

MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

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

Board Members Present:

Councillor J Goodfellow (Chair)
Councillor S Akhtar
Councillor S Currie
Councillor D Grant
Councillor W Innes
Councillor T Trotter

Clerk of the Licensing Board:

Mrs K MacNeill

Attending:

Mrs M Ferguson, Corporate Legal Adviser
Insp A 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 F McAllister

In attendance:

Councillor J Gillies
Councillor K McLeod

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – 27 FEBRUARY 2014

The minutes of the Licensing Board meetings of 27 February 2014 were agreed to be a true record, subject to a name change at paragraph 3 on the final page.

2. OCCASIONAL LICENCES

(i) Elphinstone Arms – Main Street, Elphinstone

The applicant, Mrs Margaret Dodds, was present and was represented by Mr A MacDonald of MacDonald Licensing.

Mrs MacNeill, Clerk of the Licensing Board, advised that the application is seeking the grant of three occasional licences covering the period 26 March – 8 May 2014. (Hours applied for: Monday to – Wednesday 11am – 11pm, Thursday – Saturday 11am – 1am, Sunday 12.30pm – 12 midnight. The application is in respect of music, gaming, indoor sports, food, TV sports and karaoke. Children and young persons will not be permitted entry to functions.) She stated that an application for a permanent premises licence is pending and that an objection had been received from Police Scotland.

Inspector Harborow referred to the Police Report dated 13th March 2014 which is contained in the meeting papers and read through the main issues. He highlighted recent concerns including:

- breach of licensing conditions which resulted in the premises being closed down;
- positive searches for controlled drugs;
- incidents regarding Mr Scott Dodds (the premises owner/landlord and son of the applicant) on 22 February and 23 February 2014;
- lack of co-operation with Police enquiries; and
- the management and operation of the premises

He stated that it is the Police view that the premises were operating contrary to the licensing objectives in respect of preventing crime and disorder and securing public safety. He therefore requested that the applications be refused.

Mr MacDonald addressed the Board. He pointed out that Caledonian Heritable Ltd (referred to in the Police Report) has a supply agreement with the Elphinstone Arms and work closely with Mrs Dodds. He maintained that the loss of the licence had been as a result of the way that East Lothian Licensing Board had dealt with the paperwork oversight when the business was dissolved. He explained that the occasional license applications are to cover then period until the application for a permanent premises licence is heard by the Board at their meeting in April 2014. Mr MacDonald informed the Board that Mrs Dodds has a long history of working at/running the Elphinstone Arms and stated that the Police have had no issues with this village pub prior to February 2014.

Mr MacDonald then responded to the Police Report in detail. He

- challenged the relevance of the Police search at the home address of Mr Dodds;
- contested that the assault on 22 February 2014 happened outside the Miner's Welfare Club and not outside the Elphinstone Arms (tabling a written witness statement to this effect);
- stated that Mrs Dodds had locked the premises doors and instructed a patron to call the Police on the evening of 23 February 2014 in response to 20 males approaching the premises, some of them wearing balaclavas, (again, tabling a written witness statement to this effect);
- indicated that it was not possible to ascertain if the incidents on 22 and 23 February were related; and

- questioned the Police comments in relation to the character of the patrons who are likely to frequent the premises given that there has been no crime and disorder in the past and nothing to suggest that there is any threat to public safety in the future.

Mr MacDonald stated that there is a criminal charge pending in relation to selling alcohol without a licence and that this will be processed through the Courts, adding that the Police will need to deal separately with any issues in respect of Mr Dodds. He stressed that there is no evidence of any wrong-going by Mrs Dodds. In the circumstances he urged that at least the first of the three occasional licenses be granted to give the applicant the opportunity to show that the Police concerns are unfounded and to allow the Board an opportunity to review the situation after 14 days.

Councillor Innes expressed his concern at the lack of recognition being shown for the two serious incidents which relate to Mr Dodds.

Mr Macdonald responded that it was not for him or his client to deal with criminal charges or to speculate if the two incidents were linked. He acknowledged that Mr Scott is the landlord and the son of the applicant but insisted that the incidents were not directed at the pub.

Councillor Innes challenged Mr MacDonald's assertion that there would be no ramifications from these incidents and suggested that Mrs Dodds would not have locked her premises and called the Police on the evening of 23 February 2014 if she had not feared for the safety of her patrons.

In response to Councillor Trotter, Mr MacDonald assumed that some of the patrons who were in the premises on 23 February had been aware of the incident that happened on the night of 22 February 2104.

Replying to Councillor Akhtar, Mr MacDonald advised that he was unaware of the Police objections when the applications were lodged.

Councillor Currie questioned Mr MacDonald in relation to the fact that Mr Dodds works in the premises on odd occasions and also the non co-operation with Police enquiries at Dalkeith Police Station. Mr MacDonald replied that his client had been advised to only answer basic questions as this was a criminal charge and her criminal lawyer was not able to attend and represent her.

Mr MacDonald re-iterated that the charges are nothing to do with the incidents on 22 and 23 February 2014 and that the charge is a criminal charge in relation to an administration mistake. He was of the view that the incidents are being cited as a reason not to grant the occasional licence applications. He stated that the closure of the premises is having serious financial ramifications on the family and gave an undertaking that Mr Dodds would never work/help out in the premises in future.

Insp Harborow responded to points made during Mr MacDonald's submission in relation to:

- swabbing for traces of controlled drugs;
- Mr MacDonald's attempts to trivialise the incidents on 22 and 23 February 2014;

- the fact that he had not previously dealt with an incident regarding 20 masked men in his 23-year career as a Police Officer; and
- the fact that Mr Dodds appears to be a constant and clear connection to the premises/his parents.

Insp Harborow suggested that the Dodds family has a financial contingency to turn the premises into residential flats. Mr MacDonald commented that the issue of planning permission in this regard is of no relevance to the applications for occasional licences.

The Board members and the Clerk adjourned to debate the matter in private. On re-joining the meeting, the Board delivered its decision. While the Board members acknowledged that the premises are an important community resource, by a majority decision, the Board did not agree to grant the applications for occasional licences. Councillor Goodfellow, the Chair of the East Lothian Licensing Board, added that the granting of these applications would not be consistent with the licensing objectives of preventing crime and disorder and securing public safety. He stated that when the application for a permanent premises licence comes before the Board at their April 2014 meeting, he would hope to see evidence that the issues raised by the Police have been resolved.

Decision

The Board agreed, by a majority, to refuse to grant the applications for occasional licences.

Sederunt: Cllrs Gillies and McLeod left the meeting.

3. PROVISIONAL PREMISES LICENCE

(i) McColls – 61 High Street, Haddington

Mr William Morrison, Area Manager, and Ms Emma Hutcheon, Store Manager, were present and were represented by Mr David Crank of DWF LLP.

The Clerk advised that the application seeks the grant of a provisional premises licence. She informed the Board that seven public objections had been received. The Police and the LSO stated that they had nothing to add to their reports contained in the meeting papers.

[This application falls outwith Board Policy with regards to the over provision statement and it is incumbent on the applicant to rebut the presumption against grant in terms of the over provision statement.]

Mr Crank presented his case. In response to the objections and concerns that had been raised, he advised that the terminal hour for alcohol off-sales would be amended from 22.00 hours to 20.00 hours; the space for the sale of alcohol would be reduced; there would be a limit on the strength of some alcohols that would be sold; and that there would be no bulk discounts on prices. He outlined the plans for upgrading the store should the license be granted; commented that the trading performance at the Haddington store had improved in the last 12 months; stressed that McColls are a responsible retailer; outlined the sales and training procedures that would be in place to prevent the under-age sale of alcohol; and stressed that it is unlikely that there would be increased noise and disruption. His presentation clearly addressed the five licensing objectives in relation to over provision.

Councillor Trotter stated that he had some sympathy with the objectors and that there is no shortage of places to purchase alcohol in Haddington. He commented that it was unfair to state that the store upgrade would only take place if the license is granted.

Councillor Innes acknowledged that procedures and practices would be put in place to protect the public. He was convinced by the changes put forward by the applicant that granting the provisional licence would not be contrary to the Board's statement on over provision.

Councillor Grant stated that he welcomed the changes that had been made in response to the objections.

Councillor Currie acknowledged the very full presentation from Mr Crank but stressed that the main issue is the matter of over provision. Although this reputable company planned to put processes in place, he was of the view that the over provision policy has to be applied.

Councillor Akhtar commented that the amendments are helpful and that systems would be robust.

Councillor Goodfellow, Chair of East Lothian Licensing Board, stated that he was convinced by Mr Crank's presentation that there are grounds for rebuttal of the over provision policy, adding that there is nothing to indicate that granting the provisional licence would result in anti social behaviour.

Decision

The Board agreed, by a majority, to grant the provisional premises licence.