

MINUTES OF THE MEETING OF EAST LoTHIAN LICENSING BOARD

**THURSDAY 28 MAY 2015
COUNCIL CHAMBERS, 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

Clerk of the Licensing Board:

Mrs K MacNeill

Attending:

Mrs M Ferguson, Service Manager – Legal and Procurement
Mr R Fruzynski, Licensing Standards Officer
Insp Harborow, Lothian & Borders Police
PC H Bowsher, Lothian & Borders Police
Ms D Elworthy, Licensing Admin Officer

Committee Clerk:

Ms J Totney, Team Manager – Democratic Services

Apologies:

Councillor T Trotter

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – 23 APRIL 2015

The minutes of the Licensing Board meeting of 23 April 2015 were agreed to be a true record.

2. POLICE SCOTLAND – CHIEF CONSTABLES' REPORT TO EAST LoTHIAN LICENSING BOARD FOR THE PERIOD 1 APRIL 2013 TO 31 MARCH 2014

PC Bowsher commented on the undue lateness of the report from Police Scotland. Members noted the reduction in recorded incidents in licensed premises and the lowest recorded level of crimes of violence in 38 years. Answering questions from Board Members, Insp Harborow stated that although there is no evidence, it is his experience that there is a correlation between alcohol consumption and crimes of violence.

Decision

East Lothian Licensing Board noted the report.

3. VARIATIONS OF PREMISES LICENCE

(i) The Gothenburg, 227-229 High Street, Prestonpans

Ms C Black, licensee, and Ms A Taylor, a partner in the business, were present to represent the applicant.

The Clerk stated that the application seeks to vary the licence to add the courtyard as an outside drinking area for alfresco dining from 11am to 9pm, Monday to Saturday, and from 12.30pm to 9pm on Sunday; and to add the provision of televised sport during core licensed hours. The clerk reported that a number of public objections had been received and noted that no objectors were present at the meeting.

In response to the Chair, Ms Black confirmed that there is no link between the applications for the outside drinking area and the televised sport. She stressed that televised sport and amplified music would only be inside the premises.

Insp Harborow indicated that Police Scotland have no objections to the application. However, they request that the outside drinking area be clearly marked; kept secure by way of locked gates; and that access is only via the licensed premises

The Licensing Standards Officer (LSO) reported that he had no objections to the application.

The Clerk referred to correspondence from East Lothian Council's Environmental Noise team which recommends a terminal hour for the outside area of 20.00 hrs.

Councillor Innes drew attention to a conflict in the opening hours, pointing out that planning permission only allows the sale of alcohol in the outside drinking area until 18.00 hrs. He moved that the licensing hours for the outside drinking area be in line with the hours permitted in the planning permission.

Ms Black answered questions to the Board's satisfaction in relation to health and safety and fire exits.

Councillor Currie commented that the objections against noise are the biggest concern.

Ms Black advised that the outside drinking area is a new venture and they would monitor its use given that there is no sun on this area after 6pm.

Councillor Currie shared the view expressed by Councillor Innes regarding a terminal hour of 18.00 hrs for the outside drinking area. He suggested that the applicant could apply for the terminal hour to be extended in the future, if required; adding that an initial terminal hour of 18.00 hrs would give confidence to local residents.

Ms Black advised that the objectors had been invited to meet with her so that she could explain that there would be no televised sport or music in the outside area.

Councillor Grant expressed his disappointment that the objectors had not engaged with the applicant to reconcile differences, the majority of which related to their misunderstanding that there would be outside music.

The Chair requested that care be taken that there is no noise drift from music inside the premises when access doors are open to the outside courtyard area.

Decision

The Licensing Board agreed to grant the variation to the premises licence subject to a terminal hour of 18.00 hrs for the outside drinking area.

4. APPLICATION FOR LICENCE REVIEW Day to Day, 26-28 Bridge Street, Tranent

The Clerk advised that Police Scotland has requested a review of the licence on the grounds of preventing crime and disorder.

Ins Harborow referred to the report from Police Scotland contained in the Board papers. He advised that the premises had failed an alcohol test purchase, which has not been resolved satisfactorily. Police Scotland is requesting that the licence be reviewed as there has been a breach of the conditions of the premises licence and of the licensing objectives.

The LSO had no comment to make at this stage.

Councillor Grant, local ward Member, supported the request by Police Scotland, a view that was shared by Councillor Akhtar.

The Clerk advised that a date would be set for the Board to review the premises licence and that the premises licence holder would be invited to attend the review.

Decision

East Lothian Licensing Board agreed to review the premises licence for Day to Day, 26-28 Bridge, Street, Tranent; and to invite the premises licence holder to attend he review.

5. PREMISES LICENCE REVIEW Elphinstone Arms, Main Street, Elphinstone

The Clerk advised that this review hearing had originally been requested by Police Scotland in February 2015. The review hearing has been continued from the meeting of East Lothian Licensing Board on 23 April 2015 as the applicant's agent (Mr A Macdonald of Macdonald Licensing) claimed that he had not had the opportunity to consider the reports being presented at that meeting. The Clerk informed members that it had subsequently been determined that Mr Macdonald had been in receipt of the reports but had failed to read these before the April meeting. She advised that the applicant was being represented today by Mr Williams.

Mr Williams presented a motion to the Board seeking a further continuation of the review hearing. He cited Mr Macdonald's absence as one reasons for this request. He also stated that as the premises are currently closed, with no prospect of re-opening in the near future. As such, there is no immediate issue regarding public safety or breach of licensing objectives. Mr Williams informed the Board that the licence holder is willing to agree that the premises would not re-open without the express consent of East Lothian Licensing Board and would be agreeable to this being added as a condition to the licence. He advised that there is an outstanding insurance claim regarding damage to the premises and it is unlikely that this will be

settled for some time; only then could future options for the premises be considered. Mr Williams stressed that no-one would be willing to take on the premises in their current condition. He stated that it would be disastrous for the future of the premises if the licence was prejudiced by any action taken by the Board today; especially in view of the requirement that an application for a new licence would have to address the presumption of refusal on the basis of over-provision. In summing up, Mr Williams requested a continuation of three to four months, at which time a proposal for the future of the premises would be presented to the Board.

The Clerk pointed that any condition to be placed on the licence would be a matter of consent. Mr Williams advised that his client agrees to this.

Insp Harborow confirmed he would be agreeable to continue the hearing for three to four months, subject to a guarantee that the premises would remain closed in the meantime. He commented that Police Scotland would not want to contribute to the detriment of passing on the licence to persons not presently associated with the premises.

The LSO had no comment to make.

Councillor Grant, local ward member, advised that he was comfortable with the request to continue the hearing for four months. This view was shared by fellow local ward member Councillor Akhtar.

Councillor Currie echoed his support for the hearing to be continued. He commented that he expects matters to be dealt with and disposed of to the satisfaction of all concerned at the next review hearing.

Councillor Goodfellow expressed his disappointment that Mr Macdonald was not present as he would have liked more detailed information as to why Mr Macdonald was unable to proceed at the April 2015 Board meeting.

Councillor Goodfellow pointed out that the issue of future decisions regarding over provision should not be relevant to the determination of this matter.

Decision

East Lothian Licensing Board agreed to continue the review hearing of Elphinstone Arms, Main Street, Elphinstone, until the September 2015 meeting of the Board; and to place a condition on the premises licence that the premises do not re-open without prior consent from East Lothian Licensing Board.

6. RECORDS MANAGEMENT

The Clerk reminded members that in October 2014, the Board had noted the legal requirements for records management and had agreed to adopt the East Lothian Council Records Management Plan. She provided an updated position and advised that matters would be kept under review and actioned by delegated officers.

Councillor Grant commended East Lothian Council for being held as an example of good practice and congratulated staff involved.

Decision

East Lothian Licensing Board noted the report.