

SOUTH AYRSHIRE LICENSING BOARD.

Minutes of a Meeting in County Buildings, Wellington Square, Ayr,
on 24th June 2010 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; C. Andrew, Licensing Standards Officer; M. Houston Senior Trading Standards Officer; G. Lauder, Senior Environmental Health Officer; K. Bisset, Licensing Administration Assistant; and J. McClure, Committee Administrative Officer.

In Attendance: Sergeant U. Menzies and D. Hastings, 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, 2nd September 2010 at 10.00 a.m.

2. Minutes of Previous Meeting.

The Minutes of the Meeting of South Ayrshire Licensing Board of 27th May 2010 (issued) were submitted.

Decided: to note the Minutes of the previous meeting.

3. Applications for Transfers Granted Under Delegated Powers.

There was submitted a report (issued) of 14th June 2010 by the Executive Director - Corporate Services advising Board Members of the following determination of applications for Transfer of Licences between the last Board meeting and the present one:-

The Vulcan Tavern, 18 Green Street, Ayr; and
The Bank, 111 Main Street, Prestwick.

Decided: to note the transfers granted under delegated powers.

4. Regulatory Review Group Report on Licensing (Scotland) Act 2005.

There was submitted a report (issued) of 16th June 2010 by the Executive Director - Corporate Services advising

- (1) that when the Licensing (Scotland) Act 2005 came fully into force on 1st September 2009, the Regulatory Review Group of the Scottish Government had agreed to undertake a review of the Act to consider the implementation of the new legislation in respect of its impact on business, the principles of better regulation and unintended consequences;
- (2) that the report was available for download on the Scottish Government website; and
- (3) that once the Review had been considered in detail, a further report would be submitted to the Board highlighting any issues which required to be addressed.

Decided: to note the contents of the report.

5. Consultation on Licensing Policy Statement.

There was submitted a report (issued) of 21st June 2010 by the Executive Director – Corporate Services

- (1) advising
 - (a) that, in part implement of the Licensing (Scotland) Act 2005, the Board had produced its first Licensing Policy Statement on 21st December 2007, principally updated the Policy Statement on 28th August 2009 in relation to over-provision and was now required to consult on its Policy Statement in accordance with its statutory duty to keep the Policy under review;
 - (b) that in preparing the Licensing Policy Statement, the Board was required to consult with various parties and that the Consultation Document would be advertised on the Council's website and through a local press release to ensure that all interested parties had an opportunity to contribute, with copies of the consultation available from the Licensing Office and from download from the Council's website; and
 - (c) that the main issues identified by the Board since implementation of the new Act, and during recent visits to licensed premises, had related to the operating hours for premises, however, consultees might also wish to make representations in respect of other parts of the Policy Statement and would be invited to do so with it being proposed that the Board should consult in terms of the proposals attached to the report, requesting responses by 15th September 2010 to enable the new Licensing Policy to be drafted as the Board was required to publish its revised Policy no later than 30th November 2010 with the draft Policy Statement being brought back to the Board for approval prior to that date; and
- (2) seeking approval to consult with interested parties on the Licensing Policy Statement.

The Licensing Standards Officer advised that, following discussions with the main licensed trade representatives and representatives of ALTA the main question from these representatives had been whether grandfather rights would be granted under the new Statement of Licensing Policy; concerns had been raised by the representatives from entertainment type premises regarding whether the differential between them and pub-type premises would be removed; duty to trade had been generally well received; and comments had been made that, should there be duty to trade beyond 12.30 a.m., there would be definitive staggered closing times which would assist Strathclyde Police in clearing the town at the end of the evening.

Comments were then made by various members of the Board in relation to “substantial entertainment”, whether premises should be granted whatever hours they applied for subject to the conditions stipulated being complied with; whether it was inequitable to apply duty to trade after 12.30 a.m. only and requesting a Briefing Session for Board Members following the consultation period.

Decided: to instruct the Clerk to the Board to issue the Consultation Document on Licensing Policy to all interested parties with the inclusion of the existing policy on children and young people being in licensed premises.

6. **Licensing (Scotland) Act, 2005.**

(a) **Applications for Variation of Premises Licence.**

The Board considered the following applications:-

| | <u>Applicant</u> | <u>Premises</u> |
|-----|--|--|
| (1) | Costley & Costley Hoteliers Limited | The Beresford 22 Beresford Terrace Ayr |

To permit an outdoor drinking facility during core licensed hours and subject to existing Local Conditions applied to the licence.

Having heard the applicant’s representative, the Board granted the above application.

| | | |
|-----|------------------------------|---|
| (2) | Firm of Beechgrove Stores | Beechgrove Stores Beech Grove Ayr |
|-----|------------------------------|---|

To amend the terminal hour on week days from 5.00 p.m. to 8.00 p.m. and to amend the terminal hour on Saturdays and Sundays from 1.00 p.m. to 8.00 p.m.

New service counter to right of entrance with alcohol display area behind it and adjacent. Former back shop, store and toilet incorporated as part of the shop and new back shop and disabled toilet formed by extension added to the property. New off-sale capacity of 9.87 square metres (previously 1.23 square meters).

Having heard the applicant, the Board granted the above application.

| <u>Applicant</u> | <u>Premises</u> |
|-------------------------------|---|
| (3) Somerfield Stores Limited | The Co-operative Food 19-23 High Street Maybole |

Revised arrangements for the display of alcohol. New off-sale capacity of 30.31 square meters (previously was 64.2 square meters).

Having heard the applicant's representative, the Board granted the above application.

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|----------------------------------|--|
| (4) Glenburn Miners Welfare Club | Glenburn Miners Welfare Club 35d Glenburn Road Prestwick |
|----------------------------------|--|

To allow children and young people up to seventeen years of age on the premises until 8.00 p.m. and to allow children and young people up to seventeen years of age attending a function to stay until the end of the function.

Having heard the Licensing Standards Officer, the Board granted the above application.

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| (5) Somerfield Stores Limited | The Co-operative Food 26 Main Street Prestwick |
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Revised arrangements for the display of alcohol and new off-sale capacity of 41.3 square meters (previously was 120.37 square meters).

Having heard the applicant's representative, the Board granted the above application.

(b) Application for Occasional Licence.

The Board considered the following application:-

| <u>Applicant</u> | <u>Premises</u> | <u>Occasion</u> |
|-------------------------|---|--|
| John Given | Citadel Leisure Centre South Beach Road Ayr | Musical Concert "Ladyboys of Bangkok" |

The Board heard the applicant in relation to this application and, following a question from a member regarding whether this application fell into the category of "adult entertainment" and the applicant advising that this was a family show with no vulgarity or nudity, the Board adjourned for consideration of this application.

Upon reconvening, the Board granted the above application.

(c) **Applications for Personal Licences.**

The Board considered the following application:-

| | <u>Application Number</u> | <u>Applicant</u> |
|-----|----------------------------------|-------------------------|
| (1) | SA/10/00090/LAPRS | Ferhat Aras |

Having heard an observation from Strathclyde Police, the applicant's representative in response and questions from members, the Board granted the above application.

The Board agreed to continue the following application to a future Board meeting for consideration:-

| | <u>Application Number</u> | <u>Applicant</u> |
|-----|----------------------------------|-------------------------|
| (2) | SA/10/00098/LAPRS | Linda Alexander |

(d) **Hearings in Respect of Review of Premises Licences.**

(i) **Morrisons, Cattlemarket, Castlehill Road, Ayr.**

The Board considered a notice from Strathclyde Police under Section 44(4)(b) of the Licensing (Scotland) Act 2005 in relation to a conviction for relevant offences of a person connected with the Premises Licenceholder. The Board then proceeded to a Premises Licence Review.

The Board heard from Strathclyde Police and then heard the licenceholder's representative outlining the circumstances of the offence.

The Licensing Standards Officer then gave a report on these premises.

Decided: that, in terms of Section 39 of the Licensing (Scotland) Act 2005, the Board should not take any action.

(ii) **Morrisons, Dukes Road, Troon.**

The Board considered a notice from Strathclyde Police under Section 44(4)(b) of the Licensing (Scotland) Act 2005 in relation to a conviction for relevant offences of a person connected with the Premises Licenceholder. The Board then proceeded to a Premises Licence Review.

The Board heard from Strathclyde Police and then heard the licenceholder's representative outlining the circumstances of the offence.

The Licensing Standards Officer then gave a report on these premises.

Decided: that, in terms of Section 39 of the Licensing (Scotland) Act 2005, the Board should not take any action.

(iii) The Balgarth, 8 Dunure Road, Ayr.

Following three separate Requests for Review from members of the public and one Request from a Community Council under Section 36 of the Licensing (Scotland) Act 2005, the Board held a hearing in relation to these premises.

There were submitted reports (issued to members only) by the Executive Director - Corporate Services, the Licensing Standards Officer, the Environmental Health Manager and the Planning Enforcement Officer.

The Board heard from two of the applicants for Review in relation to these premises, the reasons for requesting the Review and advising that, due to the unacceptable noise emanating from these premises; smoke pollution and food smells; and the failure to remove advertising signage following refusal of retrospective planning permission, the licenceholder had failed to comply with the preventing public nuisance licensing objective.

The Licensing Standards Officer further advised that, following a visit to the premises,

- (A) she had ascertained that the named Premises Manager no longer worked for the company and that the Licensing Section had not been informed of this, therefore, she had informed staff that alcohol must not be sold until a transfer had been granted to allow a new Premises Manager to take over and that Licensing staff had worked on this as a priority to ensure the premises were able to trade by close of business that same day; and
- (B) staff had appeared to have little knowledge of the Licensing (Scotland) Act 2005; the Summary of Licence was not on display; and there was no Children's Policy Notice available.

The Senior Environmental Health Officer reported on the signage in the children's play area/beer garden; and the smoke and odour nuisance complaint.

Photographs were then circulated by the applicant's representative detailing the layout of the premises, including the beer garden and children's play area and the applicant's representative advised

- (I) that the beer garden and children's play area had both been in existence for many years, did not require planning permission and were surrounded by a very high brick wall which acted as a sound buffer and that signage was present advising patrons using these areas to respect the neighbours and keep the noise to a minimum;
- (II) that an external flue had been fitted at substantial cost in an attempt to eradicate food smells; and
- (III) that with regard to the signage at the entrance to the premises, the licenceholder had never been contacted by a member of the Community Council outlining their displeasure at these signs, he had contacted his Architect and had met with officers from the Planning Service in a bid to ensure that the signs complied with planning regulations.

The licenceholder further advised that he had now installed CCTV within and outside the premises; an extractor had been fitted to alleviate food smells, however, smells could also come from surrounding premises including a nearby nursing home; and that signs were erected at the entrance to the premises to attract customers and not to cause a nuisance to neighbours.

Following the summing up, the Board adjourned for consideration of this matter.

Upon reconvening, the Chair advised that the Board had considered all reports submitted and the evidence heard.

Decided: to agree

- (aa) that, with regard to the application for review regarding the noise, the Board was not satisfied on the evidence presented that the grounds for the Review of Premises Licence application had been established and, therefore, no action would be taken by the Licensing Board;
- (bb) that, with regard to the two applications for review regarding the signage at the entrance to the premises, the Board was not satisfied on the evidence presented that the grounds for the Review of Premises Licence application had been established and, therefore, no action would be taken by the Licensing Board;
- (cc) that, with regard to the application for review regarding the smoke and food smells, the Board was not satisfied on the evidence presented that the grounds for the Review of Premises Licence application had been established and, therefore, no action would be taken by the Licensing Board; and
- (dd) that, as the Board had concerns that the licenceholder had been in breach of several parts of the Licensing (Scotland) Act 2005, that the Clerk to the Board should submit a written warning to the licenceholder highlighting the Board's concerns.

(iv) Seafield Stores, 45 Blackburn Drive, Ayr.

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

There were submitted reports (issued to members only) by the Executive Director - Corporate Services, Trading Standards Manager and the Licensing Standards Officer.

The Board heard from the Senior Trading Standards Officer in relation to these premises, the reasons for requesting the Review and advising how one of the premises licenceholders from these premises which is permitted to sell alcohol had been convicted of selling tobacco, which is an age sensitive product, to under eighteens which is a breach of Section 18(1) of the Children and Young Persons (Scotland) Act 1937.

The Licensing Standards Officer then gave a report outlining that these premises participated in a bottle marking initiative and utilised a refusals book, however, she had assisted the Premises Manager in relation to signage and displaying the Summary of Premises Licence and had furnished her with details of contacts for training information as, although staff had completed induction training, this training did not cover the requirements of the Act and she had now been advised that all staff had completed training and that three members of staff were booked on the Scottish Certificate for Personal Licenceholders Course.

The Board then heard the licenceholder's representative advise

- (A) that the incident in question had taken place a year ago and was a one-off situation and that the person who sold the cigarettes was no longer an employee of these premises;
- (B) that the licenceholder did not have a refusals book at the time of the incident, however, this had been rectified immediately and that all staff had undergone training in relation to sales of age sensitive products and there was a strict over 21s policy within the premises;
- (C) that this matter was primarily a Trading Standards matter and not a licensing matter as it did not relate to the sale of alcohol; and
- (D) that the lack of a refusals book and the inadequate training was naivety on the part of the licenceholder and had all been rectified.

Decided: that the ground for the Review application had been established, namely a failure to comply with the Preventing Crime and Disorder and the Protecting Children from Harm Licensing Objectives, however, as all reasonable steps had been taken to prevent a recurrence of this matter, no action would be taken by the Licensing Board.

(v) Costcutters, 59-61 Dalrymple Street, Girvan.

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

There were submitted reports (issued to members only) by the Executive Director - Corporate Services, Trading Standards Manager and the Licensing Standards Officer.

The Board heard from the Senior Trading Standards Officer in relation to these premises, the reasons for requesting the Review and advising how the premises licenceholder whose premises licence permitted the off-sales of alcohol, had been convicted of selling butane, an age-sensitive product, to under eighteens breaching Section 12(1) of the Consumer Protection Act 1987 with Regulation 2 stating that "no person shall supply any cigarette lighter refill canister containing butane or a substance with butane as a constituent part to any person under the age of eighteen years".

Sergeant Menzies advised

- (A) that in March 2010 a routine visit had been carried out by local Police Officers where they found that two staff members were on duty but neither could confirm who the Premises licenceholder was and neither had completed an appropriate training course nor could answer basic questions on the Act;
- (B) that a meeting was subsequently arranged with the Premises licenceholder and the Premises Manager when the Premises licenceholder confirmed that he had failed in his duty to train staff; and
- (C) that to date, there were no further issues in relation to these premises.

The Licensing Standards Officer then gave a report on these premises advising

- (I) that, on visiting the premises in June 2010, she had found that the required notices were on display, however, the Summary of Premises Licence required to be changed to the original or a certified copy;
- (II) that the nine members of staff had received the mandatory training and the training records and books were available for inspection;
- (III) that the premises participated in the bottle marking initiative and the alcohol display area did not exceed that which was shown on the approved plan, however some other additional products were also in this area which was not permitted and was subsequently changed;
- (IV) that a new till prompt had been added in relation to age related sales and other general procedures to improve staff vigilance had been included; and
- (V) that the Premises Manager was well informed about the requirements of the Act and her role as Premises Manager and that the Premises Licenceholder held licences for two other premises.

The Board then heard the licenceholder's representative outline

- (aa) that the offence had not been committed by the Premises licenceholder but by a member of his staff who had now been dismissed;
- (bb) that the refusals book was available for inspection and had been completed by staff on 219 occasions highlighting that staff were aware that they should not sell age sensitive products to under-age youths;
- (cc) that the training of all staff had now been completed;

- (dd) that as well as routine visits from the Licensing Standards Officer, the Premises licenceholder had also requested visits to seek advice;
- (ee) that the premises participated in a bottle marking initiative and a new till prompt was in operation where the staff member in question was required to override the till when an age-sensitive product was being purchased; and
- (ff) that since March 2010 there had been a complete turnaround in the systems operated in the premises.

Questions were raised by members of the Board regarding visits by the Licensing Standards Officer and Trading Standards and training for staff and the licenceholder's representative advised that all staff would be attending a training course at Ayr College.

Following the summing up, the Board adjourned for consideration of this matter.

Decided: upon reconvening, that the ground for the Review application had been established, namely a failure to comply with the Preventing Crime and Disorder and the Protecting Children from Harm Licensing Objectives and that the Clerk to the Board should submit a written warning to the licenceholder highlighting the obligations to train members of staff to the appropriate standard and to ensure that an adequate proof-of-age scheme was in existence.

Councillor Fitzsimmons left the meeting at this point.

(e) Section 40 Review Application.

Lansforth Limited for Fury Murry's, Unit 3, 154 High Street, Ayr

Following the Licensing Board meeting of 27th May 2010 when the Board had decided

- (I) that the ground for the Review application had been established, namely a failure to comply with the Preventing Public Nuisance Licensing Objective, in that the noise emanating from the premises late at night was unacceptable; and
- (II) that the core hours be varied to permit current hours with the exclusion of every Thursday and Sunday when the terminal hour be restricted to 12.30 a.m., with the situation being reviewed by the Board in August 2010,

the Board considered a Section 40 Application to review this decision.

The Board heard the applicant's representative advise

- (A) that since the Board meeting on 27th May 2010, noise attenuation work had been carried out which had resulted in the bass notes being practically eliminated in nearby dwellings;
- (B) that, as a result of Environmental Health Service monitoring the noise, the objectors had confirmed that 91 decibels was sufficient to eliminate the noise nuisance which was less than a Club would wish to operate at but the Premises licenceholder accepted this level until more works had been carried out; and
- (C) that since the hours were reduced on a Thursday and Sunday business had dropped by 50% and, should this continue, the viability of the Club would be questionable.

The Senior Environmental Health Officer outlined the works which had been carried out, the visits made to the premises by Environmental Health Officers and concluded that, until further works had been carried out, the maximum noise level that the amplifiers should be operated at was 91 decibels and that the bass should be kept to a reduced level.

The Licensing Standards Officer commended the staff of the premises in their handling of this matter and further advised that the objectors were aware that, should the noise become audible again, they should contact the Out of Hours Noise Team.

Questions were raised by members of the Board in relation to

- (aa) where the noise readings had been taken from when complaints had been made on 17th June 2010 and the Senior Environmental Health Officer advised that the no reading had been taken from within the Club but from the complainant's flat;
- (bb) why a level of 91 decibels was acceptable now when the licenceholder's representative had outlined at the meeting of 27th May 2010 that this was not an acceptable level for a Club to operate at and the licenceholder's representative advised that 91 decibels was not an ideal permanent solution, however, it would enable the business to keep trading;
- (cc) when the remainder of the noise attenuation works would be carried out and the licenceholder's representative advised that the works were ongoing at present; and
- (dd) whether the other neighbours other than the two complainers had been consulted to ascertain if they were satisfied with the noise level when restricted to 91 decibels and the Senior Environmental Health Officer advised that he had not managed to contact the other neighbours, however, the two complainers were now satisfied and they were closest to the premises.

Decided: to reinstate the core hours every Thursday and Sunday to 2.00 a.m. subject to the condition that the noise limiter remain in place, set at no more than 91 decibels and that the bass limiter remain in place, set at no more than 50hz.

The meeting ended at 12.50 p.m.