

MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 23 JANUARY 2014
SALTIRE ROOMS, JOHN MUIR HOUSE, HADDINGTON**

Board Members Present:

Councillor J Goodfellow (Chair)
Councillor S Akhtar
Councillor D Grant
Councillor W Innes
Councillor F McAllister

Clerk of the Licensing Board:

Mrs K MacNeill

Attending:

Mrs M Ferguson, Corporate Legal Adviser
Insp Harborow, Police Scotland
PC H Bowsher, Police Scotland
Mr R Fruzynski, Licensing Standards Officer
Ms C Molloy, Senior Solicitor
Ms D Richardson Licensing Admin Officer

Committee Clerk:

Ms J Totney, Democratic Services Manager

Apologies:

Councillor C Currie (*not yet undertaken training*)
Councillor T Trotter (*not yet undertaken training*)

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – 28 NOVEMBER 2013

The minutes of the Licensing Board meeting of 28 November 2013 were agreed to be a true record.

2. PROVISIONAL PREMISES LICENCE

(i) The Johnnie Cope – Hawthorn Road, Prestonpans

The Clerk advised that detailed comments had been received from the Police and the Licensing Standards Officer (LSO) and that there were no objections from members of the public. She reminded Board members that the matter had been continued from the November 2013 meeting; that this is a new application; and that the

Board should have regard to the over provision statement in the Licensing Policy when determining this application.

The applicant, Mr Paul Kane, was present and was represented by Mr MacDonald of MacDonald Licensing.

Mr MacDonald advised, that as a result of the comments from the Police and LSO, a number of proposed amendments had been submitted to the Licensing Admin Officer. Mr MacDonald tabled copies of these. He stated that a definite tenant had now been identified and that a 21 year lease had been signed; he stressed that the premises would be run as a café/bistro and not as a public house; and he stated that, at least initially, the business would cater for eat-in/take-out lunches for school children.

At this point, the tenant, Mr Abdul Nadeen, joined the meeting.

Mr MacDonald stated that the licensing start time would be amended to 12 o'clock midday (with a start time of 4pm Monday – Thursday); that the room designated for use by children would not display alcohol; and that there was no longer an objection from the owner of a nearby public house. In relation to the issue in respect of the over provision policy, he ran through how each of the five licensing objectives would be met.

Insp Harborow and the LSO confirmed that they had no outstanding issues.

In response to Councillor Innes, the Clerk of the Licensing Board advised that if a licence is granted for a café/bistro, the Board would need to grant a variation to the licence should the premises intend to operate as a public house at a future date. She also advised that the Board could impose a local condition so that alcohol could only be served with food purchases.

Councillor McAllister indicated his ambivalence and raised concerns in relation to the off-sales element of the application in relation to the over provision policy. In response to comments and questions from Board members, Mr MacDonald advised that he would be agreeable to the off-sales of alcohol being removed from the licence.

Councillor Goodfellow, Chair of the Licensing Board stated that he would support granting the application but voiced his concerns at going outwith the over provision statement. He therefore informed Mr MacDonald that robust and reliable evidence/control measures should have been submitted rather than the simple statements that had been made in respect of meeting the licensing objectives.

Decision

The Board agreed to grant the provisional premises licence.

3. VARIATIONS OF PREMISES LICENCE

(i) The Burgh – 83 High Street, Musselburgh

The Clerk stated that the application seeks to amend core on-sale hours as follows: Monday – Thursday to 12 midnight (currently 11pm); Friday and Saturday to 1am (currently 12 midnight); and on Sunday from 11am to 1am (currently 12.30pm to 12

midnight). She advised that three public objections had been received but that no objectors were present, and that comments had been received from the Police, the LSO and the Council's Planning Department. The Clerk pointed out that the hours being sought are outwith licensing policy and also trigger the over provision policy.

Mr Nick Hule, the tenant and operator, was present and was represented by Mr Niall Hassard of Lindsays.

Insp Harborow highlighted his concerns in relation to the terminal hour being requested for Fridays and Saturdays; over provision; the prevention of crime and disorder; the number of public houses in the area; and concerns about a repeat of previous anti-social behaviour in this area at closing time. The LSO advised that he had nothing to add to his report which was contained in the Board papers.

Mr Hassard presented on behalf of his client, indicating that in his view, the matter of over provision is irrelevant and does not apply to the extension of hours for existing licensed premises. He reported that there have been no incidents or complaints since his client took over the premises in November 2013; a period which included the busy Christmas and New Year trading when the premises were open for extended hours. He claimed that the concerns regarding anti-social behaviour are general assertions which are not evidence based; and confirmed that his client is aware of the terminal hour of 8pm in the outside beer garden. Mr Hassard informed the Board that his client is seeking to align the terminal hour for his licensed premises with that of other nearby public houses.

In response to Councillor McAllister, Mr Hassard confirmed that contact had been made with local residents in response to objections that had been raised concerning the beer garden and that people eating take away food in the street are the source of some anti-social behaviour.

Mr Hassard summed up, re-iterating that the issue of over provision is erroneous in relation to this application.

Mr Hule indicated that The Burgh only caters for around 25 patrons; the premises have recently been refurbished; and that a chef will imminently be employed so that food can be sold.

The Board members and the Clerk adjourned in private.

On returning to the meeting, Councillor Goodfellow asked about the measures that would be put in place to prevent smokers using the beer garden after the terminal hour of 8pm. Mr Hule informed the Board about the CCTV arrangements and clear signage at the premises.

Decision

The Licensing Board agreed to grant the variation to the premises licence but Councillor Goodfellow, Chair, made it clear that the Board did not accept the argument that the application falls outside the over provision statement and that the Board has agreed to grant the variation due to the exceptional circumstances of the application.

(ii) Day-Today (Formerly Nisa Stores) – 32 Redburn Road, Prestonpans

The applicant's son, Mr Ashiq, was present.

The Clerk stated that the application seeks to change the premises name from Nisa Stores to Day-Today; to vary opening hours to change to 6am – 10pm (no alcohol will be sold until 10am); and to add home deliveries (alcohol will only be delivered between 10am and 10pm).

Decision

The Licensing Board agreed to grant the variation to the premises licence.

(iii) Glenkinchie Distillery Visitor Centre – Glenkinchie, Pencaitland

No one was present to represent the applicant.

The Clerk stated that the application seeks to change the opening time on a Sunday from 10am to 12 o'clock midday. She informed the Board that there are no objections and secured agreement from the Board members that they had sufficient information before them to make a decision on the application.

Councillor Grant, Local Ward Member, stated that he would support the application despite it infringing on the over-provision policy.

Decision

The Chair stated that there is a comprehensive operating plan which addressed the licensing objectives. The Licensing Board therefore agreed to grant the variation to the premises licence.

(iv) The Musselburgh Golf Club – Monktonhall, Musselburgh

No one was present to represent the applicant.

The Clerk stated that the application seeks to change from a club licence to an open licence.

The Police requested that children aged 15 and under vacate the premises by 10pm unless they are attending a private function and that young persons aged 16 – 17 on the premises after 10pm must be accompanied by a responsible parent or guardian.

The Clerk indicated that the applicant is agreeable to the conditions requested by the Police.

Decision

The Licensing Board agreed to grant the variation to the premises licence subject to the conditions regarding children and young people.

4. GRANT OF BETTING SHOP PREMISES LICENCE

(i) William Hill - 89 High Street, Tranent

Mr Andrew Hunter from Messrs Harper McLeod LLP, was present to represent the applicant and was accompanied by Mr Elliot of William Hill. Ms M Allan, an objector, was present.

The Clerk informed that Board that two public objections had been received by email although these did not indicate personal addresses. At the request of the Clerk, Ms Allan provided her home address.

Mr Hunter presented the application on behalf of William Hill. He stated that there would be a £210K investment in the premises; stressed the Licensing Board Policy with regard to determining betting shop licences; stated that William Hill have a high level of corporate governance, including an external test purchase programme; and indicated that there is nothing to suggest that William Hill would not operate the premises responsibly.

Councillor Grant, Local Ward Member, referred to the fact that an earlier application from William Hill had been refused in 2010 and commented that there are already two other betting premises on Tranent High Street, within 20 metres of this proposed betting shop. While over provision is not a reason to refuse this application, he nonetheless queried the capacity for three betting shops in Tranent and enquired as to why William Hill had chosen Tranent. Mr Elliot indicated that research suggests there is a market for their business in Tranent.

Councillor Akhtar, Local Ward Member, raised concerns with regard to protecting children from harm; exploitation; the fact that there is a school and youth project in close proximity to the proposed betting shop; and the high number of children who frequent Tranent High Street at lunchtime and other times.

Mr Hunter responded in detail and advised that there are no objections from the Council's Children's Services or from the school; William Hill operates a Challenge 21 Policy; Under 18s are not permitted on the premises; William Hill has a very thorough staff training policy; premises are equipped with CCTV; and there is nothing to indicate that vulnerable people would gamble more as a result of William Hill opening on Tranent High Street.

In response to several questions from Councillor McAllister, Mr Elliot advised that William Hill are looking for a share of a current vibrant market; four fixed odds betting machines would be installed in the premises; and that some towns would not be a profitable location for William Hill. Councillor McAllister clearly expressed his concerns with regard to the fixed odds betting machines. In response, Mr Hunter stated that four fixed odds betting machines were permitted and pointed out the requirement to assess the application based only on current legislation and not the fact that these machines had been the subject of press comments and reports. He added that William Hill rigorously follow the Gambling Commission guidelines.

Mr Elliot advised the Chair that there are gaps between the advertising boards in the premises windows so it is possible to view parts of the interior of the premises from outside when walking past.

In response to the Chair, Mr Hunter outlined William Hill's approach to monitoring and dealing with vulnerable people and Mr Elliot indicated that he was unaware of

any collaborative arrangements that would be put in place in this respect between the betting shops in Tranent.

There were no comments from the Police and the SLO.

Ms Allan advised that there had been a survey of over 1,000 residents in Tranent and Elphinstone; and that residents did not want a further betting shop in Tranent. She urged William Hill to reconsider their application.

Mr Hunter reported that objections had been responded to and commented that the survey findings just amounted to general concern and to not evidence as to why the application should not be granted and referred to the Board's Statement of Principles at section 3.1.3. He added that the existing betting shops in Tranent had never been called before the Board, thereby assuming that they posed no risk to children and vulnerable people. He stressed in the strongest terms that the Board were required under legislation required to grant this application.

Councillor Grant acknowledged the legislative restrictions on refusing the application but commented that he was not likely to support the application, based on principle as it was his view that another betting shop would not be beneficial to Tranent High Street.

In response to Councillor Akhtar's repeated question regarding children, Mr Hunter indicated that William Hill could not patrol the High Street and but they can and do prevent them from entering their premises. In response to Ms Allan, he stated that any incidents of children going into the existing betting shops should be reported to the proper authorities.

Councillor Innes welcomed the move to bring betting shops onto High Streets and to regulate their activities. He commented that some people like betting and they deserve a quality service in this regard. He acknowledged that there is no legal reason why the Board can refuse this application and stated that an additional betting shop just equates to competition on the High Street, adding that he had heard no adverse reports regarding young people and the betting shops in Tranent.

Councillor McAllister stated his concerns in relation to vulnerable adults. He advised that he would support the application given that there are no legal grounds to object to it.

The Board put the decision to the vote:

For – 3

Against – 2

Decision

The Licensing Board agreed to grant the betting shop premises licence. In delivering the Board's decision, Councillor Goodfellow advised that, due to legislation giving the Board no room to manoeuvre or consider local opposition or local factors; it was with much regret and distress that the Board granted this application.