Drongan

Details of the variation:-

Expansion of the retail premises, increasing the retail floor space from 1220 sq ft to 2500 sq ft, resulting in a reconfiguration of the internal area, relocation of the alcohol display areas and formation of a self contained chilled alcohol area (beer cave), with age restricted entry.

Increase in the alcohol display areas from 20.65m² to 29.4m².

Mr Stephen McGowan, Solicitor, appeared before the Board to speak in support of the application, together with Ian Mitchell, Director of Mitchell's Stores Ltd. and Richard Cook, Operations Manager.

Mr McGowan explained that the premises had been fully re-built, had more than doubled in size and that the work had already been carried out. He offered a sincere apology on behalf of his client, who understood that he had acted out of turn. He advised that, although the layout of the premises had changed, his client was not currently operating an increased alcohol display area. He continued that the error had been a genuine oversight, that his client had learned a lesson and hoped that Members accepted the apology.

Providing some background information, Mr McGowan submitted that his client had operated the premises since 2004, had an unblemished record and was a long standing, responsible licence holder. He continued that his client had lived in Drongan all of his life and was well known in the community.

With regards to the premises, Mr McGowan submitted that this was a typical village store which catered mainly for local people as there was not much passing trade. Due to the expansion of the village with new homes, it was felt that improvements were required to the shop.

Mr McGowan produced pictures of the store as it was prior to any changes being made, together with pictures of how the store now looks. These pictures were circulated to Members.

Mr McGowan explained that the shop had extended into the next property and had more than doubled in size. Planning permission for the changes had been

obtained in 2020 and a Building Warrant obtained in 2021. Completing the project was delayed due to Covid and the variation of the licence was the last piece of the jigsaw.

Mr McGowan advised that his client had invested £600k in the project in Drongan. He continued that Mr Mitchell supported the local community and sponsored the local school football team and bowling club. In Mr McGowan's opinion, taking account of all the circumstances, the premises were an asset to the community.

Mr McGowan submitted that his client was not looking to increase the alcohol display area within an existing shop. The new shop had taken the retail floor-space from 1220 sq.ft. to 2500 sq.ft. The current alcohol display area was 20.65m² over 4 areas of the shop, with 16m² being fully accessible to the public. Within the new shop only 2.3m² would be accessible to the public, being one bay of red wines.

His client had more than doubled the shop in size, however only requested an increase in the alcohol display area of 9m². He continued that under the former layout, the alcohol display area equated to 23.4% of the shop. Under the new layout, the alcohol display area equated to only 12.6% of the shop.

Mr McGowan produced for Members, a document addressing each of the Licensing Objectives, as follows:-

Protecting Crime and Disorder

- 1. A modern and upgraded CCTV system with recording facilities will be installed on site as a part of the premises expansion and modernisation.**
- 2. This will include the installation of approx. 24 new cameras both within and outwith the premises. The new system will be high-definition and has a 28 day memory retention.**
- 3. Relevant staff will be trained with regard to their responsibilities in the retail sale of alcohol and initial training will be supplemented by refresher training. Training records can be made available for inspection upon request.**
- 4. A Challenge 25 policy will be operated at the premises and staff will be trained on the acceptable forms of identification.**
- 5. The licence holder shall display prominent signage confirming the company's Challenge 25 policy.**
- 6. The creation of a controlled space for alcohol display reduces the possibility of theft as the entry to the space is controlled and can be prevented by staff.**
- 7. No alcohol is consumed on the premises. The premises will be carefully managed and any incidents of crime and disorder are extremely rare. All incidents are recorded in an incident book routinely checked by the licence**

holder. The incident records can be made available for inspection on request.

8. The premises management and staff will continue to work with the local police on any matters. The new store will improve amenity in the area generally and the high-quality CCTV both inside and out will be shared upon request with Police Scotland for any wider incidents which occur in the locality.
9. Staff will be trained on the new CCTV system.

Preventing Public Nuisance

1. The new CCTV system will be well signposted both within and outwith the premises. A well run, well appointed and well-lit premises can be shown to discourage nuisance. These steps, put into effect with the reconfiguration of the store layout will act as a deterrent.
2. There are adequate arrangements in place to deal with litter and trade waste to ensure the surrounding area is kept clean.
3. The store is accessible and friendly for persons with disability, making them welcome and feel safe and secure – an asset to the local community.
4. With increased visibility around the environs of the shop unnecessary nuisance will be actively discouraged and the premises will operate a zero tolerance policy in this regard.
5. Notices will be displayed after the expansion of the shop has completed to discourage loitering and confirming that CCTV camera usage is in effect.
6. There will be no use of amplified music externally to the premises.

Securing Public Safety

1. Full risk assessments are in place at the premises and reviewed on an on-going basis.
2. The premises shall be adequately staffed so that the public are supervised whilst on site. With the creation of the new controlled space, there is additional management intervention as only staff can grant access.
3. Accidents and incidents will be recorded in an incident book which can be inspected upon request.
4. There will be no lone working.
5. Processes are in place for evacuation and accident/incident reporting and with the reconfiguration of the shop a full suite of emergency lighting is installed and the aisles will be bright and spacious allowing quick egress upon an emergency.

6. The shop will introduce digital screens with messaging around public safety in relation to alcohol but also wider messaging relevant to the local community in Drongan acting as a public information service, a digital community notice board.
7. The purpose of the reconfiguration of the shop is to create an improved facility for the local people of Drongan and increased controls on alcohol display. The shop is doubling in size following a full new build. Customers are well known and looked after. This is not an “out of town” new chain store application where the demography of the customer base is a wider diaspora. The customers are local and there is very little passing trade.

Preventing Children and Young Persons from Harm

1. All staff in the new store are trained with regard to their responsibilities in sale of alcohol and refresher training will be carried out for all existing staff.
2. Training records can be made available for inspection upon request.
3. A refusal log will be operated and can produced upon request.
4. A Challenge 25 policy will be operated at the premises.
5. The licence holder shall display prominent signage confirming the company’s Challenge 25 policy.
6. The increase in display relates to a bespoke space, the “chill room”, which cannot be accessed by anyone under 18. The controlled entry means there is no prospect of a person not of legal age browsing or perusing the alcohol in the controlled space. The “chill room” area will have approx. 2 dedicated CCTV cameras.
7. The possibility of “proxy purchase” is ameliorated where a controlled area for alcohol is introduced and therefore not immediately accessible.
8. The reconfiguration and refit of the premises included full external lighting and CCTV will disincentive “loitering” meaning children and young people will feel safer.
9. Technological improvements will fortify the correct messages around children and young people and alcohol: there will be new screens demonstrating messages such as around Proxy Purchasing, or promoting schemes such as responsible drinking campaigns.
10. The new upgraded store will also have a new speaker system linked to a “radio” network which will relay appropriate messaging to customers.

Protecting and Improving Public Health

1. The East Ayrshire Licensing Board policy statement itself recognises that there are positive health benefits with increased employment opportunities. In this case the applicant expects to go from 14 staff to 20 staff.
2. This principle is well recognised in academic circles principally around the established work of Waddell & Burton (2006) "Is Work Good for You?" which is a study recognised by a number of licensing boards in Scotland, a copy of which can be located online. There are a number of other academic studies which support the contention, such as Roelfs et al (2011).
3. This application, whilst increasing the alcohol display, more fundamentally relates to a significant upgrading of the shop and creating a more controlled alcohol display. The upgrade is essentially a full new build with the footprint going from 1220 sq ft to 2500 sq ft, more than doubling in size. The result of this is that the licence holder has employed additional staff and existing staff have been offered longer hours.
4. Minimum unit pricing will be observed at all times including the proposed new uplift or any future uplift. The modern till systems being installed as part of the premises upgrade can be programmed to ensure alcohol products are not sold below a certain price even by accident.
5. The creation of the controlled space, ie the "chill room", supports this objective because in order to access it there has to be a conscious decision by the customer to do so and access is supervised by staff.
6. Only customers who purposefully wish to purchase alcohol will be in the chill room; there is no reason to enter the space otherwise.
7. The restriction of access to the "chill room" means the alcohol in that space is less visible, less accessible therefore this is a positive in term of any concerns over "availability".
8. Whilst the alcohol display is rising from 20.65m² to 29.4m² this has to be viewed in proportionate terms given the overall expansion of the shop footprint and given the increased controls over the new alcohol display area.
9. The expansion of the shop will allow the premises to stock a much wider range of "No and Low" products: alcohol free beers, wines and so on.
10. A wider range means there is no prospect of the premises ever having to "compete" with other premises on price: they will attract customers through them feeling safe, welcomed, and through a diverse range.
11. The new shop layout is more accessible, lowered counters, wider aisles, bright, clean, secure, safe and welcoming - allowing people with diverse health needs space and a shopping experience which will support them and help them to feel safe.

Addressing the 'chill room' Mr McGowan explained that this was a controlled area where a button required to be pressed to gain access. In his opinion the

chill room fortified the licensing objectives, protecting children and young persons from harm, as there would be no reason for children to be in this area, and protecting & improving public health, as a person would have to make a conscious decision to enter the chill room. The room was less visible and less accessible.

Mr McGowan reported that the premises would have state of the art tills and a CCTV system with a one month retention period, as well as a tannoy system relaying challenge 25, etc. messages.

Referring to the photographs of the new premises, Mr McGowan referred to the premises as being a welcoming, safe, nice premises, with a clock tower at the top of the building as a focal point for the village.

Addressing over provision, Mr McGowan noted that the Board's accepted locality was East Ayrshire as a whole. He submitted that there were currently 121 off-sale premises within East Ayrshire, providing a total alcohol display of 3389.49m². He continued that the proposed increase to the alcohol display area would equate an increase of only 0.26m² of the overall display area in the locality, which in his opinion was de minimus.

Referring to the Health data considered by East Ayrshire Licensing Board when preparing their Statement of Licensing Policy, Mr McGowan noted that alcohol related hospital admissions in respect of the Drongan area were low in comparison to other areas within East Ayrshire and that Drongan was at the lower end of the Scottish National Average. He continued that the data zones were colour coded, highlighting 6 levels of deprivation, with Drongan being coded blue, showing that Drongan was better than the national average.

Mr McGowan submitted that planning permission had been granted to build approximately 75 new houses in Drongan and that the application premises would be their local shop. He moved that local changes should be taken into account by the Board.

Referring to the Board's Statement of Licensing Policy, Mr McGowan concluded that a good policy must have exceptions and that this application would be a good exception.

Councillor Maitland asked if alcohol of a higher strength would be kept behind the counter. Mr McGowan explained that spirits and higher value products would be kept in the controlled area behind the counter.

Councillor Kyle advised that she had visited the shop, which operated well.

Councillor Cowan asked if the LSO's had any issues with the operation of the premises. Mr Hiles confirmed that there had been no issues with the operation of these premises.

Councillor Canning asked if the tannoy messages would include messages about proxy purchases and their penalties. Mr McGowan referred to the 'You're asking for it' campaign, operated by the Scottish Grocers Federation with the

support of Police Scotland to raise awareness that proxy purchasing is a criminal offence, which would operate in the shop.

The Clerk reminded Members that each application must be considered on its own merits. In his view the chill room improved the operation of the premises and did not undermine the Board's Policy.

There being no objections or representations received in respect of the application, the Board agreed unanimously to grant the variation.

GAMBLING ACT 2005

APPLICATION FOR GRANT OF BETTING PREMISES LICENCE

Ladbroke Betting & Gaming Limited Unit 1
Burns Mall
Kilmarnock

Mr Stephen McGowan, Solicitor, appeared before the Board to speak in support of the application, together with Jason Williamson, Development Manager and Kevin Williams, National Licensing Manager.

The Clerk advised that a Notice of Objection had been received.

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

The Notice of Objection was circulated to Members.

Mr McGowan submitted that the application premises had been closed and unused for approximately 6 years. His clients had lodged the application and all supporting documents, including a Risk Assessment. He advised that his clients had operated premises in Croft Street since 2001, however there are structural issues with the building. Should the Board be minded to grant the licence, it was intended to commence trading from the premises in mid/late August. He advised that a written undertaking had been given that the licence for the premises in Croft Street would be surrendered once the new premises started trading.

Mr McGowan submitted that Ladbroke's were responsible operators with many premises in the UK.

Addressing the Notice of Objection and to the suggestion that the granting of the licence would increase gambling harms, Mr McGowan submitted that no evidence had been provided. He stressed that any objection must be based on evidence and not speculation.

With regards to the location of the application premise, Mr McGowan reminded Members that it was not lawful to refuse a licence for gambling premises based on over provision or demand. He continued that planning permission had been granted and that Ladbrokes were experience operators.

Mr McGowan concluded that this was a good application to move one gambling premises to another unit, which had been unoccupied for some time.

Councillor Maitland advised that there were several other empty units in the town centre and asked if consideration had been given to moving to any of these units, which would not be next door to another gambling premises.

Mr McGowan advised that other units were considered, however his clients wanted a premises close to the shopping centre. He stated that no consideration should be given to the fact that another gambling premises was next door to the application premises.

Councillor Cowan questioned the protection of the public from gambling harms due to the close proximity of the other betting premises.

Mr McGowan submitted that all operators required to work with Agencies and the public to tackle gambling harms. In terms of their Operating Licence, the Gambling Commission requires operators to share information eg. when a self exclusion has been made.

Councillor Maitland asked if both premises would have FOBT.

Mr McGowan advised that betting premises were permitted a maximum of 4 FOBT. There were currently 4 machines within the premises in Croft Street and it was intended to have 4 machines in this shop. He stated that the key was that the machines were used responsibly, which was the case in all Ladbroke premises.

Due to the close proximity of the application premises to another betting premises, Councillor Maitland expressed concern that customers could walk out of one premises and immediately into another.

Mr McGowan explained that all operators required to have self exclusion policies in place, which are shared. Should a customer's behaviour suggest they are experiencing gambling harms and they are excluded, they will be excluded from all premises. He advised that such matters are shared at a high level, with the Gambling Commission and the Police. He added that staff would also have local knowledge of customers.

Councillor Richardson asked how the FOBT would be monitored. Mr McGowan advised that, if the machines were misused, a blocking system could be used to stop play.

Referring to the business operation, Councillor Richardson enquired as to the split between over the counter betting and gaming machines.

Mr McGowan advised that in Scotland there was a strong over the counter business and that the split was approximately 60/40.

Councillor Richardson referred to the betting premises next door to the application premises and observed that customers may move from premises to premises for a better deal.

Mr McGowan advised that it was not unusual for betting premises to be next door to each other. He pointed out that the Croft Street premises was not far away and that there was a Betfred premises not far away, in King Street. He stated that customers should be able to exercise their right of choice. He conclude that the main point was that one premises would close and one would open.

There being no further questions, the Board adjourned to consider the application.

Upon returning, the Chair moved that the application be granted. The Board agreed unanimously.

GAMBLING ACT 2005
APPLICATION FOR ALCOHOL LICENSED PREMISES GMP

Melli Limited

The Standing Man
11 Portland Street
Kilmarnock

Permission for 3 Category C Gaming Machines

The Clerk outlined the application and advised that no objections or representations had been received.

Paul Simpson appeared before the Board on behalf of Melli Limited and reminded Members that licensed premises had an automatic entitlement to have up to 2 gaming machines of category C or D within their premises. He advised that an additional gaming machine was required due to customer demand.

The Board agreed unanimously to grant the permit.
