

## **MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD**

**THURSDAY 24 APRIL 2014  
SALTIRE ROOMS, JOHN MUIR HOUSE, HADDINGTON**

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**Board Members Present:**

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

**Clerk of the Licensing Board:**

Mrs K MacNeill

**Attending:**

Mrs M Ferguson, Service Manager – Legal and Procurement  
Insp A Harborow Police Scotland  
PC H Bowsher, Police Scotland  
Mr R Fruzynski, Licensing Standards Officer  
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 – 27 MARCH 2014**

The minutes of the Licensing Board meeting of 27 March 2014 were agreed to be a true record.

The Board agreed to change the running order of items on the agenda and to hear the provisional licence application before the premises licence application.

**2. PROVISIONAL PREMISES LICENCE**

**Aldi Stores – Haddington Road, Tranent**

Mr David McLeod, Aldi Area Manager, was present and was represented by Mr Niall Hassard of Lindsays.

The Clerk advised that the application seeks the grant of a provisional premises licence. She informed the Board that no public objections had been received. The Police and the Licensing Standards Officer stated that they had nothing to add to their reports contained in the meeting papers.

[NB 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 Hassard presented his case and referred to his written submission which had already been issued to Board members. He provided background information on Aldi Stores, described the proposed site in Tranent and highlighted the salient points from his written submission. In particular, he drew the Board's attention to the procedures and plans which would ensure that the licensing objectives would be protected and upheld.

In response to Councillor Grant, Mr Hassard confirmed that Aldi's purchase of the site is conditional on obtaining both planning permission and licensing permission. He advised Councillor McAllister that all of the Aldi stores in Scotland sell alcohol and that alcohol accounts for 8-12% of all sales.

The Licensing Standards Officer provided information on the number and location of alcohol off-sales premises in Tranent.

Councillor Grant, local ward Member, acknowledged the existence of a number of off-sales premises in Tranent and indicated that he would support the application. Councillor Akhtar commented on the benefit to the community and supported the application. Councillor Currie commended Mr Hassard for the written explanations that had been provided and also supported the application. Councillor McAllister expressed his concerns about the increase in home drinking and added that he had appreciated the detail that had been provided to rebut the over provision statement. Referring to the local benefits of regeneration, competition, choice and employment, Councillor Innes also supported the application.

Councillor Goodfellow, Chair of East Lothian Licensing Board, stated how impressed he had been with the written submission which had been lodged in advance of the meeting. He clearly stated that the Board would be looking for this approach and amount of detail in the future.

### **Decision**

The Board agreed, unanimously, to grant the provisional premises licence.

### **3. GRANT OF PREMISES LICENCE**

#### **Elphinstone Arms – Main Street, Elphinstone**

The applicant, Mr Malcolm Fleming of M F Publicans Ltd was present. Mrs Margaret Dodds, the proposed premises manager, and Mr Gordon Arnott of Caledonian Heritable Ltd were also present. Caledonian Heritable Ltd are financial backers and suppliers to Elphinstone Arms. The parties were all represented by Mr A MacDonald of MacDonald Licensing. Four patrons who supported the application were also present.

Mrs MacNeill, Clerk of the Licensing Board, advised that the application is seeking the grant of a premises licence. She informed members that a petition and letters of support had been received. These were in addition to the two letters of support that were contained in the papers for the March 2014 meeting of East Lothian Licensing Board. She then advised that additional documents had been received. Mr MacDonald had lodged a copy of the premises lease and a letter from the Procurator Fiscal. An anonymous letter of objection had also been delivered to Tranent police station. She confirmed that Board Members and relevant parties had been given copies of the additional documents.

[NB: At the meeting of the East Lothian Licensing Board on 27 March 2014, the Board agreed to refuse to grant occasional licenses for The Elphinstone Arms. In addition, 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 MacDonald explained that Mrs Dodds has a long association with the premises and that there is phenomenal local support for the re-opening of the Elphinstone Arms. He reminded members that the premises are currently closed solely due to an administration oversight with the paperwork for the premises licence. He claimed that the Police report still includes incorrect information which he challenged at the March Board meeting. Mr MacDonald gave a lengthy commentary on the incidents referred to in the Police report and stressed that there is nothing to indicate that there would be any ramifications as a result of these incidents.

Mr MacDonald asked that the anonymous letter be disregarded as it was factually incorrect and advised that the Procurator Fiscal had very quickly dropped the case against Mrs Dodds. He explained that Mr Fleming has been involved with the premises since November 2013. Mr Fleming is the tenant of The Elphinstone Arms which comprises the lounge bar and the upstairs flat. Scott Dodds (son of Mrs Margaret Dodds) is the owner of The Elphinstone Arms. Mr Fleming has experience in the licensed trade, but currently works as a heavy goods vehicle driver; and has an application pending for a personal licence. Mr Fleming tends to work in The Elphinstone Arms in the evenings but the premises are managed by Mrs Dodds. Mr MacDonald provided reasons as to why Mr Fleming had not co-operated with the Police during a routine interview on 1 April 2014 at Dalkeith police station, in relation to this premises licence application.

Regarding over provision, Mr MacDonald emphasised that there are no comparable facilities in the immediate vicinity. He suggested that the matter of over provision should therefore be disregarded in this case.

In response to Councillor Akhtar's question regarding the safety of patrons, Mr MacDonald assured that Board that if the premises re-open there would be full co-operation with the Police and any threats or inappropriate comments would be reported. In addition CCTV has been upgraded and external cameras installed.

Insp Harborow stated that the content of the Police Scotland letter dated 3 April 2014 is accurate. He referred to the debate at the Board meeting in March 2014 and stated that he had heard nothing today that would indicate that the Police concerns have been addressed.

The Licensing Standards Officer stated that he had nothing to add to his report contained in the meeting papers.

Insp Harborow answered questions from Councillor McAllister regarding the incidents on 22 and 23 February 2014 and reported that no charges are expected to be brought.

Councillor Goodfellow addressed a number of questions to the police in relation to the licence application dates, the date when Mrs Dodds was interviewed under caution, the address details for Scott Dodds at the date of his interview under caution and enquired if charges would have been brought if Mr Dodds had co-operated with the police.

Four local residents addressed the Board. MR B Tannerhill, Mr L Ormiston, Ms I Sharpe and Mr J Gourley spoke in turn. Their representations highlighted that the premises are the centre of the community, are well run and that there are no fears for public safety.

The Chair indicated that it is important to establish who is resident in the flat above the premises. He reflected on statements that had been made during the meeting - that Scott Dodds had previously lived in the flat but has lived with his parents since leasing the premises to Mr Fleming on 23 October 2014 and that it is Scott Dodds' association with the premises that are giving the Police cause for concern.

Mr MacDonald made it clear that if the licence is granted, there is an undertaking that Scott Dodds would not enter the premises other than to collect his rent. This would readily be accepted as a condition on the licence and Mr MacDonald stressed that legal intervention would be sought to enforce this, if required.

Insp Harborow explained that it was his desire to ensure public safety and that the significant incident on 23 February raises grave concerns. As Scott Dodds continues to draw an income from the premises, it is his view that the Police concerns will continue to exist unless there is a significant change of management at this public house.

The Board members and the Clerk adjourned to debate the matter in private. On re-joining the meeting, the Board delivered its decision.

Councillor Grant advised that, on the balance of probability, he would support the application. Nonetheless, he expressed his disappointment at the lack of co-operation with the police.

Councillor Akhtar stressed the need for full co-operation with the police and expressed her support for the application.

Councillor Currie acknowledged that the premises are a community resource and commented that there is a lot of support for Mrs Dodds. However, this is an important decision for the Board to make in a responsible way, and on the balance of risk, he would not support the application. He too remarked that he is deeply concerned at the lack of co-operation with the police.

Councillor McAllister thanked the supporters for their honest and articulate views but made it clear he would not be supporting the application. Among his reasons he cited lack of compliance with licensing requirements, lack of co-operation with the police and a high probability of further public disorder.

Councillor Innes commented that the premises are a valuable, well respected community facility which has given no cause for concern in the past. He pointed out

that the matter is only before the Board as there has been an administrative issue with the licence. He advised that he would be supporting the application but shared the concerns about the unacceptable lack of co-operation with the police.

The Chair referred to the licensing objectives of preventing crime and disorder and securing public safety. The members of the public present had confirmed that there are no safety issues and he acknowledged that there is no history of crime and disorder at the premises. He stated that the strength of public feeling regarding the importance of the premises as a community facility, would allow the Board to overturn the over provision statement. However, he was disappointed at the lack of co-operation with the police. He was also disappointed that there was no evidence submitted today, or in advance of the meeting, from the agent to allow the Board to overturn the over provision statement. He therefore commended the supporters for their positive contributions. The Chair stressed the requirement for supporting information to be provided in advance of all future meetings where the over provision policy applies.

**Decision**

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