

**EAST LOTHIAN**

**Meeting 26 January 2017 at 10:00am in , Council Chambers, Town House, 56 High Street, Haddington, East Lothian**

**Licensing (Scotland) Act 2005**

**Provisional(s)**

**Premises**

**Applicant**

**Date Received**

**Comments**

1 163 HIGH STREET  
MUSSELBURGH  
EAST LOTHIAN  
EH21 7DE

MUSSELBURGH AUCTION ROOM LTD.  
C/O MACDONALD LICENSING  
LIMITED  
21A RUTLAND SQUARE  
EDINBURGH  
EH1 2BB

30 November 2016

EL 341

## EAST LoTHIAN LICENSING BOARD

### APPLICATION FOR PROVISIONAL PREMISES LICENCE

Licensing (Scotland) Act 2005, section 20

**APPLICANT INFORMATION** *Licensing (Scotland) Act 2005, section 20(1)*

**Question 1**

*Name, address and postcode of premises to be licensed.*

163 High Street  
Musselburgh  
EH21 7DE

**Question 2**

*Particulars of applicant*

2(a) *Where applicant is an individual, provide full name, date and place of birth, and home address including postcode and telephone number.*

2(b) *Where applicant is a partnership, please provide full name, and postal address of partnership.*

2(c) *Where applicant is a company, please provide name, registered office and company registration number.*

Musselburgh Auction Room Ltd  
29 Sciennes Road  
Edinburgh  
EH9 1NX

Company Number SC529898

0131 467 7544

2(d) *Where the applicant is a club or other body, please provide full name, and postal address of club or other body.*

[Empty box for providing full name and postal address of club or other body]

2(e) *Where applicant is a partnership, company, club or other body, please provide the names, dates and places of birth, and home addresses of connected persons.\**

Antonio George Martone

[Redacted address for Antonio George Martone]

Franco Martone

[Redacted address for Franco Martone]

Stephen Robertson

[Redacted address for Stephen Robertson]

\* Connected person is defined in section 147(3) of the Licensing (Scotland) Act 2005.

### Question 3

#### *Previous applications*

- 3 *Has the applicant been refused a premises licence under section 23 of the Licensing (Scotland) Act 2005 in respect of the same premises?* **NO**

*If YES – provide full details*

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### Question 4

#### *Previous convictions*

4 <i>Has the applicant or any connected person ever been convicted of a relevant or foreign offence (1)</i>	<b>NO</b>
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*\*If YES – provide full details*

*For the purpose of this Act, a conviction for a relevant offence or foreign offence is to be disregarded if it is spent for the purpose of the Rehabilitation of Offenders Act 1974*

<i>Name &amp; position (if applicable)</i>	<i>Date of conviction or sentence</i>	<i>Court</i>	<i>Offence</i>	<i>Penalty</i>

(1) In addition to any convictions held by the applicant at the time of application, applicants should also familiarise themselves with the contents of section 24(1) of the Licensing (Scotland) Act 2005 in respect of any convictions for relevant or foreign offences which they may receive during the period beginning with the making of the premises licence application and ending with determination of the application.

**DESCRIPTION OF PREMISES** *Licensing (Scotland) Act 2005, section 20(2)(a)*

**Question 5**

5 *Description of premises (where application is submitted by a members' club, please also complete question 6)*

Café/restaurant premises located within building which also operates as an Antiques Retail unit and Auction Hall, where auctions are held and members of the public can visit to purchase antiques. The premises are accessed by a short corridor from High Street, Musselburgh and extend to Eskside East to the rear, which is where the café is.

**Question 6**

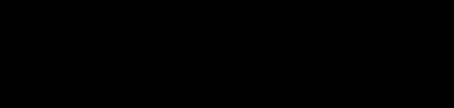
6 *To be completed by members' clubs only*

<i>Do the club's constitution and rules conform to the requirements of regulation 2 of the Licensing (Clubs) (Scotland) Regulations 2007?</i>	<i>N/A</i>
<i>* Delete as appropriate</i>	

**DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT**

If signing on behalf of the applicant please state in what capacity.

The contents of this Application are true to the best of my knowledge and belief.

Signature  (see note below)

Date ..... 9/11/16 .....

Capacity ..... ~~APPLICANT~~/AGENT (delete as appropriate)

Telephone number and email address of signatory .....

Macdonald Licensing  
21a Rutland Square  
Edinburgh, EH1 2BB

0131 229 6181, alistair@macdonaldlicensing.com

<i>I have enclosed the relevant documents with this application – please tick the relevant boxes</i>	
<i>Operating plan</i>	X
<i>Layout plan</i>	X
<i>Planning certificate</i>	X
<i>Building standards certificate</i>	
<i>Food hygiene certificate</i>	

**\* Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

<u>For use by the Licensing Board only</u>	
Application checklist	
Date received	
Fee amount	
Receipt number	
Received by ( <i>INITIALS</i> )	
Consideration date	
Last date for consideration	
Date of initial hearing	
Date of any modification hearing	
Date granted/refused (delete as appropriate)	

<u>For use by the Licensing Board only</u>	
If application is for a premises licence	
Documents required	
Operating plan	
Layout plan	
Planning certificate	
Building standards certificate	
Food hygiene certificate	

<u>For use by the Licensing Board only</u>	
If application is for a provisional premises licence	
Documents required	
Provisional planning certificate	
Operating plan	
Layout plan	

# EAST LoTHIAN LICENSING BOARD

## OPERATING PLAN

Licensing (Scotland) Act 2005, section 20(2)(b)(i)

*Name, address and postcode of premises to be licensed.*

163 High Street  
Musselburgh  
EH21 7DE

### Question 1

*STATEMENT REGARDING ALCOHOL BEING SOLD ON PREMISES/OFF PREMISES OR BOTH*

<i>1(a) Will alcohol be sold for consumption solely ON the premises?</i>	<i>YES/NO*</i>
<i>1(b) Will alcohol be sold for consumption solely OFF the premises?</i>	<i>YES/NO*</i>
<i>1(c) Will alcohol be sold for consumption both ON and OFF the premises?</i>	<i>YES/NO*</i>
<i>*Delete as appropriate</i>	

### Question 2

*STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION ON PREMISES*

<i>Day</i>	<i>ON Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>	11.00am	11.00pm
<i>Tuesday</i>	11.00am	11.00pm
<i>Wednesday</i>	11.00am	11.00pm
<i>Thursday</i>	11.00am	1.00am
<i>Friday</i>	11.00am	1.00am
<i>Saturday</i>	11.00am	1.00am
<i>Sunday</i>	11.00am	Midnight



**Question 3**

*STATEMENT OF CORE TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION OFF PREMISES*

<i>Day</i>	<i>OFF Consumption</i>	
	<i>Opening time</i>	<i>Terminal hour</i>
<i>Monday</i>	11.00am	10.00pm
<i>Tuesday</i>	11.00am	10.00pm
<i>Wednesday</i>	11.00am	10.00pm
<i>Thursday</i>	11.00am	10.00pm
<i>Friday</i>	11.00am	10.00pm
<i>Saturday</i>	11.00am	10.00pm
<i>Sunday</i>	11.00am	10.00pm

**Question 4**

*SEASONAL VARIATIONS*

<i>Does the applicant intend to operate according to seasonal demand</i>	<i>YES/NO*</i>
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*\*If YES – provide details*

The Applicant would like to take advantage of General Extensions issued by the Board and will apply for Extensions for additional occasions, as required.

**Question 5**

PLEASE INDICATE THE OTHER ACTIVITIES OR SERVICES THAT WILL BE PROVIDED ON THE PREMISES IN ADDITION TO SUPPLY OF ALCOHOL

COL. 1	COL. 2	COL. 3	COL. 4
<b>5(a)</b> <i>Activity</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Accommodation</i>	N	N/A	N/A
<i>Conference facilities</i>	N	N	N
<i>Restaurant facilities</i>	Y	Y	Y
<i>Bar meals</i>	N	N	N
<b>5(b) Activity</b> <i>Social functions including:</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Receptions including Weddings, funerals, birthdays, retirements etc.</i>	Y	Y	Y
<i>Club or other group meetings etc.</i>	Y	Y	Y
<b>5(c) Activity</b> <i>Entertainment including:</i>	<i>Please confirm</i> <b>YES/NO</b>	To be provided during core licensed hours – please confirm <b>YES/NO</b>	Where activities are also to be provided outwith core licensed hours please confirm <b>YES/NO</b>
<i>Recorded music – see 5(g)</i>	Y	Y	Y
<i>Live performances – see 5(g)</i>	Y	Y	Y
<i>Dance facilities</i>	N	N	N
<i>Theatre</i>	N	N	N
<i>Films</i>	N	N	N
<i>Gaming</i>	N	N	N
<i>Indoor/outdoor sports</i>	N	N	N
<i>Televised sport</i>	Y	Y	Y

<i>5(d)</i> <i>Activity</i>	<i>Please confirm</i> <i>YES/NO</i>	<i>To be provided</i> <i>during core licensed</i> <i>hours – please</i> <i>confirm</i> <i>YES/NO</i>	<i>Where activities are</i> <i>also to be provided</i> <i>outwith core licensed</i> <i>hours please confirm</i> <i>YES/NO</i>
<i>Outdoor drinking</i> <i>facilities</i>	Y	Y	Y
<i>5(e)</i> <i>Activity</i>	<i>Please confirm</i> <i>YES/NO</i>	<i>To be provided</i> <i>during core licensed</i> <i>hours – please</i> <i>confirm</i> <i>YES/NO</i>	<i>Where activities are</i> <i>also to be provided</i> <i>outwith core licensed</i> <i>hours please confirm</i> <i>YES/NO</i>
<i>Adult entertainment</i>	N	N	N

*Where you have answered YES in respect of any entry in column 4 above, please provide further details below.*

Activities answered 'Yes' in Column 4 may take place outwith licensed hours. The Premises may open prior to the commencement of Core Hours for breakfasts, snacks, coffees etc, but no alcohol will be sold or supplied until the commencement of licensed hours. In addition, Activities may take place during periods of Seasonal Variation or with the benefit of an Extension of Permitted Hours.

*5(f) any other activities*

*If you propose to provide any activities other than those listed in 5(a) – (e) please provide details or further information in the box below.*

Takeaways

Deliveries

Outside Catering

The premises operate as a retail facility for the collection and sale of antiques including visits by the public within the area shown on the Layout Plan. Antique auctions are also held there on a regular basis.

The cafe premises are ancillary to the use of the premises as an antique warehouse, retail facility and auction house.

*5(g) Late night premises opening after 1.00am*

<i>Where you have confirmed that you are providing live or recorded music, will the decibel level exceed 85dB?</i>	<i>YES/NO*</i>
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<i>When fully occupied, are there likely to be more customers standing than seated?</i>	<i>YES/NO*</i>
<i>*Delete as appropriate</i>	

**Question 6 (On-sales only)**

*CHILDREN AND YOUNG PERSONS*

6(a)	<i>When alcohol is being sold for consumption on the premises will children or young persons be allowed entry</i>	YES/NO*
	<i>*Delete as appropriate</i>	

6(b) *Where the answer to 6(a) is YES provide statement of the **TERMS** under which they will be allowed entry*

Children and Young Persons will be welcomed onto the Premises. Children will require to be accompanied by an adult after 5pm.

6(c) *Provide statement regarding the **AGES** of children or young persons to be allowed entry*

No restriction (0 to 17 years).

6(d) *Provide statement regarding the **TIMES** during which children and young persons will be allowed entry*

Children will require to vacate the Premises by 11.00pm unless they are attending a private prebooked function or event in which case they will be able to remain until the end, subject to supervision by a responsible adult. No restriction for Young Persons.

6(e) *Provide statement regarding the **PARTS** of the premises to which children and young persons will be allowed entry*

All public areas.

**Question 7**

*CAPACITY OF PREMISES*

*What is the proposed capacity of the premises to which this application relates?*

100 in the cafe/restaurant area and 79 in the Antiques shop area.

**Question 8**

*PREMISES MANAGER (NOTE: not required where application is for grant of provisional premises licence)*

*Personal details*

8(a) *Name*

8(b) *Date of birth*

8(c) *Contact address*

8(d) *Email address and telephone number*

8(e) *Personal licence*

<i>Date of issue</i>	<i>Name of Licensing Board issuing</i>	<i>Reference no. of personal licence</i>

**DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT**

If signing on behalf of the applicant please state in what capacity.

The contents of this operating plan are true to the best of my knowledge and belief.

Signature ..... (see note below)

Date ..... 27/7/10

Capacity ..... APPLICANT/AGENT (delete as appropriate).

Telephone number and email address of signatory .....

Macdonald Licensing  
21a Rutland Square  
Edinburgh, EH1 2BB

0131 229 6181, Alistair@macdonaldlicensing.com

**\* Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

Date 11<sup>th</sup> January 2017



**POLICE  
SCOTLAND**

Keeping people safe

Philip Gormley QPM  
Chief Constable

Your Ref:

Our Ref: J/LIC/3705/HB

The Clerk of the Licensing  
Board  
East Lothian Council  
John Muir House  
Haddington  
East Lothian  
EH41 3HA

Local Area Commander  
The Lothians and Scottish Borders Division  
Haddington Police Station  
39-41 Court Street  
Haddington  
EH41 3AE

Dear Madam,

**LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR THE GRANT OF A  
PROVISIONAL PREMISES LICENCE  
MUSSELBURGH AUCTION ROOM, 163 HIGH STREET, MUSSELBURGH  
MUSSELBURGH AUCTION ROOM LTD**

I refer to the above application and in terms of Section 21(4)(a)(i) and (ii) of the Licensing (Scotland) Act 2005, I have to advise you that neither the applicant nor any connected person has been convicted of any relevant offence.

I am unable to confirm the existence of any foreign offence in respect of the applicant or any connected person.

In terms of Section 22(1)(b) of the Licensing (Scotland) Act 2005:

I would seek to clarify with the applicant their request for 'outdoor drinking facilities' as the layout plan does not appear to detail any outside areas.

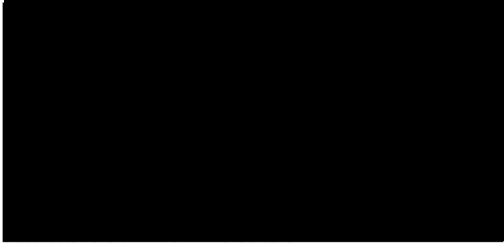
It is also pertinent to point out that this application is out with Board Policy with regards to the overprovision statement and as such the applicant will be expected to demonstrate that the grant of this licence would outweigh the presumption against grant in terms of the overprovision statement.

I would like to highlight to you that the Chief Constables response to this application is out with the time scale of 21 days allowed. The reason for this was that the Police Licensing Officer experienced difficulty in making contact with the Directors of the company and then went on annual leave over the festive period. A

visit to the premises was made on Tuesday 10<sup>th</sup> January 2017 when Police and LSO were able to speak with Stephen Robertson (one of the Directors listed) at the premises. East Lothian Council Licensing Office was informed of the difficulty prior to the festive period and were fully aware that the police response would be delayed.

Submitted for your consideration. There are no police objections.

Yours faithfully



Philip Gormley QPM  
Chief Constable

For enquiries please contact the Licensing Department on 01620 826147



# EAST LoTHIAN COUNCIL

## LICENSING, ADMINISTRATION AND DEMOCRATIC SERVICES

**From:** R. Fruzynski  
Licensing Standards Officer

**To:** K. MacNeill  
Clerk to the Licensing Board

**Date:** 11 January 2017

**Subject:** LICENSING SCOTLAND ACT 2005  
PROVISIONAL PREMISES LICENCE APPLICATION – JANUARY 2017

**MUSSELBURGH AUCTIONS, 163 High Street, Musselburgh, East Lothian EH21  
7DE**

I refer to the above subject and can confirm that the above premises have been visited and Mr Stephen Robertson, Director, interviewed concerning this provisional premises licence application. I have also liaised with Mr Antonio Martone regarding the restaurant side of the business.

The premises were formerly leased to a charity and have been operating as an auction house for approximately one year. Auctions are held every two weeks, with viewings on a Saturday and sales commencing 16.30 on a Sunday.

The company hope to renovate the existing series of sale rooms to incorporate a cafe/restaurant at the rear of the premises, which will be accessible to the public by means of a short link corridor in High Street and also by way of an entrance in Eskside East.

The cafe/restaurant will have an estimated capacity for 100 persons and the sale rooms will be able to hold up to 79 persons. The facilities will cater for both auction goers and the public in general.

The applicant has indicated that there is no immediate plan to provide entertainment in the premises although this is an option that may be considered in the future. Likewise there are no current plans to offer a takeaway or delivery service, but this may be a facility that would be desirable as a future customer offering. If a delivery service is used, it is likely that a courier service, such as Deliveroo, may be used to convey orders of food and alcohol to customers. This type of service is already used at two restaurants owned by two of the directors, as part of a separate business enterprise, in the Edinburgh area.

In respect of the proposed outside drinking area, as referred to in the operating plan, this area is not shown in the layout plan. It is proposed, however, that a balcony area be built above the cafe/restaurant to accommodate this facility during the planned reconstruction of the premises.

The application is subject to Part 4 of the Licensing Board's 'Statement of Licensing Policy 2013 - 2016' in respect of overprovision, however, I have no objections to the grant of it.

I can confirm that the mandatory site notice in respect of this application was correctly displayed at the time of my visit to the premises.

For the information of the Licensing Board the following is a list of existing licensed premises in the locality of High Street Musselburgh:

Fine Wine Company Ltd, 25 High Street – Off-sales

Musselburgh News, 53 High Street – Off-sales

Sportsmans Bar, 58 High Street – On consumption & Off-sales

Shish Mahal Restaurant, 63A High Street – On Consumption

The Tollbooth Cafe Restaurant, 63D High Street – On consumption & Off-sales

The Stand, 72-74 High Street – On consumption (currently closed for conversion to a restaurant)

The Dragon Way, 81 High Street - On consumption

Habaneros, 83 High Street – On consumption & Off-sales

Coach and Horses, 110 High Street – On consumption & Off-sales

Day Today, 121 High Street – Off-sales

R.S. McColl, 160 High Street – Off-sales

Caprice Restaurant, 198 High Street – On consumption

The Old Doll Museum, 200 High Street – On consumption

Dal Patino, 49A High Street – subject of a current Provisional Premises Licence application for on and off consumption.

R. Fruzynski

Licensing Standards Officer

EAST LoTHIAN COUNCIL

Internal Memorandum

**From:** Development Control Manager      **To:** Clerk to the Licensing Board  
**Per:** Neil Millar      **Per:** Licensing Board  
**Cc:**

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**Date:** 8<sup>th</sup> December 2016

**LICENSING (SCOTLAND) ACT 2005**

**Re: Consultation response**

**Address:** 163 High Street, Musselburgh  
**Application type:** Premises Licence

I have no objections to the grant of a premises licence. No planning permission is required for the sale of alcohol on the premises.

However, I note that the information provided in the operating plan states that outdoor drinking facilities are to be provided. Please note that it is the responsibility of the licensee to confirm what planning permission is in place for this use or demonstrate that planning permission is not required for it. Otherwise I would advise that a planning application is sought for the change of use of any area of land that is to be used as a beer garden/external drinking area.

## **Supporting Statement**

**Musselburgh Auction Room & Café, 163 High Street, Musselburgh**

**Applicants Musselburgh Auction Room Limited**

This is an Application for premises that are currently operating as an Auction House, where people can visit to view items for sale, and where there are Auctions on a regular basis. The premises are in High Street Musselburgh, accessed by a short pend, with a rear entrance onto Esk Side East.

Planning Permission was obtained in December 2015 for alterations and Change of Use to include Class 3 (Café). The Licence Application is for that.

This is a slightly strange set up as we are licensing the whole area, but we consider that we have to do that, because of the planning situation.

The Martone family, also own the Ciao Roma, and Bar Italia Restaurants, in Edinburgh for instance. They are well known Italian Restaurateurs in the East of Scotland, and their Premises Martinis, on Waterloo Place, at the end of Princes Street is more of café type operation.

Although there is access from the Auction Hall, it is expected that access will be mainly from Esk Side East.

The Premises will be upgraded, and the café will be a facility which we think Musselburgh will appreciate.

They do not consider it to be the type of business that will cause any issues.

Full and Part time jobs will be created by this business.

The position under the Statement of Licensing Policy with regard to overprovision in East Lothian had been explained to our clients and their requirement to show how the granting of this Licence would not be prejudicial to the Licensing Objectives. Going through each of these in turn we would comment as follows:-

### **1. Preventing Crime and Disorder**

The Premises have obtained Planning Permission to include an ancillary café, and will operate as such. They would like the opportunity of providing light alcohol refreshments in conjunction with the food and snacks that they will serve.

It is considered that the granting of the Licence under these circumstances would not prejudice this objective.

As will be appreciated, because of the presence of the Auction House, there can be items of considerable value and the last thing the premises would want is a facility which causes any risk to security for instance. The premises would be operated accordingly.

It would also be contrary to their interests for the premises to encourage any inappropriate behaviour or activity. This will be a family friendly facility, for use during the day and the earlier part of the evening in particular. We would suggest that the changes of unruly behaviour would be relatively slim.

Notwithstanding this, our clients accept the fact that they have an obligation to create a suitable environment. That means an environment that is pleasant for the consumer and is therefore conducive to people behaving in a civilised manner. Standards of behaviour will be set and people not prepared to accept these, or contravening in any way, will be asked to leave.

That includes overconsumption of alcohol and unruly or unsocial behaviour.

## **2. Securing Public Safety**

These will be newly fitted premises and therefore there should be no possibility of danger or inconvenience to the public. Before Building Control sign it off they will have complied with the appropriate regulations. As the Licence will also cover the Auction House the visitors for that purpose will be covered as well. The Auction House has operated for some years, and our clients, as we have mentioned already, are experienced licensed trade operators. We would not envisage this being an issue.

There will be appropriate CCTV coverage and staff will be trained to identify the appropriate issues.

Our clients would also wish their staff to work in a pleasant and safe environment.

## **3. Preventing Public Nuisance**

It would be expected to patrons to behave as they are leaving. If waiting for taxis outside, or indeed people smoking outside will be asked to take into account the interest of the neighbours and to keep their voices down, including when they are on the telephone!

Music will be played, but it is not envisaged that there should be any noise escape that would cause inconvenience.

There will be a CCTV system installed.

## **4. Protecting and Improving Public Health**

These will be food orientated premises, as will be appreciated, with the consumption of drink ancillary, but people in certain circumstances can consume too much, particularly perhaps if they have already consumed alcohol earlier. The behaviour of clients will be monitored to ensure overconsumption, which could be a danger to their safety as well, is minimised.

Staff will be trained as to the signs of people being drunk. It can sometimes be more difficult in a restaurant than in a bar because people are generally seated and it is perhaps only when they are leaving, or possibly visiting the toilet, that this is noticed.

Overconsumption of alcohol in Scotland is an issue and East Lothian Licensing Board have recognised this by their overprovision policy.

Our clients are experienced operators and in all their operations, drink is ancillary, but is seen as a pleasant addition to their operation. This would be no different. As you can imagine, the last thing they want are any drunks or people behaving inappropriately. Nor do they want customers who would upset other customers, including families. The place would be operated with this in mind.

## **5. Protecting Children from Harm**

It is hoped that families, including families with young children, will use these premises. The premises will be operated accordingly.

It is not envisaged as the type of place that children or young persons would attempt to purchase alcohol, but staff will be trained in this respect and be vigilant.

Our clients will of course operate a Challenge 25 Policy, and indeed a Refusals/ Incidents Book.