# Statement of Reasons

**Licensing (Scotland) Act 2005**

**Licensing (Procedure) (Scotland) Regulations 2007 No. 453,**

**Regulation 15(3) and Schedule 4**

*All reference to legislation are to the 2005 Act unless otherwise specified.*

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| **1. Name and address of Licensing Board:** |
| North Ayrshire Licensing Board, Cunninghame House, Irvine |
| **2. Date of Licensing Board meeting:** |
| Monday 18 November 2019 |
| **3. Name and address of agent**  |
| For Applicant: Mr. Neil Hassard, Solicitor, TLT LLP, 140 West George St, Glasgow G2 2HG |
| **4. Name and address of Premises (if applicable)** |
| The Roebank Hotel and Wedding Venue, Roebank Road, Beith, KA15 2DY (NALB ref. 494) |
| **5. Materials before the Board** |
| Board's documents1. Licensing Policy Statement (adopted 19 November 2018) (hereafter "LPS");2. Application for the Variation of Premises Licence dated 9 April 2019, with proposed new Layout Plan;3. Report on Application prepared by Solicitor (Licensing) for the Board Meeting on 18 November 2019 (and not the Report prepared earlier);4. Premises Licence. Objections and Representations See EXCEL spreadsheet: "List of Objections and Representations (494 Roebank Hotel BEITH)" |
| **6. Type of application** |
| Application for Variation of Premises Licence |
| **7. Names of all parties present** |
| The Variation Application was considered by the Board on three dates:1. 3 June 20192. 16 September 20193. 18 November 2019There were no substantial submissions on the first date. On the second and third dates:(a) For Applicant:Mr. Neil Hassard, Solicitor, and Mr. James Smith, Director of JNS Hotels Ltd., Company number SC531532 (Licence-Holder) were present on both dates.(b) Persons making Objections or Representations:On the second date (16 September 2019) the following were present:Mr. Robert Allan and Mrs. Mary Allan, 9 Trinity Crescent, BeithMr. Paul Crawford, 1 Arran Crescent, Beith.Ms. Jennifer Winning, 2 Roebank Road, BeithMr. Robert Winning, 2 Roebank Road, BeithOn the third date (18 November 2019) Mr Robert Allan and Mrs. Mary Allan, 9 Trinity Crescent, Beith, addressed the Board (speaking for themselves and for the other residents then present).(c) Representatives for Police Scotland:On both dates: Chief Inspector Shaw and Sergeant Dougan.The Chief Constable had stated that he had no objection to the Variation Application.(d) BoardOn the third date:The Board consisted of Councillors Ronnie McNicol (Convenor), Todd Ferguson (Vice-Convenor), Robert Barr, Jean McClung and Donald L. Reid.The Board were accompanied by William O'Brien (Solicitor (Licensing)), Chris Pollock (Licensing Administration Officer), and Grace Cullen (Licensing Standards Officer, "LSO"). |
| **8. Preliminary issues** |
| By the time that the case called on 18 November 2019, there were no longer any preliminary issues. |
| **9. Summary of submissions made** |
| See below |
| **10. Decision(s) taken** |
| See below |
| **10a. Reasons for decision** |
| See below |
| **11. Legal powers used to come to decision** |
| Section 30 |
| **12. Date statement of reasons issued** |
| 27 November 2019 |
| **Name of Representative of Clerk** |
|  |
| **Print Name** |
| William O'Brien, Solicitor (Licensing) |

# 9. Summary of submissions made

## 9(a) Introduction

The Variation Application proposal related to Premises in Beith now known as "The Roebank Hotel and Wedding Venue", which were formerly "The Trinity Church", a disused church building at the junction of Roebank Road and Trinity Crescent.

In 2017 the Applicant applied for the Grant of a Provisional Premises Licence, and the Board granted this on 30 October 2017. That Provisional Premises Licence was confirmed on 6 December 2018.

The Premises operate as a wedding and function venue with ancillary bistro. They have 3 bedrooms and 4 dining rooms. They are licensed for both on-sales and off-sales. The on-sales capacity is 300 persons.

The Premises are situated in a residential area and are bounded on the west side by Roebank Road and on the south side by Trinity Crescent. There are houses on the other side of each street.

When the Licence was granted in 2017 the Board approved, as well as the building itself, a small outdoor drinking area on the north side of the building - that is, on the opposite side of the building from nearby houses.

In the present Variation Application in 2019 the Licence-Holder sought the Board's authority to extend the Licence to the whole of the ground to the south of the building. Patrons using this ground would be in the line-of-sight of those houses.

On the proposed Layout Plan lodged with the Variation Application, both areas are coloured pink:

- the north area (already licensed) is marked "External drinking/smoking area".

- the south area (proposed) was divided into three areas, marked "Area 1", "Area 2" and "Area 3".

## 9(b) Planning

The Board Report set out the Planning Permission position, at Paragraph 9:

***"9. Planning Permission***

*(a) Original 2017 decision*

*Planning Permission under the Town and Country Planning (Scotland) Act 1997 was granted by North Ayrshire Council on 16 August 2017 for "Change of use and alterations to church buildings to form hotel and wedding venue" (N/17/00518/PP).*

*The Decision Notice expressly excluded the proposed south area. Condition 6 was:*

*"That outdoor drinking, smoking and dining shall take place only on the designated area as illustrated on the plans hereby approved."*

*The "designated area" on the plan in question identified the small area to the north of the building as "External drinking/smoking area." The land which is the subject of the present Variation Application is shown divided into three areas marked on the proposed Layout Plan and marks the south area as "Area 1", "Area 2" and "Area 3".*

*(b) 2019 Variation Decision*

*On 28 August 2019 North Ayrshire Council varied condition 6 of the 2017 Planning Permission by decision N/19/00518/PP. The plan referred to is similar to the proposed Layout Plan, and the variation is as follows:*

*"That the additional areas for outdoor smoking, drinking or dining as illustrated on site plan L(01)010 are hereby permitted to operate between the following hours:*

*Area 1 - (for dining and drinking only): 0900 to 2000 hours or sunset, whichever is the sooner;*

*Area 2 - (for dining and drinking to west of footpath adjacent to holly tree, with incidental smoking): 0900 to 2000 hours or sunset, whichever is the sooner;*

*Area 3 - (for dining, drinking and smoking): 0900 to 2100 hours or sunset, whichever is the sooner.*

*For the purposes of this condition, 'sunset' shall be taken to mean the published daily sunset time for Beith, North Ayrshire, as defined by the Met Office.*

*Prior to Area 3 coming into use, a timber fence as per the approved drawings L(01)010 and (01)012 shall be erected and retained thereafter to the satisfaction of North Ayrshire Council as Planning Authority.*

*For the avoidance of doubt, Areas 1, 2 and 3 shall not be used for outdoor smoking, drinking or dining purposes during hours of darkness and shall not be illuminated (other than for the purposes of safety of persons entering and leaving the premises)." "*

## 9(c) Chronology of Board consideration

The present Variation Application was considered by the Board on three dates:

First Date: 3 June 2019

At that time an issue arose under the Planning legislation. Planning Permission under the Town and Country Planning (Scotland) Act 1997 was granted by North Ayrshire Council on 16 August 2017 for "Change of use and alterations to church buildings to form hotel and wedding venue" (N/17/00518/PP). The Decision Notice expressly excluded the proposed south area. Therefore, even if the Licensing Board on 3 June 2019 granted the requested variation of the Premises Licence to include the south area, that area could not be used unless Planning Permission was granted.

Condition 6 of the Planning Decision Notice was:

*"That outdoor drinking, smoking and dining shall take place only on the designated area as illustrated on the plans hereby approved."*

The plan in question identified the small area to the north of the building as "External drinking/smoking area." The land which was the subject of the present Variation Application was shown on the Layout Plan with the words "gravel", "grass", "staff parking", and "concrete slabs".

The Applicant asked the Board to defer determination of the Variation application pending the Planning Permission being addressed. The Board agreed to this.

Second Date: 16 September 2019

By the time that the Board resumed consideration, the Planning Permission position had changed, so that the use of the south area was permitted, with conditions. North Ayrshire Council, as Planning Authority, had determined that issue on 28 August 2019 (see Paragraph 9(b) above).

The Convenor commenced the hearing of this item of business by announcing to all present that the case was to be continued for a Site Visit, and so there would be no decision that day. Therefore he said parties could an choose either

- to make their submissions that day, or

- to wait until the next meeting on 18 November 2019.

All parties confirmed that they would defer making submissions until after the Site Visit, and the Board decided to continue the case.

Site Visit

The Site Visit took place on Monday 28 October 2019, when Councillors Ronnie McNicol (Convenor), Davina McTiernan, Jean McClung, Robert Barr and Donald Lees Reid attended the Premises, and viewed the Premises, the existing north area, and the proposed 3 south areas.

Also present were:

William O'Brien (Solicitor (Licensing)) and Grace Cullen (Licensing Standards Officer, "LSO");

Mr. Neil Hassard, Solicitor, and Mr. James Smith, a Director of the Licence-Holder;

Objectors:

Mr. Robert Allan and Mrs. Mary Allan, 9 Trinity Crescent

Ms. Jennifer Winning (2 Roebank Road)

Third date: 18 November 2019

The Variation Application was further considered by the Board. The Board heard submissions from the Applicant and the Objectors. The Meeting commenced at 10.01 a.m.. After other business, the Hearing of the present case started at 10.12 a.m.. The Convenor asked the Objectors present to nominate spokespersons, and Mr. Robert and Mrs. Mary Allan, 9 Trinity Crescent, Beith, came forward and sat near the Applicant.

## 9(d) Submissions on 18 November 2019

For the Applicant

Mr. Hassard referred to the recent Site Visit by the Board, when Members viewed the Premises both inside and out, including the existing licensed area at the rear and the proposed three areas at the front.

He commented that there had been what he called a "mixed reception" both to the original application in 2017 and to the present variation request in 2019. He said that the objections in 2017 were similar to those made now. He commented that the representation from the local Community Council was in favour of the variation proposal.

He explained that from a Planning Permission perspective, the south area was divided into 3 Areas, and that the Planning Permission was reflected in the proposed new Layout Plan.

He referred to the concerns expressed by Mr. and Mrs. Allan, 9 Trinity Crescent. Their house was across the road from Area 3, and their concern was with customers smoking there. The Applicant had looked again at this, and a screen would be built. Even without the proposed screening the smoke would dissipate in 9 metres. The Allans' boundary was over 10 metres away.

All Areas would have occasional tables and chairs, CCTV coverage and waiter service. Tables would be removed when not in use.

The Council's Environmental Health officer had made an unannounced visit on 26 October 2019, and was happy with the way the Premises operated. Also, there was no Police objection to the Variation proposal.

The Variation proposal was, he said, welcome locally, and the Premises were a well-used facility. The Premises were well run. He invited the Board to grant.

Other Supporters

Addressing the public seats, the Convenor asked if there were any supporters of the Variation proposal present. There were none.

Objectors

Mrs. Allan said that the Scottish Government was against smoking outside hospitals, and here the Applicant wanted a smoking area directly across from her house. She said that the residents' complaints fell on deaf ears. In summer, her windows are open and she and her husband have their grandchildren. The smoke would carry over to her house and garden.

She pointed out that the Premises already had a smoking area at the rear, and asked why it was necessary to have another smoking area at the front? There was a front area away from her house, but most of the proposed front area was near her house.

The neighbourhood had suffered from antisocial behaviour linked to the Premises as they were already operating. It was bad enough with their customers being inside most of the time. If they were outside at the front too then the problem would only get worse. She and her husband had already had to move to the bedroom at the back of their house to get away from the nuisance.

There had been many incidents. They had not called the Police. She gave an example from last weekend (the night of Saturday 16 / Sunday 17 November 2019). At 00.45 there was shouting and bawling, and taxi horns sounded. The Premises staff did not supervise this.

Customers just stand outside smoking. She and her husband would sit in their garden in the summer, but they could not do that if the proposal was granted.

Referring to the Representations in favour of the proposals, she said that these people did not live locally, whereas the neighbours were against the proposals.

The Convenor asked Mr. Hassard if he had any comments.

Response for Applicant

Mr. Hassard said Mr. Smith was aware of the situation and apologised for it. He had taken steps to address the problems. For example, minibuses bringing customers to the Premises are instructed to wait at the bus stop on the main road (Roebank Road). He said that on one occasion a 12-seat minibus had come up to the Premises, and that the instruction would be reinforced. He said "There will be zero tolerance to any shenanigans".

He reminded the Board that the Members had seen the rear area, and that they would agree with him that it was not "an aesthetic area". The proposal was that the rear area would continue to be used by customers attending functions, and that the front area would be for customers using the other facilities of the Premises.

He explained that the Applicant had not sought the division of the south area into 3 Areas, but that this had been done by the Council's Planning Department.

Area 3 would only have a couple of tables and chairs, would be covered by CCTV and staffed.

He referred to the patronage of the Premises - the bistro offered a full menu, and the Premises did not operate primarily as a bar. When the Premises catered for a function, customers wishing to smoke would be directed out to the rear area, and not to the front Areas which were the subject of the present variation proposal.

The Convenor asked if the Premises would allow smoking in Areas 2 and 3 when food was supplied.

Mr. Hassard said:

Area 1: there would be 'no smoking' signs'

Area 2: 'incidental smoking' - customers could have a cigarette after a meal.

Area 3: smoking

The Convenor asked what type of functions did the Premises cater for? How many weddings?

Mr. Smith said that in the past year the Premises had had two large weddings, and three small weddings (about 20-30 people). Next week there would be a wedding with 15 people. There had also been two vow renewal ceremonies. There were 3 Christmas Parties arranged for this year. The Premises host a Hallowe'en party, a psychic night, birthday parties, ladies' lunches and charity events. About 4 weddings were arranged for next year - the lead time for arranging weddings was long.

Councillor McClung asked if the front area is currently used at all?

Mr. Smith said that it was not, and the area had not yet been landscaped. It was however an ongoing effort to stop customers smoking there. Mr. Smith said that Area 3 was kept closed by a locked gate, and customers could not get in there. (Mr. and Mrs. Allan disagreed with this statement).

Mr. Smith said that all smokers go round the back of the Premises. He accepted that it sometimes does happen that a few customers go out the front to smoke.

Mr. Hassard pointed out that customers going to any Premises might arrive smoking, and so they will finish their cigarettes and discard the butts before they enter, even if there are signs saying 'no smoking'.

The Convenor said that he'd seen the Community Council letter, and asked if the Applicant had met them. Mr. Smith said that it had been his brother and co-Director Neil who had met them. They were very active in the community, and the Premises catered for local events.

Councillor Reid said that he'd been very objective and had listened to all sides. There needed to be a balance. On the one hand, what the Applicant had done to develop the Church building was very good, but on the other hand this was a residential area. The Councillor said he was at the Community Council meeting when they agreed to write a letter in support of the Licence-Holder, but he was also at a later meeting when they said they had changed their mind.

He asked - would refusal of the proposal affect the viability of the Premises?

Mr. Hassard said that it would. The Applicant had done two business projections, one with the Variation granted and one without the Variation, and there was a significant difference.

The Convenor asked how many people do the Premises employ? Mr. Smith said 14.

The Convenor asked how many tables and chairs were planned?

Mr. Hassard said:

Area 1: 6 tables (being 3 on each side of the entrance)

Area 2: 3 tables

Area 3: 3 tables

Councillor Reid asked Mr. Smith how great an effort did he make to encourage smokers to use the rear area? Mr. Smith replied that most of the Premises' customers are regulars, so already know where they should go. Mr. Hassard reminded the Board that at the Site Visit they had seen the fixed umbrellas in the rear area. The Applicant said that the rear area is not monitored and holds 8-9 people.

Mr. Hassard said that the Applicant was happy with the Planning Permission, and wanted something similar from the Licensing Board.

Mr. and Mrs. Allan said that one of their concerns was with the lack of monitoring of the front. There was already smoking and noise at the front, with customers using mobile phones and swearing.

The Solicitor (Licensing) referred Mr. Hassard to Paragraph 10 of the Report to the Board (headed "Possible Licence Conditions") and asked him to comment. Mr. Hassard said that these were "eminently sensible".

## 9(e) Deliberation

At 10.45 the Board retired to Members Lounge to deliberate in private, accompanied by the Solicitor (Licensing). The Board returned to the public meeting at 11.02 a.m..

After making the decision (see Paragraph 10 below) the Board continued to deal with other business and the Meeting ended at 11.53 a.m..

# 10. Decision(s) taken

The Convenor enquired if there were any Motions.

Councillor Barr moved that the Board make the following decision:

- Area 1:

granted: for meals, teas, coffees and other non-alcoholic drinks in the period beginning at 09.00 and ending at the earlier of 20.00 or sunset; and

granted: for the consumption of alcohol in the period beginning at 11.00 and ending at the earlier of 20.00 or sunset; and

refused: smoking;

- Area 2 : refused;

- Area 3 : refused.

Councillor Ferguson seconded this Motion.

The Convenor said that this would permit Area 1 with conditions.

He enquired if there was any other Motion. There was no other Motion, and no expression of abstention or dissent. The Motion was held carried unanimously: "qui tacet consentire videtur".

The Convenor said that the Board would re-consider if there were further complaints of antisocial behaviour. He told the Applicant that it was essential that he worked with his neighbours.

Mr. Hassard requested a Statement of Reasons. He did not seek a Direction under Section 32 (so as to permit a further Application within one year without the need for a material change of circumstances).

# 10a. Reasons for Decision

## (a) Board's approach to Objections and Representations

An Objection or Representation may be:

(a) treated as 'not made' if it is lodged late (The Licensing (Procedure) (Scotland) Regulations 2007 No. 453, Reg. 10); and

(b) rejected as "frivolous or vexatious" under Section 22(4),

but otherwise the Board are obliged to have regard to it (Section 22(3)(b)), whether or not the person making it attends the Board.

There were no submissions on issue (a) or (b) in relation to any of the letters. The Board were satisfied that the Objections and Representations they had received were competent and did not fall to be rejected as “frivolous or vexatious” under Section 22(4).

Accordingly the Board had regard to all the Objections and Representations made. These were copied in the pack of papers which each Member had seen before the Meeting.

## (b) Forum

The Licensing Forum did not give any advice or make any recommendation to the Board in relation to the particular Application, and accordingly the duty on the Board created by Section 12 did not arise.

## (c) Potential Grounds for Refusal

Section 30(4) and 30(5) are:

*"(4) Where a Hearing is held under subsection (3), the Board must consider whether any of the Grounds for Refusal applies and—*

*(a) if none of them applies, the Board must grant the Application,*

*(b) if any of them applies, the Board must refuse the Application.*

*(5) The Grounds for Refusal are—*

*(a) that the Application must be refused under section 32(2), 64(2) or 65(3),*

*(b) that the Licensing Board considers that the granting of the Application would be inconsistent with one or more of the Licensing Objectives,*

*(c) that, having regard to—*

*(i) the nature of the activities carried on or 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 in accordance with the proposed Variation,*

*(d) that 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 the same or similar description as the subject premises (taking account of the variation), in the locality."*

## (d) Consideration of Grounds for Refusal

The Board were satisfied that neither of Grounds for Refusal (a) or (d) applied. There were no mandatory refusal grounds present so Ground (a) did not arise. There was no Overprovision issue, so (d) did not arise.

The Board considered that the considerations relevant to Ground (b) (Licensing Objectives) overlapped with the considerations relevant to Ground (c) (Unsuitable Premises), and that accordingly Ground (c) did not require to be separately discussed.

The Board were satisfied that the proposal was inconsistent with two Licensing Objectives.

## (e) Ground for Refusal (c): inconsistency with Licensing Objective(s)

The Board were satisfied that the proposal was inconsistent with two Licensing Objectives:

(c): 'preventing public nuisance'

(d): 'protecting & improving public health'

Here, "Licensing Objective" is shortened to "L.O.".

## (f) L.O. (c): 'preventing public nuisance'

Any increase in the level of activity was likely to expose residents to a nuisance, so the Board required to consider whether or not this possibility could be countenanced.

The Board were familiar with the Premises and their history. The Board had no doubt that the Objectors were credible and reliable and that they were giving an accurate account of their experiences. The Board had in 2017 sought to strike a balance between competing interests, and considered that permitting any material change in the use of the Premises created a likelihood that that balance would be upset. The Licence-Holder's proposal in 2019 had the likely effect of increasing the neighbours' cause for complaint, by bringing customers closer to residences.

The Board agreed with Mrs. Allan's statement that the Representations favourable to the Licence-Holder tended to come from people who did not live near the Premises, whereas the Objections came from local residents. The Board noted Mr. Hassard's reference to the Community Council's representation, but discounted that Representation given Councillor Reid's statement during the Board meeting about the Community Council's later change of opinion.

The Board noted Mr. Hassard's statement that the Council's Environmental Health officer had visited the Premises on 26 October 2019, and was happy with the way the Premises then operated. The Board did not attach any weight to that statement. At the time, the Premises were operating without the proposed variation, so the statement was not conclusive on the questions of

- whether or not the Premises were suitable for use with the proposed variation, or

- whether or not their use with the proposed variation was not inconsistent with the Licensing Objectives.

The Board considered that there was a likelihood that what was barely tolerable now would, if the variation proposals for all 3 Areas were granted, become intolerable. Areas 2 and 3 were particularly close to the houses in Trinity Crescent. Trinity Crescent is a narrow street, with the Premises, and the proposed 3 southern Areas, on one side and the houses on the other. The Board was satisfied that the noise of customer speech and mobile phone use would be likely to be a significant nuisance to the occupants of the houses. The proposed screen at Area 3 was unlikely to be an effective mitigation measure. The Board was not impressed by the statement that smoke would dissipate before reaching the Allans' house at 9 Trinity Crescent.

The Board considered that it was improbable that customers would use Areas 2 and 3 primarily for eating meals, and that it was more likely that the main use of these Areas would be for smoking. The Board did not regard it as realistic to describe Area 2 as 'incidental smoking' and to distinguish it from the "Designated Smoking Area" which the Applicant proposed to use Area 3 as.

## (g) L.O. (d): 'protecting & improving public health'

The Board were aware of the potential relevance of the European Convention on Human Rights and of its duty as a "Public Authority" under Section 6 of the Human Rights Act 1998 to have regard to the Convention. The Report the Board considered on 18 November 2019 included:

***"7. Human Rights***

*The Board requires to balance competing rights:*

*(a) Regularly exposing neighbours to noise and other nuisances may breach neighbours’ human rights to respect for private life, family life and home under European Convention on Human Rights, Article 8. If the Board was being asked to permit nuisance (by granting or varying a Licence), its decision might be the basis of a claim for compensation by them against the Board (such a claim has been recognised by the European Court of Human Rights - Gomez v Spain [2004] ECHR 633); but*

*(b) The Licence Holder has a right to free enjoyment of his possessions (the Licensed Premises): ECHR, Protocol 1, Article 1.*

*Neither right is absolute. The Board is obliged to have regard to the Licensing Objectives, but the duty is solely to ‘have regard’ to them. None of the considerations (Licensing Objective, "unsuitable premises", or Human Rights) are conclusive. They do not oblige the Board to impose such a substantial restriction that the Premises become uneconomic."*

Article 8(1) is:

*"Everyone has the right to respect for his private and family life, his home and his correspondence."*

The Board was satisfied that a decision to grant the proposal to extend the Licence to Areas at the front of the building had the potential to be inconsistent with Convention Rights, and that it was necessary to strike a balance between the competing rights referred to. The Board is only entitled to infringe that right where Article 8(2) applies. Article 8(2) is:

*"There shall be no interference by a Public Authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Although:

- the Board had the legal power to grant the Variations proposed ("in accordance with the law"),

- they were not satisfied that it would be a proportionate interference with the Convention Right to grant all the proposals requested by the Licence-Holder.

It was necessary to take each proposal in turn, and consider what the appropriate balance of the competing interests might be. The Board did so, and took into account the extent of the proposed use of the area in question, the times of operation, and the proximity of the area to nearby noise-sensitive places, such as houses.

Having done so, the Board considered that there was a distinction to be drawn between Area 1 on the one hand and Areas 2 and 3 on the other. In the Board's view, smoking was particularly likely to cause a nuisance, both from the smoke and from customers. The Board knew that typically customers who have taken drink tend to speak more loudly than when they are sober.

## (h) Conclusion

The Board had regard to all the submissions, Objections and Representations and determined that in relation to Areas 2 and 3 a "Ground for Refusal" stated in Section 30(5) existed. They therefore refused the Application for Variation to that extent as they were obliged to do by Section 30(4).

Under Section 30(6) the Board varied the conditions of the Premises Licence by substituting Condition C.5.2 of its Standard Conditions (times of drinking) with:

*"C.5.2 These conditions apply to the use of the four Areas shown coloured pink on Layout Plan (01)005 Revision D:*

*"The North Area" - the small area immediately adjacent to the north side of the building;*

*"Area 1", "Area 2", "Area 3" - areas to the south of the site and so marked on the Layout Plan ("the South Areas");*

*(a) Definitions:*

*"Sunset" - the published daily sunset time for Beith, North Ayrshire, as defined by the Met Office.*

*"Premises" includes any of the four Areas.*

*(b) In "The North Area" and "Area 1": no drinks (alcoholic or not) shall be taken into or consumed in these areas earlier than 11.00 a.m. and later than 10.00 pm.,* ***except*** *that teas, coffees and other non-alcoholic drinks may be taken into or consumed in either of those areas from 09.00 a.m..*

*(c) Area 1 may only be used for dining and/or drinking (but not smoking) between 09.00 to 20.00 hours or Sunset, whichever is the sooner;*

*(d) Area 2 and Area 3 may not be used at all.*

*(e) the South Areas shall not be used at all after Sunset other than for the purposes of entering and leaving the Premises;*

*(f) the South Areas shall not be illuminated after Sunset other than for the purposes of safety of persons entering and leaving the Premises.*

*(g) No Fireworks may be used on the Premises."*

## (i) Further Action

Although the Board granted the Application so far as Area 1 was concerned, the parties should not regard this decision as final. The Board's approach was set out in Paragraph 11 of the Report:

*"11. Further action*

*Even if the Board permits the Outdoor Drinking Areas in the South Areas initially, it may review that decision later if satisfied that the operation of that Area is not consistent with the L.O. on Review Application by any resident under Section 36."*

The Board had considered the possibility of refusing the entire variation, relating to all 3 Areas at the front of the Premises, and was not satisfied on the information available that this was appropriate, but was aware that it might have to review the position in the future if a resident commenced the relevant statutory procedure.