



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

**THURSDAY 24 SEPTEMBER 2015
COUNCIL CHAMBERS, TOWN HOUSE, HADDINGTON**

Board Members Present:

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

Clerk of the Licensing Board:

Mrs M Ferguson

Attending:

Mr R Fruzynski, Licensing Standards Officer
Ms M Winter, Licensing Administration Assistant
PC H Bowsher, Police Scotland
Insp A Harborow, Police Scotland

Committee Clerk:

Ms J Totney, Team Manager – Democratic Services

Apologies:

Councillor S Currie

Declarations of Interest:

Councillor Goodfellow declared an interest in item 2 (iii) – The Linton Hotel and Steakhouse, 3 Bridge End, East Linton, as he knows the objectors.

Councillor Trotter declared an interest in item 3 (i) – Caffè Borsa, 49 High Street, Musselburgh, as he knows the individual requesting the Review.

1. MINUTES FOR APPROVAL – 27 AUGUST 2015

The minutes of the Licensing Board meeting of 27 August 2015 were agreed to be a true record.

2. VARIATION TO PREMISES LICENCE

(i) Aldi Stores Ltd, Bank Retail Park, Newhailes Road, Musselburgh

Mr N Hassard, Lindsays, was present to represent the applicant. Mr A Robson, Area Manager (East Lothian), Aldi Stores Ltd was also present. No objections had been received in respect of this application.

The Clerk stated that the application seeks to vary the licence to accommodate a seasonal increase in capacity of 9m² between 24 November and 9 January each year; and to make a consequential change to the wording in the operating plan.

Mr Hassard highlighted the pertinent points in his client's application.

There were no further comments from the Licensing Standards Officer or from Police Scotland.

Councillor McAllister, local Ward member, stated that this is a well run store.

Councillor Innes remarked that Aldi Stores Ltd is a responsible operator.

Decision

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

(ii) North Berwick Diner and Fry, 11 Quality Street, North Berwick

No one was present to represent the applicant. No objections had been received in respect of this application.

The Clerk stated that the application seeks to vary the licence to include funeral teas; birthdays; club or other group meetings; and live performances which may commence before core hours but not before 10 am; and televised sport. She pointed out to members that the addition of live music has been driven by successful performances at the premises during Fringe by the Sea.

Councillors Innes, Trotter and Goodfellow commented on the positive tourism and economic benefits resulting from Fringe by the Sea.

Decision

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

(iii) The Linton Hotel and Steakhouse, 3 Bridge End, East Linton

Having declared an interest in this item, Councillor Goodfellow withdrew from the meeting and left the Council Chamber.

In his absence, Councillor Innes proposed that Councillor Grant take the chair; this was seconded by Councillor Trotter.

Mr A MacDonald, MacDonald Licensing was present to represent the applicant. Mr P Cairney, licence holder and tenant manager, Linton Hotel, was also present.

One public objection had been received; the objector was not present.

The Clerk stated that the application seeks to vary the licence to include recorded music; live performances; televised sport; to add off sales from 11 am to 10 pm each day; to provide that certain activities will take place outwith core hours, taking into account the fact that the premises are a hotel; to clarify access by children and young persons, particularly when resident in the hotel; to amend on sale hours on Thursday, Friday and Saturday to 1 am, and on a Sunday to midnight; and to replace current provisions on seasonal variations and provide that the premises would like to take advantage of general extensions issued by the Board, and may apply for extended hours on certain occasions. She advised that the application also seeks to substitute a new layout plan to clarify the extent of the outside area; clarify the areas where children and young persons have access; rename the use of certain rooms; and change the name of the premises to The Linton Hotel and Steakhouse.

Mr MacDonald highlighted the key points in the application. He responded to the comments in the Police Scotland report by stating that he did not consider it realistic that the off sales of alcohol should be the same price that patrons pay to consume it on the premises; a point he re-iterated later in the meeting to Councillor Grant. Mr Cairney explained the need for a competitive price-point for alcohol off sales if the outside catering part of his business is to be successful.

Mr MacDonald advised the Board that Mr Cairney had spoken to his neighbours regarding their objections about privacy. He stated that their concerns would be resolved by re-instating fencing in the outside area of the premises, near the neighbouring residential property and restricting the licensed area to exclude the area immediately adjacent to the neighbours' property. He advised that an amended layout plan would be submitted and undertook to forward a colour copy to the licensing office.

The Licensing Standards Officer advised that he had no objections to the application.

Board members indicated that they were pleased that the applicant had demonstrated a responsible attitude to their neighbours.

Councillor Innes felt that it was unreasonable for Police Scotland to request that the price of off sales is identical to the price of purchasing alcohol on the premises. He suggested that any policy for off sales pricing in East Lothian should be discussed with the Licensing Forum. Councillor Grant advised that the alcohol pricing policy could be reviewed in 2016 when the Statement of Licensing Principles is revised.

Decision

East Lothian Licensing Board agreed to grant the variation to the premises licence subject to an amended layout plan showing the reinstatement of the external fencing and restriction of the licensed area.

Councillor Goodfellow rejoined the meeting and regained the Chair from Councillor Grant.

3. REVIEW OF PREMISES LICENCE

(i) Caffè Borsa, 49 High Street, Musselburgh

Having declared an interest in this item, Councillor Trotter withdrew from the meeting and left the Council Chamber.

The Clerk advised that the review had been requested by Mr K Potter, previously designated premises manager (DPM) at Caffè Borsa. Under delegated authority, the Clerk had agreed that this is a valid request for a review. She advised that reports from Police Scotland and the Licensing Standards Officer had been obtained and distributed to the Members of the Board and all other parties. These reports detail the circumstances leading to the review request which include the claim that Mr 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 G Richardson, the tenant and manager of Caffè Borsa, was present.

Mr Potter and the Licensing Standards Officer (LSO) advised that they had nothing to add to their written reports. In response to Councillor Goodfellow, the LSO confirmed that no alcohol was being consumed outside the premises when he visited on 31 August 2015 with PC Bowsher.

Insp Harborow referred to the Police report and advised that references to 30 August should read 23 August. He highlighted the final paragraph of the report and stressed that he is very concerned about Mr Richardson's dismissive approach to licensing legislation.

Mr Richardson confirmed that he understood the allegations and stated that the times of the alleged incidents are all inaccurate. He advised that he could verify that he was elsewhere on the stated dates and times if necessary. He apologised if he had appeared dismissive to the Police and commented that he has always valued the advice available from the LSO. He acknowledged that on the day he was visited by the LSO and PC Bowsher he did appear vague about the staff training records but asserted that this was the responsibility of Mr Potter in his role as DPM.

Mr Richardson answered a number of questions from Board members including: compliance with licensing training; his plans for recruiting a new DPM; discrepancies between his recollection of the conversation regarding the cheque which he had allegedly given to a Council officer from Transportation Department in respect of a permit for the use of tables and chairs outside the premises and that of the Police and LSO; his un-discharged bankruptcy; the fact that licensing legislation applies to premises of all sizes; and his experience in the licensed trade. Mr Richardson stated that he had been opportunistic in placing tables outside the premises without the necessary permissions but that he respects the licensing legislation and recent changes in licensing law.

Councillor Innes stated that the character of licence holders is very important and suggested that Mr Richardson was trying to mislead the Licensing Board regarding the permit for outside tables.

Councillor Goodfellow pointed out to Mr Richardson that both the Police and the LSO had concerns about his dismissive attitude and the failures to comply with licensing law that became apparent through their investigations. Mr Richardson replied that he had not intended to appear complacent or derogatory in relation to licensing legislation.

Mr Potter provided information about his employment with Caffè Borsa and told members that Mr Richardson had purported to be the owner of Caffè Borsa.

The members of East Lothian Licensing Board and the Clerk of the Board withdrew from the Council Chamber to debate the matter in private.

Returning to the Chamber and addressing Mr Richardson directly, Councillor Goodfellow, stated that the reports from Police Scotland and the Licensing Standards Officer led the Board to conclude that the premises are not being operated in accordance with conditions of the premises licence. The premises licence would therefore be suspended for one month until 24 October 2015. The Board urged that the opportunity be taken to appoint a qualified designated premises manager and to ensure that all staff are trained and have up to date training records. Councillor Goodfellow added that assistance could be sought from Police Scotland and the LSO.

Decision

East Lothian Licensing Board agreed to suspend the premises licence for one month until 24 October 2015.

(ii) Elphinstone Arms, Main Street, Elphinstone

Councillor Trotter rejoined the meeting.

Mr A MacDonald, MacDonald Licensing was present to represent the applicant. Mrs M Dodds, premises manager, was also present.

The Clerk advised that the review had been requested by Police Scotland and had been continued from previous meetings of the Licensing Board, subject to the condition that the premises did not re-open until the Board had held a review hearing.

Mr MacDonald updated Board members regarding the premises insurance claim and indicated that the repairs works would not start until early 2016. He assured members that the premises would not re-open until the Board are satisfied with the proposals and that previous issues are addressed to the Board's satisfaction.

The Clerk confirmed that a condition to this effect, without time limit, had been added to the licence following the Board meeting in May 2015.

Mr MacDonald therefore requested a further continuation, subject to that condition.

The LSO had no further comments. Insp Harborow advised that the views of Police Scotland remain consistent with those expressed previously.

Decision

East Lothian Licensing Board agreed to continue the matter for six months, subject to the condition that the premises would not reopen without the prior consent of the Licensing Board.

4. PERSONAL LICENCE APPLICATION

Grant D Dowie

Mr A MacDonald, MacDonald Licensing was present to represent the applicant. He advised the Board that the application was being withdrawn as his client's pending court case had now been heard. He advised that his client had been convicted and was awaiting sentencing.

Decision

East Lothian Licensing Board noted that the application had been withdrawn.