



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 25 AUGUST 2016
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 K MacNeill, Service Manager, Licensing, Administration and Democratic Services

Attending:

Mrs M Ferguson, service Manager – Legal & Procurement
Ms C Molloy, Legal Team Leader
Mr R Fruzynski, Licensing Standards Officer
Ms M Winter, Licensing Officer
Ms G Herkes, Licensing Officer
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 Grant declared an interest in Items 3(b) and 3(d) and advised that he would withdraw from the Chamber during the debate and decision on these items.

Councillor Goodfellow declared an interest in item 5(b) and advised that he would withdraw from the Chamber during the debate and decision on this item.

Given the declarations of interest, the Convenor advised the Board that there would be slight changes to the running order for the meeting. The minutes reflect the order in which the business was dealt.

1. MINUTES FOR APPROVAL

The minutes of the Licensing Board meeting of 23 June 2016 were agreed to be a true record.

***Sederunt:** Councillor Grant leaves the meeting*

3 PREMISES LICENCE – MAJOR VARIATION

3 (d) Co-Op, Northfields, Mid Road, Prestonpans

Ms A Junner, Hill Brown Licensing was present to represent the applicant. Mr G Cranston, Co-Op Manager, was also present.

The Clerk advised that the major variation seeks to increase the alcohol display capacity from 26.8 m² to 30.59375 m². No objections had been received from Police Scotland or the Licensing Standards Officer (LSO) but a representation had been received from NHS Lothian in relation to public health.

Ms Junner explained the unusual background to the application, pointing out that this has resulted from a change in the specification of fixtures and fittings (such as fridges) that had been installed in the store. She stressed that all other aspects of the proposition are identical to those in the provisional licence application that was granted by the Board on 27 August 2015.

***Sederunt:** Insp Harborow and PC Bowsher joined the meeting*

In response to questions from Councillors McAllister, Akhtar and Trotter, Ms Junner conceded that the increase in available capacity could well result in an increase in the amount of alcohol being displayed.

Police Scotland and the LSO had nothing to add to their written reports.

Ms E Oldcorn, Senior Specialist in Health Promotion, NHS Lothian, advised the Board that alcohol off-sales are a particular concern, especially in a recognised area of deprivation. In response to a question from Councillor Goodfellow, she advised that 75% of alcohol consumption comes from off-sales.

Ms Junner stated that the over provision policy had applied to these premises when the provisional licence was granted, a year ago, and stressed that the Co-Op is a good operator.

Councillor Innes commented that if this capacity had been sought in the provisional licence it would have been granted and he supported the application. He added that the proposed capacity was not unusual for the size of the store.

Councillor McAllister advised he would not be supporting the application; remarking that there had been insufficient effective planning in respect of the fixtures and fittings. He had additional concerns given that the area is one of multiple deprivation and thanked the NHS Lothian representative for their input.

Councillor Akhtar supported the application based on previous experience of the checks and balances that are in place at the Co-Op stores.

Councillor Trotter opposed the application due to the problematic area. However, he praised the Co-Op for the positive way that they run their business.

East Lothian Licensing Board Convenor, Councillor Goodfellow, echoed the comments made in respect of the contribution from NHS Lothian. He informed the Board that he would not be supporting the application on the grounds of improving and protecting public health.

In response to a request by Ms Junner, the Board determined that, under Section 32(3)(a) of the Licensing (Scotland) Act 2005, there was no restriction on the applicant submitting another application for this major variation within one year.

Decision

East Lothian Licensing Board agreed to refuse the grant of a major variation to the premises licence.

3 (b) Glenkinchie Distillery, Glenkinchie, Pencaitland

No one was present to represent the applicant.

The Clerk advised that a letter of representation had been received from NHS Lothian.

Decision

East Lothian Licensing Board agreed to continue the item to the September 2016 meeting so that the applicant/representative could attend.

Sederunt: Councillor Grant re-joined the meeting

3 (a) Carberry Tower, Whitecraig, Musselburgh

Mr J Guy, Anderson Strathern, was present to represent the applicant.

The Clerk advised that the application seeks to vary the operating plan to include bar meals; to vary the layout plan to change the names of various rooms; and to vary the description from a 15th Century Castle to a Hotel with conference facilities, an event, hospitality and training centre with a bar, function rooms and separate Ceilidh Hall.

Mr Guy explained that the changes have resulted from a recent change of ownership.

The LSO commented that the premises are well run.

Decision

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

3 (c) Horseshoe Tavern, 54 Newbigging, Lewisvale, Musselburgh

Mr S McGowan, TLT Solicitors, was present to represent the applicant. Ms L Lynch, premises manager was also present.

The Clerk advised that the application seeks to allow on sales from 11 am on Sundays and allow children and young person access from 11 am on Sundays.

Mr McGowan stated that the premises wished to come into line with other similar establishments in relation to 11 am opening on a Sunday.

The LSO commented that these are very well run premises.

Decision

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

3 (e) The Ship Inn, 184 North High Street, Fisherrow, Musselburgh

Mr A Macdonald, Macdonald Licensing was present to represent the applicant.

The Clerk advised that the application seeks to vary bar meals; include music outwith core hours; serve breakfast/coffee/tea from 10 am; and allow entry to young persons at all times during a function and when having a meal between 10 am and 8 pm. She advised that no objections had been received.

Mr Macdonald informed the Board that there is a desire to depart from a traditional pub style operation.

Police Scotland, the LSO and NHS Lothian had no comments to make.

Decision

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

2. PREMISES LICENSE – NEW GRANT

Cucina Amore, 37 Quality Street, North Berwick

Mr A Macdonald, Macdonald Licensing, was present to represent the applicant. Mr F Cucchi, company director, was also present.

The Clerk advised that no objections had been received but that the application engages the Board's overprovision statement.

Mr Macdonald explained that the application has resulted from the fact that the company that previously held the licence was dissolved/struck off the register of companies. He stressed that he considered this to therefore be a re-application, adding that the premises have been operating for more than three years.

Councillor Goodfellow clarified that the Board has to deal with this as a new application.

Police Scotland and the LSO had no comments to add to their reports. The LSO advised that the premises are well run.

Councillor Grant indicated his support for the application. Councillor Innes commented on the unusual situation and added his support to the application, a view that was echoed by Councillor Goodfellow.

Decision

East Lothian Licensing Board agreed to grant the premises licence.

4 OCCASIONAL LICENCE

Simon Flame, Marquee and Stately Home, Broxmouth House, Broxmouth Park, Dunbar

The Clerk advised that the application for an occasional licence would usually be dealt with under delegated powers. However, given the repeated applications for occasional licences, this application had been presented to the Board for determination, in line with the Board's policy.

Mr Frame stated that he was guilty of not progressing an application for a premises licence quickly enough. He advised that an application had been submitted for planning permission but that this was still to be granted as council officers are seeking clarification on some aspects of the application. He gave an undertaking that he would progress all necessary actions straight away.

The Convenor made it clear that East Lothian Council has been very generous in granting occasional licenses.

The LSO advised that the premises are well run but that it is time now for a full premises licence to be progressed.

Police Scotland had no comment to make.

Members were strongly of the view that it was highly unlikely that any further occasional licences would be granted without a hearing. Councillor Innes stated that if an occasional licence application was presented to the Board in future, a planning officer should attend to explain the delays in granting a full premises licence. He also stressed that in the event of a further application for an occasional licence, he would expect the applicant to be present to demonstrate that they had done everything in their power not to hold up the process of applying for a premises licence. He requested that these provisos be noted.

Councillor Goodfellow added that the any future occasional licence applications must be lodged at least six weeks in advance.

Decision

The Board agreed to grant the occasional licence and determined that any future applications for occasional licences be subject to the provisos as outlined by Councillor Innes.

5 PERSONAL LICENCE REVIEW

5 (a) Ryan Baynham

Mr A Macdonald of Macdonald Licensing was present to represent the applicant. Mr Baynham was also present.

Mr Macdonald reported that the outstanding court action, which had resulted in the review being carried forward from previous meetings, had now been dealt with. He informed the Board that Mr Baynham acknowledged that there had been an incident and had accepted the fixed penalty offered by the Procurator Fiscal. He added that while his client did not fully agree with all the reported versions of events, Mr Baynham was, nonetheless, ashamed about what had happened. Mr Macdonald explained the background to the incident and urged the Board to take no action.

Mr Baynham personally confirmed that he was ashamed at what had taken place and assured the Board that such a situation would not happen again.

The Clerk confirmed the date on which Mr Baynham had become a personal licence holder.

In response to questions from Councillor McAllister, Mr Baynham stressed that there were no mitigating circumstances to account for the incident.

The LSO commented very favourably on Mr Baynham as a personal licence holder.

Police Scotland referred the Board to their report; acknowledged Mr Baynham's statement of regret; agreed that there are no issues with the way that Mr Baynham runs his premises; but disagreed with Mr Macdonald's view that no action should be taken.

Councillor Trotter indicated that he was happy to accept that this had been an isolated incident, but recommended that a severe reprimand would be appropriate in the circumstances. This view was supported by Councillor Grant; endorsed by Councillor Innes; echoed by Councillor McAllister; and agreed by Councillor Akhtar.

The Clerk outlined the sanctions that are available to the Board and the way in which these would be recorded. She explained that, if an endorsement was placed on Mr Baynham's licence, it would be active for five years but that Mr Baynham could continue to operate as a designated premises manager.

Councillor Goodfellow commented on the seriousness of the incident and stressed that the Board would take a very firm view if there was to be a repeat of such an incident.

Decision

East Lothian Licensing Board agreed to endorse Mr Baynham's personal licence.

***Sederunt:** Councillor Goodfellow left the meeting. Councillor Grant assumed the role of Convenor of East Lothian Licensing Board for item 5 (b).*

5 (b) Martin Gach

Mr Gach was present to represent himself.

Police Scotland referred to their letter to the Board and summarised the contents.

The LSO informed the Board that Mr Gach is not known to him.

Mr Gach explained the circumstances surrounding the incidents in the Police Scotland report; answered questions from the Board regarding the incidents; and stated that he had "no explanation" for the incidents.

The Clerk reminded the Board of the sanction options available to them.

Board Members adjourned from the Chamber to debate the matter in private.

On reconvening, Councillor Grant advised that the Board had taken a very serious view of the personal licence review and had debated the matter at length.

Decision

East Lothian Licensing Board agreed to revoke Mr Gach's personal licence given the seriousness of the incidents and breach of the licensing objective of preventing crime and disorder.

The Clerk advised Mr Gach that he could not work as a designated premises manager.