

## **EAST AYRSHIRE LICENSING BOARD**

**Minute of the Meeting of East Ayrshire Licensing Board held within the Council Chambers, Council Headquarters, London Road, Kilmarnock on Tuesday 14 May 2024 at 10am.**

**SEDERUNT:** Councillor Drew Filson (Chair), Councillor Stephen Canning, Councillor Elaine Cowan, Councillor June Kyle, Councillor Claire Leitch, Councillor Clare Maitland and Councillor Kevin McGregor.

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

**APOLOGIES:** Councillor William Crawford, Councillor Lillian Jones and Councillor David Richardson.

### **1. SEDERUNT**

Noted.

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

There were no declarations of interest intimated by the Board Members.

### **3. MINUTE OF MEETING**

3.1 The Minute of the meeting of East Ayrshire Licensing Board held on 19 March 2024 was approved and noted.

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

The Clerk reported on the applications discharged under delegated authority between 12 March and 6 May 2024, namely:-

Minor Variation	:	16
S33 Transfer of Premises Licence	:	3
S34 Transfer of Premises Licence	:	2
Grant of Personal Licence	:	12
Renewal of Personal Licence	:	1
Renewal of Small Lotteries Registration	:	7
Grant of Small Lotteries Registration	:	2
Automatic Entitlement of Gaming Machines	:	1
Extended Hours	:	2
Occasional Licences	:	94

The Clerk reported that of the 94 Occasional Licences granted, 38 were granted to personal licence holders, 24 to club premises, 19 to voluntary organisations and 13 to premises licence holders.

It was noted that, as of the date of the report, there were 959 Personal Licences in force, an increase of 12 since the last report and 294 Premises Licences in force, a reduction of 1 since the last report.

## **5. APPLICATIONS**

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

## **6. PREMISES LICENCE REVIEW**

Continuation of premises licence review hearing 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 reminded Members that this was a continuation of the Premises Licence Review Hearing, which was first before the Board on 23 August 2022. At the hearing on 23 August, the Board agreed to continue the Hearing to enable the proprietors to continue with measures put into place to address noise nuisance from the premises. The Hearing resumed on 23 May 2023 when it was noted that there had been some improvements with regards to noise, however the Board further continued the Hearing to allow the Board to commission an Acoustic Noise Consultant to enable them to reach a more informed and robust decision.**

**The Noise Impact Assessment was received and had been forwarded to all parties.**

**Mr David Gordon and Mrs Claire Gordon were present to speak in support of the premises licence review application.**

**Mr MacIver, Solicitor, was present, representing the premises licence holders, Oxford Hotels & Inns Management, together with Paul Cowan, tenant of the premises.**

**Mr Gordon thanked all concerned for their support going through the hearing process. He also thanked the new tenant, Mr Cowan, for the measures he had put in place to address noise issues, which had made a difference. He advised that part of the reason it was felt necessary to request the Premises Licence Review Hearing was because the previous tenant had not carried out any work to alleviate noise.**

**Mr Gordon submitted that his only issue now was in relation to the beer garden and expressed concern that the maximum occupant capacity for the beer garden is 240. He continued that on a hot day there was the potential for 240 customers to be in the beer garden, which would generate a lot of noise. He added that the Acoustic Noise Consultant had not addressed the beer garden in the Noise Impact Assessment.**

**Mr Maciver had no questions for Mr Gordon.**

**Ms McEwan, LSO, reported on matters since the Premises Licence Review Hearing on 23 May 2023.**

**She advised that an e-mail from Mr David Gordon was received by the Licensing Section on 5 June 2023, advising of further noise disturbances from the Portmann Hotel. Mr Gordon advised that on 28 May 2023 noise from the beer garden was excessive with bouts of football singing and foul language being heard from within his property. Mr Gordon again raised the question around the capacity of customers permitted to be in the beer garden.**

**Mr Gordon further advised that on Saturday 3 June 2023 music from the Portmann Hotel had continued until 2.30am on the Sunday morning. He advised that he had attempted to report the noise nuisance to Police Scotland but unfortunately had been unable to get through on the phone. Mr Gordon also made reference to noise nuisance previously reported to Members at the Hearing on 23 May 2023, which he had reported to Police Scotland at around 2am in the early hours of Monday 8 May.**

**Following receipt of Mr Gordon's e-mail, a meeting was arranged with the tenant of the Portmann Hotel, Mr Paul Cowan, together with the designated Premises Manager at that time, Kendal Proudfoot, on the afternoon of Tuesday 13 June 2023.**

**The above incidents were discussed with Mr Cowan and Ms Kendal. Mr Cowan advised that on Sunday 28 May 2023, Kilmarnock Football Club had secured premier league status, which was a big event for Kilmarnock football supporters. Mr Cowan acknowledged that the beer garden had been busy that day with football supporters and advised that he had employed security staff who were working within the premises until close of business. He confirmed that, as per the Licence Conditions, the beer garden had been emptied by 9pm.**

**In relation to the allegation of noise nuisance on 3 June, Ms Proudfoot checked the premises diary and advised that a birthday party had taken place in the conservatory at the rear of the premises from 6pm until 8pm. She advised that this was a meal only and that there had been no music or entertainment provided. She advised that there had however been live music within the bar situated at the front of the Hotel that evening, and advised that the music had ended at 12.30am.**

**CCTV footage from 7 May into the early hours of 8 May and also 3 June into the early hours of 4 June was requested. Ms Proudfoot was able to retrieve the stored CCTV footage from 1am on both dates which showed staff clearing up within the premises. CCTV footage from 2am showed the premises to be clear of customers and in complete**

darkness, with the exception of lighting within the corridor areas leading to the Hotel's bedrooms.

A further visit to the premises was made on 20 March 2024 at which time Paul Cowan was available. Mr Cowan advised of further mitigations which had been put in place to prevent noise nuisance. He advised that the windows within the conservatory area were locked at all times when a function was taking place to prevent customers from opening the windows. He advised that he had purchased a mobile air conditioning unit which he hoped would make a difference during the summer months. The air conditioning unit was observed within the conservatory area.

Mr Cowan advised that he had also purchased a mixer which was linked to the noise limiter and which would prevent D.J.'s from overriding the set volume level.

Mr Cowan confirmed that all previous mitigations were still being applied, namely D.J.'s and live entertainment would be located within the main building, with speakers facing internally rather than into the conservatory area where the dance floor is located, the beer garden being closed at 9pm and customers requested to smoke at the front of the building to prevent the rear door leading to the beer garden from being opened, beer garden being closely monitored by staff during busy periods and ongoing staff training to ensure all the abovementioned procedures were being applied.

Ms McEwan concluded that:-

1. CCTV footage from Monday 8 May at 2am and footage from Sunday 4 June at 2.30am, revealed that the premises had been closed with no customers within, which did not support the allegation made by Mr and Mrs Gordon that the noise nuisance experienced by them was attributable to The Portmann Hotel.
2. Further mitigations put in place by the current tenant include the purchase of a mobile air conditioning unit and the purchase of a mixer which prevents D.J.'s from overriding the set volume level.
3. A noise Impact Assessment had been carried out, which concluded that music noise levels at Mr and Mrs Gordon's property complied with WHO Guidelines. The assessment did not include noise from patrons using the beer garden.

Ms Carol Heaton, Team Leader, Environmental Health, reported on Environmental Health involvement since 23 May 2023.

Ms Heaton submitted that subsequent to the Premises Licence Review Hearing on 23 May, it was agreed that the Environmental Health Service would offer expertise to the Licensing Section to detail a scope for the Acoustic Consultant to be engaged. The Noise Impact Assessment

scope was agreed with the Legal Services Manager and sought to address the noise produced from events inside the premises. It did not seek to deal with issues of noise reported from the beer garden as this was covered by licensing conditions at that time.

On 27 January 2024, a survey by the Acoustic Consultant was carried out at the Portmann Hotel and at the complainer's residence. EH Officers consulted with the company to ensure that the report would allow hotel staff and council officers to assess noise limits and any potential breaches easily without need for specialist noise monitoring equipment or knowledge.

It was agreed following the monitoring survey between EH Service and the consultant that NR 15 'inaudibility' criteria could be easily achieved by the hotel with residential windows partially open for ventilation and with the venue's noise management policies in place. NR15 is considerably more stringent than previous levels measured against by EH Service.

In February 2024 the Noise Impact Assessment was received by EH service and passed to Licensing Section for consideration. The following noise management measures were in place at the time of the survey:

- All windows and external doors to the function room remained closed.
- Patrons were discouraged from smoking in the beer garden and directed to the smoking area to the front of the hotel, on Portland Road.
- DJ's set up their equipment on the carpeted area to the right of the bar, away from the glazed façade closest to residential properties.
- The DJ's audio output routed through an in-house limiter rack unit (*Formula Sound, AVC2-D*) before going to the PA system.
- A sound limiter was in place to control sound output from any DJs working at the premises.
- Concern over rising temperatures in the summer months causing the hotel to open doors and windows have been addressed by the purchase of an air conditioning system.

Ms Heaton submitted that the EH Service is satisfied that the measures to control noise from the function room can be complied with easily by hotel staff. If measures laid out in the Noise Impact Assessment are strictly followed there would be no impact on a successful night of entertainment at the hotel nor on the enjoyment of the complainer's home. The Noise Impact Assessment clearly lays out steps for compliance that can be assessed without specialist noise monitoring equipment or knowledge to aid compliance with the conditions of the licence.

Ms Heaton continued that the EH Service noted that in emails during March 2024 to the Licensing Section, the complainer acknowledged the improvements to practices implemented by the hotel over the past months in relation to noise management within the function room. In the same emails the EH Service noted ongoing concern by the complainer that the noise from the beer garden may cause noise nuisance at their property as it falls outside the parameters of the Noise Impact Assessment.

A change in licensing conditions for the Portmann Hotel in relation to Noise issues was made by the Licensing Board in November 2023 as follows:-

- (a) The permitted use of the area is restricted to 9pm each evening for the consumption of alcohol.
- (b) In relation to noise control and in pursuance of the licensing objective of preventing public nuisance generally, the Licensing Board will not permit amplified sound or music to be played within, or relayed to, outdoor drinking areas, nor permit live music to be played within those areas.
- (c) The area should be suitably monitored at all times to ensure that the use of the area by patrons does not have an adverse impact on the locality, particularly neighbouring properties.
- (d) All bottles and glasses must be cleared from the tables at frequent intervals throughout the day. The beer garden must be totally cleared of all bottles and glasses by 9pm.

Ms Heaton concluded that it remained that the area should be cleared by 9pm and compliance with the conditions stipulated is for the Licensing Section to assess. Should Noise Nuisance be experienced in relation to the beer garden beyond the licensing conditions laid out, this should be reported to the EH Service for action. Following any noise complaint, the EH Service would look to witness the issue and assess any complaint on its merits at that time and act as necessary to secure compliance.

Mr Maciver was grateful for Mr Gordon's acknowledgement of the improvements carried out to the premises. Addressing the recommendations within the Noise Impact Assessment, Mr Maciver stated that these have been and will continued to be complied with. He continued that Mr Cowan operated the beer garden within the terms of the licence, until 9pm and that the beer garden is well monitored.

Mr Maciver concluded that, as the issues had been dealt with, it was hoped that a line could be drawn and that all could live in harmony.

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

Mr Gordon submitted that he had not wanted to go through the premises licence review processed, however felt that it had been

justified as matters had now been put in place to address noise from the premises. He stated that the current tenant had made a difference to the operation of the premises and to ensuring that the correct controls were in place.

Mr Gordon reiterated that the beer garden had a capacity of 240, which could create a lot of noise. He advised that the childrens' play area within the beer garden used to be closest to his house and that the noise of children playing was pleasant. During COVID, however the beer garden changed and more tables and chairs were added to allow more people to use the beer garden.

Mr Gordon urged Mr Cowan to maintain the procedures put in place.

Mr Maciver submitted that Mr Cowan had proven himself thus far and that there was no reason to doubt that this would change.

The Board adjourned to consider the matter.

Upon returning, the Chair recognised the work carried out by Mr Cowan and moved that the grounds for review had not been established. The Board agreed unanimously.

The Clerk advised that the Board appreciated the measures put in place by Mr Cowan and that Members would expect these measures to continue.

With regards to the occupant capacity of the beer garden, the Clerk explained that the capacity was set taking account of safe access/egress to the beer garden. He continued that the occupant capacity of the whole premises was 220 and that it was unlikely that all of the customers would be outside using the beer garden at the same time.

The Clerk accepted that on some occasions the beer garden may be louder than others and reminded Mr Gordon that should noise nuisance be experienced in relation to the beer garden beyond the licensing conditions laid out, this should be reported to the EH Service for action.

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

David Miller

The Sorn Inn  
35 Main Street  
Sorn

Details of variation:-

Repositioning of bar area and altering restaurant to form accommodation.

**Mr David Miller, appeared before the Board to speak in support of the application.**

**The Clerk outlined the application and explained that the variation was to amend the bar area of the premises and remove the restaurant to form further accommodation. He advised that no change of use was required from Planning in respect of these amendments.**

**The Clerk continued that no objections or representations had been received in respect of the application, however Building Standards had commented that a completion certificate had yet to be issued in respect of the works.**

**Mr Miller advised that Building Standards had arranged to inspect the premises the next day with a view to issuing a completion certificate.**

**The Board agreed unanimously to grant the variation, subject to a completion certificate being issued by Building Standards in respect of the works.**

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

Avenue Square Property Ltd.

Sports Bar  
6-8 Avenue Square  
Stewarton

Details of variation:-

To amend the operating plan of the premises from a sports bar to :-

Licensed hours applied for:-

On Sale

Monday - Thursday	:	6.30pm - 12 Midnight
Friday	:	6.30pm – 2am
Saturday	:	11.30am – 2am



Sunday

:

11.30am – 12 Midnight

Amend the name of the premises to Avenue Niteclub and change the description of the premises to – the provision of private functions and late night opening.

It is intended to provide conference facilities and to cater for receptions including weddings, funerals and birthdays and club/group meetings within the premises; it is intended to provide recorded music, live performances, dance facilities and adult entertainment all within the core licensed hours.

Children and young persons aged 3 to 17 years will be permitted access to the function suite, when accompanied by a responsible adult, to attend a private function, for the duration of the function, but no later than 12 Midnight.

The proposed occupant capacity of the premises is 80.

**The Clerk outlined the proposed variation and advised that the request to permit adult entertainment within the premises was contrary to the Board's policy. He advised that a representation had been received from The Violence against Women Partnership and the Child Protection Committee in respect of the request to provide adult entertainment.**

**Mr Paul Moon, Director of Avenue Square Property Ltd., appeared before the Board to speak in support of the application.**

**Ms Diane Langley appeared on behalf of The Violence against Women Partnership and the Child Protection Committee to speak in respect of the representation.**

**Mr Moon confirmed that there were no procedural issues and the hearing proceeded in accordance with the agreed hearing procedure.**

**Ms Langley submitted that The Violence against Women Partnership and the Child Protection Committee, as competent objectors in terms of the Licensing (Scotland) Act 2005, wished to make representation in respect of the application on the following grounds:-**

- 1. The applicant seeks to promote/permit adult entertainment, which was contrary to the Statement of Licensing Policy 2023 – 2028 (section 21)**
- 2. The provision of adult entertainment was contrary to the licensing objective of "Preventing Crime and Disorder"**
- 3. The provision of adult entertainment was contrary to the licensing objective "securing public safety"**
- 4. The provision of adult entertainment in premises that, on other occasions, permit access by children is contrary to the licensing objective of "protecting children and young people from harm".**

**Addressing the Licensing Objectives, Ms Langley referred to guidance issued to Licensing Boards in January 2023 (Licensing (Scotland) Act 2005 Section 142 Guidance for Licensing Boards), which clearly set out that the objective of preventing crime and disorder relates not only to alcohol related crime and disorder within or immediately within the vicinity of licensed premises, but that**

consumption of alcohol also related to issues of domestic violence and that Licensing Boards should work with key partners to reduce the risk to women and girls. In particular, the provision of adult entertainment normalises harmful attitudes about women such as the idea that women are objects to be used for sexual gratification. As a result, the sex industry not only encourages violence against women but is violence against women. Indeed, this assertion is supported in scientific studies that illustrate clear links between the consumption of adult entertainment and sexual violence towards women. With reports of sexual violence increasing in East Ayrshire it is clear that with the guidance directing Licensing Boards to consider supporting work in this regard via partnership working it is incumbent on the Licensing Board to uphold this representation.

In addition, as stated above, activities that occur within the sex industry such as stripping and pole dancing, amongst others, are considered to be within the remit of commercial sexual exploitation as defined in Scotland's strategy *Equally Safe* (2023). This strategy aims to prevent, end and eradicate all forms of violence against women and girls. Commercial sexual exploitation is defined as a form of violence against women and girls within this co-owned Scottish Government and COSLA policy. There are clear links identified between commercial sexual exploitation and exposure to further forms of violence. It is recognised that although women might also purchase sex, the overwhelming majority of those who buy sex tend to be men.

The Scottish Government's recently published strategic approach to *Challenging and deterring men's demand for prostitution and supporting the recovery and sustainable exit of those involved in prostitution* is aligned to *Equally Safe* (2023) and reinforces that there is no place for commercial sexual exploitation in Scotland. Given that commercial sexual exploitation cannot be tackled in isolation, a whole system approach is required. East Ayrshire's Violence Against Women partnership is part of an Ayrshire wide alliance. An approval for a licensing application for an adult entertainment venue would be in conflict with challenging male demand.

East Ayrshire Community Planning Partnership has signed up to *Equally Safe* and the East Ayrshire Violence Against Women Partnership is the local strategic body responsible for the delivery of this policy. East Ayrshire Council has a *Position Statement on Prostitution*. There is a stated commitment within East Ayrshire to take measures to end violence against women and girls, including the structural inequalities that underpin it. Upholding the representation to a venue which provides sexual entertainment is one such measure that can help to eradicate violence against women and girls. Failure to take these measures will be in breach of efforts to advance policies on eradicating violence against women and girls and on equalities and human rights.

The East Ayrshire Violence Against Women Partnership is of the view that sexual or adult entertainment contributes to the sexual objectification of women and therefore is not in keeping with the principles of equality. The Equality Act 2010 Act introduced a new public sector equality duty which requires public authorities to eliminate discrimination, promote equality and good relations

across a range of protected characteristics, such as sex. Upholding this representation would support this duty.

It is believed that there is a need to consider Human Rights and that the focus should be on the rights of women contracted in venues, and women as part of the broader general public. Sexual entertainment is not a human right it is sexual exploitation. Sexual exploitation is a practice by which person(s) receive sexual gratification, or financial gain, or advancement through the abuse of a person's sexuality by abrogating that person's human right to dignity, equality, autonomy, and physical and mental wellbeing.

Under Article 1 of the European Convention of Human Rights, the UK is required to convey the Convention Rights and fundamental freedoms of 'everyone within their jurisdiction'. The human rights of a minority of individuals i.e. customers, club owners, managers and some performers as protected by Article 1 of Protocol 1 (protection of property), Article 8 (respect for private and family life) and Article 10 (freedom of expression) are what are called qualifying rights in that they can be limited and must be balanced fairly against the rights of those impacted by adult entertainment. They do not take precedence over the systematic exploitation of the majority i.e. those who are harmed through sexual entertainment and other forms of sexual exploitation.

Furthermore, a failure to protect a woman from sexual exploitation may breach: Article 2 (her right to life); Article 3 (her right to be free of inhuman and degrading treatment); Article 4 (her right to be free of slavery and servitude). The latter two are absolute rights which can never be limited in any circumstance.

In 2015 the Scottish Government also committed to the United Nations Sustainable Development Goals. These are "global goals and targets that are part of an internationally agreed performance strategy. All countries are aiming to achieve these goals by 2030." Specifically, Sustainable Goal 5.1 and 5.2 are referenced:-

**5.1 End all forms of discrimination against women and girls everywhere.**

**5.2 Eliminate all forms of violence against women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.**

A venue selling sex as entertainment for the gratification of another goes against the commitment of the Scottish Government to the United Nations Sustainable Development Goals.

Working in environments where sex is being sold as entertainment has an impact on women, routes in are unique to the individual woman but include, poverty, history of sexual abuse and unequal status in society. There is a significant difference between the man who buys sex entertainment and the woman he buys for his pleasure.

With regards to Securing Public Safety, Ms Langley submitted that guidance supplied to Licensing Boards highlights that this objective links to a duty placed on licence holders to ensure that the public are kept safe in relation to

the sale or supply of alcohol or operation of licensed premises. In terms of this guidance the public in this context relates to a wide definition which includes customers on the premises, the premises' staff and passers-by or persons in the vicinity of a licensed premises.

The presence of a venue which sells adult entertainment may also create an area where women do not feel safe and this impacts on their freedom of movement as they go about their day to day business. Whether actual or perceived, all women and girls police their movements and this relates to their personal safety and wellbeing. The proximity of a venue selling sex as entertainment to transport hubs, shopping areas, clubs and bars creates the presence of a predatory and sexually aggressive environment in which women and girls may be fearful and uncomfortable.

Addressing the Licensing Objective, Protecting Children and Young People from Harm, Ms Langley submitted that the adult entertainment industry normalises the objectification of women and girls as sexual objects, thereby increasing the risk of harm to girls from consumers of this industry. Permitting adult entertainment within licensed premises in East Ayrshire thereby increases the risk to children and young people and is thereby incompatible with this licensing objective.

The Scottish government has passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (07 December 2023) which became an act by royal assent on 16 January 2024. This will come into force within Scottish domestic law on 16 July 2024. UNCRC covers all aspects of a child's life and sets out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. With incorporation, children's rights will be legally protected in Scotland, with Scottish courts used to enforce their rights and public authorities required to take steps to respect children's rights in their decisions and actions. With reference to articles 3, 34 and 36 of UNCRC:–

*Article 3 states In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

*Article 34 makes reference explicitly to Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.*

*Article 36 states Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.*

The (VAW/CPC) is unaware of the specifics of the nature of this adult entertainment but have concerns that should this entertainment be provided as part of a private function, no specific protective factors have been set out in the operating plan to protect children and young people from consuming this. Should this adult entertainment be dedicated adult nights we have concerns that it would be in breach of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill and children and young people might be able to access advertising or promotional materials (by nature of attending birthday parties, wedding receptions etc).

If we are truly committed to protecting children and young people from harm we need to name and identify what we think that harm is. East Ayrshire Violence Against Women Partnership are of the view that sex sold as entertainment is sexually exploitive and forms part of a continuum of harm. Sex entertainment may expose children and young people to psychological harm as a result of coming into contact with activities that are intended for adults only. Stewarton is a growing town with a high number of families with children and young people who may be affected by this application.

Ms Langley concluded that, given the aforementioned evidence the (VAW/CPC) respectfully requested that East Ayrshire Licensing Board uphold the representation.

Mr Moon explained that the variation application was submitted to change the operation of the premises to a nightclub with function suite. The request to permit adult entertainment was only to accommodate anyone using the function suite for hen or stag parties who had hired entertainment such as kiss o' grams. He stressed that he did not promote the sex industry and did not intend to operate a lapdancing club.

Mr Moon submitted that he understood that the request was contrary to the Board's policy, he understood the problems within the sex industry and that he was not promoting sexual entertainment. The request was only to allow kiss o' grams within the premises, should these be arranged for stag/hen parties.

The Clerk reminded Members of their Policy in respect of adult entertainment –

*Although each application received, specifying the different forms of entertainment, including adult entertainment, will be determined on its own merits, the policy of the Board in East Ayrshire is not to permit adult entertainment involving male strippers, female strippers and/or erotic dancers within any licensed premises.*

*For the purpose of this Policy Statement, adult entertainment means any live performance or any live display of nudity, for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). The definition of nudity for the purpose of this Policy Statement is (a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus, (b) in the case of a man, exposure of his pubic area, genitals or anus.*

The Clerk asked Ms Langley if applying the above policy would address her concerns.

Ms Langley accepted that the Board's policy addressed her concerns, however in her view kiss o' grams could also veer into the realms of adult entertainment.

The Clerk submitted that kiss o'grams would not necessarily be considered as adult entertainment unless they carried out any of the above.

Councillor Leitch referred to the applicants' request to provide dance facilities within the premises and asked this request was linked to adult entertainment.

**Mr Moon advised that the request was to allow customers to dance to music played within the premises and that there was no link to adult entertainment.**

**Councillor Cowan asked what control measures would be in place, should such acts be permitted.**

**Mr Moon advised that full details of the act would be requested to ensure that it complied with the Board's policy. If the event did not comply with the Board's policy, the booking would not be taken. Should the event go ahead, adequate staff would be in place to monitor the event.**

**The Clerk encouraged Mr Moon to liaise with East Ayrshire Council's Licensing Standards Officers if there was any doubt as to whether any proposed entertainment within the premises contravened the Board's policy.**

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

**Ms Langley reiterated that she did not support permission to allow kiss o' grams. In her opinion such acts contravened the Board's policy as these acts could be scantily clad and could sexually stimulate any member of the audience. She concluded that such entertainment was not in the best interest of the residents of East Ayrshire.**

**Mr Moon stressed that he did not intend to operate an adult sex venue or a lapdancing club. The variation application was to change the operation of the premises to a function suite and late night opening premises. The request for adult entertainment was only to permit such entertainment as kiss o' grams within the premises, should these be requested for hen/stag parties.**

**The Clerk advised that East Ayrshire Council's Environmental Protection Team had requested clarification on how the internal noise level within the premises will be maintained below 85dB. It was noted that the front of the premises faced onto Avenue Square, and there are a number of residential properties in the vicinity, both on Avenue Square and at the rear of the premises, which could be impacted by noise breakout from the premises. The Clerk asked if Mr Moon could clarify how this could be mitigated, particularly during the late evenings when the ambient noise level in the area surrounding the premises will have dropped.**

**Mr Moon advised that the premises had an internal sound monitor system which indicated when noise levels were too loud via a red/amber warning. The system also cut out when noise levels went beyond 85dB. With regards to external noise, Mr Moon advised that two door stewards would be employed to monitor customers outside smoking and to ensure the premises were cleared quickly at the end of the night.**

**The Board adjourned to consider the application.**

**Upon returning the Board agreed unanimously to grant the variation, with the exclusion of adult entertainment.**

**The Clerk reminded Mr Moon that, should he have any doubt with regards to whether an act is considered adult entertainment, he should consult with the Licensing Standards Officers prior to taking the booking.**