

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

**THURSDAY 27 NOVEMBER 2014  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**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 (Clerk of the Licensing Board)

**Attending:**

Mr R Fruzynski, Licensing Standards Officer (LSO)  
Ms C Molloy, Senior Solicitor  
Mrs D Elworthy, Licensing Officer  
Insp A Harborow, Police Scotland  
PC H Bowsher, Police Scotland

**Committee Clerk:**

Ms J Totney, Team Manager - Democratic Services

**Apologies:**

Councillor S Currie  
Councillor T Trotter

**Declarations of Interest:**

None

**1. MINUTES FOR APPROVAL – 23 October 2014**

The minutes of the Licensing Board meeting of 23 October 2014 were agreed to be a true record.

**2. OCCASIONAL PREMISES LICENCE**

**(i) & (ii) Duke Street, Old Primary School, Kingston, North Berwick**

Mr Neil Johnson and Mrs Lisa Johnson, co-directors and owners, were present.

The Clerk informed the Board that two event applications have been received for canapé making demonstrations, with 1 glass of sparkling wine, for a maximum of 16 people on 4 December 2014 and 11 December 2014. Children and young persons would not be permitted entry to these functions. The clerk advised that an objection

had been received from Mr Richard Dalgleish. Mrs Dalgleish was present to represent her husband.

Mr Johnson provided information on the nature of his business. He stressed that the main aim of the events is the canapé demonstrations and not the consumption of alcohol.

Mrs Dalgleish outlined her objections to these events, stating that there is limited parking in the village; that she has concerns about drink-driving; and that access to her garage has been blocked during similar previous events.

Mr Johnson advised that he rents the premises and the car park from East Lothian Council and that he is a willing participant in the current mediation process which East Lothian Council is providing with regard to the longstanding parking and access issues. He said that his employees are aware of the need to keep access clear and that access is only blocked when loading and unloading. He stated that he is operating in accordance with the lease/legal rights.

Mrs Dalgleish claimed that her access has been blocked for several hours on a regular basis and that she has been spoken to rudely in the past.

Councillor Goodfellow, Chair of East Lothian Licensing Board, commented that the matter is straying into a dispute about access. He asked Mr Johnson several questions to clarify the frequency, purpose and number of guests who attended these events and also the amount of public parking that was available.

At the request of Councillor McAllister, Mr Johnson undertook to ensure that Mrs Dalgleish's garage/right of access would not be blocked in future.

The LSO advised that there is no licensing issue associated with the application and that the objections relate to parking issues.

Insp Harborow had no comments to make and PC Bowsher advised that the local police had been involved historically [in access related issues].

Councillor Grant expressed his agreement with the LSO; the objections are not licensing issues, a view echoed by Councillor Innes.

### **Decision**

East Lothian Licensing Board agreed to grant the occasional licenses and urged Mr and Mrs Johnson to co-operate to ensure that access is not blocked.

## **3. VARIATIONS TO PREMISES LICENCE**

### **(i) The Mercat Grill, 10 Whitekirk Road, Whitekirk**

Mr Stuart Blaikie, applicant/license holder, was present. His son Mr Graham Blaikie was also present to represent the designated premises manager.

The Clerk informed the Board that this is a major variation which seeks to vary the following, per section 3 (b) of the application form which has been submitted:

1. Amend core opening time for On Sales to 10am Monday to Sunday inclusive. Should the Licensing Board members be minded, we would be agreeable to a

local condition stating that the supply of alcohol between 10am and 11am would be ancillary to consuming a meal or customers attending a pre-booked funeral purvey.

2. Amend core terminal hour Monday to Wednesday inclusive to Midnight. This allows the dart league to complete matches without finishing early.
3. Amend core terminal hour on Thursday to 1am.
4. Amend Seasonal Variations to add Riding of the Marches Musselburgh festival. The annual event is held on a Saturday at end of July, with previous applications granted without incident. The additional licensed hours, to commence at 08.30 hours, will only be traded for private bookings, usually for East Lothian council entertaining their councillors & guests for the Ride Out. The premises would not open to the general public until 11am.
5. Amend Bar Meals so that the activity is available prior to core hours from 6am for the service of breakfast to accommodate a breakfast networking group, and breakfast to customers as and when required. Alcohol would not be available until the commencement of core hours.
6. Add Conference Facilities as an activity during and prior to core hours, but no earlier than 6am.
7. Add Live Performances as an activity during and outwith core hours so that it is available to accompany other permitted activities.
8. Amend Televised Sport wording in Column 4 as it makes reference to alcohol not being served until 11am yet the core opening time on Sunday is 11am. Can we suggest the wording is removed as currently stated and replaced by "Televised Sport will be available as an activity during and outwith core hours"
9. Amend Any Other Activities to also specify we may provide a range of activities during core hours such as Fireworks night, Family day which may include bouncy castle/face painting & other child friendly activities, Charity nights, Race nights, Open microphone nights, or similar social activities appropriate to the target market.
10. Amend Children & Young Persons Terms so that Children will be admitted entry to the premises when accompanied by an adult. Young Persons can be un-accompanied if for the purpose of consuming a meal prior to 7pm, otherwise they need to be accompanied by an adult.
11. Amend Children & Young Persons Ages so that it specifies Children 0 to 15 years, and Young Persons 16 & 17 years
12. Amend Children & Young Persons times so that Children & Young Persons will be permitted access prior to core hours and until 7pm, or until 10pm for the purposes of consuming a meal in the Public Bar, or until 11pm for Children and terminal hour for Young Persons for the purposes of consuming a meal in the Conservatory, or until the terminal hour when attending a pre-booked event or private family function.
13. Amend Children & Young Persons Parts so that Children & Young Persons will be permitted access to all areas, including the Public Bar dining area but not to remain in the bar area. Access/egress will be allowed through the Public Bar to get to the dining area and the baby changing room. Access to the whole of the Public Bar will be allowed when pre-booked for an event or private family function.

Graham Blaikie provided the Board with background information on the running of the business, the reasons for the requested variations and his plans for future development and expansion. In response to Councillor McAllister he talked about the demand for providing breakfasts.

The LSO had nothing to add to his report in the Board papers. In response to questions, he advised there is one bowling club and one golf club in East Lothian that have a licence to sell alcohol from 10am.

Insp Harborow referred to his letter in the Board papers and commented that the needs of the darts team could continue to be covered by occasional licences. With regard to licensing objectives, he requested that variations numbered 1, 2 and 4 be rejected.

Councillor McAllister referred to the issue of over-provision and mentioned that Whitecraig is one of three problem areas in the county in this respect.

Although Councillor Grant considered the premises to be well-run, he was unconvinced about the need to serve alcohol from 10am. He too stated that he did not support variations numbered 1, 2 and 4; a view shared by all the other Board members.

#### **Decision**

East Lothian Licensing Board agreed to grant variations numbered 3 and 5-13 and to refuse to grant variations numbered 1, 2 and 4.

#### **4. PREMISES LICENCE REVIEW**

The Clerk advised that four licences were being reviewed in respect of non-payment of the mandatory annual licence fee, as agreed at the 23 October 2014 Board meeting. She further advised that all fees have now been paid.

##### **(i) Golden Chopsticks, 102 New Street, Fisherrow, Musselburgh**

Mr Hai Yang Sun, owner, was present. He explained his attempts to make payment by telephone and online and apologised for the late payment. The LSO informed the Board of the considerable time and effort he had spent in an attempt to collect the outstanding fee.

The Chair advised that the Board takes the non-payment of fees very seriously and stressed the impact this has on administration time and costs. He informed Mr Sun of the sanctions that could be imposed if there is a repeat of the late payment of the mandatory annual licence fee.

#### **Decision**

East Lothian Licensing Board agreed to take no further action.

##### **(ii) Haddington Conservative Club, 7 Market Street, Haddington**

No one was present to represent the licence holder.

The Clerk advised that Haddington Conservative Club is not trading at the moment.

#### **Decision**

East Lothian Licensing Board agreed to take no further action and to write to Haddington Conservative Club outlining the seriousness of the situation and possible future sanctions in the event of there being a repeat of the late payment of the mandatory annual licence fee.

**(iii) Way Inn, 1 Cuthill, Inchview North, Cuthill, Prestonpans**

Mr Michael Yip, manager of the family business, and his mother, Mrs Yip, were present. They were represented by Alistair MacDonald of MacDonald Licensing.

Mr MacDonald produced bank statements indicating that the fee had been paid earlier than was showing on East Lothian Council records. He mentioned that there had been an initial delay due to the [accounting] address used for contacting the company but that this would be changed to the restaurant address for future. He apologised for the late payment.

The LSO mentioned that the family own three licensed restaurants in East Lothian and the Council understands that it is the fee for The Way Inn that was paid late. However, Mr MacDonald took issue with this and speculated that the fee was applied to the wrong establishment. The LSO pointed out that payment of the fee was also received late in 2011.

Councillors McAllister and Innes were satisfied that there had been an administration mix-up.

**Decision**

East Lothian Licensing Board agreed to take no further action. However, the Chair strongly re-iterated the seriousness of late payment of the mandatory annual fee; the impact on time and costs; and the sanctions that would be applied if there is a repeat of the late payment of the annual mandatory licence fee.

**(iv) Whispers, 95 High Street, Tranent**

Mr William Morgan, Licensee, was present. He apologised for the late payment, which had also been late in 2013, and stated that this would not happen again.

The LSO and Police Scotland had nothing to add.

The Chair stressed the seriousness of late payment of the mandatory annual fee on two consecutive years. However, Board members were not minded to support the Chair in issuing a written warning to the licence holder.

**Decision**

East Lothian Licensing Board agreed to take no further action. However, the Chair strongly re-iterated the impact on time and costs and the sanctions that would be applied if there is a repeat of the late payment of the annual mandatory licence fee.

**5. PERSONAL LICENCE APPLICATIONS**

**(i) Grant Douglas Downie, c/o MacDonald Licensing Ltd, Edinburgh**

Mr Grant Downie was present and was represented by Mr Alistair MacDonald of MacDonald Licensing.

The Clerk advised that Mr MacDonald had a motion to propose to the Board.

Mr MacDonald advised that his client is to appear in Court at the end of February 2015. In the circumstances, he requested that this item be continued until after the Court case.

Insp Harborow was agreeable to Mr MacDonald's suggestion.

**Decision**

East Lothian Licensing Board agreed to continue this item to the Board in February 2015

**(ii) Barry James Marnell, c/o Licensing Dept, Co-Operative Group**

Mr Barry J Marnell was present. He confirmed that he had seen the Police Scotland report/objection and also the reference from the Co-Operative Group. He explained that he had passed the interview for a post as Assistant Manager and was looking forward to a settled family life and career.

There was no comment from the LSO.

Insp Harborow had nothing further to add. In response to a question, he advised that Mr Marnell's conviction would be spent on 19 April 2016.

The Chair pointed out that there is over 18 months between the date of the offence and the date of the conviction.

Councillor Grant commented that the Police report did not make good reading but noted the supportive testimonial from the Co-Operative Group. He would therefore support the application but stressed that the Board had the power to review the licence should another offence be committed.

Councillor McAllister observed sincerity in the applicant. He noted that Mr Marnell had only worked with the Co-Operative for 2 ½ months and believed that he would do well in the future. However, due to the seriousness of some of the items in the Police report, he would not be supporting the application at this time and would be happier if the conviction had been spent.

Councillor Innes shared the view of Councillor Grant. While the Police report is not good reading, he advised that he believes in restorative justice and the opportunity to change. Given the strong testimonial from Mr Marnell's employer, he was minded to support the application. He re-iterated that if Mr Marnell let the Board down, the Board had the power to review the licence.

Councillor Akhtar supported the application.

The Chair commented on the fact that the conviction is spent five years after the date of conviction and not five years after the date of the offence; pointing out that it is more than five years since the date of the offence. He was in support of granting the application.

**Decision**

East Lothian Licensing Board agreed to grant the personal licence.