

***Excerpt of Minutes of Meeting
of Licensing Board held on 16 August 2011***

**PREMISES REVIEW FOR
148 MONTROSE STREET, CLYDEBANK G81 2PE**

In terms of Section 38(1) of the Licensing (Scotland) Act 2005, the Licensing Board considered an Application for Review of the Premises Licence from the Chief Constable of Strathclyde Police in relation to Mrs Tubassum Akbar, the licence holder in respect of the above premises.

Having heard the Clerk to the Licensing Board, it was noted:-

- (a) that in view of the letter from Strathclyde Police requesting a Premises Licence Review Hearing, both a representative of the licence holder and a representative of the Police authority had been invited to attend the meeting in order that a Hearing could take place;
- (b) that Mrs Akbar, Premises Licence Holder and Mr Mohsam Mahmood, an employee at the premises were in attendance and were represented at the meeting by Ms Francesca Trainor, Solicitor, Trainor Alston Solicitors;
- (c) that a copy of the letter from the Police authority and a report from the LSO had been issued to Members of the Board in advance of the meeting and that copies had been received by the licence holder; and
- (d) that Chief Inspector Byrne and Sergeant Stewart were in attendance on behalf of the Chief Constable, Strathclyde Police.

The Board heard from the Clerk who outlined the procedure which the hearing would follow. It was noted that firstly the Board would consider any preliminary issues. Thereafter, the Board would hear from the representative of the Police in relation to the review hearing request and then there would be an opportunity for the Applicant and the Board to ask questions. Thereafter, the Board would hear from the LSO and then there would be a further opportunity for questions. The Board would then hear from the licence holder with a further opportunity for questions. Thereafter, the Board would debate the matter and should there be a motion to suspend the licence, then the licence holder would have the opportunity to address the Board on the period of the suspension. It was noted that a further and separate motion would be required on the period of suspension.

Thereafter, at the request of the Chair, Councillor Brown, the Board heard a preliminary submission from Ms Trainor under the Human Rights Act 1998 that having regard to Schedule 1, Article 6 of the European Convention on Human Rights, the Board could not consider the application for review as the applicant was not given the name and date of birth of the person to whom alcohol was sold. Ms Trainor advised that it would be contrary to justice to allow the hearing to proceed given that fair notice of this evidence had not been given to her client.

Having heard Chief Inspector Byrne in response and received advice from the Clerk, it was agreed that sufficient fair notice had been given and thereafter the Board agreed to proceed with the hearing.

The Board then heard from Sergeant Stewart in relation to the circumstances outlined in the Police letter dated 19 July 2011. Sergeant Stewart also provided an update from the Procurator Fiscal's office and in doing so, advised that a pleading diet had been set for 8 September 2011 with a possible trial date for 6 October 2011.

Sergeant Stewart was heard in answer to questions from Ms Trainor and thereafter, with the permission of Ms Trainor and in agreement with Mr Mohsam Mahmood, he provided details of a question and answer session carried out by Strathclyde Police with shop assistant Mr Mohsam Mahmood concerning the circumstances where alcohol was sold to a 16 year old youth on 27 May 2011. It was noted from the interview that Mr Mahmood had seen the proof of age identification for the youth on a number of occasions however had not viewed the proof of age identification on the day when the offence occurred.

Thereafter, both Chief Inspector Byrne and Sergeant Stewart answered questions from Members.

The Board then heard from the Mr Clyde, LSO who provided an update in terms of Section 38(4)(a) of the Licensing (Scotland) Act 2005 following the request for a review of the licence and was heard in answer to questions from Ms Trainor and Members concerning refusals made at the premises.

A copy of the refusals book used at the premises was then passed to Members of the Board. Having heard both Ms Trainor and Mr Mahmood in answer to questions from Members, it was noted that there was a refusals books kept at each of the two tills at the premises.

Having heard the Chair, Councillor Brown, Ms Trainor was then given the opportunity to address the Board in relation to the aforementioned police report and in doing so, directed Members to Section 103 of the Act and advised that Mr Mahmood had not knowingly sold alcohol to a young person and had taken "reasonable steps" to establish the age of the young person. Thereafter, with the Board's permission, Ms Trainor asked questions of Mr Mahood concerning the

night in question and thereafter, called upon an independent witness/regular customer who advised that he was familiar with the youth and had witnessed Mr Mahmood requesting identification from the youth on previous occasions at the premises. Ms Trainor advised that her client had already been dealt with in relation to the previous sales of alcohol and tobacco to persons under age and had been found not guilty in relation to the alleged offence occurring on 14 December 2007.

Thereafter, Ms Trainor answered questions from Members and in doing so, gave assurances that Mrs Akbar was prepared to take steps to prevent any future sale of alcohol to underage persons.

Following consideration, the Board unanimously agreed that the premises licence be suspended given that the premises were not being run to the required standard and that the ground of review of preventing crime and disorder had been established. The Board also took into account the previous history of non-compliance and previous underage sales occurring on 27 November 2009 and 4 June 2008. The Board also unanimously agreed that the premises licence be suspended on the ground relevant to the objective of preventing crime and disorder.

The Board then heard from Ms Trainor who addressed the Board on the period of suspension. It was noted that Ms Trainor considered a short suspension to be an appropriate period in the circumstances.

Following discussion and having heard the Clerk to the Licensing Board in answer to Members' questions, the Board agreed:-

- (1) that the premises licence be suspended for a period of 4 months with the reprisal that should the matters as regards the operation of the premises be remedied to the Board's satisfaction, then an application to revoke the suspension could be considered at the meeting of the Board on 8 November 2011; and
- (2) that the Board made a finding in terms of Section 84 (3)(a), that Mrs Akbar's conduct had been inconsistent with the crime and disorder objective and that at a Hearing be held before West Dunbartonshire Licensing Board to consider the Personal Licence held by Mrs Akbar, at its next meeting on 8 November 2011.

Councillor Black, having earlier proposed an amendment, withdrew his amendment in support of Councillor Calvert's motion. The decision was then unanimous.
