



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 22 JUNE 2017
COUNCIL CHAMBERS, TOWN HOUSE, HADDINGTON**

Board Members Present:

Councillor F Dugdale (Convener)
Councillor L Bruce
Councillor J Goodfellow
Councillor J Henderson
Councillor C McGinn
Councillor J McMillan

Clerk of the Licensing Board:

Mrs K MacNeill, Service Manager, Licensing, Administration and Democratic Services

Attending:

Mr R Fruzynski, Licensing Standards Officer
Ms G Herkes, Licensing Officer
Ms G Winter, Licensing Officer
Insp A Harborow, Police Scotland
PC H Bowsher, Police Scotland
Ms E Oldcorn, NHS Lothian

Committee Clerk:

Ms J Totney, Team Manager – Democratic Services

Apologies:

None

Declarations of Interest:

Councillor Goodfellow declared an interest in item 3c.

1 APPOINTMENT OF THE CONVENER OF THE LICENSING BOARD

The Clerk welcomed members to the first meeting of the new East Lothian Licensing Board following the Scottish local government elections and sought nominations for the position of Convener.

Councillor Dugdale was proposed by Councillor Goodfellow and seconded by Councillor McMillan. There were no other nominations and Councillor Dugdale was elected Convener of East Lothian Licensing Board for the committee session 2017-2022.

2 GRANT OF PREMISES LICENCE

2a Lanna Thai, 32 Bridge Street, Musselburgh

No one was present to represent the applicant.

The Clerk advised that there are no objections; that the previous premises licence was surrendered when the establishment changed hands; and that the new management had been operating under a series of occasional licences.

Police Scotland had nothing to add to their report and the Licensing Standards Officer (LSO) referred to his report, stating that he supported the application.

Decision

East Lothian Licensing Board agreed to grant the premises licence.

3 GRANT OF PROVISIONAL LICENCE

3(a) 91 High Street, Haddington

Mr J Wilkie, partner, Zest Capital Management, was present to represent the applicant.

The Clerk advised that the premises are the former George Hotel and that a public objection had been received but that the objector was not present at the meeting.

Mr Wilkie advised that part of the building will be rented out as a licensed restaurant and that the likely tenant will be Falko, who are a high quality operator.

The Clerk referred to the fact that the application engages the Board's over provision policy and noted that a written supporting statement had been provided in this regard.

Responding to questions from members, Mr Wilkie advised that obtaining a provisional licence was a condition of the lease and that deliveries and online sales were in line with Falko's current operating plan for their existing premises.

Insp Harborow referred to the Police Scotland report dated 22 May 2017 and to the representations in relation to seasonal variations, and children and young persons, and sought clarification about the delivery of alcohol.

Mr Wilkie confirmed that alcohol deliveries would only be with the delivery of food and advised he was happy to accept the proposed wording from Police Scotland in relation to children and young persons.

Ms Oldcorn indicated that the NHS representation about online sales of alcohol had been addressed.

The LSO stated that Falko is a very well run premises.

Mr Wilkie advised that they wished to have the opportunity to provide live music and acknowledged public concerns about the need to manage noise levels in the town centre. He added that once the completion certificate had been issued for the premises, the licence would become a permanent licence.

Decision

East Lothian Licensing Board agreed unanimously to grant the provisional premises licence.

3(b) MRH Dalrymple Filling Station, Dirleton Road, North Berwick

Mr A Hunter, Harper McLeod LLP, was present to represent the applicant. Ms N Law, senior premises licence controller for the applicant company, was also present.

The Clerk advised that petrol filling stations are excluded premises under licensing legislation. With regard to representations, she advised that the community council had been consulted and had no objection to the application; there were no public objections.

Mr Hunter outlined the company's background as a fuel and convenience retailer and that an alcohol on-sales licence was being sought to supplement the convenience offering following a planned refurbishment of the premises into a Spar store. He referred members to the statement that had been submitted in relation to the over provision policy and highlighted the product range, price point, display, and storage proposals for the sale of alcohol. He added that the premises are excluded premises, per the Licensing (Scotland) Act 2005, but that the legislation allows for exemptions and stated the statutory test that requires to be met to allow such premises to apply for an alcohol licence: "... if a premises (or parts of premises) are used as a garage they will be able to apply for an alcohol licence if the local community is (or is likely to become) reliant on the premises as a principal source of either fuel or groceries. ..."

Mr Hunter tabled a market research report that had been produced following interviews with customers in April and May 2017 and provided information on the methodology and sample size.

Mr Hunter answered questions from Councillor Goodfellow on the definition of "reliant", the either/or nature of the premises being the source of fuel/groceries, and the travel and shopping habits of those who had participated in the survey. He stressed the either/or nature of the test, covered the survey results in great detail, referenced the new house building in the immediate area, and stated that the premises are in fact an exception.

Ms Oldcorn stressed her concerns with regard to drink driving, public health and safety, adding that the filling station is an excluded premises under the Act. Mr Hunter refuted that there is any evidence to link the availability of alcohol at petrol stations and the prevalence of drink driving.

Insp Harborow stated that this is an excluded premises and presented his understanding of the survey results. He concluded that he does not believe that the exemption test criteria had been met. He added that there are numerous places that local residents can drive to in North Berwick for alcohol.

Mr Hunter repeated the terms of the statutory test, pointed out that the research is not about the availability and purchasing of alcohol; explained, in the context of the statutory test, the terms inconvenience and disadvantaged; asked the Board to accept that the premises are relied on as a principal source of fuel; and stated that the survey results are sufficient to satisfy the statutory exception.

Referring to the amount of content in the research report, Councillor McGinn remarked that he would have liked this document to have been issued at least a week in advance of the meeting.

The LSO provided information on the number of licensed premises in North Berwick and explained that there are two filling stations in East Lothian that have been granted an alcohol licence. Should the licence be granted, he suggested that there be a limit on the strength of beer/cider/tonic wine that is sold. Mr Hunter indicated that he would be agreeable to this.

Councillor Goodfellow raised several points. Mr Hunter confirmed that the word disadvantaged is the language used in a Court of Session hearing, and in using the word, he was quoting court precedent. Insp Harborow confirmed that Police Scotland are not objecting to the application but are highlighting that the filling station is an excluded premises and that he was not convinced that it is a viable exception and that the test has been satisfied.

Following questions from several members, Mr Hunter and Ms Law advised that there are robust refusal procedures at the other licensed filling stations operated by Malthurst Petroleum Ltd and described the location and height of the proposed alcohol display area. Councillor Henderson asked that her concerns regarding the display height and location were noted.

Councillor Goodfellow, local ward member, commented that the Spar store would be an excellent additional facility but he was not convinced that the majority of users would be disadvantaged or inconvenienced if the store was not licensed and saw no justification for granting the licence. He added that the local community was not isolated and that local residents had not petitioned for the filling station to be able to sell alcohol. He stated that he opposed granting the licence as there were other places to buy fuel and food close by.

Councillor Henderson, local ward member, echoed the comments made by Councillor Goodfellow, and would not be minded to grant the licence.

Mr Hunter reminded members that the test is de minimus and the survey results would satisfy the way that the Court defines this test.

The Clerk concurred that the test is a legal test, albeit that the test is complex.

Councillor McMillan was of the view that parallels could not be drawn with the other two filling stations in East Lothian that had been granted an alcohol licence and was not minded to grant the application.

Councillor Goodfellow proposed adjourning the meeting to take legal advice but Mr Hunter objected to this on the basis that the Board had already started to deliberate the matter in public. It was decided not to adjourn in the circumstances.

Councillor Bruce stated he was not minded to grant the application; a view that was shared by Councillors Dugdale and McGinn.

The Clerk asked members to individually provide specific reasons for refusing to grant the application.

Councillor Henderson had not heard enough to go against the over provision policy and the recommendation of Police Scotland regarding the failure to satisfy the statutory test on excluded premises.

Councillor Goodfellow was not convinced that the exemption has been satisfied, on evidence from Police Scotland, and that the application engages the Board's over provision policy.

Councillor Bruce was not satisfied that there was adequate rebuttal in relation to the over provision policy. He was satisfied that the premises met the test for exemption from being classed as excluded premises.

Councillor Dugdale did not feel that the conditions for being exempted had been fully satisfied.

Councillor McMillan was not satisfied that the statutory test for an exemption had been met and also that the over provision policy had been engaged.

Councillor McGinn echoed the statement made by Councillor McMillan.

Decision

East Lothian Licensing Board agreed unanimously not to grant the provisional premises licence on the basis that the premises were excluded and that the grounds for exemption had not been satisfied. A majority of members also felt that the Board's over provision policy was also engaged. A statement of reasons of refusal would be issued by the Clerk within the statutory time frame.

3(c) North Berwick Bowling Club, 17 Clifford Road, North Berwick

Mr E Danks, Paris Steele WS, was present to represent the applicant. He was accompanied by Mr A Walker, Club Developer.

The Clerk advised that there had been a public objection and that the objector, Mr J Ramsay, who is the closest residential neighbour to the new development, was present. She added that the previous clubhouse premises had been demolished and moved to an entirely new site.

Mr Danks explained that the full licence for the previous premises had been surrendered and that he was aware of the objection. Following questions from Councillor Goodfellow, Mr Danks informed members that the club had sought guidance from, and had co-operated with the LSO and he believed that a suitable arrangement had been reached regarding noise and smoking. He highlighted the error with an external door and stated that this is now locked in position; there would also be restrictions on the end time for the use of the locker room; that the club were agreeable to maintaining the height of the laurel hedge at between three and four metres; and that the club would be happy to provide local residents with a contact number for the Club President, to be used in the event of any issues.

Sederunt: Councillor Goodfellow left the meeting

Mr Jeffrey addressed the Board, explaining that he supported the club as a sporting operation but had concerns about the use of the premises in the evening and the playing of amplified music. He referred to noise nuisance at the opening event on 6 May 2017 and added that some of his concerns had now been addressed.

The LSO confirmed that the licence is still a club licence and that up to 12 occasional licences can be obtained each year for events.

The Clerk advised that East Lothian Council's noise abatement officer had asked for standard conditions to be attached to the licence. She advised Mr Ramsay that if

there are any problems he can request a review of the licence, although she encouraged him to engage in dialogue with the club in the first instance.

Insp Harborow advised that there are no objections from Police Scotland.

Sederunt: *Insp Harborow left the meeting*

The LSO reported that there had been extensive discussions with the applicant along with visits to the premises to discuss neighbours' concerns and agree actions that would mitigate against these.

Decision

East Lothian Licensing Board agreed unanimously to grant the provisional premises licence.

Sederunt: *Councillor Goodfellow rejoined the meeting*

4 MAJOR VARIATION OF PREMISES LICENCE

4(a) Cockenzie & Port Seton Bowling & Recreation Club, King George V Park, North Seton Park, Port Seton

No one was present to represent the applicant.

The Clerk advised that the applicant seeks to amend the opening time on a Sunday from 12.30 hrs to 11.00 hrs; amend the operating plan to include bowling events; and add the bowling green area to the licence. She stated that there are no objections and explained that the club already have a licence. However, as they are unable to consume alcohol on the bowling green due to a public pathway, they are seeking to extend the licence to cover the bowling green. She informed members that there are no objections from Police Scotland; the premises have a club licence; and the applicant has provided a statement in response to engaging the over provision policy.

The LSO explained the layout of the premises and bowling green, confirmed a terminal hour of 22.00 hrs for the consumption of alcohol at the bowling green, provided information on the recent changes to the club's management team, and assured Councillor Bruce that nominated club members would be appointed to ensure there is no transfer of alcohol between the bowling green and the club house.

PC Bowsher reminded members that Port Seton is a bye-law area and penalties would be applied should alcohol be consumed outwith the designated licensed area.

Decision

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

4(b) Co-operative, 118-120 High Street, Dunbar

Ms S Hands, Hill Brown Licensing, was present to represent the applicant. Mr S Galloway, Operations Manager, Co-operative, was also present.

The Clerk advised that the applicant seeks to amend the shop opening hours to 6 am to 10 pm daily to meet customer demand.

Ms Hands explained that the store had recently undergone a major refurbishment and now sought to open one hour earlier to provide a greater service to the local

community. She stressed that there would be no change to the sale or display of alcohol.

BPC Bowsher and the LSO had nothing to add to their written reports and they both supported the application.

Decision

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

c) Jo's Kitchen, 73 Market Street, Haddington

No one was present to represent the applicant.

The Clerk advised that the application seeks to place two tables outside the premises, with a terminal hour of 21.00 hrs, during the warmer months; to be placed on private land which is owned by the premises; and to amend the operating plan to include an outdoor drinking and dining area. She added that there are no objections and that no pavement permissions are required.

The LSO advised that there have never been any problems or complaints relating to these premises, adding that he would be happy to support the application.

PC Bowsher supported the application and had nothing to add to the report from Police Scotland.

Decision

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

4(d) Lidl UK GMBH Store, Olivebank Industrial Estate, Newhailes Road, Newhailes, Musselburgh

Mr A Hunter, Harper McLeod LLP, was present to represent the applicant.

The Clerk advised that the application seeks to increase the capacity of alcohol display for the period of 1 December each year until 2 January the following year; increase the capacity during non-seasonal trading from 45.16m² to 46.47m² with an additional capacity during seasonal trading of 12.02m² and vary the operating plan to reflect the changes to the alcohol area.

Mr Hunter provided some brief background information to the application, stating that the request was similar to the application that had been granted for the Lidl store in Prestonpans. In response to Councillor Henderson, he clarified the reasons for only seeking an extended capacity between 1 December and 2 January annually.

PC Bowsher referred to the Police Scotland report and the comments regarding over provision.

Ms Oldcorn advised that NHS Lothian have objected on the basis of overprovision, especially given that the Musselburgh area has a higher than average number of outlets for the provision of alcohol.

The LSO acknowledged the health concerns regarding the additional availability and referred members to his written report.

Decision

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

East Lothian Licensing Board agreed unanimously to grant the provisional premises licence.

4(e) Cockenzie Royal British Legion, West Harbour Road, Cockenzie

Mr W McGauchie, Chair was present to represent the applicant.

The Clerk advised that two public objections had been received but that the objectors were not present. She informed members that the application seeks to change from a club licence to an open licence.

Mr McGauchie explained the reasons for seeking to change to an open licence; stated that the premises are well used by the local community; the costs of up-keeping the fabric of the building are high; and that it is the intention to continue with a signing in procedure.

PC Bowsher advised that it would be for the club to decide if they wished to continue with a signing in process or operate a guest list.

The LSO noted the objections and informed the Board that he has had a lot of contact with the club who in turn have engaged with neighbours to explain how the club would operate.

Ms Oldcorn advised that there are no objections from NHS Lothian.

Councillor Bruce, local ward member, commended the club for being an important part of the community.

Councillor McMillan pointed out that East Lothian Council can provide advice on commercial business planning. He encouraged the club to maintain good relationships with its neighbours.

Decision

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

4(f) No 28 (Sportsmans Bar), 58 High Street, Musselburgh

Mr M McDougal, TLT Solicitors, was present to represent the applicant. Mr S Bremner Operations Director for the tenant, and the Business Development Manager for the applicant company, were also present.

The Clerk advised that she had received a copy of the applicant's overprovision statement this morning and that comments had been received from NHS Lothian.

Mr McDougal explained that the application is in four parts and relates to changing the premises name, providing light bar meals, changing core hours and providing an outdoor drinking area.

[Specifically, the application seeks to change the premises name to No 58; amend opening hours to 11.00 hrs to 23.00 hrs Monday to Wednesday (inc), 11.00 hrs to 01.00 hrs Thursday to Saturday (inc) and 11.00 hrs to 12.00 midnight on Sunday; to include bar meals and outdoor drinking facilities in the listed activities; amend the

operating plan to include provision of teas, coffees breakfasts from 09.00 hrs, offer a range of receptions (including funeral purveys), club meetings and the showing of certain major sporting events on TV that require alcohol on the premises from 09.00 hrs, subject to the granting of an extended hours application; recorded music to be played outwith core hours during indoor receptions; the potential to provide quiz nights and similar social activities during core hours; the potential to use the outdoor drinking area for breakfasts and coffees prior to core hours, but no earlier than 09.00 hrs and no later than the terminal hour; the addition of an outdoor drinking area on the pavement; and an increase in total capacity to 108, to include a capacity of 12 in the outdoor drinking area. In addition, children and young persons will be permitted until 20.00 hrs but only when accompanied by an adult.]

In response to questions from members, Mr McDougal explained that his client is looking to align the opening hours to those in the Board's policy and to those of neighbouring licensed establishments; provided detailed information in relation to consultations with the LSO, the use of barriers for delineation, management, supervision, control measures, and the concerns that had been raised by the community council.

PC Bowsher highlighted that the tenant has only very recently taken over the premises; expressed some concerns about the increase in the terminal hours in view of historical noise complaints; and urged the applicant to take on board the suggestion of a terminal hour of 20.00 hrs for the outside area. She pointed out that there is currently no CCTV in the premises; remarked on the tight corner space where the outside drinking area is proposed; and mentioned that the type of patron frequenting the premises has changed over the last two years. She added that the previous tenant did not tolerate anti social behaviour and encouraged the applicant to join the Pub Watch scheme. If the Board is minded to grant the application, PC Bowsher suggested that this should be conditional upon the installation of an operational CCTV system.

Mr Bremner stated that he had managed several hot-spot establishments in Edinburgh and had been approached about taking on the Sportsman bar. He explained that he personally would be running the premises and that he intends to do that in a robust way.

The LSO outlined the background to the current core hours for the premises and spoke about the historic noise problems. He commended the previous tenant for good management and stewarding, particularly the stewarding of the outside smoking area. The LSO reminded the Board that if there are concerns about the premises in the future, the licence could be reviewed with the potential to attach further conditions.

Ms Oldcorn stated that NHS Lothian objects to the application for the increased hours on the basis of over provision given that data indicates that there are more than enough alcohol outlets in Musselburgh.

Councillor Bruce asked where smokers would go once the pavement area is given over to an outside drinking area, especially if all 12 outside seats are occupied. Mr McDougal stressed that the delineation barriers would be vital and that potentially smokers would have to move further down the street.

The LSO suggested that an area to the front of the premises, not within the licensed part of the pavement, could be delineated where smokers could stand. He stressed the need for the outside drinking area and smoking area to be properly stewarded to avoid problems. The LSO urged the applicant to establish a good relationship with a local objector and offered to pass on the applicant's contact details.

Responding to a question from Councillor Dugdale, the LSO provided information on how other establishments approach stewarding and the management of outside areas, which included inspections every 15 minutes which are recorded in a log book. Mr McDougal advised that his client would be agreeable to 15 minute inspections and working from a checklist.

In response to Councillor McMillan, Mr McDougal commented that it would be preferable to trade up until the terminal hours but consideration would be given to all control measures, including early closing, in order to uphold the licensing objectives. He confirmed that his client was agreeable to a terminal hour of 20.00 hrs for the outside area.

Councillor Henderson indicated that she is not minded to grant the application on the basis of over provision and the fact that there are outstanding questions regarding the outdoor area.

Councillors Bruce, Goodfellow, Dugdale, McMillan and McGinn all individually stated that they were minded to grant the application.

Decision

East Lothian Licensing Board agreed to grant the variation to the premises licence, subject to the following conditions:

- i. A terminal hour of 20.00 hrs for the outside area;
- ii. The installation of operational CCTV inside and outside the premises;
- iii. Membership of a Pub Watch scheme, where such a body exists;
- iv. Regular stewarding and recording in relation to the outside area; and
- v. Providing an updated operating plan

Sederunt – Ms Oldcorn left the meeting

REQUEST FOR REVIEW OF PREMISES LICENCE

RS McColl, High Street, Haddington Tesco, Haddington

The Clerk advised that a request had been received from a member of the public seeking a review of the premises licences for RS McColl, High Street, Haddington, and Tesco, Haddington. She advised that this was in relation to an allegation that alcohol had been sold to minors from these premises and had given rise to an incident in the playing fields at Knox Academy, Haddington, on Friday 16 June 2017.

PC Bowsher confirmed that there had been an incident on Friday evening involving a number of youths. She informed members that she and the LSO had jointly visited RS McColl and Tesco, although the member of the public had not produced receipts confirming that either of these premises was the source of the alcohol. She confirmed that she was more than happy with the procedures in place at RS McColl who she regarded to be a very diligent operator and who was able to prove that they had not sold alcohol to underage drinkers or to agents. She advised that Tesco did not sell all of the products involved and that they had been very co-operative with the police. It was her view, that without receipts or evidence, there was no justification for reviewing these premises licences, a view with which the LOS concurred.

PC Bowsher and the LSO answered questions from Councillor McMillan about the products involved; local stockists of these products; the opportunity for theft from RS McColl and Tesco; follow-up activity in relation to the youngsters who had been arrested; and the possible sources of alcohol for the youngsters involved in the incident.

In response to Councillor Goodfellow, PC Bowsher advised that there was no association between the incident and Knox Academy, Haddington.

Decision

East Lothian Licensing Board unanimously agreed that there would be no review of the premises licences for RS McColl, High Street, Haddington, and Tesco, Haddington.

Signed

Councillor Fiona Dugdale
Convener of East Lothian Licensing Board