



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

**THURSDAY 26 JANUARY 2017  
COUNCIL CHAMBERS, TOWN HOUSE, HADDINGTON**

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### **Board Members Present:**

Councillor J Goodfellow (Convenor)  
Councillor S Currie  
Councillor D Grant  
Councillor W Innes  
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 and Procurement  
Ms G Herkes, Licensing Officer  
Mrs L Shearer, Solicitor  
Insp A Harborow, Police Scotland  
PC H Bowsher, Police Scotland

### **Committee Clerk:**

Ms J Totney, Team Manager – Democratic Services

### **Apologies:**

Councillor S Akhtar  
Councillor F McAllister

### **Declarations of Interest:**

None

## **1. MINUTES FOR APPROVAL**

The minutes of the Licensing Board meeting of 24 November 2016 were agreed to be a true record, subject to the correction of the date of the meeting.

## **2 STATEMENT OF PRINCIPLES – GAMBLING ACT 2005**

A report was submitted by the Clerk of the Board which reported on the results of the consultation exercise for the review of the Board's Statement of Licensing Principles and sought the Board's approval of the attached Statement of principles for 2016-2019.

There were no questions or comments from Board members or from Police Scotland.

Councillor Goodfellow, Convenor, thanked the Clerk for the comprehensive document. He commented that there are concerns that there is an overprovision of gambling premises in East Lothian but acknowledged that there are no criteria for refusal within the Act.

### **Decision**

East Lothian Licensing Board agreed to note the terms of the report and approved the Statement of Principles 2016-2019, attached as appendix 1 to the report.

## **3 PROVISIONAL PREMISES LICENCE**

### **163 High Street, Musselburgh (Auction Rooms)**

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

The Clerk introduced the item and invited Mr Macdonald to speak on behalf of his client.

Mr Macdonald provided the Board with background information on the premises and application, acknowledged the representations from Police Scotland and the Licensing Standards Officer (LSO) and pointed out that the outside drinking area is being withdrawn. He drew members' attention to his supporting statement contained in the papers and acknowledged the presumption of overprovision. However he stressed that the premises are to be a family friendly cafe and not a public house and that he did not anticipate any problems from the premises in relation to the Board's licensing objectives.

**Sederunt:** *Insp Harborow joined the meeting.*

In response to questions from Councillors Currie and Grant, Mr Macdonald confirmed the entry and exit arrangements for the auction rooms and the adjoining cafe and outlined the times that these would be used for access. He stated that the main cafe entrance is to the rear of the premises.

Councillor Goodfellow raised the matter of the areas within the premises that are to be licensed. In particular, he expressed concern that the delineated area was extensive and included upstairs rooms, toilets and offices. Mr Macdonald advised that it had been agreed with East Lothian Council planning officers that the licence should cover the same areas that had been granted planning permission for change of use. He advised that the planning officers are of the view that the premises are one complete business and do not regard the cafe as a standalone unit. Councillor Goodfellow also asked a question in relation to the off sales of alcohol. Mr Macdonald explained that this would be a very small part of the business and would likely be ancillary to patrons buying carry out food.

Insp Harborow advised that there are no additional comments from Police Scotland.

Councillor Currie referred to the matter of overprovision which was highlighted in the report from Police Scotland and also to Mr Macdonald's written response in this regard. He stated that overprovision is always a concern for the Board and that, as a local member, he had particular concerns in this case, especially given the existing availability of alcohol in this area, outside smoking, and the rear access arrangements for the premises. He was therefore not comfortable in supporting the application.

Mr Macdonald stated that the alternative to providing a licence would be to operate a "bring your own bottle" policy which would not eliminate the smoking issues and would likely lead to greater alcohol consumption.

Councillor Innes advised that he would support the application, stating that the provision of food in similar premises is not unusual in East Lothian. He applauded the applicant's standing and reputation and noted that there are no objections from Police Scotland, the LSO, NHS Lothian or local residents.

Although comfortable with the applicant's credentials, Councillor Trotter expressed concern in relation to the overprovision policy and stated that he would not be supporting the application.

Councillor Grant remarked that the application was unusual and he understood the local member's concerns. Based on the information provided by Mr Macdonald in response to questions, he stated that on balance he would support the application. He stressed the fact that if the licence is granted, it is on the basis that the premises are correctly run by the applicant.

The Convenor summarised that there was a split decision on the application. He applauded the business model and gave his support to the cafe. However, he could not support the off sales of alcohol, the potential delivery of alcohol, or the extensive area that is to be licensed. He indicated that he might be minded to change his opinion if off sales are removed and the area that is to be licensed is amended.

Mr Macdonald stated that his client would withdraw the request to include off sales and stressed that the area to be licensed was instructed by the Council's planning officers.

The Clerk advised Mr Macdonald that it is open to him to restrict the licensed area when applying to the Licensing Board. As the application is for a provisional licence, she stated that the Board could consider an application to restrict the licence to the cafe area only. Mr Macdonald confirmed that his client would be agreeable to this but stated that planning officers had expressed concern that the cafe area could be sold as a separate business entity.

Mrs Ferguson, Service Manager – Legal and Procurement, and legal adviser to the Board, made it clear to Mr Macdonald that although planning officers have advised that the whole premises are suitable for licensing, there is no need for the entire premises to be licensed as one unit. Mr Macdonald agreed to restrict the licensed area to the cafe.

Councillor Goodfellow reflected that the application was now only for a licence in respect of the cafe area and that off sales would be removed from the application. Given these changes, he advised that he would support the application.

## **Decision**

East Lothian Licensing Board agreed to grant the provisional licence subject to the licensed area being restricted to the cafe and the removal of alcohol off sales.

In closing the meeting, the Convenor offered his congratulations to Mrs Ferguson on her new post with Fife Council, wished her every success and expressed his thanks to her for the valued legal advice provided over the last five years.

The Convenor reminded members that the annual joint meeting of East Lothian Licensing Board and East Lothian Licensing Forum would follow on from the Board meeting.

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