

# EAST LoTHIAN COUNCIL

## LICENSING, ADMINISTRATION AND DEMOCRATIC SERVICES

**From: Rudi Fruzynski,  
Licensing Standards Officer**

**To: Kirstie MacNeill  
Clerk to the Licensing Board**

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Date: 22 September 2015

**Subject: LICENSING (SCOTLAND) ACT 2005 - PREMISES LICENCE REVIEW  
CAFFE BORSA, 49 HIGH STREET, MUSSELBURGH, EAST LoTHIAN**

On Monday 31<sup>st</sup> August 2015 I received official intimation in terms of Section 38(3) (b) of the licensing (Scotland) Act 2009 that the Licensing Board had decided to review the Premises Licence in respect of the above premises based on the content of a request from Mr Kevan Potter.

In terms of Section 38(4) of the Act I have prepared a report into the circumstances of the request for this review for the consideration and information of Licensing Board Members. My observations are as follows:-

In July 2014 Mr Gordon Richardson applied for a Provisional Premises Licence on behalf of BDL Property Management Ltd., 24 Craigpark Glasgow, in respect of the old Musselburgh Arms Hotel to turn the premises into an up market coffee house and event space, to be known as Caffe Borsa. The directors of the company were stated to be Rajan Pandey and Manish Khanna. The licence was granted by the Board in August 2014.

In April 2015, Mr Richardson applied for Confirmation of Caffe Borsa's Provisional Licence, however, it was not accepted at the time as it was revealed through enquiry by the Licensing Office that Mr Richardson, who had been nominated as the Designated Premises Manager, had had his Personal Licence revoked by South Ayrshire Licensing Board following failure to complete his mandatory refresher training. Eventually, the application was updated, nominating Mr Kevan Potter as DPM, and the Premises Licence was confirmed on 27<sup>th</sup> July 2015.

The on consumption hours granted to Caffe Borsa are as follows:

Monday – Friday 1100 – 2300 hours  
Saturday and Sunday 1100- 2400 hours

In addition, off sales hours are permitted between 1000 and 2200 hours each day.

On 31<sup>st</sup> August 2015, Mr Potter contacted the Licensing Office intimating that he was no longer the DPM at Caffe Borsa with immediate effect. He also requested a review of the Premises Licence stating that Mr Gordon Richardson had been selling alcohol to be consumed outside the premises, at tables placed on the footway at the front of the cafe while there were no outside drinking facilities granted in the licence. Mr Potter claimed that Mr Richardson had told Mr Potter twice that the premises were so small and out the way that the licensing laws did not really apply to them.

I can confirm that the original Provisional Licence application, submitted by Mr Richardson, included a reference in the Operating Plan to requiring outdoor drinking facilities, but outside area was shown in the Layout Plan. As such, I contacted Mr Richardson on 11<sup>th</sup> July 2014 and asked for clarification on this point. He responded that it was the intention to apply for 4 tables against the front elevation wall with two seats at each. Mr Richardson enquired if a separate application should be submitted to the Transportation Department or was it something that would be considered by the Board. Full guidance was provided that outside areas on the public concourse are applied for separately to both the Licensing Board and Transportation. On 23<sup>rd</sup> July, Mr Richardson emailed me and asked that the request for an outside drinking area be removed and that he would deal with it at a later stage.

Following Mr Potter's request for a review, I contacted him that day by telephone and asked him for a statement fully outlining the nature of the circumstances surrounding his employment at Caffè Borsa and the reasons for his request for a Premises Licence review. This was sent to the LSO on 20<sup>th</sup> September. The statement is included as an appendix to my report.

On 31<sup>st</sup> August 2015, I spoke to Mr Keith Scott, Transportation Department, East Lothian Council and informed him that there was an allegation that Caffè Borsa was permitting the use of tables and chairs on the public footpath outside the premises. He confirmed that no council permit had been granted for such practice and that he would call at the premises and check on the situation.

At 1430 hours that same afternoon, Constable Heather Bowsher and I called at Caffè Borsa when it was noted that there were customers seated at tables and chairs placed on the footpath outside the premises. At the time of this visit, Mr Richardson was initially engaged in a telephone call and the opportunity was taken to check the mandatory signage that was required to be displayed and it was noted that this was in order.

When Mr Richardson became free, Constable Bowsher informed him of the reason for the joint visit and it was pointed out to him that he did not have a permit to use tables and chairs on the footway and that he also had no facilities in his Premises Licence Operating Plan for such a facility. He stated that Mr Keith Scott, Transportation, East Lothian Council had visited him that morning and that the problem had all been sorted out. He stated that he had given Mr Scott a cheque for the permit application and everything was now in order. Constable Bowsher informed Mr Richardson that everything was not alright and that an application for a permit was only the beginning of the process of deciding through due process and consultation as to whether a permit should be granted and until the application was actually granted, and a major variation to the Premises Licence Operating Plan had been approved, no tables and chairs could be used outside the premises. Mr Richardson reluctantly accepted this advice and stated he would have the tables and chairs removed, and remarked that he didn't think he would apply for a variation since it was a bureaucratic encumbrance for such a small facility.

Constable Bowsher then stated that she had spoken with Mr Potter that morning and that he had additionally alleged that Mr Richardson had permitted alcohol to be consumed by customers at the tables and chairs. He emphatically denied that this had happened.

Mr Richardson was then asked to produce the personal licences or training records in respect of the three members of staff on duty. It then transpired that none of the staff held personal licences and it was stated that the training records were at the company's office in Glasgow. It was explained to Mr Richardson that it was a condition of the Premises Licence that training records must be available for production at all times and should be kept on the premises. Mr Richardson to begin with claimed that he had a Personal Licence, but Constable Bowsher reminded him that his licence had been revoked and he was asked if he had a staff training recorded and he conceded he did not.

At this juncture, I left Constable Bowsher and Mr Richardson to discuss the need for alcohol to be removed from display and not sold until proper staff training had been carried out. I then went and spoke with the 3 members of staff on duty and found them to be co-operative, but somewhat cautious with their answers to questions. I asked if any of them had served alcohol to customers seated at the tables and chairs on the footpath. All stated that it was not permitted in the licence and that no one was allowed to drink outside. I asked if anyone had to their knowledge been served alcohol earlier than 1100 hours and all stated that they were not aware of this happening and that Mr Richardson had not tried to persuade them to do so at any time. I asked if they had been given any alcohol training and they collectively stated that they had received about an hour's training from Mr Potter. They confirmed that none of them had signed a staff training record.

The following day I spoke with Mr Keith Scott, Transportation Department, and he updated me on his visit the previous day to Caffè Borsa. He stated that he had told them that they didn't have permission for the placement of tables and chairs on the public footway. He said "the manager acknowledged that he knew he required a permit and was expecting a visit. I gave him the relevant application form to apply for consent and stipulated that there would be no issues with him getting consent presuming the relevant structural report was satisfactory. He was informed that there would be a fee of £200 for the initial consent and was happy to pay this. The application form was left with Mr Richardson and no money or cheque was paid over at the time of my visit".

On 3<sup>rd</sup> September 2015, I went on annual leave and PC Bowsher elected to continue with enquiries into this review.

In summary, Mr Richardson has had a considerable amount of contact with the LSO before during and after the application process for the grant of an alcohol licence in respect of Caffè Borsa and been given sound guidance on all aspects of compliance with the Licensing (Scotland) Act 2005 and associated legislation, but at times he has deviated from the advice given and relied on past experience of setting up numerous enterprises, which he frequently commented on, and as such he now needs to not just do what he thinks is alright and listen and comply with the expert direction afforded to him.

R. Fruzynski  
Licensing Standards Officer

Appendix (overleaf) – Statement from Mr Kevan Potter

Kevan Potter

20/09/2015

## STATEMENT OF EVENTS

On 13 July 2015 I applied for a position that was advertised on Gumtree for a Store Manager of a new place that was opening in Musselburgh. I almost immediately received a reply inviting me for an interview on 16 July 2015. At the interview Gordon Richardson explained to me that he would normally be the DPM but in this situation it would be myself as he lived too far away. I went on holiday on 20 July 2015 and on 21 July I received a call from Gordon and he offered me the job of Store Manager. He said he urgently needed a scanned copy of my Personal License and I explained that I wouldn't be home until late afternoon on 24 July. Upon my return from holiday I emailed scanned copies of both my license and my passport.

On Wednesday 29 July I started work as the Store Manager at Caffè Borsa. David Kennedy, a man who was brought in by Gordon to set up the store, had said to me that as I was going to be the DPM when the staff came in I should do the 2 hours mandatory training required for them to sell alcohol. Gordon told me that I shouldn't spend two hours training them as "we are so small, that licensing laws don't apply to us." I told him that this wouldn't happen but I would need the paperwork printed off so I could sign off that I had done the training with all staff. I gave them one hour training that day as the premises license wasn't through. Despite numerous attempts to get Gordon to give me the paperwork this never materialised.

On Thursday 30 July we were setting up the store and we had a visit from Rudi Fruzynski, the Licensing Officer. He was going through a few things with me as I was the DPM, during this meeting it was mentioned in a conversation between Rudi and Gordon, that Gordon had in fact been banned from holding a Personal License as he hadn't kept his training up-to-date. At this meeting Rudi explicitly told us that we under no circumstances were we allowed tables outside the premises without prior consent from ELC. And also highlighted that one of the terms of our license was that no alcohol be consumed outside at any time. Despite this Gordon insisted in having table and chairs outside, he bought garden tables from IKEA and insisted on hot days that we take two interior tables and put them outside also. When Rudi left the premises that day Gordon told me "keep him sweet" and again told me that "he will leave us alone because we are so small and the licensing laws of East Lothian don't apply to us".

We opened on Friday 31 July but no alcohol was sold as I insisted that it would not be sold until I had a copy of the premises license in my hand. Gordon was not happy about this. I didn't see a copy of the premises license until Tuesday 25 August but I had phoned a couple of weeks before this and spoke to a woman called Maree and she confirmed the license had been granted but it had been sent to Gordon's registered office in Glasgow but if they hadn't received it they were to call the council immediately to inform them of this. Every time I asked about the license up until 25 August I was always told "it's in hand Kevan". When I saw the premises license the holder of it was a company called BDL Property Management Ltd, I asked Gordon who this was and why they had been given my license details. He told me they owned the premises, I feel that this should have been mentioned to me before I sent my license and passport to him.

On numerous occasions I had conversations with Gordon regarding selling alcohol. On Sunday 30 August at 10.45 am I was approached by a couple of people and they said to me that they would like two large glasses of rose wine to sit outside. I informed them that it was outwith permitted hours and alcohol was not allowed to be consumed outside the premises. One of the people took exception to this and informed me that they had been served wine and had been allowed to consume it at the tables outside the previous week. They said they had been served an older guy, with white hair, stubble and wearing yellow driving glasses on his head. This description is a perfect match to Gordon. They informed me that Gordon had told them he was the owner and asked me who I was to speak against him. I informed them that I was premises manager and Gordon's name isn't even on the license and as the premise manager I had a legal duty to serving alcohol within permitted times and in the correct places. They left the premises.

When I mentioned this to Laura Millar, one of the baristas, she told me that in fact it did happen and that Gordon had told her "you didn't see that". I called Gordon but got no answer, in fact I called him a total of 32 times. In between all these calls I texted him and challenged him about this and he told me on the text that no alcohol was ever sold outside. I asked him if that meant that two members of the public and one of his staff were lying and he was telling the truth. I got no reply. After all these calls I messaged Gordon and told him I wanted to see him as this is a serious matter that could affect my personal license as well as the premise license but would have no consequences for him and if I didn't hear from him I was closing his shop until he spoke to me. He didn't answer so I closed the premises. I spoke to Sarah Currie, the premises supervisor an hour later and when I told her about the alcohol getting served outside and Gordon denying it her words were "he is a liar, he told us "you didn't see that"". Sarah told me she was very angry at the fact that he had done this knowing it was illegal.

Later that evening I received a call from what turns out to be a switchboard number for Police Scotland. They called me back and I spoke to a PC Stuart in Musselburgh and he told me that Gordon had been in and reported that I had stolen the keys for the cafe. At the time I closed up the shop as far as I was concerned I was still the premises manager. He didn't email me to inform me he had sacked me until around 11.00 pm that evening. I found this very bizarre given it was him that broke the law in the first place. I felt he was trying to cover up for his negligence.

I handed the keys in to PC Stuart at Musselburgh and had a conversation with him at the doors of the station and he informed me that I needed to speak to Heather Bosha the police licensing officer for East Lothian as a matter of urgency. I called to speak to her at 8.00 am on Monday 31 August, she called me back and I gave a statement to her over the phone, at which point she informed me she would contact Rudi and they would do joint visit that morning to Caffè Borsa.

I have since met with Heather at Tranent Police Station and gave a further statement to her regarding the situation. Gordon Richardson also threatened me by telling me that he would request a review of my personal license and my ability to hold a license in the future. This is something that I found strange as it was him who broke the law and it is him that has been careless in the management of his own personal license.

After further investigation of Gordon I found out that he has been banned from being a company director or being involved in the setting up, marketing, management and day-to-day running of a business by the government's Insolvency Service until September 2016. As far as I was concerned Gordon was our boss and the company owner as this is what he led us to believe. It turned out that his

wife is the sole director of the company yet we have never met her. Gordon was the one who carried out all recruitment and selection for all posts. He was through at the store every day giving instructions to myself and others in terms of how to run "his business". We were never issued with payslips and when I spoke to HMRC there had been no tax or National Insurance paid despite him deducting random amounts from my salary. Payment of wages was always late and from two different accounts, one personal to his wife and the other from Le Grand Ciel Ltd.

This is a full and honest statement of the events from opening until he sacked me on Sunday 30 August 2015.

Hope this covers everything you required Rudi. Please let me know if there is anything else you need.

Kind regards

Kevan