



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 28 APRIL 2016
COUNCIL CHAMBERS, TOWN HOUSE, HADDINGTON**

Board Members Present:

Councillor J Goodfellow (Convenor)
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, Service Manager, Licensing, Administration and Democratic Services

Attending:

Mr R Fruzynski, Licensing Standards Officer
Mrs D Elworthy, Licensing Admin Officer
PC H Bowsher, Police Scotland
Insp A Harborow, Police Scotland

Committee Clerk:

Ms J Totney, Team Manager – Democratic Services

Apologies:

Declarations of Interest:

None

1. MINUTES FOR APPROVAL

The minutes of the Licensing Board meeting of 24 March 2016 were agreed to be a true record.

2. STATEMENT OF EXTENSION FOR HM THE QUEEN'S 90TH BIRTHDAY

Councillor Goodfellow, Chair of East Lothian Licensing Board read out the following statement of extension for the Queen's 90th birthday.

In terms of Section 67 of the Licensing (Scotland) Act 2005, the Board has determined that it is appropriate to grant a general extension of licensed hours for the Queen's 90th birthday weekend. This extension will apply from Friday 10 June 2016 to Saturday 11 June 2016 inclusive and will allow an extension of the terminal hour for the sale of alcohol during that period until 1 am. This extension will only apply to on-sales and not to off-sales of alcohol. There will be no general extension beyond this although any applications for extended hours outwith the general extension will be considered on a case-by-case basis. It should be noted that such applications will require to be submitted not later than 18th May. There is no need for licensees to apply for the general extension to 1 am. On sales premises can utilise these hours to the extent they consider appropriate.

3. VARIATION TO PREMISES LICENCE

(a) Aldi, Whittinghame Drive, Haddington

Michael McDougall, Lindsay's Solicitors, was present to represent the applicant. Ms R Callaghan, Area Manager, Aldi, was also present.

The Clerk advised that the application seeks to vary the operating plan in respect of the alcohol display area. The current total alcohol display area of 28.125m² to be increased to a permanent display area of 23.625m² and a seasonal display area of 4.500m². The seasonal area will only be used between 24 November and 9 January annually. The application also seeks to amend the layout plan in respect of the slight increase in alcohol display capacity, internal reconfiguration and the introduction of tandem tills.

Mr McDougall referred to Board's over provision policy and explained the very minor nature of the increase in the alcohol display area, adding that the increase in display capacity is in response to customer demand.

Insp Harborow and the Licensing Standards Officer (LSO) had nothing to add to their written reports.

Local Ward Member, Councillor Trotter, supported the application.

Councillors Innes and Akhtar commented that Aldi is regarded as a responsible operator.

Decision

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

(b) King's Palace Chinese Restaurant, 129-131 High Street, Dunbar

Ms Wing Sze Cameron, Premises Manager, was present.

The Clerk advised that the application seeks to vary the premises licence to change on-sales hours to: 11am to 1am on Thursday to Saturday inclusive and 11am to midnight on Sunday (from: 11am to 11pm Thursday to Saturday and from 12.30pm to 2.30pm and from 6.30pm to 11pm on Sunday); allow young children/young persons

when accompanied by an adult until 11pm or closing time at special events (currently 8pm); add seasonal variation to take advantage of any general extensions; and change off-sales to 11am to 10pm Monday to Sunday inclusive (from: midday to 10pm Monday to Saturday and 6pm to 10pm on Sunday).

The Clerk informed Board members that there are no objections from Police Scotland or the LSO but one public objection had been received in respect of noise nuisance. The objector was not present.

Ms Cameron explained that the premises are a family run restaurant and that she was looking to update her operating plan and avoid the need to make any changes on an occasional basis in future.

The LSO stated that the premises are well run and that he has had no complaints regarding noise.

Insp Harborow advised that he has nothing to add to the Police Scotland report. He added that Police Scotland have not received noise related complaints regarding these premises.

Councillor Innes commented on the need to promote East Lothian as a tourist destination and supported the application.

Councillor Currie stressed the importance of there being no objections from Police Scotland or the LSO. He supported the application.

Decision

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

4. REVIEW OF PREMISES LICENCE

- (a) Tesco Extra, Olive Bank Road, Musselburgh**
- (b) Tesco Store, Newton Port, Haddington**
- (c) Tesco Store, Tantallon Road, North Berwick**

Ms Audrey Junner, Hill Brown Licensing, was present to represent Tesco Stores, in the event of there being questions from Board members.

The Clerk advised that items 4 (a), (b) and (c) would be dealt with together as they all relate to Tesco Stores. She reminded the Board that a hearing must be held when the Board is notified of a conviction elsewhere in the United Kingdom and pointed out that Tesco has self reported regarding health and safety convictions.

Councillor Goodfellow remarked that he was not in favour of the current legislation which required these hearings to take place; adding that the legislation would be changing soon.

Decision

East Lothian Licensing Board agreed to take no action.

(d) Co-operative Food Group Ltd, Main Street, Ormiston

Ms Audrey Junner, Hill Brown Licensing, was present to represent the applicant. Mr Andrew Leaper, National Licensing and Diligence Manager, Co-operative Group; Mr Eddie McNally, Area Risk Manager, Co-Operative Group; and Mr Graham Cranston, Area Manager for Ormiston Co-Operative store, were also present.

The Clerk advised that the review of the licence had been requested by Police Scotland following two alcohol test purchase failures.

Insp Harborow referred to the report from Police Scotland and explained in detail the background and circumstances relating to the two test purchase failures on 27 March 2015 and 10 December 2015. He added that re-tests had been carried out after both test purchase failures and advised that the re-tests had been passed on both occasions. He also informed members that there had been a test purchase failure on 17 March 2016 at another Co-Operative store in East Lothian.

In response to Councillors Goodfellow and Innes, the representatives from the Co-Operative Group answered questions regarding staff training and the age/gender of the staff involved in the test purchase failures.

The LSO reported that the due diligence systems at the Co-Operative store in Ormiston are excellent. He suggested that the problems are due to staff being unwilling to comply with processes and procedures.

Ms Junner tabled a comprehensive booklet which provided members with detailed information on the licensing training delivered by the Co-Operative Group. She provided extensive information, by way of a verbal presentation, regarding previous test purchase successes; the fact that, across East Lothian, the Co-Operative only failed three out of 27 test purchases in the period March 2015 – March 2016; the intensive staff training programme that is delivered to staff; the repercussions for the staff involved in the test purchase failures; and the weekly reporting of age challenges and sales refusals. She assured Board members that her client is not complacent; is an extremely responsible operator with a high awareness of the licensing objectives; and that there is no continued threat of crime or disorder from these premises.

Ms Junner answered questions from Board members regarding the till systems; staff numbers, including the number of staff who are personal licence holders; and the nature of staff contracts.

Councillor Currie sought an explanation for the test purchase failures, especially given the extent of the due diligence and staff training. Mr Leaper advised that the Co-Operative's policy is to strive for perfection but this can be difficult to achieve when individuals are making decisions. Councillor Currie made the point that many premises in East Lothian do achieve perfection and pass all test purchases; often with a lot less in the way of training and due diligence than has been evidenced in the Co-Operative Group's presentation booklet.

Councillor Innes commented on the comprehensive information that is available regarding sales records and suggested that the management team need to review how they use this information to reduce the potential for human error.

In response to Insp Harborow, the Clerk advised that the license review is solely in respect of the Co-Operative Food Group store at Ormiston, East Lothian.

Board members adjourned to deliberate in private.

On reconvening Councillor Currie expressed concerns at the test purchase failures, given the level of training and due diligence. He repeated the fact that other premises have achieved perfection in relation to test purchases.

Councillor Goodfellow then advised that the Board had established that there are grounds to review the licence. He stated that, per section 39(2)(a) of the Licensing (Scotland) Act 2005, the Board had decided to issue a written warning as the Board take a very serious view of test purchase failures. He made it clear that if the premises are before East Lothian Licensing Board for a similar offence in future, the Board will take the matter extremely seriously. He reported that it is the Board's view that the increased management has been beneficial to the store and resulted in recent test purchase passes. He made it clear that any review before the Board is only a review of the licence for the particular premises in question.

Decision

East Lothian Licensing Board agreed to place a written warning on the licence of the Co-Operative Food Group, Main Street, Ormiston, East Lothian.

5. APPLICATION FOR PERSONAL LICENCE

(a) Nicol Burdell

Miss N Burdell was present and confirmed that she had received copies of the paperwork that is before the Board today.

The Clerk advised that an objection had been received from Police Scotland.

Insp Harborow stressed that he supported the report from Police Scotland in the strongest terms.

Board members discussed the reports before them, which contained personal information. PC Bowsher provided background information regarding conversations that had informed the content of the Police Scotland report.

Ms Burdell stated to the Board that the situation is unfair as she had not received relevant correspondence from her previous employer referred to in the Police report. She is also of the view that she is being victimised by Police Scotland.

The Board adjourned briefly to deliberate the matter.

On reconvening, Councillor Goodfellow advised that, based on the evidence before them today, the decision of East Lothian Licensing Board is to refuse Ms Burdell's application for the grant of a personal licence. He added that the Board had felt it necessary to come to this decision, for the purpose of preventing crime and disorder, per Section 73 (4) of the Licensing (Scotland) Act 2005.

Decision

East Lothian Licensing Board agreed to refuse to grant the application for a personal licence.

6. REVIEW OF PERSONAL LICENCE

(b) Ryan Baynham

The Clerk advised that Police Scotland has requested a review of Mr Baynham's personal licence and the matter is called before the Board today to comply with statutory timescales. However, Mr Baynham has requested that the item be continued until the meeting of East Lothian Licensing Board on 26 May 2016.

Decision

East Lothian Licensing Board agreed to continue the review of the personal licence until the meeting on 26 May 2016.