

MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 28 AUGUST 2014
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Board Members Present:

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

Clerk of the Licensing Board:

Mrs K MacNeill (Clerk of the Licensing Board)

Attending:

Mrs M Ferguson, Service Manager – Legal and Procurement
Mr R Fruzynski, Licensing Standards Officer
Ms C Molloy, Senior Solicitor
Ms D Richardson Licensing Admin Officer
Ms L Lauder, Environmental Protection Group Leader
Insp A Harborow, Police Scotland
PC H Bowsher, Police Scotland

Committee Clerk:

Ms J Totney, Team Manager - Democratic Services

Declarations of Interest:

Councillor Innes declared a non-financial interest in respect of item 2.

Sederunt: Councillor Innes left the Chamber

1. MINUTES FOR APPROVAL – 26 June 2014

The minutes of the Licensing Board meeting of 26 June 2014 were agreed to be a true record.

2. EXTENSION OF LICENSED HOURS

Prestonpans Labour Party Club – Prestonpans

Mr H Cairney and Mr T Harris were present to represent the Club.

The Clerk advised that the application seeks to extend the licensing hours from 12 midnight to 6am on 18/19th September 2014; to cover the night of the Scottish Referendum. She reported that an objection has been received from the Police.

Mr Cairney acknowledged that the extended hours are outwith Board policy but stressed that the extension to hours will be solely for a private function. He added that there had been no issues when licensed hours were extended on previous Election nights.

Police Scotland had nothing to add to their letter contained in the Board papers and the Licensing Standards Officer (LSO) clarified that he does not object to the application.

Councillor McAllister indicated that he would support the application.

However, Councillor Currie highlighted the objections from the Police regarding public safety. He stated that issue is the provision of alcohol and that he has no objection to the premises being open serving only teas/ coffees/hot drinks. He would not be supporting the application.

Councillor Grant noted the Police objections, which he took seriously. Based on the premises being well run and there being no history of issues on previous similar occasions, he would be supporting the application; a view echoed by Councillor Akhtar.

Councillor Trotter advised he would not be supporting the application which is outwith Board policy.

Insp Harborow pointed out that the application makes no reference to the extended hours being used for a private event.

Board members voted:

For: 4

Against: 2

Decision

East Lothian Licensing Board agreed to grant the extension of licensed hours.

Sederunt: Councillor Innes rejoined the meeting

3. GRANT OF PROVISIONAL PREMISES LICENCE

(i) Giancarlo's – 119 High Street, Tranent

The applicant, Mr G Paccitti, was present and was represented by Mr A MacDonald of MacDonald Licensing.

The Clerk informed the Board that this application had triggered the overprovision statement and that no objections had been received.

Mr MacDonald provided background information on the plans for the business along with information to support compliance with the Board's licensing objectives. In particular, he advised that the application would prefer to run licensed premises rather than operate a 'bring your own bottle' policy; would monitor/manage any issues arising from smokers and patrons leaving the premises; that the premises are being extensively re-built and would comply with the Council's building standards; and that the premises would be a family friendly restaurant.

In response to Councillor Innes's question about off-sales, Mr MacDonald stated that this is not crucial, but it would be preferable to complement take-away food sales.

Councillor Grant supported the constructive use of the premises and advised he would support the application.

Councillor Akhtar commented on job opportunities and the positive impact on the regeneration of the High Street.

Councillor Currie acknowledged the link between off-sales and take-away food sales, adding that he would support the application.

In response to Councillor McAllister, Mr Paccitti clarified that the off-sales prices would not be as expensive as the restaurant prices for alcohol; stressing that the main aim is to run a restaurant and sell food.

At the suggestion of Councillor Goodfellow, Mr MacDonald was agreeable to off-sales being restricted to customers who are purchasing take-away food.

Decision

East Lothian Licensing Board agreed to grant the provisional premises licence subject to the off-sales of alcohol being restricted to customers who are purchasing take-away food.

(ii) Caffè Borsa – 49 High Street, Musselburgh

Gordon Richardson, agenda and founder of Caffè Borsa was present to represent the applicant.

The Clerk informed the Board that one objection and one late objection had been received. The Board agreed to consider the late objection, a copy of which had been provided to Mr Richardson. No objectors were present. There were no objections from the Police or the SLO.

Mr Richardson provided information on his business background and plans for the coffee house.

In response to Councillor Curie's concerns about an additional off-sales facility in the area, Mr Richardson advised that he would be happy to accept a local condition setting off-sales prices at the same level as sit-in prices.

Councillor McAllister referred to the high number of existing off-sales premises in the area and the potential for anti-social behaviour. Mr Richardson anticipated that off-sales would account for 0.2% of the business.

Councillor Grant commented positively on the regeneration of these premises and advised that he would be supporting the application; a view echoed by Councillors Innes, Akhtar and Goodfellow.

Decision

East Lothian Licensing Board agreed the grant of a provisional premises licence subject to the condition that off-sales prices be the same as on-sale prices for alcohol.

4. VARIATIONS OF PREMISES LICENCE

(i) Co-op – Brotherstone’s Way, Tranent

Ms L Woods, Store Manager, was present and was represented by Mr A MacDonald of MacDonald Licensing.

The Clerk informed the Board that the application seeks to increase the shelving capacity from 31.68m² to 34.2m². She added that there are no objections and that the application triggers the overprovision policy.

Mr MacDonald advised that demand in general at the store has increased as a result of the extensive amount of new homes which have recently been built in the area. The store is now being refreshed and while the display area for alcohol is being increased slightly, there is no intention to increase the sale of alcohol. He highlighted the arrangements that are in place in respect of CCTV and personal licence holders.

There were no objections from the Police or LSO.

Decision

East Lothian Licensing Board agreed to grant the variation of premises licence.

(ii) Gullane Delicatessen – 40 Main Street, Gullane

Mr L Crolla, Premises Manager, was present and was represented by Mr A MacDonald of MacDonald Licensing.

The Clerk informed the Board that the application seeks the following major variation: to add on-sales core hours as follows: Monday, Tuesday, Wednesday and Sunday – 11am to midnight; Thursday to Saturday 11am to 1am; to benefit from seasonal variations; to add restaurant facilities, club or other group meetings, recorded and live music, TV and sport; to add deliveries, takeaways and outside catering as activities; children and young persons’ access (children to be accompanied by an adult); capacity for on-sales: 53; and a change of name (still to be advised).

The Clerk further reported that this application triggers the overprovision policy.

A number of objections had been received. Mrs Coutts was present to speak to her objection and also to speak on behalf of Mr Walker. Mr Brough, another objector, was also present.

After discussion with his client, Mr MacDonald advised that the core hours for on-sales would be amended to: Monday, Tuesday, Wednesday and Sunday – 11am to 11pm; and Thursday to Saturday 11am to midnight; that there would be no live performances after 11pm; and that there would be no amplified music. Mr

MacDonald then outlined the background to the application, the business plans for the premises, the situation regarding planning permission and the fact that there is currently a premises licence for off-sales of alcohol. He acknowledged the type of concerns that had been raised and detailed how nuisance from noise and cooking odours would be mitigated. He also explained the context in which TV sports would be shown.

In response to Councillor Innes, the Clerk advised that the Board can only restrict the times for the sale of alcohol and not for the sale of take-away food. Mr MacDonald stressed that take-away food sales are anticipated to be a very ancillary part of the business.

Mrs Coutts addressed the Board and outlined her objections and concerns. In particular she referred to exit noise and the late terminal hour (as amended) on Sundays. In terms of the overprovision policy, she was of the view that the supporting statement did not satisfy the rebuttal requirements.

Mr Brough addressed the board and outlined his objections and concerns. In particular he referred to the potential for noise nuisance and a marked deterioration in amenity for adjacent domestic properties.

Mr MacDonald responded to questions regarding the seating capacity and exit arrangements/'drinking-up' time at the end of the night.

The Police and the LSO advised that they had nothing to add to their written reports contained in the Board papers.

Ms Lauder, The Council's Environmental Protection Group Leader, addressed the Board regarding suggested conditions in relation to plant and machinery noise; ventilation; live music; and sound proofing. She answered several questions from Board members. Following a short debate, it was ascertained that the Board could not impose a condition whereby express permission for live music requires to be granted in advance by the Council's Environmental Health department. However, Councillor Goodfellow made it clear that any noise nuisance from live music could result in a review of the licence by the Board and therefore stressed that it was in the applicant's interest to work closely with the Environmental Health department.

Councillor Currie advised that given the changes and conditions that had been discussed, he would be supporting the application.

Councillor Innes welcomed the concessions that had been made regarding the terminal hours and the mitigation of noise nuisance from live music and supported the application.

Councillors Trotter, Grant, Akhtar and McAllister also indicated their support for the application.

Councillor Goodfellow, local ward member, acknowledged the objectors concerns; many of which were not related to the sale of alcohol and therefore are not in the scope of the Board's remit. If there are issues, he urged the objectors to contact the Council's Environmental Health department. He welcomed the changes and conditions that had been agreed and on balance would therefore be supporting the application.

Decision

East Lothian Licensing Board agreed to grant the variation of the premises licence subject to the terminal hours being amended to: Monday, Tuesday, Wednesday and Sunday – 11am to 11pm; and Thursday to Saturday 11am to midnight; that there would be no live performances after 11pm; and that there would be no amplified music.

(iii) Lidl – Olivebank Industrial Estate, Musselburgh

Mr MacDonald of MacDonald Licensing was present to represent the applicant.

The Clerk informed the Board that the application seeks to include the provision of recorded (background) music. There are no objections

Decision

East Lothian Licensing Board agreed to grant the variation to the premises licence.

(iv) Lidl – Mercat House, High Street, Prestonpans

Mr MacDonald of MacDonald Licensing was present to represent the applicant.

The Clerk informed the Board that the application seeks to include the provision of recorded (background) music and increase capacity from 36.17m² to 40.5m². She informed members that the application triggers the overprovision policy and that there are no objections.

Mr MacDonald provided brief background information to the application.

Decision

East Lothian Licensing Board agreed to grant the variation to the premises licence.

(v) Pan Convenience Store – 5 Hawthorn Road, Prestonpans

Mr MacDonald of MacDonald Licensing was present to represent the applicant.

The Clerk informed the Board that this application has been continued from June 2014 and that an application for a further continuation has now been received.

Mr MacDonald provided brief background information to the reasons behind his request for a continuation of a further two months.

Decision

East Lothian Licensing Board agreed to continue the item until the October 2014 meeting.

(vi) The Pine Martin – Spott Road, Dunbar

The applicant was represented by Mr Grunert of John Gaunt and Partners was present to represent the applicant.

The Clerk informed the Board that the application is a major variation which seeks to: extend terminal hours on Thursday to Sunday until midnight from 11pm; accommodation (hotel) to be re-instated within the licensed area; amend children's access to 'non resident children to be allowed access to the premises under adult supervision until 10pm; off-sale to also show deli display area; new off-sale capacity to show: Bar servery 4.7m (L)x6m(D)x2.2m(H)²; deli display area 1.8m(L)x0.25m(D)m²; and off-sale shelving 1.025m(L)x0.3m(D)m²; and new layout plan showing hotel.

The Clerk further advised that there are no objections and that the application triggers the overprovision policy.

Mr Grunert referred to the supporting statement which he had submitted in advance of the meeting and briefly explained the reasons behind the application to vary the premises licence.

The Police and the SLO advised that they had nothing to add to their reports contained within the Board papers.

Decision

East Lothian Licensing Board agreed to grant the variation of the premises licence.

(vii) Umberto's – 119/112 High Street, Dunbar

The Clerk informed the Board that the applicant had been unaware of the requirement for a supporting statement in respect of this application. The applicant had therefore requested that the item be continued.

Decision

East Lothian Licensing Board agreed to continue the item to the September 20-14 meeting.

5. PREMISES LICENCE REVIEW

Elphinstone Arms – Main Street, Elphinstone

6. APPLICATION TO TERMINATE CLOSURE ORDER

Elphinstone Arms – Main Street, Elphinstone

Mrs Margaret Dodds, Premises Manager, was present and was represented by Mr A MacDonald of MacDonald Licensing.

Board Members agreed that these two items would be heard together.

Insp Harborow addressed the Board and summarised the circumstances and events over the past months which have resulted in today's hearing to review the premises licence. In doing so, he referred to the detailed letter/report from Police Scotland and also to the letter from MacDonald Associates which are contained in the Board papers. In particular, he responded in detail to the points raised in Mr MacDonald's correspondence.

Mr MacDonald asserted that the response from Insp Harborow included new material and strongly stated that the new material should have been intimated to him.

Councillor McAllister questioned the Police regarding their statement in relation to Mr Scott Dodd's criminality. PC Bowsher provided details on the number of convictions which she described as minor.

Mr MacDonald responded on behalf of his client; stating that the Police have major issues with Mr Dodds and that this is not a licensing related issue. He briefly recounted the circumstances and incidents at the premises during the previous months. He stressed that he was concerned that his client had not been invited to the meeting of the Board when the closure order had been granted and claimed that some of the information presented to that meeting was incorrect. Mr MacDonald also challenged that some of the information presented in the police report [contained in the Board papers] is factually incorrect and added that the Police have made little progress with their investigations into the fire-raising incidents, despite CCTV recordings. Mr MacDonald made it clear that there is still a lot of local support and a desire within the Elphinstone community for the premises to re-open. He commented that it would be at least three/four months before the premises are ready to re-open and therefore suggested that the Board do not need to make their decision at this meeting, adding that the Board could suspend the licence rather than revoking it.

In response to Councillor Akhtar, Insp Harborow stated that co-operation from Mrs Dodds would have helped the Police with their investigations. Mrs Dodds addressed the Board directly and stated that she had been helpful and had provided PC Bowsher with information which she maintained the Police had not followed up.

Insp Harborow summed up that the major issue is with regard to security and public safety in Elphinstone.

However, Mr MacDonald strongly claimed that the Police are seeking that the licence be revoked [as opposed to suspended] on the grounds of 'getting rid' of Mr Dodds.

The LSO advised that he had nothing to add to his report contained in the Board papers.

At the request of Councillor Grant, the Board agreed to adjourn to debate the matter in private. It was also agreed that proceedings would officially break for 20 minutes to allow all present to take a break.

Sederunt: The Board Members, Mrs MacNeill, Mrs Ferguson, Ms Molloy and Ms Richardson left the Chamber and returned some 30 minutes later.

Councillor Goodfellow, Chair of the Licensing Board, invited members to comment.

Councillor Grant advised that it had been a difficult decision. Having considered all views, he could not support the licence being revoked at this stage and, on the

balance of risk, asked that the licence be suspended for six months with a further review thereafter.

Councillor Akhtar had nothing to add to the comments made by Councillor Grant.

Councillor Currie acknowledged the points made by Councillor Grant but advised that he did not agree with this view. He would be seeking to have the licence revoked.

Based on the current and past information, Councillor Trotter supported that the licence be revoked.

Councillor Innes stated that the Board's primary responsibility is to protect public safety but added that the premises are an important part of this small community. He supported a six month suspension of the licence with a further review thereafter.

Given the degree of calculated and sustained crime and disorder, Councillor McAllister sought that the licence be revoked.

Councillor Goodfellow reiterated that it had been a difficult decision to make and that the Board's prime responsibility is to protect public safety and to ensure that there is no crime and disorder. On the balance of risk, he supported suspending the licence for six months and reviewing it thereafter.

The Board voted on the matter:

To suspend the licence for six months:	4
To revoke the licence:	3

The Clerk pointed out that the decision on whether to hold a review hearing would need to take place within a six month period from today's date.

Decision

East Lothian Licensing Board agreed to suspend the premises licence for six months and to consider whether to hold a review hearing within six months of today's date.

7. PERSONAL LICENCE REFRESHER TRAINING

The Clerk presented a report informing the Board of the requirement for personal licence holders to undertake refresher training within 5 years of issues of the licence and for the requirement for licences to be revoked unless such training is undertaken. The report also sought to delegate to the Clerk and Depute Clerks of the Board, power to revoke personal licences where such training has not been undertaken within statutory timescales. In addition, the Clerk informed the Board of the potential impact of failure to comply with this requirement on businesses and individuals.

In response to Councillor Innes, the Clerk advised that potentially 50% of personal licence holders in East Lothian could have their licences revoked. The Clerk also indicated that the matter has been well publicised within the trade and by the Licensing Forum and that reminder letters had been issued.

Decision

East Lothian Licensing Board agreed to note the report and to delegate authority to the Clerk or one of the Depute Clerks to East Lothian Licensing Board to revoke personal licences in terms of Section 87(3) of the Licensing (Scotland) Act 2005.

8. AIR WEAPONS AND LICENSING (SCOTLAND) BILL

The Clerk presented a report informing the Board of proposed changes to Alcohol Licensing Law contained within the Air Weapons and Licensing (Scotland) Bill. In particular she drew their attention to the changes in appendix two. She highlighted the consultation response document which was to be completed by the end of August 2014 and asked that Board Members advise her of any personal responses they would like included.

Decision

East Lothian Licensing Board agreed to note the report and to delegate authority to the Clerk of the Board to respond to the consultation on behalf of the Board.