

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 27 August 2024 at 10am.

SEDERUNT: Councillor Drew Filson (Chair), Councillor William Crawford, Councillor June Kyle, Councillor Claire Leitch, Councillor Clare Maitland 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) and Councillor Kevin McGregor.

APOLOGIES: Councillor Stephen Canning, Councillor Elaine Cowan, Councillor Lillian Jones.

1. SEDERUNT

Noted.

2. DECLARATIONS OF INTEREST

In relation to the variation application for The Clydesdale, 30 The Square, Cumnock, Councillor Kyle declared a non-financial interest and intimated that she 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

Councillor Richardson referred to page 13 of the draft minute of East Ayrshire Licensing Board meeting held on 11 June 2024 where it read – Councillor Richardson referred to the betting premises next door to the application premises and expressed concern that customers may move from premises to premises for a better deal.

Councillor Richardson asked that the minute be amended to read - 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.

Subject to the above amendment, the Minute of the meeting of East Ayrshire Licensing Board held on 11 June 2024 was approved and noted.

4. APPLICATIONS CONSIDERED UNDER DELEGATED AUTHORITY

The Clerk reported on the applications discharged under delegated authority between 1 June and 18 August 2024, namely:-

Minor Variation	:	16
S33 Transfer of Premises Licence	:	3
S34 Transfer of Premises Licence	:	1
Grant of Personal Licence	:	40
Renewal of Personal Licence	:	1
Renewal of Small Lotteries Registration	:	11
Grant of Small Lotteries Registration	:	2
Extended Hours	:	2
Occasional Licences	:	120

The Clerk reported that of the 120 Occasional Licences granted, 45 were granted to personal licence holders, 29 to premises licence holders, 23 to club premises and 23 to voluntary organisations.

It was noted that, as of the date of the report, there were 991 Personal Licences in force, an increase of 14 since the last report and 294 Premises Licences in force, the same number as the last report.

5. LICENSING BOARD MEETINGS

The proposed dates for Licensing Board meetings for 2025 were agreed and noted.

6. APPLICATIONS

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

The Board had a short adjournment, from 11.40am until 11.50am.

7. PREMISES LICENCE REVIEW

Review of premises licence for premises known as Crosshouse Post Office & Newsagent, 7 Kilmarnock Road, Crosshouse, following receipt of a Premises Licence Review Application from East Ayrshire Council's Licensing Standards Officer, in terms of Section 36(3)(a) of the Licensing (Scotland) Act, 2005 for breach of a licensing condition, namely breach of Paragraph 4(1)(a) of the mandatory conditions attached to the licence, as there is no premises manager in respect of the premises.

The Clerk advised that transfer and variation applications had recently been lodged in respect of the above premises which, if granted, would address the issues reported by the LSO. The Clerk suggested that the Board may wish to consider continuing the review hearing until the next meeting of the Board to allow time for the applications to be processed.

The Board agreed unanimously to continue consideration of the review application until the next meeting of the Board.

There being no further business, the meeting ended at 11.55am

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

The Clydesdale Restaurant Ltd

The Clydesdale
30 The Square
Cumnock

Details of the variation:-

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

Amend operating hours as follows:

Current Hours - On Sale

Monday - Sunday : 11am - 12 Midnight

Proposed Hours - On Sale

Monday - Sunday : 10am - 1am

Off-Sale

Monday - Sunday : 10am – 10pm

Increase the capacity within the premises from 40 to 60, with a further 40 in the beer garden and 12 within the street café.

Permit club/group meetings within the premises and also provide dance facilities, theatre, films, televised sports all within the core licensed hours. Permit outdoor drinking facilities until 10pm each evening.

Leisa Hall, Director of the applicant company appeared before the Board to speak in support of the application, together with Stevie Hooper-Sanders.

The Clerk outlined the application and advised that no objections or representations had been received, however various requests in the application were contrary to the Board's policy, including the proposed on sale hours, the request for off-sale and the proposed times for outdoor drinking.

The Clerk advised that comments had been received from Police Scotland that the only entrance and exit to the rear beer garden for customers was via a side gate, accessed to the rear of Gibbs Close, which is situated to the side of the premises. The area, which is utilised as a car park has uneven surfaces in parts and there is only one streetlight, erected at the pavement of Lugar Street and Gibbs Close.

In relation to the street café situated within The Square opposite the premises, Police Scotland had concerns that, in its current layout, the area is not segregated or identified that it is part of the premises.

The Clerk continued that East Ayrshire Council's Building Standards had advised that the existing sanitary provision in the premises was based on a maximum occupancy of 40 persons (50/50 split in male/female) and any increase in occupancy would result in a shortage of female sanitary provision.

Ms Hall submitted that, as a variation application was being lodged for amendment to the core licensed hours, it was decided to include the other requests to be considered at the same time. Ms Hall explained that the premises were closed on Mondays and Tuesdays and that the additional hours would only be required to cater for small events.

The Clerk reminded Members of the approved hours permitted in terms of the Board Statement of Licensing Policy, which are Monday to Wednesday from 11am until 12 Midnight and Thursday to Saturday from 11am until 1am. Ms Hall advised that she would be happy if the Board were to grant these permitted hours.

With regards to the beer garden, Ms Hall accepted that areas of the ground were uneven but explained that she was unable to carry out any repairs as the ground did not belong to her.

Mr Hooper-Sanders submitted that the area would only be used in Summer months and would not be used when it was dark. He continued that the premises operated as a restaurant, not a pub and that customers would not be inebriated when leaving the premises.

Mr Hooper- Sanders addressed the street café, advising that the Ayrshire Roads Alliance had shared the same concerns as the Board when considering the Street Permit. He explained that staff would turn right when exiting the premises and walk down to the end of the railings, where there was a drop kerb, to cross the road to the street café. Mr Hooper-Sanders submitted that the road was not a particularly busy road and that staff would be able to see clearly to cross the road from this point. Customers would also be advised to use this point to cross the road.

Councillor Crawford disputed that Lugar Street was not a busy road.

Ms Hall stated that the road was a one way system and that staff would have a clear view to cross the road from the point previously described.

Councillor Crawford referred to the area outside the premises, advising that cars parked immediately outside the premises on Lugar Street.

Ms Hall explained that this was a loading bay however the cars did not block the view of the road, there being a clear view as far back as the traffic lights.

Photos of the outside of the premises, showing area for the street café, the outside of the applicant premises and Lugar Street were viewed by Members.

The Chair enquired as to how Ms Hall intended to monitor the street cafe.

Ms Hall advised that staff would provide menus and take orders over to customers in the street café.

Councillor Maitland asked what concerns ARA had in respect of the street café.

Mr Hooper-Sanders reminded Members that the Roads Permit had been granted. He advised that ARA had questioned the road crossing, however were happy with the explanation given, that staff and customers would cross the road at the end of the railings where there was a drop kerb and a clear view of the road.

The Clerk asked if the rear beer garden could only be accessed via the side lane.

Mr Hooper-Sanders advised the kitchen to the rear of the premises had a back door leading to the beer garden, which would be used by staff, however customers would only be able to access the area via the side lane.

Ms Hall submitted that the premises operated as a restaurant, not a pub and that customers would enjoy a glass of wine with a meal. Addressing the street café, she explained that the building was a listed building and therefore she was unable to place adverts outside the premises. The street café would be a form of advertisement for the premises.

The Chair asked if it was intended to create a boundary around the street café area.

Ms Hall confirmed that it was intended to place event barriers around the street café area, however, to date, the weather had prevented this from happening.

The Clerk reminded Ms Hall that it was a condition of the Road Permit that the street café must be physically delineated by a removeable barrier to define the operational area of the street café and the barrier must be distinguishable to other users, particularly those with visual impairments.

There being no further questions, the applicant was given the opportunity to sum up.

Mr Hooper-Sanders concluded that this was a small business and that they were trying to develop an area that had been forgotten about. He pointed out that the licensed premises across from the application premises in The Square was currently closed.

The Board adjourned to consider the application.

Upon returning, the Chair moved that consideration of the application be continued to the next meeting of the Board, to allow a site visit to be arranged.

The Clerk confirmed that Members understood what the licence holders were trying to achieve, however it was felt that Members would benefit from a site visit prior to considering the application. ARA and Planning could also be invited to attend to provide assistance.

Members agreed unanimously to continue consideration of the application to the next meeting of the Board to allow a site visit to be arranged.

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

Co-operative Group Food Ltd

Co-op
Unit 1, 2 Academy Street
Hurlford

Details of the variation:-

To amend additional activities within the operating plan to include:-

The sale of food, non-food items and other household goods, and the provision of ancillary consumer services within and outwith licensed hours. Home deliveries may be provided to customers. Alcohol will only be delivered in terms of and in compliance with the relevant provisions of the Licensing (Scotland) Act 2005.

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

Co-operative Group Food Ltd

Co-operative Group Food Ltd
21 Main Street
Stewarton

Details of the variation:-

To amend additional activities within the operating plan to include:-

The sale of food, non-food items and other household goods, and the provision of ancillary consumer services within and outwith licensed hours. Home deliveries may be provided to customers. Alcohol will only be delivered in terms of and in compliance with the relevant provisions of the Licensing (Scotland) Act 2005.

Audrey Junner, Solicitor, appeared before the Board on behalf of the applicants to speak in support of the variation applications.

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

Ms Junner submitted that the inclusion of home deliveries was requested due to changes in the Board's Statement of Licensing Policy, and that alcohol deliveries had become more popular.

Ms Junner explained that the method of delivery of alcohol from the premises would either be via e-commerce, where the request was made online and the delivery made by staff, or via Deliveroo, a third party delivery service. Both methods would apply the same policy whereby drivers would be trained and no

deliveries would be made to anyone under the age of 18 years. ID would be checked for anyone who looked under the age of 25 years. If ID could not be provided, the delivery would be returned to the store and a refund given. Deliveries would never be left in a safe place.

Councillor Leitch asked if digital ID would be accepted.

Ms Junner advised that physical ID would be checked on the doorstep.

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

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

Motor Fuel Limited

Kilmarnock (West Langlands) Service Station
West Langlands Street
Kilmarnock

Brief overview of nature of the business proposed to be carried on in the premises:-

Licensed hours applied for:-

Off Sale

Sunday - Saturday : 10am – 10pm

The premises are a general convenience store adjacent to a petrol/derv filling station forecourt, with separate parking area.

It is intended to provide recorded music within the premises. The premises may play background music within the retail areas of the store. The premises may offer takeaway 'food on the go'. Customers may order groceries, food and drinks, including alcoholic drinks, for home delivery from the premises. The premises may operate outwith the core licensed hours - up to 24 hour basis.

The proposed alcohol display area within the premises will be 7.14660m².

Disabled access & facilities statement – the customer areas of the premises are located on a single level, with level entry/exit. Emergency exit points are suitable for use by disabled persons. The premises have a customer toilet with disabled access facilities. General items are displayed at different heights, however where a product is outwith the reach of a disabled customer, shop floor staff will be available to assist. Assistance dogs are welcome and disabled parking is available.

Audrey Junner, Solicitor, advised that she appeared on behalf of the applicants' Agents, Harper Macleod. Mr Alex Fife, Area Manager with Motor Fuel Limited accompanied Ms Junner.

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

Ms Junner submitted that Motor Fuel Limited had acquired 337 petrol stations from Morrisons, 49 of which were in Scotland. Provisional premises licence applications had been lodged for 48 of those petrol stations and 1 already held a premises licence. She continued that £2.5bn had been spent on the acquisition of the petrol stations. A further £40m would be spent in the second half of the year to upgrade and refurbish the premises, with proposals to install rapid chargers on the sites next year, which was a significant investment in the sites.

Ms Junner advised that there would be a full scale renovation and refurbishment of the convenience stores. She continued that Morrisons had not prioritised non-fuel sales, however MFG had realised the benefits. She advised that the premises would still appear as Morrisons, however internally there would be a Costa Coffee, food to go and non food products.

Ms Junner advised that current staff would transfer over to the main store, which would create an additional 6 to 8 jobs at the premises, and customers wishing to pay for fuel using cash would not be disadvantaged as they would be able to go into the shop.

Addressing excluded premises Ms Junner referred to a market research document, which had been circulated to Members and which had been carried out by Taylor McKenzie Research. Referring to Section 123 of the Licensing (Scotland) Act 2005, and to the case of BP Oil UK Limited –v- City of Glasgow Licensing Board and City of Edinburgh Licensing Board, Ms Junner reminded Members that premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of petrol or derv, or groceries. She stressed that if only one person was reliant on the premises to a significant extent, then the premises met the test.

Addressing the key points of the research, Ms Junner submitted that of the 425 customers interviewed, 26.6% (113) were local customers and 24.5% (104) of those customers were local residents living within a locality of under 1 mile from the premises. All 113 local customers used the service station as a source of fuel and with 111 of those local customers also using the service station as a source of groceries.

Ms Junner continued that the market research showed that, of the 104 customers within a locality of under 1 mile from the premises, 103 customers stated that they used the petrol station as their principal source of fuel. 16.5% (17) of these customers stated that they would be materially disadvantaged or inconvenienced were the premises be unable to provide fuel. As 17 customers were reliant on the premises to a significant extent, the premises met the test.

Addressing over provision, Ms Junner submitted that the premises would have a positive impact on the locality and would be preserved as a petrol filling

station. New jobs would be created and a very modest alcohol display was being requested.

Mr Junner continued that people would make a choice to either shop at the main Morrisons store, or the applicant premises and that sales of alcohol would not be duplicated.

Ms Junner concluded that the applicants had an excellent track record nationally, were responsible licence holders and moved that the application be granted.

Councillor Maitland referred to two shops close to the application premises and questioned whether the premises would be a threat to local businesses.

Ms Junner advised that customers already used the application premises and that market force was not a consideration of the Board.

Councillor Maitland questioned whether local residents would use the premises to purchase groceries.

Ms Junner reminded Members that the market research showed that the main use of the premises was for fuel.

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

Upon returning Councillor Maitland moved that the licence be refused. This motion was seconded by the Chair. As there were no other motions it was unanimously agreed to refuse the application.

The Clerk advised that Members accepted that 17 local customers were reliant on the premises to a significant extent as their main source of petrol/derv and therefore met the test in terms of S123 of the Act.

The Clerk continued that Members accepted that the proposed alcohol display within the premises was not a large area, however, from the information provided were not persuaded to deviate from policy.

Ms Junner asked the Board to grant a directive in terms of Section 25 of the Act, to permit the applicant to submit a subsequent application for the same premises within one year of the refusal. The Board Members unanimously agreed to grant the directive as requested.

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

TAJ Grocers Ltd.

Premier
1A Goatfoot Road
Galston

Brief overview of nature of the business proposed to be carried on in the premises:-

Licensed Hours applied for
Sunday – Saturday

Off Sale
10am – 10pm

The premises are a single storey convenience store.

Recorded background music may be played within the premises, both within and outwith the core licensed hours. Home deliveries of food and alcohol may be provided to customers – Food to Go.

The proposed alcohol display area is 21.22m².

Disabled access & facilities statement – access to the premises is via the main entrance door, which is electronic, opening sideways and is wheelchair accessible. The premises is on one level floor surface throughout. There are suitable spaces within the premises to accommodate customers who may have mobility difficulties. The service counter area can be accessed by wheelchair users. Assistance is offered to customers and all staff have been trained to identify those who appear to require support or assistance.

Mr Gordon Emslie appeared before the Board on behalf of the applicants, together with Tajinder Singh, who will operator the premises.

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

Mr Emslie submitted that the premises had previously held a premises licence and that his clients had entered into a lease in respect of the convenience store, which would offer a wide range of fresh food items, as well as providing food to go and a home delivery service. He continued that the proposed alcohol display area would be split over two areas.

Mr Emslie advised that there were two smaller stores nearby which offered small ranges. It was intended to offer larger ranges within the store, ranges which had been requested by local residents.

Addressing over provision, Mr Emslie submitted that any anti social behaviour within the area was no different to any other area.

Mr Emslie referred to the layout plan of the premises, advising that the area shaded green was an inaccessible alcohol display area and that area shaded pink was a 'beer cave'. He produced photographs of 'a beer cave' within another store, advising that the beer cave would have a push button entry, and pointed out a white control panel, advising that the beer cave could be manually locked. The room would be a chilled space, which had lower running costs and would be an environmental improvement. There would be CCTV cameras both at the door of the beer cave and within the room.

Mr Emslie advised that new AI technology would be installed at the premises with facial recognition. The system photographs every customer and, should a

customer place an item in their pocket instead of paying for the item, an alarm would go off.

Mr Emslie continued that the premises were located at the west side of Galston, approximately 15 minutes away from Tesco and Co-op stores and that the proposed licensed hours were within the Board's policy. He concluded that the Snappy Shopper app would be used for home deliveries, that Challenge 25 would be applied, that these were not large premises and that 5 new jobs would be created. Mr Emslie moved that the application be granted.

Councillor Richardson referred to the AI Tech system and asked if customers over the age of 25 would automatically be permitted entry to the beer cave.

Mr Emslie referred to the challenges in determining a person's age and advised that the system would only be a tool to assist and that staff would also carry out checks.

Councillor Leitch referred to home deliveries and asked if ID would always be checked. Mr Emslie confirm that ID would be checked.

Referring to the photographs produced by Mr Emslie, the Clerk enquired which store this was. Mr Emslie advised that the photos were of a Premier Store located in Grangemouth.

Councillor Maitland asked if the alcohol display area requested was the same as that granted under the previous licence.

The Clerk advised that previous licence had an alcohol display area of 12.28m², however this was not a relevant factor in determining this application.

The Chair asked the LSO's if they were aware of any issues in the locality of the application premises. The LSO's were not aware of any issues.

The Board adjourned to consider the application.

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

The Clerk advised that the Board had considered their over provision policy but were satisfied that the granting of the licence would have no impact on the Licensing Objectives. Members were familiar with the operation of a beer cave and were of the view that this addressed any health concerns due to restricted access and as such had agreed to make an exception to their policy and grant the application.

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

N & S Properties Limited

The 43 Mexican Tex-Mex & Steakhouse
43 Titchfield Street
Kilmarnock

Brief overview of nature of the business proposed to be carried on in the premises:-

Licensed hours applied for:-

On Sale

Sunday - Wednesday : 11am - 12 Midnight

Thursday - Saturday : 11am – 1am

The premises will be a restaurant. It is intended to provide conference facilities, restaurant facilities, bar meals and to cater for receptions including weddings, funerals and birthdays and club/group meetings within the premises; and also to provide recorded music and live performances within the premises, all within and outwith the core licensed hours. The premises may open prior to the licensed hours for the provision of teas, coffees, breakfasts, etc. and the activities noted above may be made available. No alcohol will be sold outwith the core licensed hours.

The premises may be used for community and charity events, business networking and meetings, tastings and food & drink events. The premises may take advantage of any additional hours afforded by the Licensing Board's policy in this regard, including the festive period, bank holidays and any other dates so designated

Children aged 0 – 15 years will be permitted access to the premises during the core licensed hours, when accompanied by an adult, for the consumption of a meal, snack, or to attend a private function.

Young persons aged 16 & 17 years will be permitted access to the premises during the core licensed hours, unaccompanied by an adult, for the consumption of a meal, snack, or to attend a private function.

The proposed occupant capacity of the premises is 60.

Disabled access & facilities statement – access to the premises is from a level surface; furniture within the premises is loose and can be re-arranged to accommodate; disabled toilet on ground floor; table service on offer; accessible tables can be available; assistance dogs welcome; large print menu can be made available.

Mr Stephen McGowan, Agent for the applicant, appeared before the Board, together with Mr and Mrs Sandhu, owners of the premises, and Ujjwal Karki, who would operate the premises.

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

Mr McGowan submitted that his clients had owned a number of licensed premises over the west of Scotland for over 20 years and that he had acted for them for over 15 years. He explained that, during Covid, the company who had held the licence for these premises had failed, the company had been dissolved and, due to an oversight, the licence had lapsed. He

advised that once this had come to light, the premises had stopped selling alcohol immediately.

Mr McGowan advised that the premises had traded more recently on Occasional Licences until an application to reinstate the premises licence could be considered. There had been no problems with the operation of the premises during this time.

Mr McGowan concluded that the restaurant operated on a 75/25 split between food and drink, had not caused any problems over the years and moved that the licence be granted.

The Board agreed unanimously to grant the licence.
