

EAST LOTHIAN

Meeting 22 February 2018 at 10:00am in Council Chambers, Town House, 56 High Street, Haddington, East Lothian

Licensing (Scotland) Act 2005

Premises Licence Review(s)	Premises	Applicant	Date Received	Comments
2	NISA LOCO RASUL BROS 96 LOCHBRIDGE ROAD NORTH BERWICK EAST LOTHIAN EH39 4DP	POLICE SCOTLAND	29 January 2018	
3	MACMERRY MINERS WELFARE & SOCIAL CLUB 13A MAIN STREET MACMERRY EAST LOTHIAN EH33 1PB	POLICE SCOTLAND	22 January 2018	
4	PANS CONVENIENCE STORE 5 HAWTHORN ROAD PRESTONPANS EH32 9QW	POLICE SCOTLAND	8 February 2018	

Council
Licensing
24 FEB 2018
Received

RASUL BROS.
96 Lochbridge
Road
North Beswick
EH39 4DP

2nd February 2018

Dear Ms MacNeill

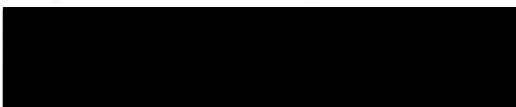

NOTIFICATION OF REVIEW HEARING

Further to your letter of 29th January regarding the Review Hearing on 22nd February, I am enquiring if you could possibly re-arrange this hearing, for a later date.

I am travelling to Pakistan on the 20th February, for an important ceremony, and hope to return by 6th March.

I would like the opportunity to attend the hearing and hope you give consideration to my request.

Yours sincerely



Date 27th January 2018

Your Ref: EL0136

Our Ref: J/LIC/3705/HB

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



**POLICE
SCOTLAND**

Keeping people safe

Philip Gormley QPM
Chief Constable

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 - SECTION 36
PREMISES LICENCE REVIEW APPLICATION**

**Rasul Bros, 96, Lochbridge Road, North Berwick, East Lothian, EH39 4DP.
PREMISES LICENCE HOLDER: Rasul Bros, 18-26 High Street, North Berwick**

In terms of section 36(1) of the Licensing (Scotland) Act 2005 I hereby make application to the East Lothian Licensing Board for a review of the premises licence in respect of the premises known as as Rasul Bros 96, Lochbridge Road, North Berwick, East Lothian, EH39 4DP.

This application for review is made in terms of the grounds set out at Section 36(3) (a): that one or more of the conditions to which the premises licence is subject has been breached.

- Staff Training

And in terms of Section 36(3) (b) on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely:

- Preventing crime and disorder
- Protecting children and young persons from harm

In support of this application, and in terms of section 36(5A) the following information is provided for your consideration.

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The premises is a local convenience store situated within a residential area of North Berwick. The licence holder is Rasul Bros. The directors of this company being Maqbool Ahmed and Ghulam Rasul. The Designated Premises Manager is Jabad Ahmed.

The family also run the premises Nicer Foods, 18-26 High Street, North Berwick. The licence holder of this store being Tasneem Akhtar. The DPM being Maqbool Ahmed. It is pertinent to note that Nicer Foods failed a test purchase back in December 2015.

Under the terms of Section 105(3) of the Licensing (Scotland) Act 2005, the Chief Constable may authorise a child or young person (a test purchaser) to buy or attempt to buy alcohol for the purposes of determining whether a person has committed an offence under Section 102 of the Act by selling alcohol to such a child or young person. Test purchasing provides the Police with an essential tool in the fight against underage sales and underpins the no-proof, no-sale provisions, which represent an important safeguard in tackling the underage drinking and antisocial behaviour which adversely affect many communities.

Stringent controls are employed by Police Service of Scotland for the recruitment of test purchasers and the conduct of any Test Purchase Operation. Standard Operating Procedures are in place to ensure that operations are carried out safely, fairly and effectively. The procedures were prepared in consultation with various governmental groups and organisations including the Crown Office, Scotland's Commissioners for Children & Young People, the Society of Chief Officers for Trading Standards in Scotland, the Association of Chief Police Officers in Scotland, the Convention of Scottish Local Authorities and the Scottish Executive, under the auspices of the Scottish Executive Enforcement Advisory Group on Age Restricted Sales.

A Test Purchase Operation may be carried out on premises for any of the following reasons:

- There is intelligence to suggest that alcohol is being sold illegally to persons under 18 years of age from specific licensed premises; and/or
- There is intelligence indicating that the licensed premises are situated in a locality where persons under 18 years of age are consuming alcohol.
- The premises being within a locality where all premises are being subjected to a test purchase operation, in a non-discriminatory manner, to raise awareness in relation to the illegal sale/purchase of alcohol in licensed premises.

Test purchasing involves utilising the services of a young person to enter licensed premises and attempt to purchase alcohol under the direct observation of at least one plain clothes Police Officer also within the premises. The young person must be between 16 and 16½ years of age at the time of a Test Purchase Operation. In addition to age, a test purchaser is continually assessed on their appearance,

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level of maturity and general character. If, for instance, the young person looks older than 16½ years of age, they will not be used in a Test Purchase Operation.

The test purchaser is told that all questions which may be asked by the seller must be answered truthfully. In particular, the test purchaser must, if challenged, state their correct age. Further, if the initial attempt to buy alcohol is refused, the test purchaser must not try to persuade or coerce staff to make a sale. In short, licensed premises will pass a Test Purchase Operation if staff simply challenge the test purchaser regarding his or her age.

As such, it was decided to conduct a test purchase operation in the East Lothian area in a non-discriminatory manner, to raise awareness, and as part of that operation on the 4th December 2017 a total of 12 'off sale' licensed premises were tested within the North Berwick and Dunbar areas, with 2 failing.

At 1840 hours on Monday 4th December 2017, a Test Purchase Operation was conducted at the premises and a test purchaser was sold a bottle of wine without being asked for identification or being challenged as to their age. Consequently, Jamie Roberts, a Sales Assistant is now the subject of a report to the Procurator Fiscal at Edinburgh Sheriff Court regarding the contravention of Section 102 of the Licensing (Scotland) Act 2005.

In addition, when interviewed by the Police Jamie Roberts could not provide his staff training record for the premises. Officers also noted that there was no 'challenge 25' signage within the store, as recommended.

Consequently, the DPM Jabad Ahmed, is now the subject of a report to the Procurator Fiscal at Edinburgh Sheriff Court regarding the contravention of Section 103(1) and Section 141B of the Licensing (Scotland) Act 2005.

On Monday 11th December 2017, following the test purchase failure, the Police Licensing Officer and East Lothian Council's Licensing Standards Officer, visited the premises. They spoke with the DPM Mr Jabad Ahmed who stated that Jamie Roberts did not have a training record on the premises and that his training record was at the other store (Nicer Foods, High Street, North Berwick). Mr Ahmed was informed that Jamie and all other staff who worked within the Lochbridge Road store required to have a staff training record on the premises when working there. Mr Ahmed agreed to have this rectified as soon as possible.

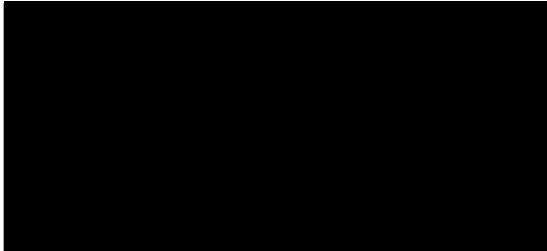
The Police Licensing Officer and LSO noted that there was now 'challenge 25' signage in place. Mr Ahmed admitted to not having any up prior to the test purchase. Mr Ahmed was reminded that the store would be retested within 14 days of the original test purchase failure.

At 1940 hours on Thursday 14th December 2017, a second Test Purchase Operation was conducted at the premises. On that occasion, alcohol was not sold to the Test Purchaser.

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I request that the Licensing Board considers the aforementioned grounds for review and take such steps as it considers necessary or appropriate for the purposes of the Licensing Objectives under the terms of Section 39(2) or 39(2)(2A) of the Act.

Yours faithfully



Philip Gormley QPM
Chief Constable

Date: 16/01/2018

For enquiries please contact the Licensing Department on 01620 826147

EAST LoTHIAN COUNCIL

LICENSING ADMINISTRATION AND DEMOCRATIC SERVICES

From: Rudi Fruzynski,
Licensing Standards Officer

To: Kirstie MacNeill
Clerk to the Licensing Board

Date: 05 Feb. 18

Subject: LICENSING (SCOTLAND) ACT 2005 - PREMISES LICENCE REVIEW
NISA LOCO, RASUL BROS., 96 LOCHBRIDGE ROAD, NORTH BERWICK
EH39 4DP

On Monday 29th January 2018, I received intimation in terms of Section 38(3)(b) of the licensing (Scotland) Act 2005 that the Licensing Board had accepted an application to review the Premises Licence in respect of the above premises.

In terms of Section 38(4) of the Act, I have prepared this report outlining the basis of the request for the review, which is submitted for the consideration of Licensing Board Members.

R. Fruzynski
Licensing Standards Officer

Licensing Standards Officer's Report

Nisa Loco, Rasul Bros., 96 Lochbridge Road, North Berwick is a licensed grocery and convenience store.

Summary of Review:

This review relates to the failure of a test operation carried out at the above store on 4th December 2017. At the time, the member of staff who failed the test purchase was unable to produce a signed Staff Training Record, which is a mandatory requirement under the Licensing Scotland Act 2005. The police officers conducting the operation also noted that there were no Challenge 25 signs on display.

Licensing Standards Officer's Observations

The working relationship between the LSO and store has always been a good one and any deficiencies resolved without recourse to formal action. Over the period of 8+ years, since the new licensing regime came into being, the main problem has frequently been that members of the general staff have not had a mandatory Staff Training Record on the premises to show the Licensing Standards Officer when asked to inspect it. The member of staff or the premises manager has frequently made the excuse that the shop assistant's training record was at the sister store in High Street, North Berwick, where the person also happened to work, or that they worked at another licensed premise in the town, where their training record was kept and could be inspected if required. This unacceptable practice was frequently pointed out to the various premises manager who have held the position, including the current manager, Mr Jabad Ahmed. The matter has as always been resolved, but sometimes standards have lapsed, as it did on this occasion, when the store failed a test purchase operation and again, all Staff Training Records were not available for inspection.

As indicated in the police review report, Constable Heather Bowsher and the LSO called at the premises on 11th December and the Staff Training Record in respect of the shop assistant who had earlier failed the test purchase was still not on the premises. At this time Mr Ahmed stated that he had forgotten to retrieve it from the shop in High Street.

On Thursday 1st February 2018, Constable Bowsher and the LSO returned to the shop in Lochbridge Road to check the Staff Training Records of the staff on duty and found one male shop assistant working within the store. He was asked if he had a Personal Licence or a Staff Training Record and he stated he had a training record. When asked to produce the record he stated he thought it was at the sister store in the High Street. He stated that the manager was at the other shop and would be back in 15 minutes if we cared to wait or call back.

At 12.50pm same date, Constable Bowsher and the LSO called at 18-26 High Street, North Berwick and spoke with Jabad Ahmed. He was filling a basket with goods and appeared to be somewhat agitated. He was approached and Constable Bowsher informed him that a visit had been made to his shop in Lochbridge Road and that his shop assistant had stated he thought his

Staff Training Record was at the High Street Store. Mr Ahmed stated he did not have time to deal with the matter as he had to get back to the shop for the schools coming out at lunchtime. It was then simply pointed out that the direction he had been given on numerous occasions that a Licensing Folder be kept at each store, containing the relevant training records, copies of personal licences, a copy of the premises licence and the layout plan, in a place known to and accessible to all members of staff, would satisfy legal requirements and not take up anyone's time when the material was requested for inspection purposes. At this Mr Ahmed stated that he did not have f..... time for this and he was away to his other shop. His attitude was rebuked by the LSO. Mr Ahmed then described how Constable Bowsher and the LSO were 9 – 5pm people who are in soft jobs and did not know what hard work was, unlike him who works all the hours of the day to make a living. At this point, Mr Ahmed's brother spoke up that he agreed with the police and LSO and that his brother had been told so often to get his house in order, but had taken no notice.

Jahbad Ahmed then backtracked and spent a long time apologising to the Officers for his actions and swearing and stated he had had a bad day, and that his attitude was out of character. He then left the shop.

Shortly afterwards, Mr Ahmed made two telephone calls to the Licensing Office apologising to members of the office staff for his comments and attitude towards PC Bowsher and the LSO. He followed these calls up with an email to the LSO apologising profusely for his actions. He confirmed that the member of staff serving earlier in the day at the Lochbridge Road store did have a Staff Training Record, which was in the shop's office. He re-iterated that he had been under pressure and had had a bad bay for which he was sincerely apologetic.

The sentiments of the LSO, in relation to all of the foregoing, is that everyone can have a bad day and that Mr Ahmed's apology is accepted. However, he does need to take on board officials guidance and timeously act on it, recognising that by doing the simple things, that it will save him and his staff anxiety and time when compliance officers visit to check that the conditions of his licence are being complied with.

This report is submitted for the consideration of Licensing Board members.