

MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 27 FEBRUARY 2014
SALTIRE ROOMS, JOHN MUIR HOUSE, HADDINGTON**

Board Members Present:

Councillor J Goodfellow (Chair)
Councillor S Akhtar
Councillor C Currie C
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 MacKay 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 T Trotter

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – 7 JANUARY 2014 AND 23 JANUARY 2014

The minutes of the Licensing Board meetings of 7 January 2014 and 23 January 2014 were agreed to be a true record.

2. GRANT OF PREMISES LICENCE

(i) The Waterloo Bistro – Tyne House, Poldrate, Haddington

The applicant, Mrs Ann Kinnoch was present and was represented by her husband, Mr Paul Kinnoch, Designated Premises Manager.

The Clerk advised that the application is seeking the grant of a premises licence. She informed the Board that three public objections had been received from owners/residents of the properties in the adjoining Tyne House apartments and advised that the objectors/their representatives were present at the meeting.

Mr Kinnoch addressed the Board and acknowledged that he was aware of the representations from the objectors. He summarised the contact he has had with the owners/tenants/their agents and stated that the objectors had received notification of this application for a premises licence. Mr Kinnoch described the mitigating actions he has taken in respect of complaints and objections to items such as kitchen noise, noise from the beer cellar and live music. In relation to live sports, he advised that this would only be for significant sporting events such as the Ryder Cup. Mr Kinnoch added that he had managed the premises since 2008 and that he has encouraged the residents in the neighbouring properties to discuss any issues with him so that these could be addressed. He commented that the success of his current business has attracted more people to the premises in recent years.

Councillor Goodfellow, Chair of the Licensing Board, advised Mr Kinnoch that this new application is outwith Board Policy with regard to the over provision statement. As such the applicant must robustly demonstrate, in terms of the licensing objectives, that the grant of this licence would outweigh the presumption against grant in terms of the over provision statement. The Chair stated that, so far, he had not heard any statement which addressed the issue of over provision.

In response, Mr Kinnoch summarised the operating history at the Waterloo Bistro since 2008 and indicated that the establishment has been recently refurbished and is a family friendly bistro which sources produce from local suppliers. He stressed that he would continue to support the licensing objectives and that the premises are well-run. He commented that he considered the application to be a replacement licence and not a new licence. [The premises have been operating with occasional licences].

Mrs K Steele was present to represent Mr B Steele, an objector and owner of one of the Tyne House properties. She tabled a photograph of the Tyne House building and stated that it would be reasonable to expect this to be a peaceful and quiet residential location. Mrs Steele commented that the courtyard construction would likely amplify any noise and that patrons at outdoor tables would create additional noise. She added that there have been problems in the past where patrons have parked in residents' car parking areas and suggested that these issues would be exacerbated in the future.

Ms C Wade, a resident at Tyne House and an objector, addressed the Board. Ms Wade stated that she considered the volume of the music to be intrusive and that she experiences disturbances while the kitchens are open. She mentioned that she can still be experiencing noise nuisance as late as 1am. Ms Wade commented that she is generally very supportive of Mr and Mrs Kinnoch and their business and that her issues are in relation to loud music and extended opening hours. Ms Wade provided Board members with a log of dates and times of disturbances. Councillor Innes enquired if the Environmental Health Officers had been consulted in relation to the noise. Ms Wade advised that she had reported issues regarding beverage machines and these had been moved and that she has contacted Environmental Health on previous occasions.

Insp Mackay referred the Board to the letter from Police Scotland dated 3 February 2014. He advised that there are no objections from the police but drew members'

attention to the Police recommendations in respect of access for children and young persons, and the terminal hour for the outside drinking facility.

The Licensing Standards Officer (LSO) advised that he had no objections and that there were no objections from the Council's Environmental Protection department.

Ms Wade was accompanied by a relative who referred Board members to conditions dating from 1982 which did not permit live music at the premises due to the proximity of residential neighbours. The Clerk advised that this is a planning condition which still exists and has been pointed out to Mr Kinnoch. The Clerk stated that the Board's remit did not cover this issue which is a matter for the Council's Planning Enforcement Officer.

In response to the Chair, Mr Kinnoch advised that he is agreeable to accepting the conditions requested by Police Scotland. Mr Kinnoch also mentioned that background music is only played at an appropriate volume; that the premises close earlier towards the end of the year; and that live music is not performed on a weekly basis.

Board members and the Clerk adjourned to debate the matter in private.

On reconvening, the Chair indicated that there had been a difficult debate as there were a lot of issues to discuss.

Councillor Innes advised that he was happy to support the application and that Mr Kinnoch had provided enough evidence to show that licensing objectives had been met. He appreciated the concerns of nearby residents but commented that he would have expected to see a report from the Council's Environmental Health department had there been significant noise issues. However, as live music is subject to a planning condition, he suggested that the live music element of the application should not be supported.

Councillors Akhtar, Grant, McAllister and Currie stated that they too would support the application and suggested that any issues should be resolved through discussion.

The Chair stated that there should be some mediation between the applicant and the residents and requested that the LSO work closely with both groups. He clearly stated that the application was being granted without a licence for live music, a point re-iterated later on by the Clerk. However, this could be applied for at a later date as a variation to the licence once the planning issues have been dealt with. The Chair also stressed that he would have expected to have seen a robust statement from the applicant in advance of the meeting which addressed all five licensing objectives in relation to overprovision.

The Clerk pointed out that any application which is granted is open to review at any time if an objection is raised.

Decision

The Board agreed to grant the premises licence subject to the conditions that the licence does not include live music; the terminal hour for outside drinking is 22.00 hrs; that children aged 15 and under will be allowed access until 22.00 hrs when consuming a meal and in the company of a responsible parent or guardian; that young persons aged 16-17 may remain for the duration if having a meal and in the company of a responsible parent or guardian; and that children and young persons

may remain for the duration it attending a private function and are in the company of a responsible parent or guardian.

3. PROVISIONAL PREMISES LICENCE

(i) McColls – 61 High Street, Haddington

The Clerk advised that this item would be continued to the next meeting of East Lothian Licensing Board on 27 March 2014.

4. VARIATIONS OF PREMISES LICENCE

(i) Bunneys – 96 High Street, North Berwick

The Clerk stated that the application seeks to make the following major variations to the licence:

- Change the premises name to JP's Deli & Café
- On-sales terminal hour to be 9pm Sunday – Thursday, and midnight on Friday and Saturday
- Yes to seasonal variations
- To add restaurant facilities; receptions (including Weddings, funerals etc); Club or Group meetings; live performances to take place outwith core hours but not before 8 am and no later than midnight without the grant of an extended hours application. Live performances will be low key and may include events for Fringe by the Sea. Recorded music may be places at all times premises are open.
- Amend children's and young persons' access to 8am – 9pm when accompanied by an adult unless attending a function then they will remain until the terminal hour
- Added other activities
- Increase capacity to 41

The Clerk informed the Board that nine personal objections had been received. Some of the objectors were present and wished to address the Board.

The applicant and premises owner, Mr John Paul McLachlan, was present and was represented by Mr N Hassard of Lindsays.

Mr Hassard addressed the Board and spoke about Mr McLachlan's professional background as an executive chef. He outlined the plans for the premises at 96 High Street, North Berwick which include small pre-booked dining events, occasional cheese and wine events; live music, such as Fringe by the Sea; and cooking classes. In response to the written objections, Mr Hassard advised that the applicant is agreeable to removing all live music performances; restricting the capacity to 25 (twenty five); and that suppliers had been requested not to deliver goods before 7am, where possible, and to operate quietly and respect the fact that there are residential neighbours. Regarding the smoking issue, he advised that smokers would be asked to use the area opposite the premises. He acknowledged the reports from the Police and the LSO noting that there are no objections from either of these parties and that no issues have been raised by the Council's Environmental Health department or by

consultees. He informed the Board that a Planning application has been lodged separately with the Council and that a response is still awaited. He advised that the applicant is agreeable to the amendments requested by the Police and confirmed that no alcohol will be sold other than during the core licensed hours.

The Chair stated that the application for extended hours falls outwith Board Policy with regards to the over provision statement. He pointed out that the application did not contain any information that would rebut the presumption against grant in terms of the over provision statement. The Chair therefore stressed that on summing-up, Mr Hassard must address the five licensing objectives in relation to over provision.

Professor D Ingram, an objector, advised that some of his issues have been covered by Mr Hassard's presentation and that it is pleasing that live music has been removed. He informed the Board that he still had concerns about the volume of recorded music and requested that this be restricted to low-key background music only. He commented that the requested terminal hour is very late and would increase the already considerable noise in the High Street. He asked that the premises windows be kept closed at all times and that the privacy in the garden area, which is overlooked by the premises, be respected. Professor Ingram also expressed concern, that if the license is granted in its present form, the premises could at a future date change into an entertainments and functions venue. He urged the Board to remove live music; amplified music; a terminal hour of midnight; extended hours; and seasonal variations/events from any licence that is granted.

The Clerk advised the Chair that it could be a condition of the licence that seasonal variations are not included. She stated that the applicant would, however, be able to apply for occasional licences which would be considered on an individual basis. The Clerk confirmed that Mr Hassard had in effect changed the application today to remove live music and reduce the capacity.

Mr P Mitchell and Ms P Grant, objectors, addressed the Board. They re-iterated the concerns regarding noise from open windows in the premises; privacy in the communal garden; and the potential disturbance from a terminal hour of midnight. They pointed out that there is already anti social behaviour/litter/disruption in that part of the High Street. They also requested that deliveries be re-routed to reduce noise disturbance to residents and that frosting be applied to the premises windows.

The Police advised that their comments had been addressed by the applicant. The LSO advised that he had no objections and that no complaints had been received in relation to the extended hours.

Mr Hassard confirmed that recorded music would be restricted to low-key background music and that there is no issue with the request to apply frosting or fit blinds to the windows. He stated that the terminal hours are within licensing policy and that the maximum permitted terminal hour has not been requested every day of the week in recognition of the locality and proximity to residential neighbours. In relation to the over provision, Mr Hassard stated that, based on licensing legislation and guidance from Scottish Ministers, it is his view that over provision does not apply to this application and that he had advised the Clerk of his views in advance of the meeting.

The Chair clearly stated that East Lothian Licensing Board does consider that a change in hours and a change in capacity trigger the over provision policy.

Councillor Innes suggested to Mr Hassard that it would be prudent for him to address the over provision issue before members adjourned to consider their decision.

Mr Hassard advised that the increase in capacity, from 20 to 25, is minimal and does not prejudice any licensing objective. If this was not the Board members' view, he stated that the capacity would remain at 20. He commented that the objections did not relate to the applicant who is a very experienced and professional businessman and informed the Board that the applicant has upheld the licensing objectives since he took over the premises in August 2013. He stressed that the applicant's primary business is food with alcohol sales being ancillary; that the applicant fully recognises the residential nature of the area; and that a balance is being sought between the terminal hour on Fridays and Saturdays and the rest of the week. He pointed out that any licence granted could be reviewed if there are any issues or further objections. He committed that his applicant would deal with local issues with the neighbouring residents, such as applying frosting to the premises windows and the request to keep the windows closed at all times, and that the LSO could assist in these matters on a more formal basis. The applicant confirmed that he would be in attendance at any events such as cheese and wine tastings and that the windows would remain closed during the summer.

Board members and the Clerk adjourned to debate the matter in private.

On reconvening, Councillor Currie acknowledged the efforts which had been made to mitigate the objectors concerns and supported the application.

Councillors McAllister, Grant, Akhtar and Innes supported the application. Councillor Grant reminded the meeting that the Board has the power to review a licence.

The Chair advised that the variations to the licence had been granted subject to a number of conditions. He added that if required, issues relating to noise disturbance from early morning deliveries and patrons leaving the premises could be addressed by Council Officers.

Decision

The Board agreed to grant the variations to the premises licence subject to the conditions that: the capacity is reduced to twenty five (25); there are no live music performances/events; recorded music will only be low-key background music; blinds and/or frosting are applied to the premises windows to preserve the privacy of the shared garden area; and that when attending a pre-booked function, children and young people will be allowed on the premises until the terminal hour when accompanied by an adult. For the avoidance of doubt, no alcohol will be sold other than during the core licensed hours.

***Sederunt:** Councillor Innes left the meeting*

5. GRANT OF PERSONAL LICENCE

(i) Logan Bryce – c/o Winckworth Sherwood, London

The applicant, Mr L Bryce, was present and was represented by Mr S Kelly of Shepherd and Wedderburn. Ms L Higgins, Manager at Sainsbury's Store, Portobello was also present.

Mr Kelly addressed the Board and provided the background to his client's serious offences and explained the measures that his client has taken to turn around his

personal and working life. He informed the Board that Mr Bryce is a well respected employee of Sainsbury's supermarket and has the opportunity to be promoted from team leader to depute store manager. He informed the Board that all depute store managers require to hold a personal licence.

Mr Bryce personally addressed the Board, and spoke about his background. He advised that his outlook is now very much about looking to the future.

Ms Higgins advised that Mr Bryce is a very valuable, reliable, honest and trustworthy member of staff who has a potentially great career ahead of him. She stated that she fully supported this application.

The Board members and the Clerk briefly debated the matter in private.

Decision

The Board unanimously agreed to grant the personal licence.

6. REPORT TO LICENSING BOARD – PERSONAL LICENCE REFRESHER TRAINING

The Clerk spoke to the report which informs the Board of the requirement for Personal Licence Holders to undergo refresher training and of the administrative arrangements in place. She advised members that statutory reminder letters would be issued and that while this activity would result in a considerable amount of work for the Council, a fee could not be charged. The Clerk requested that the LSO bring the matter to the attention of current personal licence holders.

Decision

The Board noted the content of the Report.

7. REPORT TO LICENSING BOARD – INTERNAL AUDIT REPORT

The Clerk spoke to the report which informs the Board of the audit report on Licensing insofar as it relates to the Licensing Board. She advised that the report had been presented to the Audit and Governance committee and that internal audit would be provided with updates as action items are completed.

Decision

The Board noted the contents of the Executive Summary and Action Plan for the Licensing Board.