



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 28 NOVEMBER 2019
COUNCIL CHAMBERS, TOWN HOUSE, HADDINGTON**

Board Members Present:

Councillor F Dugdale (Convener)
Councillor L Bruce
Councillor J Henderson
Councillor J McMillan

Clerk of the Licensing Board:

Mr C Grilli (Depute Clerk), Service Manager – Legal

Attending:

Ms M Winter, Licensing Officer
Ms C Shiel, Licensing Officer
Mr R Fruzynski, Licensing Standards Officer
PC H Bowsher, Police Scotland
PC C Banks, Police Scotland

Committee Clerk:

Ms J Totney, Team Manager – Democratic and Licensing

Apologies:

Councillor W Innes
Councillor J Goodfellow

Declarations of Interest:

None

1. MINUTES FOR APPROVAL

The minutes of the East Lothian Licensing Board meeting of 31 October 2019 were approved as a true record of the meeting.

2. NEW PREMISES LICENCE
Event Space, Archibald Hope House, Eskmills Park, Inveresk, Musselburgh

The premises consist of a function suite, kitchen, toilets and storage. The application seeks the on sales of alcohol within Board policy hours to include conferences, receptions, meetings, recorded music, live performances and televised sport, all of which may take place outwith core hours without the sale of alcohol. The external outside drinking area has been withdrawn from the application.

There are no objections from the public, NHS Scotland or the Community Council.

The licence holding company has been dissolved and the premises are to be licenced under a new company. The applicant has therefore been trading on occasional licences recently and no complaints have been received.

Mr C Bell, Venue Manager was present and made a brief presentation to the Board. He explained that the beer garden had been taken away and that there were plans to redevelop the premises.

PV Bowsher advised that the premises capacity had been confirmed at 400 and that the applicant was agreeable to CCTV being a condition on the licence.

The Licensing Standards Officer (LSO) commented that the premises are well run and supported the application.

Decision

East Lothian Licensing Board unanimously agreed to grant the premises licence subject to the following condition:

- CCTV to be installed and maintained in full working order

3. PROVISIONAL PRMISES LICENCE
Aldi, Gateside West, West Road, Haddington

The premises are a purpose built supermarket, to include the off sales of alcohol. There are no objections from the public or the Community Council. However, NHS Scotland have expressed concern about the size of the alcohol display area.

Mr N Hassard, TLT Solicitors, was present to represent the applicant. He informed the Board that the licence relates to a replacement store in the new retail park development and described the configuration of the new-look store, which is being rolled out across Aldi branches. In particular, he explained the changes to the way that alcohol is displayed, meaning that it will not be within sight of the check-out staff. Mr Hassard provided an undertaking that the existing Aldi licence would be surrendered when the new full licence is granted.

Board members asked questions about the incidence of thefts of alcohol from the new style of stores; the reasons for the reconfiguration of stores; the size of the alcohol display area; and the monitoring of the CCTV, which Mr Hassard answered to their satisfaction.

Councillor McMillan referred to the suggestions in the LSO's report about increasing the number of staff who are present in the alcohol display area during busy times;

however, Mr Hassard advised that this would be operationally difficult to achieve but volunteered that his client would be happy for CCTV to be a condition of the licence.

PC Bowsher accepted the offer of CCTV being added as a condition and asked that all thefts of alcohol be reported to Police Scotland.

The LSO referred to his report of 22 October and stated that there is a higher incidence of alcohol theft from premises that are configured in the style of the new-look Aldi stores; however, he noted that all shoppers had to exit the premises via the tills.

Decision

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

- CCTV to be installed and maintained in full working order; and
- All thefts of alcohol to be reported to Police Scotland

4. MAJOR VARIATION OF PREMISES LICENCE

4a Lodge Nisbet, 1112 Social Club, Rannoch House, 30 Ormiston Road, Tranent

The application seeks to vary the premises licence to change if from an open premises licence back to a registered club licence. There are no objections from any parties.

No one was present to represent the applicant and the Board agreed to proceed in their absence.

PC Bowsher referred to the Police Scotland report and commented that she was slightly disappointed that was to be a reversal of the open licence, for reasons unknown to the Board.

The LSO considered the application to be a retrograde step, stating that an open licence provides more flexibility and provides more scope to operate in a legal fashion.

The Board expressed disappointment that no one was present to provide the reasons behind the variation to the licence.

Decision

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

4b Muss-Bar & Kitchen (formerly Habaneros), 83 High Street, Musselburgh

The application seeks to vary the terminal hour from 12 midnight to 1am on a Thursday; include conferences, receptions, club group meetings, films, and outdoor drinking outwith core hours; permit children on the premises from 8am to 10pm daily unless attending a private function when they can remain until the end of the function; permit young persons from 8am until the end of core hours; amend the layout plan to reposition the internal bar, modify internal fixed seating, increase kitchen size, remove the external fence to extend the rear outdoor drinking area, create a covered timber pergola in the rear external area with pop-up servery units for the sale of alcohol (dismantled when not in use), and the creation of a designated smoking area; change the premises name to Muss-Bar & Kitchen; and change the premises description to a modern family friendly community premises with food and drink offerings.

Two public objections have been received along with representations from the LSO and Police Scotland. There are no objections from NHS Scotland or the Community Council.

Ms J Hood, Licensing Consultant, was present to represent the applicant. Two managers from Punch Partnerships PTL Ltd (the applicant) were also present.

Ms Hood advised that the premises had previously been a Mexican restaurant and provided detailed information about the recent investment and planned changes in the premises; particularly in relation to the outside drinking area at the rear.

PC Bowsher stated that the Police Scotland concerns in relation to the terminal hour for the outside area and access for children and young people have been clarified in Ms Hood's presentation. She requested that internal and external CCTV be a condition of the licence.

The LSO provided information about a historic noise complaint at the premises and stated that membership of Pub Watch would be good practice. He asked that there be a small amendment to the operating plan to include deliveries. Ms Hood stated that her client would be agreeable to voluntary membership of the Pub Watch and to amending the operating plan.

Board members asked questions about the management of the rear external drinking area and the relationship with neighbours; Ms Hood responded to the Board's satisfaction.

The Board adjourned to debate the application in private.

On reconvening, The Convener welcomed the applicant's commitment to engage with the Pub Watch scheme and acknowledged that the applicant had noted the neighbours' objections and had taken steps to mitigate their concerns and prevent issues.

Decision

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

- CCTV to be installed internally and externally and maintained in full working order;
- The operating plan to be amended to include deliveries;
- The updated operating plan to be provided to the Licensing Office; and
- Access to be allowed for children and young persons until 10pm or until the end of a meal or if attending a pre-arranged function

4c Town House Fish & Chicken Bar, 17 Market Street, Haddington

No one was present to represent the applicant. The Board therefore agreed to revisit this application at the end of the meeting.

5. PERSONAL LICENCE (Continuation) Mei Mei Ni

Ms Mei Mei Ni was present.

This application was first heard by the Board on 22 March 2018 and has been continued every six months, due to a pending case against the applicant.

PC Bowsher advised that the Crown Office are currently in talks with HMRC regarding the pending case and requested a further continuation.

Decision

East Lothian Licensing Board unanimously agreed to continue the application for six months unless there is a decision on the pending case before then, when the application would then be submitted to the next available meeting of the Licensing Board.

6. OCCASIONAL LICENCE APPLICATIONS Speakeasy Style Bar, 4 Brewery Lane, Belhaven

Five occasional licence applications had been received covering various dates between 5 December 2019 and 31 December 2019. The applications seek to operate a speakeasy style bar in a two storey office/house with four rooms and 2 WCs. Capacity is stated as a maximum of 70-100 persons.

Public letters of objection and support have been received, along with representations from the LSO. As objections have been received from members of the public, these applications must be determined by the Board and not under delegated powers.

The Clerk advised that all five applications would be considered by the Board at the same time.

Mr R Hardie, applicant was present. He asked the Board to have faith in him as a person, adding that he had not prepared a formal presentation but would be talking with his heart. He explained his connection with Dunbar, experience in the hospitality industry, plans and aspirations for the venture, target market/clientele, use of social media to promote the venture, plans to 'give back' to the local community; the contact he has made with neighbours; the positive response he has had from local people; and his communication with the LSO, PC Bowsher, and the Council's planning department in relation to licensing his business. He stated that he is applying for occasional licences following guidance from the LSO. He informed the Board that he has used a decibel tester to make sure that noise levels do not cause a nuisance.

Mr Hardie reported that there had been a soft launch event last night that had resulted in a call to Police Scotland around 11.15pm after the music had stopped. PC Bowsher confirmed that a complaint had been received but that as the premises were already closed when Police Officers arrived, she had no comment to make on the matter. He stated that he respected the objectors' views and had addressed these in his Facebook posts and was happy to do so again in person today.

The Clerk advised that a late objection had been received; the Board were agreeable to accepting this. The Clerk also established that there were objectors present who wished to address the Board.

Mr C Bell, objector, advised that due to the nature of the venture, the location had only been revealed the day before the launch and that neighbours were unaware of what was planned. He stated that his objections relate to noise given the proximity of the premises to his house; he also had concerns about the location, traffic, and lack of parking, suitability of venue, change of use, and fire safety.

Mr P Humphrey, stated that Mr Bell had made him aware of the venture, explained that the premises were previously office accommodation, challenged if there is change of use for the premises, stated that there is no safe pedestrian access and no parking, sought more information on occasional licences, and was of the view that this is an unsuitable location for this venture. The Clerk made it clear that the Licensing Board determines an application based only on the licensing merits.

PC Bowsher pointed out that four of the applications are outwith the Board's policy on opening hours, and made it clear that the extended Festive opening hours are only for premises that have a full licence. She mentioned that it is not unusual for a business to test the water with a series of occasional licences to establish if it would be worthwhile to apply for a full premises licence.

Once pointed out by PC Bowsher, Mr Hardie realised that the hours requested on some of the applications were incorrect and that he had made some mistakes with the paperwork and may even have handed in the wrong application forms; however, PC Bowsher pointed out that the Board could only go with the information on the application forms. The Board then tried to establish the correct information regarding the dates and hours; with Councillor McMillan commenting on the completion of the forms and Councillor Henderson pointing out to Mr Hardie that he needs to be very precise and clear about what he is applying for.

The Board adjourned in private to discuss the matter further.

On reconvening, Councillor Dugdale, Convener, advised Mr Hardie that the Board had some concerns about the forms and had some questions in relation to his presentation. She then invited the LSO to comment.

The LSO referred to his report dated 19 November and expanded on the contents in relation to capacity; stressed that the Board can only take licensing legislation into account when determining applications, outlined the Board's policy in relation to the use of occasional licences, and confirmed that he had fully consulted with Mr Hardie regarding these applications.

Councillor McMillan commented that various figures were stated in relation to the capacity of the premises to which Mr Hardie provided further information and clarity on the numbers.

Board members had numerous questions for the applicant regarding management and safety of the venue and site and also had several comments to make. Councillor Henderson stressed the need for application forms and plans to be completed accurately and in detail. Councillor Bruce made the point that delineation of the bar area is not clear on the layout plans that had been submitted. Councillor McMillan challenged the applicant's confidence, business plan, marketing strategies, goals and readiness to open in 48 hours' time. PC Bowsher stressed that the exact opening hours need to be clearly recorded on the application forms.

PC Bowsher advised that she had made the applicant aware of her concerns a few months ago as his Facebook crowdfunding campaign could suggest irresponsible drinks promotions for financial supporters. The LSO stated that he had brought this to Mr Hardie's attention and that his Facebook was subsequently amended.

In response to questions and comments from Board members, an emotional Mr Hardie

- assured members that he would not violate the licensing objectives as the venture was so precious to him

- stated that he would employ people to be on the door to ensure safety and prevent noise
- pointed out that a minor external risk area would be blocked off
- confirmed that under 18s would only be allowed access to the Christmas Eve carol singing event
- described the internal location of washing, cleaning and serving areas, including sinks
- confirmed that no food would be served
- assured the Board that only staff would be permitted to carry drinks upstairs for patrons
- reported that in relation to building checks for fire safety and access, he had nothing formal yet from the Fire Services but that fire alarms and extinguishers were arriving today and that there were emergency exits
- confirmed that he had never run a bar and had therefore employed people to do so
- advised that he had received provisional bookings for birthday parties, once the premises had a full licence
- provided information on the progress with decoration, furnishings, internal building works and staff training
- praised the LSO for his support and advice
- stated that he had not had a return call from the planning department following his enquiry to them in October and that it was his understanding from conversations with Council officers that he did not require change of use for occasional licences, only to be told subsequently that it is required. He added that a retrospective change of use has been applied for, to which the Board then debated the criteria for change of use in relation to occasional licences
- confirmed that any reference to drinks promotions were removed from Facebook following advice from the LSO

Mr Hardie asked the Board if he would get the chance to address the comments made by the objectors as the remarks were damaging to him. The Clerk stated that the Board had heard his representation and noted the applicant's rebuttal of the comments.

The Board adjourned again to consider the matter in private.

On reconvening, Councillor Dugdale, explained that the Board had carefully reviewed all the information and had reached a unanimous decision that there was insufficient evidence to promote the licencing objective of securing public safety. The Clerk advised that a statement of reasons would be issued to the applicant.

Mr Hardie stated that he did not feel that there had been due process and that he had not been given a proper chance to address the objections that had been made; the Clerk made it clear that the applicant had been given every opportunity to put forward his case and that this had been heard by the Board. Mr Hardie sought more specific information so that he could take action to address the Board's concerns; the Clerk reiterated that reasons would be provided in writing and Councillor Henderson made it clear that the Board had to take a decision that was not just about the applicant and his business, but also about the public. The Clerk confirmed that Mr Hardie could re-apply and pointed out that the issues could be discussed with the LSO and Police Scotland.

Decision

East Lothian Licensing Board unanimously agreed to refuse to grant all five of the occasional licences.

4. MAJOR VARIATION OF PREMISES LICENCE
4c Town House Fish & Chicken Bar, 17 Market Street, Haddington

Mr S Santangeli was now present to represent the applicant.

The application seeks to include the facility of supplying alcohol to customers who have purchased a hot food meal. The application also seeks to vary the licence to add ambient background music.

Mr Santangeli provided information about the existing premises licence.

The LSO advised that the business has been operating for years without causing any problems and that the applicant is fully aware of the requirements that need to be fulfilled regarding the delivery of alcohol, adding that he has no objections to the application.

PC Banks referred to the letter from Police Scotland dated 25 October stating that there are no objections to the application.

Mr Santangeli advised members that alcohol deliveries would be made by their own drivers who would be appropriately trained and confirmed that alcohol will only be delivered with a substantial meal and not with snacks.

Decision

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

At the conclusion of the meeting, the Board noted that this would be the final meeting attended by PC Bowsher who will be retiring from Police Scotland. Members joined the Convener in thanking PC Bowsher for her contribution to alcohol licensing in East Lothian.

Signed

Councillor F Dugdale
Convener of East Lothian Licensing Board