



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

**THURSDAY 27 OCTOBER 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

### **Clerk of the Licensing Board:**

Mrs M Ferguson, Service Manager, Legal and Procurement

### **Attending:**

Mrs K MacNeill, Service Manager, Licensing, Administration and Democratic Services  
Mr R Fruzynski, Licensing Standards Officer  
Ms G Herkes, Licensing Officer  
Ms M Winter, Licensing Officer  
Insp A Harborow, Police Scotland  
PC H Bowsher, Police Scotland

### **Committee Clerk:**

Ms J Totney, Team Manager – Democratic Services

### **Apologies:**

Councillor T Trotter

### **Declarations of Interest:**

Councillors Grant and Innes declared an interest in items 6 (a) and 6 (b). Councillor Grant stated that he had an extensive knowledge of the situation and Councillor Innes advised that he had been involved in the initial response referred to in the papers. Both Councillors informed the Board that they would leave the Council Chamber during these items and would not take part in the debate or the decision making. The Clerk confirmed that the meeting would still be quorate once Councillors Grant and Innes had left the meeting.

## **1. MINUTES FOR APPROVAL**

The minutes of the Licensing Board meeting of 22 September 2016 were agreed to be a true record.

## **2. STATEMENT ON OCCASIONAL EXTENDED HOURS OVER THE FESTIVE PERIOD**

Councillor Goodfellow, Convenor, East Lothian Licensing Board advised that, 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 festive period. This extension will apply from Friday 16 December 2016 until Tuesday 3 January 2017 inclusive and will allow an extension of the terminal hour for the sale of alcohol during that period until 2 am. The extension will only apply to on-sales and not to off-sales of alcohol. There will be no general extensions beyond this although any applications for extended hours outwith this general extension will be considered on a case-by-case basis. It should be noted that such applications will be required to be submitted no later than 1 December 2016. There is no need for licensees to apply for the general extension to 2 am. On sales premises can utilise these hours to the extent they consider appropriate.

## **3 PREMISES LICENCE – MAJOR VARIATION**

### **3 (a) The Longniddry Inn, Main Street, Longniddry**

Mr S McGowan, TLT Solicitors, was present to represent the applicant. Mr A Russell, Premises Manager and Mr J McWilliams, Punch Taverns, were also present.

The Clerk advised that the major variation seeks to amend on and off sales on Sundays from 12.30 pm to 11 am; amend the terminal hour on Thursdays from 11 pm to 1 am; allow bar meals outwith core hours; add outdoor drinking during core hours; and allow that the premises may open prior to core licensed hours for the provision of teas, coffees, breakfasts etc. The application states that no alcohol will be sold outwith core hours. She further advised that a public objection had been received. The Objector, Mr Wyzgowski, was represented by his wife.

Mr McGowan stated that his client was agreeable to a terminal hour of 10.00 pm for the outside area, as suggested by Police Scotland. He advised that following the objection from a neighbouring resident, the application would be amended to withdraw the request for a change to the terminal hour on Thursdays.

The Licensing Standards Officer (LSO) indicated that the establishment is well run and Police Scotland had nothing to add to their written report.

Councillors Innes, McAllister and Currie commented on the high quality of the venue and commented favourably on the fact that the application now reflected the concerns of local residents.

### **Decision**

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

### **3 (b) The Craig House, Carberry Road, Inveresk**

Mr C Grunert, John Gaunt and Partners, was present to represent the applicant. Ms F Guthrie, Designated Premises Manager was also present.

The Clerk advised that the major variation seeks to amend the operating plan to increase residential capacity from 180 to 246; change breakfast serving time from 7 am to 6.30 am; amend the layout plan to extend the Premier Inn by 22 bedrooms; and decrease the size of the outside drinking area to allow for the extension.

Mr Grunert provided background information regarding the application; highlighted the fact that the Premier Inn bedrooms are licensed; stressed that the capacity in the bar area would not be increasing; and undertook to look into the representations in relation to planning for the external drinking area.

The LSO reported that the premises are well run and Police Scotland had nothing to add to their written report.

Board Members were unanimous in their support and commented on that the extension to the Premier Inn reflects the growth of East Lothian as a tourist destination.

#### **Decision**

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

### **4 REQUEST FOR REVIEWS OF PREMISES LICENCES**

The Clerk presented a report seeking the Board's agreement to instigate review proceedings in respect of premises licences where the annual fee for 2016/17 remains unpaid, that being a breach of the mandatory conditions attached to those premises licenses.

The Clerk provided updated details of the seven premises where the annual fee for 2016/17 remains unpaid.

Councillor Currie expressed concern that there are unpaid fees every year.

Councillor Goodfellow thanked the Licensing team for all their hard work in ingathering fees.

#### **Decision**

East Lothian Licensing Board agreed to:

- i. hold a review hearing in respect of the premises licences listed in appendix 1, as amended, on the basis that the annual fees for 2016/17 have not been paid and this constitutes a breach of mandatory condition number 10 and is a ground for review hearings, at the Board's initiative in terms of Section 37 of the Licensing (Scotland) Act 2005.
- ii. Delegate to the Clerk of the Board the authority to cancel any review hearings in respect of those premises that pay the annual fee prior to the date of the said hearing.

## **5 PERSONAL LICENCE**

### **Emma Smillie**

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

The Clerk advised that Ms Smillie had disclosed her conviction on the application form and that a letter of support had been received from her employer.

Mr Macdonald provided pertinent background information and pointed out that Police Scotland are not objecting to the licence being granted.

Councillor McAllister appreciated Ms Smillie's honesty; Councillor Currie stressed that the trust and confidence in Ms Smillie demonstrated by her employer are of the utmost importance; Councillor Innes commented that Ms Smillie had changed her lifestyle and is clearly a valuable part of her employer's team; and Councillor Grant acknowledged the remorse shown by the applicant.

### **Decision**

East Lothian Licensing Board agreed to grant the personal licence.

*Sederunt: Councillors Grant and Innes left the meeting*

## **6 GRANT OF PREMISES LICENCE**

### **6 (a) Macmerry Bowling Club, West Bank Road, Macmerry – Bowlers**

### **6 (b) Macmerry Bowling Club Pavilion, West Bank Road, Macmerry – Miners' Welfare**

Mr S McGowan, TLT Solicitors, was present to represent Macmerry Bowling Club, West Bank Road, Macmerry – Bowlers (The Bowlers). Mr E Dickson, Secretary, and Mr D Dixon, Treasurer, were also present.

Mr A Macdonald, Macdonald Licensing, was present to represent Macmerry Bowling Club Pavilion, West Bank Road, Macmerry – Miners' Welfare (The Miners). Mr J Fortune, Club President, was also present.

The Clerk advised that this is an unusual situation as two applications had been received for these premises and that the Board would therefore hear both of these together.

Mr McGowan raised a number of preliminary matters regarding the competency of the Miners' application in relation to the right to occupy the premises in question. He then provided a comprehensive account of events from 2007 which he considered pertinent to the applications. In particular he highlighted an agreement dated 20 May 2014 which outlined lease and licence arrangements for the premises; stated that bar facilities have not been provided by the Miners in the agreed manner; and that the Miners are therefore in breach of the agreement between them and the Bowlers. He urged the Board to take a view on the competency of the Miners' application before debating the merits of both applications.

Mr MacDonald indicated that his involvement is very recent and therefore appreciated being granted a short adjournment to discuss the papers with his client. He then provided his interpretation of the background situation. He added that there

is no requirement under legislation for the person who is granted a licence to have a right of occupancy; suggested that the situation be dealt with practically so that a bar is provided, by the Miners, for the bowling club as and when required; and indicated that it is not for the Board to make a decision on the termination of any legal arrangement/agreement. He was of the view that it would be helpful if the Board postponed making a decision today pending guidance and clarification from the Council's property and legal departments on the situation regarding occupancy of the premises.

Mr Macdonald and Mr McGowan agreed that the Board are in a difficult position.

Councillor Currie asked if the relationship between the Bowlers and the Miners had broken down to such an extent that there is no prospect of both parties reaching an agreement.

Mr McGowan relayed his client's frustrations at the lack of undertaking by the Miners to provide bar facilities when required. He added that attempts to meet with the Miners to discuss matters have failed and that there is now a loss of trust in the Miners on the part of his clients. He pointed out that the agreement dated 20 May 2014 is silent regarding the licence and that his client's preference is that the Board reaches a view today regarding the preliminary issue of competence in respect of the Miner's application.

Mr Macdonald advised that it is his impression that there has been a breakdown between the people involved and that the matter can no longer be resolved by the two parties. He indicated that he would welcome the opportunity to work with Mr McGowan to resolve matters.

Mr McGowan stated that if the Board decides not to consider the competency issue in relation to the Miners' application, then he would be agreeable to working directly with Mr Macdonald.

After a short recess, Councillor Goodfellow informed Mr Macdonald and Mr McGowan that it is the view of the Board that the matter of who should be applying for the licence should be resolved outwith the Board meeting. He advised that the Board can only grant once licence and that the Board is not the appropriate forum for a decision on who should be applying for the licence. He urged the two legal representatives to move to resolve the matter and to only bring one application back to the meeting of East Lothian Licensing Board on 24 November 2016. Councillor Goodfellow stated that the Board are not clear that the bowling club has a lease from the Council that gives them permission to run a licensed bar in these premises. He noted however that the Miners do not appear to have any right to enter or occupy the premises. He asked that the legal representatives seek clarification from Council Officers and try to resolve the matter outwith East Lothian Licensing Board, before the next meeting, failing which, the Board would have to decide which application, if any, to grant.

### **Decision**

East Lothian Licensing Board agreed to continue the consideration of both premises licence applications to the meeting on 24 November 2016.