

SOUTH AYRSHIRE LICENSING BOARD.

Minutes of a meeting in the County Buildings, Wellington Square, Ayr,
on 10th November 2011 at 10.00 a.m.

Present: Councillors Douglas Campbell (Chair), Andy Campbell, Ian Douglas, Ian Fitzsimmons, Ann Galbraith, Bill Grant, Alec Oattes and Tom Slider.

Attending: V. Andrews, Clerk to the Board; M. Toshner, Building Standards Manager; M. Douglas, Licensing Policy Officer; C. Andrew, Licensing Standards Officer; and J. McClure, Committee Administrative Officer.

Also Attending: Chief Inspector N. Kerr; Sergeant U. Menzies; and Constable I. Bain, Strathclyde Police.

1. Date of Next Board Meeting.

The Chair advised that the next Board meeting would be held in the County Hall, County Buildings, Ayr on Thursday, 8th December 2011 at 10.00 a.m.

2. Minutes of Previous Meetings.

The Minutes of the Meetings of South Ayrshire Licensing Board of 29th September 2011 and 5th October 2011 (Special) (issued) were submitted.

Decided: to note the Minutes of the previous meetings.

3. Application for Transfer Granted Under Delegated Powers.

There was submitted a report (issued) of 24th October 2011 by the Clerk to the Licensing Board advising of the following determinations of applications for Transfer of a Licence between the last Board meeting and the present one:-

- (1) Bar Libertine, 7 River Street, Ayr;
- (2) Cactus Jaks, 17 Miller Road, Ayr;
- (3) The Village Store, 2 Kennedy Drive, Dunure; and
- (4) Ramada Jarvis Hotel, Dalblair Road, Ayr.

Decided: to note the transfers granted under delegated powers.

4. Update Report by the Licensing Standards Officer.

The Licensing Standards Officer advised

- (1) of her recent visits to Elliots Terrace, Bar and Restaurant, Prestwick following it being brought to her attention that breaches of the Mandatory Conditions as per the Licensing (Scotland) Act 2005 had occurred;
- (2) that she had now met with one of the Directors of the Company and had outlined what was acceptable and would be having regular update meetings to ensure that further breaches did not occur; and

- (3) that, should any further issues arise, she would issue a notice and any non-compliance with the notice would result in a Premises Licence Review Request.

Concerns were raised by Members of the Board regarding the loophole being exploited with regard to not charging for mixers; and questions were raised by Members of the Board in relation to which Directorate of the Council was responsible for ensuring that advertising was clear and concise; the varying prices of mixers; whether there was a weakness in the legislation regarding charging for mixers and the Licensing Policy Officer and Licensing Standards Officer responded accordingly.

Decided:

- (a) to note the report from the Licensing Standards Officer;
- (b) to request that the Clerk to the Board write to the Scottish Government bringing this loophole in the legislation to its attention; and
- (c) to request that the Licensing Standards Officer provide the Board with a further update report on Elliotts in due course.

5. Licensing (Scotland) Act, 2005.

(a) Application for Premises Licences.

The Board considered the following applications:-

<u>Applicant</u>	<u>Premises</u>
(1) Filippo Mancini	Filippo's/Royal Cafe 11 New Road Ayr

Retail Sale of Alcohol (On Premises) – every day from noon to 11.00 p.m.

Having heard the applicant and the Building Standards Manager and following questions from Board Members, the Board agreed to continue consideration of this application to allow a site visit to be undertaken.

(2) The Deli Troon Limited	The Deli 39 Ayr Street Troon
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Retail Sale of Alcohol (Off Premises) – every day from 10.00 a.m. to 10.00 pm.

The Board first considered the issue of locality for the purposes of this application and decided (with the agreement of the applicant's representative) that a 500m radius from the application premises would be the appropriate locality for consideration of this application.

The Board heard from the applicant and questions were raised by Members in relation to why a licence was now being sought; and whether alcohol would be restricted to certain types and the applicant responded accordingly.

The Chair then advised that the Board had to consider if any of the five grounds for refusal applied and that, if they did not, the Board was required to grant the application and, as none of the grounds for refusal applied, the Board granted this application.

(b) Application for Provisional Premises Licences.

The Board considered the following applications:-

<u>Applicant</u>	<u>Premises</u>
(1) RTR Trading Limited	The Cottage Shop 47 Burns Statue Square Ayr

Retail Sale of Alcohol (Off Premises) – every Monday to Saturday inclusive from 11.00 a.m. to 7.00 p.m.; and every Sunday from 11.00 a.m. to 5.00 p.m.

The Board first considered the issue of locality for the purposes of this application and decided (with the agreement of the applicant's representative) that a 300m radius from the application premises would be the appropriate locality for consideration of this application.

The Board heard from the applicant and questions were raised by Members in relation to how the applicant would comply with the licensing objectives; how many staff would be working on the premises; how many of these staff members held a personal licence; and whether the applicant would be on the premises at all times and the applicant responded accordingly.

The Chair then advised that the Board had to consider if any of the five grounds for refusal applied and that, if they did not, the Board was required to grant the application and, as none of the grounds for refusal applied, the Board granted this application.

(2) Buzzworks Claremont Limited	74 Main Street Prestwick
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Retail Sale of Alcohol (On Premises) – every day from 10.00 a.m. to 12.30 a.m.

The Board first considered the issue of locality for the purposes of this application and decided (with the agreement of the applicant's representative) that Prestwick Main Street and the premises at Prestwick Cross/Monkton Road would be the appropriate locality for consideration of this application.

The Board then heard from both objectors and from the applicant's representative in response and, following comments from Members, adjourned for consideration of this application.

Upon reconvening, Councillor A. Campbell, seconded by Councillor Fitzsimmons, moved that, having regard to the number and capacity of licensed premises, or licensed premises of the same or similar description as the subject premises, the application be refused on the grounds of over provision of licensed premises.

By way of Amendment, Councillor D. Campbell, seconded by Councillor Galbraith, moved

- (a) that, in terms of locality, the Board had considered Prestwick Main Street and the premises at Prestwick Cross/Monkton Road should be taken as the appropriate locality when making their deliberations;
- (b) that the application was from Buzzworks to operate a restaurant without a bar and whether the premises were sold was not relevant to the considerations of the Board;
- (c) that the ground for refusal “excluded premises” was not applicable;
- (d) that the ground for refusal, “that the application must be refused under Section 25(2), 64(2) or 65(3)” was not applicable;
- (e) that with regard to the ground for refusal “that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives”, the Board had considered the application, the evidence submitted by the applicant in relation to the proposed mode of operation and the submissions from the objectors for each of the issues and decided that granting the application would not be inconsistent with the licensing objectives;
- (f) that with regard to the ground for refusal that, “having regard to
 - (I) the nature of the activities proposed to be carried on in the subject premises;
 - (II) the location, character and condition of the premises; and
 - (III) the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol”,

the Board considered the issues raised and heard nothing to persuade them that the premises were unsuitable; and

- (g) that, with regard to the ground for refusal that “having regard to the number and capacity of
 - (I) licensed premises; or
 - (II) licensed premises of the same or similar description as the subject premises,

in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality”,

the Board did not believe, having taken into account the other licensed premises within the locality which served food and were therefore to be considered “of the same or similar description”, that granting the application would result in over provision;

- (h) that, with regard to the issues raised on the current financial climate, it was not appropriate for the Board to take a decision to grant or not based on the current financial climate;
- (i) that, with regard to references made to Prestwick Airport, South Ayrshire was a tourist area and that the main towns in South Ayrshire served the whole tourist area including golf courses, Culzean Castle, Burns Monument and Burns Heritage Park and that a number of licensed premises were required to serve the tourists in the area;
- (j) that regarding licensed premises of a similar nature, fourteen other premises within the locality area were serving meals and there was no over capacity, however, the problem for this Board and other Boards was tackling what ‘capacity’ meant; and
- (k) that, as no grounds for refusal had been established, the application should therefore be granted.

On a vote being taken by a show of hands, four Members voted for the Amendment, three Members for the Motion and one Member abstained. The application was therefore granted.

Councillor Galbraith left the meeting at this point.

(c) Application for Variation of Premises Licences.

The Board considered the following applications:-

<u>Applicant</u>	<u>Premises</u>
(1) The Coylton Arms Partnership	The Coylton Arms 9 Low Coylton Coylton

Relocation of outside drinking area and additional external drinking area to rear of premises.

Having heard the Building Standards Manager and in the absence of the applicant, the Board decided to continue consideration of this application to allow the applicant to attend.

(2) 125 Social Club	125 Social Club 26 Fullarton Street Ayr
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Change to core On Sale Hours.

<u>Existing</u>	<u>Proposed</u>
Monday 11.00 a.m. to 11.00 p.m.	Monday 11.00 a.m. to 12.30 a.m.
Tuesday 11.00 a.m. to 11.00 p.m.	Tuesday 11.00 a.m. to 12.30 a.m.
Wednesday 11.00 a.m. to 11.00 p.m.	Wednesday 11.00 a.m. to 12.30 a.m.
Thursday 11.00 a.m. to 11.00 p.m.	Thursday 11.00 a.m. to 12.30 a.m.
Friday 11.00 a.m. to 12.30 a.m.	Friday 11.00 a.m. to 12.30 a.m.
Saturday 11.00 a.m. to 11.00 p.m.	Saturday 11.00 a.m. to midnight
Sunday 11.00 a.m. to 11.00 p.m.	Sunday 11.00 a.m. to midnight

The Board granted the above application.

(d) Applications for Occasional Licences.

The Board considered the following applications:-

<u>Applicant</u>	<u>Premises</u>
(1) Adam Fergusson	Maybole Town Hall Maybole

Maybole Ball – 29/12/11 – 10.00 p.m. to 2.00 a.m.

Having heard from the applicant and the Licensing Standards Officer, the Board granted the above application, subject to the following conditions being specified on the licence:-

Total number of tickets – 190;
Admission only to ticket holders;
Each ticket allowed 5 vouchers for alcohol with vouchers limited to a single unit (each unit to be one 125ml glass of wine or one 275ml bottle of beer);
and
Training to be given by the Personal Licence Holder to those serving alcohol.

<u>Applicant</u>	<u>Premises</u>
(2) Darren Mitchell	Hamilton Arms 22 Bridge Street Girvan

Premises are an unlicensed hotel offering accommodation, restaurant facilities and bar meals.

12/11/11 to 25/11/11 –
On-Sale – 11.00 a.m. to midnight.
Off-Sale – 11.00 a.m. to 10.00 p.m.

(3) Darren Mitchell	Hamilton Arms 22 Bridge Street Girvan
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Premises are an unlicensed hotel offering accommodation, restaurant facilities and bar meals.

26/11/11 to 08/12/11 –
On-Sale – 11.00 a.m. to midnight.
Off-Sale – 11.00 a.m. to 10.00 p.m.

Having heard from the applicant's representative and the Licensing Standards Officer in relation to application numbers (2) and (3) above and following comments from Members, the Board agreed that the applications should be granted for the restaurant facilities only; that the applicant should contact the Clerk to the Board once the premises were fully functional with letting bedrooms and food available and a visit by the Licensing Standards Officer and selected members of the Board would then be organised to assess the suitability of arrangements in place at the premises and grant the application as outlined above under delegated powers once said arrangements were assessed to be suitable; and the Premises Licence application would be considered at a future Board meeting.

(e) Applications for Extended Hours.

The Board considered the following application:-

<u>Applicant</u>	<u>Premises</u>
Western House Catering Limited	Princess Royal Suite Ayr Racecourse 2 Whitletts Road Ayr

Winter Sensual Event – 26/12/11 – 12.30 a.m. to 2.30 a.m.

Having heard from the applicant's representative and the Licensing Standards Officer, the Board granted the hours as outlined above subject to the event being restricted to over 18s and agreed that, should similar applications be received in future, a report would be submitted to the Board from the Licensing Standards Officer in relation to these events.

(f) Review Hearing of Premises Licence Under Section 36.

The Board considered the following application for review:-

(i) Ross McRoberts for Ocean Stores, Churchill Tower, South Harbour Street, Ayr.

Following a Request for Review from Strathclyde Police under Section 36(1) of the Licensing (Scotland) Act 2005, the Board held a hearing in relation to these premises.

There were submitted (issued) a report dated 31st October 2011 by the Clerk to the Board outlining the background to this review and the options available to the Board; a letter from Strathclyde Police dated 28th September 2011 outlining the reasons for requesting the review; the initial information supplied by the premises advising how they would meet the licensing objectives; and a report from the Licensing Standards Officer (LSO) dated 25th October 2011 reporting on the outcome of her visits to the premises.

The Board then heard Chief Inspector Kerr, Strathclyde Police in relation to the reasons for requesting the review.

The Licensing Standards Officer updated the Board on her visits to the premises and her findings and advised that, following her visits to the premises, no contact had been made with her by the Premises Licenceholder who had not been present when she had visited.

The Premises Licenceholder's representative then circulated a letter to Board members and advised

- (1) that the member of staff who had sold alcohol to the underage customer was a personal licenceholder with a lot of experience in the licensed trade, however she had received bad news the day prior to the test purchase and that the letter issued to Board Members would also be issued to the Procurator Fiscal;
- (2) that with regard to the Licensing Standards Officer's report, of the four members of staff, two were personal licenceholders and the other two staff members had undertaken in-house training and were now booked on a course to become personal licenceholders;
- (3) that the Premises Licenceholder had deemed it reasonable to display medicine and gift bags in the alcohol area, however, following the LSO's visit, these had now been removed from that area;
- (4) that the entries in the refusals book provided by the LSO had been recorded in the wrong order as the old book was still in operation, however, this has now been rectified and only the new book was being utilised;

- (5) that with regard to the displaying of the Summary Premises Licence, the previous licence had been in the name of Mr. McRoberts' mother and the application for transfer had been granted two years ago, however, he had mislaid the licence and wrongly assumed that the licence displayed on the wall was acceptable and had now applied to the Licensing Section for a duplicate licence; and
- (6) that Mr. McRoberts had been running the premises well for over five years now and was grateful to the LSO for her assistance.

Questions were raised by Members in relation to training records; the LSO's numerous attempts to contact Mr. McRoberts; and the reason for the test purchase being carried out and the LSO, Mr. McRoberts and Chief Inspector Kerr responded accordingly.

The Board then adjourned for consideration of this application for review.

Upon reconvening, the Board agreed, by a majority,

- (a) that the request for review had been upheld on the basis of the Preventing Crime and Disorder and Protecting Children from Harm licensing objectives;
- (b) that the licence be suspended for four calendar days as of 10.00 a.m. on Friday 11th November 2011; and
- (c) that the review of the personal licenceholder be deferred until the Procurator Fiscal had made a decision on the matter of the Police report.

At this point, the time being 12.55 p.m., it was noted that the Board would resume at 2.00 p.m. to consider the remaining item of business on the agenda.

Present: Councillors Douglas Campbell (Chair), Andy Campbell, Ian Fitzsimmons, Alec Oattes and Tom Slider.

Attending: V. Andrews, Clerk to the Board; M. Douglas, Licensing Policy Officer; C. Andrew, Licensing Standards Officer; and J. McClure, Committee Administrative Officer.

Also Attending: Chief Inspector N. Kerr, Sergeant U. Menzies and Constable I. Bain, Strathclyde Police.

6. Resumption of Meeting.

The meeting resumed at 2.00 p.m.

7. Licensing (Scotland) Act, 2005.

Review Hearing of Premises Licence Under Section 36.

The Board considered the following application for review:-

Kirsten Hood for The Ship Inn, 36 North Harbour Street, Ayr.

Following a Request for Review from Strathclyde Police under Section 36(1) of the Licensing (Scotland) Act 2005, the Board held a hearing in relation to these premises.

There were submitted (issued) a report dated 31st October 2011 by the Clerk to the Board outlining the background to this review and the options available to the Board; a letter from Strathclyde Police dated 20th October 2011 outlining the reasons for requesting the review; and a report from the Licensing Standards Officer dated 24th October 2011 reporting on the outcome of her visit to the premises.

The Board then heard Chief Inspector Kerr, Strathclyde Police in relation to the reasons for requesting the review.

The Licensing Standards Officer outlined

- (1) that she had recently met with Mrs. Hood to ensure that all requests had been met and to discuss the location and supervision of the pool table and keeping the pool cues behind the bar; and
- (2) that she had viewed the incident book and refusals book.

The licenceholder's representative then advised

- (a) that the person involved in the alleged violent incident referred to in the Police report was Mrs. Hood's husband and he was being prosecuted for a breach of the peace only and not assault; and that he was pleading not guilty to the charge of uttering threats;
- (b) that it was stipulated in the Police report that Mrs. Hood had been requested to make an exclusion order in terms of Section 94 of the Act, however, an exclusion order could only be made under two circumstances: by the Sheriff when someone was convicted of a violent offence or by the court on application of the Premises Licenceholder within a period of six weeks after a conviction and no exclusion order could be sought until the person had been convicted;
- (c) that the charges were a matter for the Court and Mrs. Hood's position was that she did not agree with Strathclyde Police's allegations;
- (d) that the Police report gave one side of the story as Mrs. Hood stated that her husband was peacemaking and did nothing wrong and the circumstances were not appropriate for an exclusion order, however, were her husband to be found guilty she would have abided by anything requested by Strathclyde Police regarding the exclusion order;

- (e) that Mrs. Hood accepted fully that there was no incident book or refusals book and this had now been resolved; training records had been updated and training undertaken; the matter of door stewards was being resolved and personal licenceholders were now in place and she apologised for these omissions, however, these matters had all been addressed quickly and to the LSO's satisfaction; and
- (f) that with regard to the ground for review of the Preventing Crime and Disorder licensing objective, Strathclyde Police had only been in attendance in the premises once in five years and that was following a call from Mrs. Hood; the premises had been well run and there was no history of violence.

In relation to the matter of the exclusion order at (b) above, Chief Inspector Kerr advised that the original charge had been threatening and abusive behaviour and that Strathclyde Police would always contact the licenceholder and request that they support an exclusion order as a matter of course.

Questions were raised by members of the Board in relation to previous cases of violence; the process to be followed should a violent incident occur and whether both parties were made to leave at separate times; whether there were no history of incidents or if these incidents were not reported to Strathclyde Police; the male referred to in the Strathclyde Police letter; and whether there was CCTV on the premises and Chief Inspector Kerr, the Licensing Standards Officer and the applicant's representative responded accordingly.

The Board then adjourned to consider this matter.

Upon reconvening, the Chair advised

- (i) that the Board had taken time to discuss the issues raised in the letter from Strathclyde Police requesting a review on the grounds of the Preventing Crime and Disorder and Securing Public Safety licensing objectives;
- (ii) that the Board noted that Strathclyde Police had the option of seeking an Exclusion Order and did not consider this a matter for the Board; and
- (iii) that the Board had agreed
 - (A) that the request for review had been upheld in part in respect of the Preventing Crime and Disorder licensing objective and in respect of the various administrative matters raised in the letter from the LSO relating to maintaining records and utilising door stewards; and
 - (B) to request that the Clerk to the Board write to the Premises Licenceholder detailing the Board's concerns and the requirement to retain up to date records;

- (C) to request that the Clerk to the Board should report back to the Board when the outcome of the legal process was known at which time the Board would decide on any further action if necessary; and
- (D) to request that the LSO should report back to a future Board meeting with regard to agreements reached with monitoring the pool table area and keeping the pool cues behind the bar.

The meeting ended at 2.45 p.m.