

**MINUTES of MEETING of ARGYLL AND BUTE LICENSING BOARD held in the BY SKYPE  
on TUESDAY, 23 JUNE 2020**

**Present:**

David Kinniburgh (Chair)	Gordon Blair
Rory Colville	Roderick McCuish
Robin Currie	Jean Moffat
Lorna Douglas	Richard Trail

**Attending:**

Susan Mair, Depute Clerk to the Board  
Margaret MacLean, Admin Assistant  
Kelly Coffield, Licensing Assistant  
Eric Dearie, Licensing Standards Officer  
Raymond Park, Licensing Standards Officer  
Sergeant Wendy Macginnis, Police Scotland

**1. APOLOGIES**

Apologies were intimated from Sandy Taylor and Audrey Forest.

**2. DECLARATIONS OF INTEREST**

Roderick McCuish declared a non-financial interest in Agenda item 8(a) (Application for Review of a Personal Licence) as he knew the individual.

**3. APPROVAL OF MINUTES OF LICENSING BOARD MEETING OF 15TH MAY 2020**

The minutes of the meeting held on 15<sup>th</sup> May 2020 were submitted and approved.

**4. APPLICATION FOR GRANT OF A PREMISES LICENCE**

**(a) 9 Woodside, Craighouse, Isle of Jura, PA60 7YA**

Mrs McLean attended on behalf of the applicant and advised that the business would entail purchasing whisky themselves then selling the product online. She explained that this would be by way of a question based competition, similar to a raffle. Customers would be able to buy a ticket costing £3.00 then it would be put into a draw. The whisky would be kept in the designated bedroom and a random ticket generator on the computer would then pick the winning ticket and the bottle would be posted out to the successful entrant.

Eric Dearie, Licensing Standards Officer stated that no capacity figure was required but as the business seemed to be run as a raffle, a licence may be needed under the Gaming Act 2005.

Mrs MacLean emphasised that it would be a competency based competition therefore the person could only gain entry if they answer the question correctly.

Rory Colville asked how this would be monitored when posting the alcohol to ensure all entrants were 18 years or over. Mrs McLean said that everyone would be asked to confirm their age prior to entering the competition. Rory Colville asked if Challenge 25 would be in place. Mrs McLean advised that this would be implemented by the website designer. Rory Colville asked Eric Dearie if this was acceptable, to which he replied yes as there were many ways alcohol could be delivered but proof of age was required on delivery. Rory Colville asked, on that basis, could the applicant use a courier who would be more aware of the requirements regarding delivery of alcohol. Mrs McLean confirmed that the rules and regulations would be on the website which stated a signature and proof of age would be required on delivery. Rory Colville confirmed he was happy with this.

Richard Trail thought this was an unusual business model and asked Mrs McLean if she knew of any other businesses elsewhere which were similar. She said there was another business in Port Ellen, Islay. Richard Trail asked the Depute Clerk, Susan Mair if she was aware of this business and replied she was not.

Gordon Blair expressed his concerns regarding access to the competition and wanted to see it demonstrated first. He asked Mrs McLean if she could provide the members with a list of similar companies and she said she would.

Robin Currie thought there was no need for this information and he had no issues with the online sales as there were now many businesses trading this way.

Gordon Blair reiterated that he had no issues with the online sales but had concerns that the business was run similar to a raffle therefore entrants would not be paying the full price for the alcohol.

The Chair asked Mrs McLean if any enquiries had been made regarding the Gambling Act and she said no.

The Chair said he had some concerns and thought that any requirements under the Gambling Act needed to be explored.

Susan Mair advised that this was a complex area and the Gambling Commission would require to be contacted. She said she would be happy to liaise with the applicant regarding this matter as further permissions maybe required.

The Chair moved to continue the application to the September Board meeting until further clarification was received on any potential gambling implications. Richard Trail seconded the motion.

Robin Currie moved for an amendment to grant the application subject to the relevant gambling rules and regulations being adhered to which was seconded by Rory Colville.

A vote was taken by calling the roll.

### **Motion**

David Kinniburgh  
Richard Trail  
Lorna Douglas  
Gordon Blair

### **Amendment**

Robin Currie  
Rory Colville  
Jean Moffat  
Roderick McCuish

On there being an equality of votes, the Chair issued his casting vote and the Motion was carried.

## **5. APPLICATION FOR MAJOR VARIATION OF A PREMISES LICENCE**

### **(a) Co-op, 54 Sinclair Street, Helensburgh, G84 8TQ**

Eilidh McGuire, Solicitor, Glasgow attended on behalf of the applicant and explained that this was the first of five similar applications from the Co-operative Food Group. Ms McGuire spoke to the terms of the application which sought to: amend activities to allow recorded background music; the sale of food, non-food items and other household goods; the provision of ancillary consumer services and to include home deliveries. She advised that all orders would be taken from 10.00am to 10.00pm and delivered between 6.00am and midnight and all legislative requirements would be in place.

Having considered the foregoing, the Board agreed to grant the application as applied for.

### **(b) Co-op, Main Street, Bowmore, Isle of Islay, PA43 7JM**

Eilidh McGuire, Solicitor, Glasgow attended on behalf of the applicant and confirmed that this was in the same terms as Agenda item 5(a). The Chair asked if her previous submission would be the same for this application and she confirmed that it was.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(c) **Co-op, Oban Road, Lochgilphead, PA31 8NG**

Eilidh McGuire, Solicitor, Glasgow attended on behalf of the applicant and confirmed that this was in the same terms as the previous applications. The Chair asked if her submission for Item 5(a) would be the same for this application and she confirmed that it was.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(d) **Co-op, Queen Street, Dunoon, PA23 8AX**

Eilidh McGuire, Solicitor, Glasgow attended on behalf of the applicant and confirmed that this was in the same terms as the previous applications. The Chair asked if her submission for Item 5(a) would be the same for this application and she confirmed that it was.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(e) **Co-op, Rieclachan, Campbeltown, PA28 6EE**

Eilidh McGuire, Solicitor, Glasgow attended on behalf of the applicant and confirmed that this was in the same terms as the previous applications. The Chair asked if her submission for Item 5(a) would be the same for this application and she confirmed that it was.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(f) **Knockderry House Hotel, Shore Road, Cove, Helensburgh, G84 0NX**

The applicant, Murdo MacLeod attended to speak to the terms of the application which sought to reduce the on-sales hours and to reinstate the public bar. He explained that, previously, the public bar area had been removed from the premises licence but, due to a number of changes including the impact of coronavirus and that the hotel was the only establishment left in the peninsula area, he wanted to reinstate the public bar for local patrons. Mr MacLeod said that the current circumstances had had a huge impact on the business and therefore he wanted to broaden trade to take it back to where it once was although he was looking to reduce the opening hours to reflect current customer demand.

The Chair asked Mr MacLeod if he had an external drinking area. Mr MacLeod advised there was a veranda at the front of the premises.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(g) **The Glen Bar & Restaurant, Carradale, Campbeltown, PA28 6QG**

May Currie attended on behalf of the applicant and to speak to the terms of the application which sought the following :- to add off-sales hours to

the licence; to add takeaways and deliveries of meals and alcohol; to change opening hours on a Sunday from 11a.m. to 12 midday; and to add conference facilities and theatre as activities on the operating plan. She explained that there was a campsite in close proximity to the premises and they wished to cater for both locals and tourists.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(h) **The Mandarin Chinese Restaurant, 86/88 West Princes Street, Helensburgh, G84 8XD**

Lynn Nicolson attended on behalf of the applicant and to speak to the terms of the application which sought to: add off sales hours to the licence and to include takeaway and delivery of alcohol with meals. Ms Nicolson advised that the off sales hours would be from 5.00pm to 10.00pm and food could be delivered or collected from the premises through one of the windows.

Rory Colville asked why the opening time was restricted to 5.00pm. Ms Nicolson advised that the premises were closed during the day and it was due to local demand which seemed to suit how they ran the business.

The Chair asked if the premises had already been providing alcohol as he had noticed on their Facebook page that they were advertising 'bottles or draught to go' with the takeaway food. Ms Nicolson advised that the alcohol was complimentary to the food and no charge was being made for it. She explained that there may have been a misunderstanding as the applicant had thought the variation application would have been granted in April. The Chair asked Raymond Park, Licensing Standards Officer if such an arrangement was permissible. Mr Park advised that he thought not in the absence of an off-sales facility. Ms Nicolson added that her client had done this for regular customers to thank them for their continued custom during difficult times. She confirmed that all the required legislative measures were in place.

Having considered the foregoing, the Board agreed to grant the application as applied for.

(i) **Wm Morrison Supermarkets PLC, 40/42 John Street, Dunoon, PA23 8BJ**

Richard Taylor, Solicitor, Glasgow attended on behalf of the applicant and spoke to the terms of the application which sought to add a home delivery shopping service and a click and collect service as activities on the licence. Mr Taylor advised that his client had planned to provide these services in the near future but the current circumstances had accelerated the process. He confirmed that deliveries had started when the application was submitted but all legislative measures had been put in place.

Having considered the foregoing, the Board agreed to grant the application as applied for.

**6. APPLICATION FOR MAJOR VARIATION OF A PREMISES LICENCE  
(CONTINUED FROM A PREVIOUS MEETING)**

**(a) Commercial Inn, Cross Street, Campbeltown, PA28 6HU**

Susan Mair, Depute Clerk advised that a request had been received to continue the application.

The Board agreed that the application be continued to the September Board Meeting.

**7. APPLICATION FOR GRANT OF A PERSONAL LICENCE**

**(a) Tarlok Singh, 10 John Street, Upper Flat, Dunoon, PA23 8BN**

Susan Mair, Depute Clerk noted that the applicant had not been in contact despite a letter being sent to him regarding the date and time of the meeting. Ms Mair confirmed that the letter had been delivered and signed by the applicant and follow up emails had been sent. She suggested that the matter be continued to the September Board Meeting and the Board can then consider it in his absence if required.

Having considered the foregoing, the Board agreed to continue the application to the meeting in September.

**8. APPLICATION FOR REVIEW OF A PERSONAL LICENCE**

**(a) Johannes Van der Wal, The Old Schoolhouse, Kilninver, PA34 4UT**

Having declared a non-financial interest in this matter, Roderick McCuish left the meeting. Lorna Douglas also left the meeting due to another commitment.

Sergeant Wendy Maginnis, Police Scotland referred to her report (Appendix 1).

Mr Van der Wal attended and advised that he had been involved with the local community for some time. He managed two premises at which tastings were part of his job to enable him to advise his customers accordingly. Mr Van der Wal apologised for his behaviour and said that he should have been aware that the tastings that day had a higher alcohol content than usual and the fact he had not eaten had made matters worse. He explained that on the drive home he collided with another car which he could not remember but the incident had changed his life. He felt deeply sorry for the driver of the other vehicle and was upset and angry with himself. Mr Van der Wal advised that he rarely drinks but may have built up a tolerance over the years. He stated that he has had no alcohol since the accident in November last year. He admitted that he had made a terrible mistake and was ready to prove he respected the law and the

Licensing Act.

It was noted that Lorna Douglas had returned to the meeting.

The Chair noted the recorded level of 105 microgrammes of alcohol within 100 millilitres of breath and asked Sergeant Maginnis what was the legal limit for driving. She advised it was 22 microgrammes of alcohol per 100 millilitres.

Gordon Blair asked Mr Van der Wal about the tastings and if this was common practice and if there was a requirement to taste all whiskies. Mr Van der Wal said this was carried out once a month when new whiskies were received in order that he could advise his customers. Mr Blair stated the Board had a zero tolerance with drink driving.

Robin Currie raised a point of order stating that the Board were not there to advise about the rights and wrongs of drink-driving.

Richard Trail asked what the normal trading hours were for the premises. Mr Van der Wal stated 10.00am to 5.30pm. He added that he did not normally drive to work but on that day he did. Mr Trail asked how he travelled to work at present and Mr Van der Wal said his wife dropped him off then collected him after work or he took the bus or cycled.

Rory Colville expressed his concern regarding the position and wondered how he regulated his customers consumption of alcohol,, especially if they were driving. Mr Van Der Wal emphasised that he was still really angry with himself and stressed that in both premises, customers were asked if they were driving and if so, no samples would be provided to them.

Gordon Blair asked if there were any checks and balances for staff as well as customers and wondered why the staff, at the time, were not aware that Mr Van der Wal was intoxicated. Mr Van der Wal could not explain this and did not think his staff had realised how much alcohol he had consumed. He said that he already had discussions with the staff about this and more communication between them and himself was essential.

The Chair had issues regarding the tolerance build up mentioned previously and was concerned that Mr Van der Wal was unaware he was unfit to drive considering he was five times over the limit. Mr Van der Wal believed that the tolerance build up was over a period of time and he did not think he was unfit to drive. He added that the only reasonable explanation was that he got caught up in the excitement of the tastings on the day. The Chair asked if he had been sentenced. Mr Van der advised that, due to coronavirus, sentence had been deferred until 12<sup>th</sup> August 2020. He confirmed that he had been banned from driving and thinks that he may be fined and ordered to pay compensation to the other driver. The Chair asked Sergeant Maginnis if the offence was drink-driving only and she replied it was also dangerous driving. Mr Van der Wal stated that this had been reduced to careless driving.

Jean Moffat asked if Mr Van der Wal had given up alcohol completely and he replied yes he had since the incident.

The Chair enquired about how many samples were consumed on the day. Mr Van Der Wal explained that small cups were provided and he had 5 cups, 4 of which were of higher alcohol content. He reiterated his feelings of anger and regret and apologised once more. The Board adjourned to consider the matter further.

On resuming, the Chair advised that the Board were of the view that it was necessary for the purposes of the licensing objectives, being preventing crime and disorder and protecting and improving public health, to make an order suspending Mr Van der Wal's personal licence for a period of six months in terms of section 83(9)(b) of the Licensing (Scotland) Act 2005.

Susan Mair, Depute Clerk advised that he would receive written confirmation of the decision.

## **9. APPLICATION FOR REVIEW OF A PREMISES LICENCE**

### **(a) Keystore, 8-10 Old Luss Road, Helensburgh, G84 7BJ**

The Chair advised that the Board had received a written submission from the licence holder. It was noted that the licence holder expressed regret at what had occurred and the reassurance that there would be no repetition of such an incident. It was also noted that there was now a written policy in place regarding the hiring of staff.

Sergeant Wendy Maginnis, Police Scotland referred to her report (Appendix 2).

The Chair referred to the letter which had been received from Jackie Baillie, MSP (Appendix 3).

The Chair asked if the Camelot equipment had been returned. Sergeant Maginnis advised that she would find out.

Robin Currie asked if the Camelot equipment had been taken away due to the incident and Sergeant Maginnis replied yes, everything had been removed as soon as the Home Office had informed Camelot of the matter.

The Chair enquired if the licence holder had been charged by the Police. Sergeant Maginnis advised that he had not been charged but he had been fined by the Home Office.

Rory Colville asked Susan Mair, Depute Clerk how the Board could deal with the matter. Ms Mair advised that there were a number of options - take no action; suspend the premises licence for such period as they may determine; vary the licence; issue a written warning; or revoke the



licence.

Rory Colville proposed that a written warning be issued.

The Chair agreed with Rory Colville and moved to issue a written warning to the licence holder. Mr Colville seconded the motion.

Robin Currie moved to suspend the licence for a period of six months due to the seriousness of the matter. With no seconder, the amendment fell. Robin Currie requested his dissent be recorded.

With no-one being otherwise minded, the Board were satisfied that the ground for review was established and that it was necessary and appropriate for the purpose of the licensing objective of preventing crime and disorder to take the step of issuing a written warning as provided for in section 39(2)(a) of the Licensing (Scotland) Act 2005.

## **10. ANY OTHER BUSINESS**

### **(a) Report on Review of Licensing Policy Statement**

It was noted that all proposed actions were agreed. The Chair noted that the use of e-cigarettes was not a licensing matter but asked if the Licensing Policy could include a statement relating to vaping. It was agreed to approve the revised Policy Statement subject to the insertion of suitable wording in relation to vaping, to be agreed with the Chair.

## **11. NEXT LICENSING BOARD MEETING**

The next meeting of the Licensing Board will be held by Skype on Tuesday 8<sup>th</sup> September 2020 at 11.00am.