



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

**THURSDAY 24 AUGUST 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
Mr J Sherval, NHS Lothian

Committee Clerk:

Ms J Totney, Team Manager – Democratic Services

Apologies:

None

Declarations of Interest:

Councillor McMillan declared an interest in item 3a.

1 MINUTES FOR APPROVAL

The minutes of the East Lothian Licensing Board meeting of 22 June 2017 were approved as a true record.

2 GRANT OF OCCASIONAL LICENCE

2a Marquee & Stately Home, Broxmouth House, Broxmouth Park, Dunbar

Mr A D Williams, WS, was present to represent the applicant. Mr S Flame, applicant was also present.

The Clerk advised that there had been repeated applications for occasional licenses and that as this is outwith Board Policy, the current applications were being presented to the Board. She advised that an objection had been received from the Camping and Caravanning Club (the Club), who were only objecting to the marquee, but that no representative from the Club was present at the meeting. She referred to the extract minute of the Board meeting in August 2016 which stated that it was highly unlikely that further occasional licenses would be granted to Broxmouth House and made members aware of the outstanding planning considerations; adding that Ms S McQueen, Planner, was present at today's meeting to provide further information and answer any questions.

The Clerk stated that the application seeks occasional licences for wedding receptions on 1 September 2017, 5 pm – 1am; on 2 September, 11 am – 1 am; 3 September, 11am – 3 pm 2017, 8 September 6 pm – 1 am, 9 September 11am – 1 am, 23 September 11am – 1 am; 13 October 7 pm – 1am, and 14 October 11am – 1 am, with children and young persons permitted at all times.

Mr Williams commented that he was disappointed that matters were before the Board; provided reasons as to why there are unresolved planning matters; advised that this client fundamentally disagrees that there is the need for a new planning application to be submitted; indicated that his client had made several unsuccessful attempts to contact Ms McQueen to discuss matters; and informed members that a meeting had been scheduled for 1 September with Ms McQueen at Broxmouth House, to take matters forward. He outlined the measures that had been put in place to deal with the Club's objections about noise, including screening, and advised that the local site manager had rejected the offer of a meeting. He asked the Board to follow the recommendations from the Licensing Standards Officer (LSO) and Police Scotland, and grant the applications.

The LSO and Insp Harborow had nothing to add to their written reports. There were no objections or comments from the NHS Lothian representatives.

In response to questions from Board members, Mr Flame advised that Broxmouth house is not used for events and that guests do not reside in the house.

Ms McQueen set out the Council's position with regard to the planning application, and advised Councillor Goodfellow that ideally the marquee and house would form one planning application, as advised to Mr Williams and his client in early June 2017.

Councillor McGinn commented on the lack of descriptive information on all the application forms and asked questions about the 10 events that had already been held this year.

Councillor Goodfellow highlighted that the issue of operating with occasional licenses pre-dates August 2016. The LSO confirmed that this had been the case since 2013 and reminded members about the Board's policy regarding repeated occasional licence applications.

Board members adjourned to consider their decision.

On returning to the Chamber, members individually stated their comments and decision.

Councillor Goodfellow expressed disappointment to see the applicant again, as he hoped that it had been made clear previously that there was to be an end to the use of occasional licenses. He stated that he was not convinced that the applicant was trying to resolve planning issues, and purely for the convenience of wedding guests, he was minded to grant the licenses for September. However, he asked that the applications for October are held over and presented to the September meeting of the Board.

Councillor Henderson generally echoed Councillor Goodfellow's comments and was surprised that the business had been running for many years with planning concerns regarding usage. She agreed to grant the licenses for the September dates and to carry forward the October licences to the next meeting of the Licensing Board.

Councillor McGinn agreed to grant the September licences and to hold over the October licenses until the next Board meeting. He reiterated his concern at the lack of detail in the application forms and stressed, that as a new Board member, he would be expecting more information in order to make a decision. He agreed to grant the September applications and for the October applications to be presented to the next meeting of the Board.

Despite the fact there had been no objections from Police Scotland, Councillor McMillan commented on the need for the applicant to demonstrate supervision, management and professionalism. He agreed to grant the September applications and stated that he was looking for the applicant to engage constructively with the Council's planning department, adding that given the Board's policy, the Licensing Board is being very liberal.

Councillor Bruce agreed to grant the September licenses but to continue the October licence applications to the next Board meeting.

Councillor Dugdale agreed to grant the September applications and to hold over the October applications until the next Board meeting for consideration. She also sought a progress report on the planning matters.

Decision

East Lothian Licensing Board agreed:

- i. to grant the occasional licence applications for 1st – 3rd September 2017; 8th & 9th September 2017; and 23rd September 2017; and
- ii. to continue the applications for 13th & 14th October 2017 to the meeting of East Lothian Licensing Board to be held on 28 September 2017

3 GRANT OF PROVISIONAL LICENCE

3(a) NB Distillery Ltd, Halfland Barns, North Berwick

Sederunt: *Councillor McMillan left the meeting*

No-one was present to represent the applicant.

The Clerk advised that no public objections had been received but there was a representation from NHS Lothian seeking the condition that the applicant only sells their own products online; the Clerk confirmed that the applicant was agreeable to this. She made reference to Police Scotland's comments about engaging the overprovision policy and stated that the local Community Council support the application.

The LSO, Police Scotland and NHS Lothian had nothing to add to their reports.

Councillor Goodfellow remarked that this is a well run business, a view that was echoed by Councillor Henderson. Councillors Henderson and McGill commented positively on the well presented written report from the applicant.

Decision

East Lothian Licensing Board agreed to grant the provisional licence.

Sederunt: *Councillor McMillan re-joined the meeting*

3(b) Station Yard Micropub, Station Road, Dunbar

Mr G McPhillips applicant, and partner in the business, was present.

The Clerk advised that no public objections had been received; there was a representation from NHS Lothian; that the application was supported by the community council; and that a very detailed overprovision statement had been provided by the applicant.

Mr McPhillips outlined the proposals for the premises and highlighted that the business intends to retail craft ales and gins by way of off sales. He explained that children and young persons can enjoy the beer garden; acknowledged that the business is weighted toward alcohol rather than food; agreed to make it clear, as requested by NHS Lothian, that child and young persons must be accompanied by an adult at all times; and clarified the outside area that is to be delineated and licensed.

Police Scotland had nothing to add to their report.

The LSO commended the applicant on the exemplary quality of the overprovision statement.

Mr J Sherval, NHS Lothian, thanked the applicant for addressing the concerns set out in their letter.

Councillor Henderson stated that she was very impressed by the detail in the submission and commended the time, money and innovation involved. The five other Board members individually stated that they agreed to grant the provisional licence.

Decision

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

4 MAJOR VARIATION OF PREMISES LICENCE

4(a) County Hotel, 15-17 High Street, North Berwick

Ms J Hood, Licensing Consultant, was present to represent the applicant. Mr Breathnach, Director of the applicant company, Killernan Inns Ltd, was also present.

The Clerk advised that a public objection had been received, along with a representation from Police Scotland.

Ms Hood informed the Board about the refurbishment taking place in these premises and listed the changes being sought in the application: to amend the core terminal hour on Thursdays and Sundays to midnight; to amend section 6(e) of the operating plan to include the restaurant areas and remove the games room; and to vary the description of the premises on the premises licence to read: (1) the ground floor comprises public bar with server and lounge/dining room off to rear, reception/cafe area, gents toilets, disabled toilets, laundry room, cleaners' closet, beer storage area and soft drinks storage area; and (2) on the first floor there is a function room with a fire exit, this is served by a ladies toilet; further there is a kitchen which has a door to a fire exit and small balcony area; and there are three bedrooms all en-suite which have been converted from the owners' accommodation. She stated that the premises will now be a more food-orientated offering; that there have been no noise complaints since the current operator has taken over the premises; acknowledged that the increase in licensed hours of two hours per week engages the overprovision policy; and provided a verbal overprovision statement to the Board.

Members debated the increase in the terminal hour; the arrangements for smokers; the terminal hour for children and young persons; and drinking patterns and health related statistics, with input from Mr Sherval and Ms Hood.

Police Scotland had nothing to add to their report and the LSO confirmed there had been no complaints since the applicant took over the premises.

Councillor McMillan expressed concern that increasing the terminal hour to midnight on Thursdays and Sundays could be seen to be supporting a drinking culture rather than a family friendly food based establishment. Despite these reservations, he was minded to grant the application. The five other Board members individually stated that they agreed to grant the provisional licence.

Decision

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

4(b) Poonthai's, 7 Westgate, North Berwick

Mr A Macdonald, Macdonald Licensing was present to represent the applicant. Mrs Cumpstie, Premises Licence Holder was also present.

The Clerk advised that the application seeks to increase on sale hours to 11.30 am to 12 midnight each day; add off-sales; children and young persons to have access, if accompanied by an adult, during operating hours; to provide activities taking place outwith core hours/during periods of extended hours; and to add deliveries and takeaways as activities.

Mr Macdonald indicated that there had been an alteration to the application; to which the Clerk advised that the Board had been notified. He then provided background information about the business and the reasons for seeking an increase in the licensed hours; stated that his client had complied with the recommendations from NHS Lothian and Police Scotland with regard to the terminal hour; and had taken account of the comments from North Berwick Community Council.

Insp Harborow acknowledged that a number of the issues raised by Police Scotland have now been addressed but sought clarification that children and young persons would only be permitted on the premises if they are having a meal and are accompanied by an adult over the age of 18. He also raised the issue of the terminal hour for the outside area given that it is overlooked by neighbouring residential properties; stating that the current terminal hour of 22.30 hrs is historic and outwith current Board policy. Insp Harborow also sought reassurance about home deliveries of alcohol in relation to satisfying the statutory obligations in relation to the delivery and remote sales of alcohol.

Mr Macdonald advised that his client is aware of her legal responsibilities but it would be too restrictive if home deliveries of alcohol had to be made by a Premises Licence Holder, although he would be agreeable to deliveries being made by a trained member of staff. He was also agreeable to amending the application to show that children and young persons will be allowed access to the premises if an adult is having a meal. He confirmed the terminal hour for the outside drinking area, adding that this could not be changed by the Board today as this was not a review hearing; a point that was confirmed by the Clerk.

The LSO reported that the establishment is well run and that he supports the application on the proviso that there is appropriate training and that complying with Challenge 25 and the delivery and remote sales of alcohol are local conditions on the licence. In response to Councillor McMillan, the LSO answered questions about what constitutes a 'meal'. He commented that this should be clarified in future in the Boards' policy and the Clerk undertook to include this in the updated policy that is currently being drafted. The LSO reminded members that the Board's policy allows for children and young persons to be present on premises until 22.00 hrs without reference to accompanying adults eating a meal.

Ms Oldcorn confirmed that the matters raised by NHS Lothian had been addressed.

For clarity, the Clerk summarised the issues that had been debated and the conditions that are to be attached to the licence.

Councillor Henderson was comfortable with the conditions and supported the application.

Councillor Goodfellow expressed some reservations about the home delivery of alcohol and was concerned about the terminal hour for the outside drinking area but was minded to grant the application.

Councillors McGinn, Bruce, McMillan and Dugdale stated individually that they were minded to grant the application subject to the agreed conditions.

Decision

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

- i. Children and young persons will be allowed access to the premises when accompanied by an adult who is eating a meal

- ii. A terminal hour of 22.00 hrs, in general, for children and young persons, unless they are attending a private party/event/function
- iii. Home deliveries of alcohol to be carried out by a fully trained member of staff

4(c) Preston Lodge RFC Clubrooms, Bankfoot House, Drummohr, Prestonpans

Mr C Reynolds, Vice President, Preston Lodge Rugby Club, was present to represent the applicant and briefly outlined the variations being applied for.

The Clerk advised that the application seeks to change the name of the premises; vary the terminal hour on Saturdays from midnight to 1 am; allow televised sport from 8 am (previously 9 am); change the licence to an open club; to include an outdoor drinking area; to include the bowling green in the licensed area; and amend the premises description. She advised that representations had been received from North Berwick Community Council and from NHS Lothian.

Police Scotland had nothing to add to their report.

The LSO supported the application.

There were no questions from Board members.

Decision

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

4(d) Railway Hotel, 70 Court Street, Haddington

Mr N Hassard, TLT LLP, was present to represent the applicant. Ms E Kennedy, Operations Manager for Greene King Brewing 7 Retailing Ltd, was also present.

The Clerk advised that the application seeks to change the name of the premises to 'The Bell'; add restaurant facilities and bar meals during and outwith core hours; amend the operating plan wording: restaurant/bar meals – premises may open early for the provision of breakfasts, teas, coffees etc; no alcohol to be sold outwith core hours; children and young persons to be permitted up until 1- pm or for 24 hours if they are resident at the hotel; children and young persons to be admitted to the raised area of the premises only

Mr Hassard informed members that there has been a change of tenant and a significant investment in refurbishing the premises recently. He advised that his client was agreeable to a terminal hour of 22.00 hrs in the beer garden.

Police Scotland and NHS Lothian had nothing to add to their reports.

The LSO reported that there are no historic complaints in relation to these premises.

There were no questions from Board members.

Councillor McMillan, local ward member, supported the application and wished the business well.

Councillor Goodfellow was minded to grant the application, commenting it was good to see a significant investment in the premises.

Councillor Henderson welcomed the scale and commitment of the investment and was minded to grant the application.

Councillor Bruce, McGinn and Dugdale individually stated their intention to grant the application.

Decision

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

4(e) Tiger Coast, 114 High Street, North Berwick

Mr N Hassard, TLT LLP, was present to represent the applicant. Mr G Langley and Ms E Norbury, proposed new tenants, were also present.

The Clerk advised that two public objections had been received from neighbouring residents and that the objectors, Ms S Harley and Mr M Balfour, were present at the meeting. In addition, representations had been received from North Berwick Community Council and NHS Lothian.

The Clerk advised that the application seeks to vary the description to wine bar and bistro in a mixed commercial and residential street; allow on and off sales of alcohol; amend on sales to 11 am daily; amend terminal hour Thursdays to Saturday to 1 am on to 12 midnight on Sundays; delete any break in trading hours; amend off sales to 11 am – 10 pm daily; allow seasonal hours; allow conference, bar meals, receptions, club and group meetings, live performances, theatre, film, gaming and TV sport all within and outwith core hours; permit restaurant and recorded music outwith core hours; the premises may open before core hours from 8 am for breakfast, teas and coffees; ancillary activities may take place from 8 am; allow corporate, community, charity and private events such as demonstrations, product launches, education and fundraising; children and young persons to be accompanied by an adult for the purposes of a meal, snack or soft drink or attending a function; and amend the capacity to 80.

Mr Hassard advised that his clients hope to take occupancy of the premises on 15 September 2017; that the current licence is somewhat antiquated; and that his clients do not intend to take on the business with the licence in its current format, adding that he has the current licence holder's permission to be attending today's Board meeting. Mr Hassard provided details of his clients' background and previous business ventures along with the proposed short and long term changes to the business. He explained that this clients had already met with the LSO and PC Bowsher and also with Ms Harley; had made arrangements for the disposal of trade waste to eliminate historic noise complaints; were establishing relationships with local taxi firms; and would be restricting off sales of alcohol to 'meet the maker' events.

In response to a question from Councillor Goodfellow, Mr Hassard advised that it could be a condition of the licence that the increased licensing hours are not effective until his clients take over the business.

Councillor Henderson commented on the amount of information that is not available, such as a layout plan, thereby making it difficult to appreciate what it is that the applicant is asking for. Mr Hassard produced a proposed plan which had not been subject to a survey or [planning] permission.

Councillor Bruce noted that the premises would stop serving full meals at 21.30-22.00 hrs and queried as to why access was therefore being sought for children and

young persons until 23.00 hrs. Mr Hassard conceded that a terminal hour of 22.00 hrs for children and young persons would be acceptable.

Ms Harley addressed the Board and advised that she was now much more comfortable about her concerns, having met with the proposed new tenants and received reassurances regarding noise and disturbance issues. Mr Balfour reiterated this view but wondered if the terminal hour was later than that for other premises in the area.

Councillor Henderson repeated her comments about the lack of layout information, considering the major variations that are being sought. However, the LSO pointed out that no change is being proposed to the lay out plan until January 2018 and that this could be brought before the Board at that time. Councillor Henderson advised she would be content to consider that as a condition.

Insp Harborow had nothing to add to the report from Police Scotland.

In the absence of a written report, the LSO commented positively on the application and asked that Mr Langley and Ms Norbury remain mindful of the potential for noise breakout from live music and patrons smoking at the front of the building. For consistency, he recommended a terminal hour of 22.00 hrs for children and young persons, unless attending the premises for an organised event or private function.

Mr Sherval commented on the wide age range (2 – 17 years) and circumstances in relation to children and young persons when making decisions and suggested this be considered when drafting the revised Board policy.

Councillors Goodfellow and McMillan, along with Ms Harley and Mr Balfour discussed potential anti social behaviour, mitigating measures, and options available should there be any issues. Ms Harley stated that her preference would be to talk directly to Mr Langley and Ms Norbury to resolve any matters.

Councillor McGinn commented on the strong engagement with the objectors and echoed the LSO's comments regarding children and young people.

Councillor Henderson indicated that she is minded to grant the application with conditions [see decision].

Councillor Goodfellow agreed to grant the licence on the proviso that one of the conditions is that the variations to the licence are only effective from the date of entry of the new tenants; to which Mr Hassard offered to provide the date of assignation of the lease.

Councillors McGinn, Bruce, McMillan and Dugdale all individually voiced their support to grant the application subject to conditions. [see decision].

The LSO recommended that the Board discuss and agree the new layout plan for the premises before it is implemented.

Decision

East Lothian Licensing Board agreed to grant the major variation to the premises licence, effective from the date of the assignation of the lease, subject to the following conditions:

- i. To have in place arrangements for the effective management of smokers
- ii. To have in place arrangements to monitor external areas to prevent public nuisance

- iii. To provide to East Lothian Licensing Board in due course, (c. January 2018), with a new premises layout plan
- iv. To limit access to children to 22.00 hrs unless attendance is at an organised event or function
- v. To limit the off-sales of alcohol to only those associated with promotional events that are being held on the premises

Signed

Councillor Fiona Dugdale
Convener of East Lothian Licensing Board