

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 19 March 2024 at 10am.

SEDERUNT: Councillor Drew Filson (Chair), Councillor Stephen Canning Councillor June Kyle, Councillor Claire Leitch and Councillor Kevin McGregor.

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 Graham Barton, Councillor William Crawford, Councillor Elaine Cowan, 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 23 January 2024 was approved and noted.

4. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Clerk reported on the applications discharged under delegated authority between 7 November 2023 and 15 January 2024, namely:-

Minor Variation	:	9
S33 Transfer of Premises Licence	:	1
Grant of Personal Licence	:	12
Renewal of Personal Licence	:	3
Renewal of Small Lotteries Registration	:	12
Extended Hours	:	2
Occasional Licences	:	70

The Clerk reported that of the 70 Occasional Licences granted, 30 were granted to personal licence holders, 23 to club premises, 16 to voluntary organisations and 1 to a premises licence holder.

It was noted that, as of the date of the report, there were 947 Personal Licences in force, a reduction of 3 since the last report and 295 Premises Licences in force, a reduction of 1 since the last report.

5. APPLICATIONS

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

There being no further business, the meeting ended at 11.50am

Appendix 1

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

Kirsty Park

The Railway Inn
26-28 East Main Street
Darvel

Details of the variation:-

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

To include permission to open from 8am, 7 days per week, to provide food and soft drinks within the lounge area of the premises. No alcohol will be sold and the bar area will remain closed until 11am.

Kirsty Park appeared before the Board, together with her husband, Andrew Park, to speak in support of the application.

Mrs Park advised that it was the intension to provide breakfasts from the premises, from 8am each morning. Mr Park confirmed that the lounge area of the premises, together with the outdoor drinking area would be used for breakfasts.

The Clerk advised that no objections or representations had been received in respect of the application and that there was no change to the sale or supply of alcohol.

The Board agreed unanimously to grant the variation.

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

West Coast Pubs (Kilmarnock) Ltd.

Aces Low
5 St Marnock Place
Kilmarnock

Details of variation:-

To amend the operating plan of the premises from a late night opening venue to the following :-

Licensed hours applied for:-

On Sale

Sunday - Wednesday : 11am - 12 Midnight

Thursday - Saturday : 11am – 1am

It is intended to provide bar meals 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, gaming, televised sport, bingo nights, games nights, quiz nights and karaoke within the premises, all within the core hours. The premises may remain open until 2am on Christmas Eve, Boxing Day, Hogmanay and Easter Sunday each year.

Children age 0 – 15 years and young persons age 16 & 17 years will be permitted access to the whole premises for the consumption of a meal, until 9pm, or to attend a private function, for the duration of the function.

The proposed occupant capacity of the premises is 100.

Ross Gilmour, tenant of the premises, 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 operation of the premises from late opening premises to pub type premises. He advised that no objections or representations had been received in respect of the application.

Mr Gilmour submitted that there was no space in Kilmarnock for the nightclub and that the premises were currently being used for storage. He continued that the premises would be called The Drunken Donut and would operate like a ‘mancave’ for sports, or a geeky pub.

The Clerk pointed out that the current occupant capacity of the premises was 150 and noted the request to vary the occupant capacity to 100. Mr Gilmour advised that an occupant capacity of 100 would be sufficient.

The Board agreed unanimously to grant the variation.

The Board had a short adjournment from 10.20am until 10.30am.

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

Ummer Kaur Lalli

Premier Store
29 Main Street
Kilmaurs

Details of the variation:-

Significant expansion of retail premises resulting in reconfiguration of the internal area and relocation of the alcohol display areas.

Increase the alcohol display areas from 15.75m² to 45.03m².

Include the following activity, to take place outwith the core licensed hours – The premises will open for general retail trade prior to the commencement of licensed hours.

Mr Stephen McGowan, Solicitor, appeared before the Board to speak in support of the application, together with Jagtar Lalli, husband of the applicant.

Mr McGowan submitted that his client was fully aware of East Ayrshire Licensing Board's policy position, however hoped that he could make a positive case and that the Board would make an exception.

Providing some background information, Mr McGowan advised that the premises operated as a village shop and post office, however formerly operated as The Wheatsheaf Inn, public house. His client purchased the premises in 2012 and thereafter East Ayrshire Licensing Board permitted a variation to the premises licence to allow his client to trade as a convenience store with off-sales. He continued that his client had traded from the premises since 2012 with no adverse attention. The premises operated well and were well known in the village.

In Mr McGowan's opinion, the applicant was fit & proper to hold a licence.

The Clerk advised that two objection notices had been received in respect of the application, one from Laura Coulter and one from Fraser Coulter. A notice in support of the application from Lauren McCulloch had also been received.

Neither Laura Coulter, Fraser Coulter nor Lauren McCulloch were present or represented at the meeting.

Mr McGowan confirmed that he had no procedural issues to raise.

The objection notices and the notice in support of the application were circulated to Members and Members were given time to read the content.

With regards to the proposed variation, Mr McGowan submitted that the store had proven to be too small for local demand and so his client intended to expand the provision of all products. He continued that the post office would remain, however the shop would triple in size. To improve the 'street scape', in consultation with Planning and Building Standards, his client has agreed to pay for the installation of 30 bollards. Mr McGowan submitted that his client had fought long and hard to obtain all the relevant permissions, had invested £1/2m in the venture, and that the variation application was the last piece of the puzzle.

He advised that it was proposed to increase the alcohol display from 15.75m² to 45.03m². He submitted that his client was aware of the Board's

overprovision policy but hoped that Members would see the wider context of the application and take the view that this was an exceptional application. He continued that the licensing objectives would be protected and upheld and if granted would be a significant investment in the locality.

Mr McGowan urged Members to consider the whole circumstances and look at the wider proposals of the application. He advised that a butcher's counter would be installed, a food to go section, parcel collection lockers and that there would be a tripling of all products currently provided, as well as an increase in alcohol.

Mr McGowan advised that his clients have a positive impact on the local community and sponsor local events as well as subsidising a Breakfast Club within the Primary School, at no cost to the school.

Addressing the layout of the shop, Mr McGowan advised that there were currently 25 bays within the premises for non-alcoholic products and 8 bays for alcoholic products, which equated to an alcohol display of 32%. In terms of the new layout, there would be 100 bays of non-alcoholic products and 25 bays for alcoholic products, equating to an alcohol display of 25%, which was, proportionally, a decrease of alcohol display.

Addressing the size of alcohol display areas, Mr McGowan advised that there was currently an alcohol display area of 15.75m², which was made up of an accessible area of 11.25m² and an inaccessible area of 4.5m², a split of 70/30.

Under the new proposals, the alcohol display area would be 45.03m², made up of 2 bays for red wine, which was 4.75m², a chilled room of 32.68m² and an area behind the counter of 7.6m². Mr McGowan submitted that this changed the dynamics of the alcohol display, changing the accessible area for alcohol from 11.25m² to only 4.75m².

In Mr McGowan's opinion the proposals would have a positive effect on the wider community in terms of public safety and public nuisance. He continued that there was currently no butcher in the village and that an upgrade of this nature would provide a safe and welcoming hub, especially for the elderly as the premises would be fully accessible.

Mr McGowan referred to the plan submitted with the application and to the location of the chilled room. He advised that this room would have a large selection of fine wines and that the room would have controlled access door with the code to the door being provided by staff, supporting the Licensing Objectives, protecting children and young persons from harm and protecting and improving public health. He continued that in a typical off-sales premises there were no restrictions, however with the chilled room the vast majority of alcohol would be inaccessible, which would be a vast improvement.

Explaining the chilled room, Mr McGowan submitted that the room would in effect be a shop within a shop, which would only be accessed by someone

wishing to purchase alcohol. Accordingly no one under the age of 18 years would be within this area.

Mr McGowan advised that the premises would be fitted out to a high specification and that the till systems would have state of the art face recognition as well as prompts for age verification, challenge 25, etc.

As part of the refit, and to create a positive ambiance, responsible signage would be displayed, a radio system would be in place and digital screens within the premises would relay responsible drinking messages.

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

Protecting Crime and Disorder

A modern and upgraded CCTV system with recording facilities will be installed on site as a part of the premises expansion and modernisation.

This will include the installation of approx. 35 new cameras both within and outwith the premises. The new system will be high-definition. The new system will allow for "night vision" functionality providing quality image capture equivalent to daylight.

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.

A Challenge 25 policy will be operated at the premises and staff will be trained on the acceptable forms of identification.

The licence holder shall display prominent signage confirming the company's Challenge 25 policy.

The creation of a controlled space for alcohol display reduces the possibility of theft as the entry to the space is only allowed by staff.

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.

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.

Staff will be trained on the new CCTV system.

Preventing Public Nuisance

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, which will be put into effect with the expansion of the store, will act as a deterrent.

There are adequate arrangements in place to deal with litter and trade waste to ensure the surrounding area is kept clean.

The new design of the store will be accessible and friendly for persons with disability, making them welcome and feel safe and secure - an asset to the local community.

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.

Notices will be displayed after the expansion of the shop has completed to discourage loitering and confirming that CCTV camera usage is in effect.

There will be no use of amplified music externally to the premises.

Securing Public Safety

Full risk assessments are in place at the premises and reviewed on an on going basis.

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.

Accidents and incidents will be recorded in an incident book which can be inspected upon request.

The newly expanded store will be well staffed meaning, no lone working.

Upgrades will be put in place for evacuation and accident/incident reporting and with the expanded layout and modernisation, a full suite of emergency lighting will be installed and the aisles will be bright and spacious allowing quick egress upon an emergency.

The new shop will introduce digital screens with messaging around public safety in relation to alcohol but also wider messaging relevant to the local community in Kilmaurs acting as a public information service, a digital community notice board.

The purpose of the expansion of the shop is create an improved facility for the local people of Kilmaurs. 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.

Preventing Children and Young Persons from Harm

All newly employed staff in the new store will be trained with regard to their responsibilities in sale of alcohol and refresher training will be carried out for all existing staff.

Training records can be made available for inspection upon request.

A refusal log will be operated and can produced upon request.

A Challenge 25 policy will be operated at the premises.

The licence holder shall display prominent signage confirming the company's Challenge 25 policy.

This application proposes to create a bespoke space, the "chill room", which cannot be access by anyone under 18. The controlled entry means there is no prospect of a person even browsing or perusing the alcohol in the controlled space unless a member of staff has authorised entry. The "chill room" area will have approx. 5 CCTV cameras.

The possibility of "proxy purchase" is ameliorated where a controlled area for alcohol is introduced and therefore not immediately accessible.

The wider upgrade to the premises including full external lighting and CCTV will disincentive "loitering" meaning children and young people will feel safer.

The new upgraded store is going to install technological improvements which 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.

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

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 12 staff to 20 staff.

This principal 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 online¹. There are a number of other academic studies which support the contention, such as Roelfs et al (2011)².

This application, whilst increasing the alcohol display, more fundamentally relates to a significant increase and upgrading of the shop footprint. The result of this is that the licence holder will look to employ additional staff.

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.

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 controlled by staff.

Only customers who purposefully wish to purchase alcohol will be in the chill room; there is no reason to enter the space otherwise.

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".

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.

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.

The new shop will be fully 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.

Referring to the Board's Policy Statement, Mr McGowan noted that Members accepted that the creation of employment had a positive effect on public health. He advised that the proposals would create up to 8 new jobs within the store, which should offer comfort to Members.

Mr McGowan submitted that there would be an expansion of alcohol free or low alcohol products. As there were now some top quality alcohol free/low alcohol products, his clients were considering such items, as it was felt that there was a market for these products.

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

3360.21m2. He stressed that the number of premises had no impact on this application as the premises were currently licensed premises and that only the alcohol display would be affected. He continued that the proposed increase to the alcohol display area was 29.28m2, which was less than 1% of the overall display area in the locality, which in his opinion was de minimis. Mr McGowan asked Members to note that there was only one other off-sales premises in the village of Kilmaurs.

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 Kilmaurs area were low in comparison to other areas within East Ayrshire and that Kilmaurs 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 Kilmaurs being coded blue, showing that Kilmaurs was better than the national average.

Referring to Kilmaurs Community Action Plan for 2021/26, Mr McGowan noted the three criteria to be delivered, new jobs, locals to shop locally to keep the village vibrant and to improve the condition of shops, all of which his client had addressed in his proposals.

Mr McGowan submitted that the Kilmaurs area was changing with new housing developments and new people coming to the area.

With regards to over provision, Mr McGowan submitted that over provision was not about restricting trade and that a good policy should not be set in stone. A good policy must have exceptions. He stated that if this project was not a good case for an exception, then he didn't know what would be.

Mr McGowan concluded that the premises would offer the 'wow' factor and that alcohol was only one part of the expansion.

Referring to the letter of objection submitted by Laura Coulter and to the statement that young people purchase alcohol from local convenience stores, Councillor Leitch asked if the LSO's had received any complaints with regards to the operation of the shop.

On a point of clarity, the Clerk pointed out that the objector had not stated that young people were purchasing alcohol from this particular shop.

Mr Hiles, LSO, advised that no complaints had been received in respect of the operation of the shop and that no issues had been raised as a result of any visits carried out.

Councillor Leitch referred again to the objections and asked if it was intended to provide a delivery service from the store.

Mr McGowan advised that his clients used the Snappy Shopper delivery service and that all of the required procedures were followed. He continued that this service was no different from supermarket deliveries.

Councillor Canning asked if the additional jobs created would be full time positions.

Mr McGowan advised that the positions would be a mix of part time and full time positions.

Mr Lalli explained that there was one full time manager and one full time supervisor employed. The remaining staff were part time, however all worked above 30 hours per week and were paid more than minimum wage. He advised that his staff were dedicated and that approximately 85% of staff were long term members of staff, with the remain 15% being students who move on from time to time.

Councillor Canning asked if Mr Lalli had any other stores. Mr Lalli advised that he had one other store in Saltcoats. He had operated this store since 2003 with no issues.

Referring to the CCVT system, Councillor Canning asked how long footage was stored. Mr Lalli advised that the system had a 60 day retention period.

Referring to the proposed plan of the store, Councillor Canning asked what the large area to the front of the store would be used for.

Mr Lalli advised that this would be used for storage. He explained that there would be three entry points for deliveries and a main entrance to the store. Any deliveries would go straight to the storage area, with no more cages etc. being on the shop floor. The main entrance would have sliding doors for disabled access.

Councillor Filson advised that he had recently carried out a site inspection of the premises, together with the LSO. He asked if the beer cave would be visible to staff.

Mr McGowan advised that the chilled room would be in full view of staff and that it could not be opened without obtaining the code to open the door.

Councillor Canning asked if the face recognition tills previously referred to were currently operational.

Mr Lalli advised that the tills were part of the proposals and had not yet been installed.

The Clerk asked if the tills would still prompt staff when someone was purchasing alcohol.

Mr McGowan advised that all the current checks would remain in place, however the tills would provide additional checks.

Councillor Filson referred to littering in the area and asked if the shop's carrier bags would be branded. Mr Lalli advised that bag would be purchased from the cash and carry and their brands would be used.

Mr McGowan stated that, given his client's spend on the venture, the last thing that he would want would be for the area to be littered.

Mr McGowan addressed the two letters of objection. He submitted that the letters were generic and from two members of the same household. He stressed that minimum unit pricing would be adhered to and invited Members to place no real weight on the objections due to their generic nature.

Mr McGowan noted the letter of support in respect of the application due to his clients support of the Primary School Breakfast Club.

There were no further questions.

To sum matters up, Mr McGowan stated that that this was a good application which supported the Licensing Objectives and moved that the variation be granted.

The Board adjourned to consider the application.

Upon returning the Chair thanked Mr McGowan for his in depth submission and moved that the variation be granted. The Board agreed unanimously.
