

EAST LOTHIAN

Meeting 22 February 2018 at 10:00am in Council Chambers, Town House, 56 High Street, Haddington, East Lothian

Licensing (Scotland) Act 2005

Premises Licence Review(s)	Applicant	Date Received	Comments
2 NISA LOCO RASUL BROS 96 LOCHBRIDGE ROAD NORTH BERWICK EAST LOTHIAN EH39 4DP	POLICE SCOTLAND	29 January 2018	
3 MACMERRY MINERS WELFARE & SOCIAL CLUB 13A MAIN STREET MACMERRY EAST LOTHIAN EH33 1PB	POLICE SCOTLAND	22 January 2018	
4 PANS CONVENIENCE STORE 5 HAWTHORN ROAD PRESTONPANS EH32 9QW	POLICE SCOTLAND	8 February 2018	

Date 7th February 2018



**POLICE
SCOTLAND**

Keeping people safe

Philip Gormley QPM
Chief Constable

Your Ref: EL0335

Our Ref: J/LIC/3705/HB

The Clerk of the Licensing
Board
East Lothian Council
John Muir House
Haddington
East Lothian
H41 3HA

Local Area Commander
The Lothians and Scottish Borders Division
Haddington Police Station
39-41 Court Street
Haddington
EH41 3AE

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005 - SECTION 36
PREMISES LICENCE REVIEW APPLICATION**

**Pans Convenience Store, 5 Hawthorn Road, Prestonpans, East Lothian,
EH32 9QW.**

PREMISES LICENCE HOLDER: Abdul Nadeem, [REDACTED]

In terms of section 36(1) of the Licensing (Scotland) Act 2005 I hereby make application to the East Lothian Licensing Board for a review of the premises licence in respect of the premises known as as Pans Convenience Store, 5 Hawthorn Road, Prestonpans, East Lothian, EH32 9QW.

This application for review is made in terms of Section 36(3) (b) on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely:

- Preventing crime and disorder
- Protecting children and young persons from harm

In support of this application, and in terms of section 36(5A) the following information is provided for your consideration.

The premises is a local convenience store situated within a residential area of Prestonpans. The licence holder and Designated Premises Manager is Abdul Nadeem.

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It is pertinent to note that the premises has previously failed a test purchase back in December 2015. The then, premises licence holder, surrendered the premises licence. The now, premises licence holder Abdul Nadeem, operated on occasional licences while a new application for a premises licence was submitted. In March 2016 a provisional premises licence was granted and in April that year (2016), a full premises licence was granted, with a condition attached that there was a personal licence holder on the premises at all times during licensed hours. At the request of the licence holder, in October 2016, the condition was removed from the premises licence by the Board.

Under the terms of Section 105(3) of the Licensing (Scotland) Act 2005, the Chief Constable may authorise a child or young person (a test purchaser) to buy or attempt to buy alcohol for the purposes of determining whether a person has committed an offence under Section 102 of the Act by selling alcohol to such a child or young person. Test purchasing provides the Police with an essential tool in the fight against underage sales and underpins the no-proof, no-sale provisions, which represent an important safeguard in tackling the underage drinking and antisocial behaviour which adversely affect many communities.

Stringent controls are employed by Police Service of Scotland for the recruitment of test purchasers and the conduct of any Test Purchase Operation. Standard Operating Procedures are in place to ensure that operations are carried out safely, fairly and effectively. The procedures were prepared in consultation with various governmental groups and organisations including the Crown Office, Scotland's Commissioners for Children & Young People, the Society of Chief Officers for Trading Standards in Scotland, the Association of Chief Police Officers in Scotland, the Convention of Scottish Local Authorities and the Scottish Executive, under the auspices of the Scottish Executive Enforcement Advisory Group on Age Restricted Sales.

A Test Purchase Operation may be carried out on premises for any of the following reasons:

- There is intelligence to suggest that alcohol is being sold illegally to persons under 18 years of age from specific licensed premises; and/or
- There is intelligence indicating that the licensed premises are situated in a locality where persons under 18 years of age are consuming alcohol.
- The premises being within a locality where all premises are being subjected to a test purchase operation, in a non-discriminatory manner, to raise awareness in relation to the illegal sale/purchase of alcohol in licensed premises.

Test purchasing involves utilising the services of a young person to enter licensed premises and attempt to purchase alcohol under the direct observation of at least one plain clothes Police Officer also within the premises. The young person must be between 16 and 16½ years of age at the time of a Test Purchase Operation. In addition to age, a test purchaser is continually assessed on their appearance,

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level of maturity and general character. If, for instance, the young person looks older than 16½ years of age, they will not be used in a Test Purchase Operation.

The test purchaser is told that all questions which may be asked by the seller must be answered truthfully. In particular, the test purchaser must, if challenged, state their correct age. Further, if the initial attempt to buy alcohol is refused, the test purchaser must not try to persuade or coerce staff to make a sale. In short, licensed premises will pass a Test Purchase Operation if staff simply challenge the test purchaser regarding his or her age.

As such, it was decided to conduct a test purchase operation in the East Lothian area in a non-discriminatory manner, to raise awareness, and as part of that operation on the 5th December 2017 a total of 26 'off sale' licensed premises were tested within the Prestonpans, Tranent and Musselburgh areas, with 2 failing.

At 1745 hours on Tuesday 5th December 2017, a Test Purchase Operation was conducted at the premises and a test purchaser was sold a four pack of lager without being asked for identification or being challenged as to their age. Consequently, Louise Mackenzie, a Sales Assistant is now the subject of a report to the Procurator Fiscal at Edinburgh Sheriff Court regarding the contravention of Section 102 of the Licensing (Scotland) Act 2005.

Consequently, the DPM Abdul Nadeem, is now the subject of a report to the Procurator Fiscal at Edinburgh Sheriff Court regarding the contravention of Section 103(1) and Section 141B of the Licensing (Scotland) Act 2005.

On Monday 11th December 2017, following the test purchase failure, the Police Licensing Officer and East Lothian Council's Licensing Standards Officer, visited the premises. They spoke with the DPM Mr Abdul Nadeem who stated that Louise MacKenzie had been working for him for approx. 3 years. He produced a training record which was signed by Louise and himself, dated 20th March 2016. He then showed us the CCTV footage of the test purchase sale. The member of staff made no attempt to look at or challenge the TP for ID. Mr Nadeem had no explanation for this.

Additional Information

Following the previous test purchase failure back in December 2015, there were a number of store policies put in place by Mr Nadeem, one of which was to record ALL alcohol sales. This wasn't done on the night (5th December 2017) the Test Purchaser was sold alcohol.

The Police Licensing Officer also noted that back on 23rd March 2016 herself and the LSO visited the premises whilst it was operating under occasional licences. At that time Louise MacKenzie was working within the store, stacking shelves. When asked if she had a training record, Louise stated that she did not have one and that her job was to stack shelves and serve behind the counter. Louise was asked about the sale of alcohol and she stated that she was not allowed to make the sale as she had not completed the training. A short time later Mr Nadeem arrived

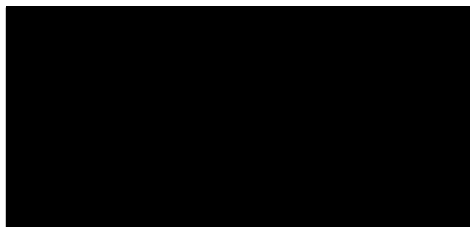
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at the shop, whilst checking the paperwork, Mr Nadeem produced a training record relating to Louise MacKenzie. This consisted of two pieces of paper which were signed off by Louise and Mr Nadeem dated the 20th March 2016. The Police Licensing Officer quizzed Mr Nadeem about the training record and informed him that when asked, Louise had stated that she did not have a training record and that she did not sell alcohol. Mr Nadeem just shrugged his shoulders and stated that it was there. The LSO asked Mr Nadeem what training material he used. He stated that he had given her 'verbal training'. Advice was given at that time to Mr Nadeem, as to what training material was preferable.

At 1900 hours on Thursday 14th December 2017, a second Test Purchase Operation was conducted at the premises. On that occasion, alcohol was not sold to the Test Purchaser.

I request that the Licensing Board considers the aforementioned grounds for review and take such steps as it considers necessary or appropriate for the purposes of the Licensing Objectives under the terms of Section 39(2) or 39(2)(2A) of the Act.

Yours faithfully



Philip Gormley QPM
Chief Constable

Date: 17/01/2018

For enquiries please contact the Licensing Department on 01620 826147

EAST LoTHIAN COUNCIL

LICENSING ADMINISTRATION AND DEMOCRATIC SERVICES

From: Rudi Fruzynski,
Licensing Standards Officer

To: Kirstie MacNeill
Clerk to the Licensing Board

Date: 09 Feb. 18

Subject: LICENSING (SCOTLAND) ACT 2005 - PREMISES LICENCE REVIEW
PANS CONVENIENCE STORE, 5 HAWTHORN ROAD, PRESTONPANS,
EAST LoTHIAN EH32 9QW

On Wednesday 7th February 2018, I received intimation in terms of Section 38(3)(b) of the licensing (Scotland) Act 2005 that the Licensing Board had accepted an application to review the Premises Licence in respect of the above premises.

In terms of Section 38(4) of the Act, I have prepared this report outlining the basis of the request for the review, which is submitted for the information of Licensing Board Members.

R. Fruzynski
Licensing Standards Officer

Licensing Standards Officer's Report

I refer to the Police report requesting this review dated 7th February 2018. I do not wish to add anything to the observations contained in this report which relates to the joint police and LSO visits to the Pans Convenience Store on 11th December 2017, following the failed test purchase operation the previous week, and the earlier visit made on 23rd March 2016 when a confusing picture evolved concerning the staff training and sale of alcohol by shop assistant Louise Mackenzie.