



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

**THURSDAY 27 FEBRUARY 2020  
COUNCIL CHAMBERS, TOWN HOUSE, HADDINGTON**

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**Board Members Present:**

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

**Clerk of the Licensing Board:**

Ms K MacNeill, Service Manager – People and Governance

**Other Councillors Present:**

Councillor J Williamson

**Attending:**

Ms M Winter, Licensing Officer  
Ms C Shiel, Licensing Officer  
Mr R Fruzynski, Licensing Standards Officer  
Inspector A Harborow, Police Scotland  
PC C Banks, Police Scotland

**Committee Clerk:**

Ms B Crichton, Committees Officer

**Apologies:**

Councillor W Innes

**Declarations of Interest:**

Councillor McMillan, Item 3b, due to having a connection with Glenkinchie Distillery in his role as Cabinet Spokesperson for Economic Development and Tourism.

## **1. MINUTES FOR APPROVAL**

The minutes of the East Lothian Licensing Board meeting of 23 January 2020 were approved as a true record of the meeting.

## **2. NEW PREMISES LICENCE**

### **Miros Village, 127 High Street, Musselburgh**

The application sought a licence for on sales and off-sales of alcohol within policy hours to run a café/restaurant with takeaways and deliveries, and to host receptions and play recorded music. The inclusion of live performances had been withdrawn from the application, and the terminal hour had changed to 11pm each day.

There were two objections and one representation from the public. There were no objections from NHS Scotland, the Police, or the Community Council.

The applicant had been trading on occasional licences and no complaints had been received.

Alistair Macdonald, agent, was present, along with applicant, Mr Kazim Aslan. Mr Macdonald made a detailed presentation to the Board. He provided some context around the applicant's other café, run on Portobello Promenade, which had operated for several years without issue. He advised that Mr Aslan had previously managed the Portobello café, but would move to the Musselburgh premises as manager. Mr Macdonald advised that the café's main business during the day was food, snacks, and hot drinks, but it was hoped that a full restaurant offering could be provided in the evenings in future. He advised that background music would be played, but at a level that was not intrusive to those reading or holding conversations. Due to objections and representations made by neighbours, live music had been removed from the application. Work had been carried out to minimise any noise escape and it was submitted that the premises were very well insulated.

Mr Macdonald addressed some of the issues raised in the objections and representations. With reference to the overconsumption of alcohol, he advised that alcohol would be only sold ancillary to the sale of food, those who arrived at the premises having consumed too much alcohol would not be permitted access, and he noted that there were pubs on Musselburgh High Street for those who wished to buy alcohol only. He also advised that no smoking was allowed in the stairway entrance. Staff had seen no indication that smokers were causing issues but he undertook that staff would observe the behaviour of smokers in future as the property was glass-fronted. He stressed that his client did not wish to cause disruption or problems, but wished to access early evening trade given the investment he had made in the premises. His client hoped that his neighbours would become core customers. He submitted that the application would not impinge on the amenity of the neighbours, and neighbours were encouraged to contact staff with any issues that arose.

Inspector Harborow flagged the applicant's responsibilities under section 119 and section 14.3 of Board policy regarding the delivery of alcohol, including driver training, that no alcohol may be left with under-18s, and that drivers were required to keep mandatory records of all deliveries.

The Licensing Standards Officer (LSO) reported that Mr Aslan was aware of all responsibilities regarding licensing objectives, and noted that the adjustments to the terminal hour and the deletion of live performances had been helpful. He stated that background music had not been an issue when he visited the premises.

Fiona Irving spoke to her representation, and voiced her gratitude for the recognition of neighbours' amenity. She noted Mr McDonald's comment that early evening trade would be important to the business, but took issue with whether the 11pm closing time was in keeping with early evening trade. She questioned the statement made in the application that there would be no noise escaping into the flats above as it was possible to hear music and conversational noise from her home. She acknowledged that no complaint had been made regarding the Hogmanay party, but had not realised that occasional licences were part of a move towards obtaining permanent licence. Ms Irving also noted concerns with smokers, including having received verbal abuse when asking them not to smoke or discard cigarette ends in that area. She raised further concerns regarding security in the close. She summarised by submitting that current proposals would adversely affect the amenity of neighbours but she had submitted a representation rather than objection to try to find a solution.

Mr Macdonald responded to some of the issues raised by Ms Irving. He requested that his client be made aware of any issues in future so they could be dealt with. His client had been unaware of noise issues, but offered to listen to the noise in Ms Irving's flat and consider solutions such as moving speakers. Mr Aslan undertook to clear up litter created by smokers more frequently in view of Ms Irving's comments. Mr Aslan would also hang notices instructing customers not to stand in the doorway, and would consider CCTV should it become an ongoing problem. Mr Macdonald advised that Mr Aslan would be prepared to move to a closing time of 10pm Monday-Wednesday and would make neighbours aware of functions in future.

Councillor McMillan questioned the arrangements in place for management of the premises. Mr Macdonald introduced Maciek Pagowicz, day-to-day manager, who was listening to the undertakings being made.

In response to a question from Councillor Goodfellow, it was established that the only activities to take place outside of licensed hours would be the serving of breakfasts.

Councillor Goodfellow noted that another objector had raised the issue of public welfare as people left from the premises under the influence of alcohol, and asked whether there was a history of these kinds of problems in Musselburgh High Street. Inspector Harborow advised that this could be the case with any increased footfall, but was more often the case with pubs than cafes. The police would support both the premises and the neighbours to find solutions to any problems.

Ms Irving summarised the undertakings made by Mr Aslan was pleased with the suggested changes. She questioned whether the earlier closing time of 10pm could also be extended to Thursday and Sunday. She wished to be a good neighbour and said that her household had a good relationship with the café. She said her household would call the police and LSO if a compromise could not be found, but felt confident that this would not prove necessary.

Mr Macdonald confirmed that his client did not wish to make further changes and asked for the grant of a licence as amended.

Councillor McMillan commented on the constructive and engaging presentations; he had been reassured by the relationship between the LSO and neighbours, welcomed Inspector Harborow's professionalism, and was minded to grant the application.

Councillor Goodfellow agreed with Councillor McMillan's comments and was also minded to grant the application. He encouraged neighbours to report any issues. Although the security to the common close was not a licensing matter, he appealed to the applicant that this be dealt with.

## **Decision**

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

- Licensed hours are 11am-10pm Monday-Wednesday and 11am-11pm Thursday-Sunday
- Licence holder undertakes the displaying of a notice for smokers and regular cleaning of cigarette ends, as well as noise monitoring
- Standard conditions attached to any alcohol deliveries that may take place

### **3. MAJOR VARIATION OF PREMISES LICENCE**

#### **a Aldi Stores, Olive Bank Retail Park, Newhailes Road, Musselburgh**

The application sought to amend the permanent alcohol display area from 25.875m<sup>2</sup> to 31.51426m<sup>2</sup>. There were no objections from the public, police, NHS, or Community Council. The LSO's representation included the reporting of all thefts to the police, maintenance and CCTV cameras, and that a member of staff should operate the area at busy periods. He also recommended that unused checkout aisles be closed.

Michael McDougall, agent, was present, along with Sean Feely, Aldi representative. Mr McDougall stated that, after a significant redevelopment of the store, there would be just one alcohol display for 12 months of the year. He gave assurance that thefts would be reported and high stock value would be tagged, and commended the application to the Board.

The LSO commented on the positive relationship between Aldi and licensing standards, as both parties were able to discuss issues and agree on next steps. He noted that all points made had been taken on board by Aldi, and therefore offered his support to the application.

Councillor Dugdale enquired about the recommendation for there to be a member of staff in the alcohol area. The LSO advised that this was a recommendation rather than a condition, and was due to the fact that shoplifters took advantage of busy periods.

In response to a question by Councillor McMillan, the LSO confirmed that high-value products to be tagged referred only to spirits. Councillor McMillan asked Aldi to think about how 'high value' might be defined to guard against theft. Mr McDougall stated that Aldi checked stock levels on a daily basis, and would use data to put strategies in place if necessary.

## **Decision**

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

*Sederunt: Councillor McMillan left the meeting.*

#### **3b Glenkinchie Distillery Visitor Centre, Glenkinchie Distillery, Glenkinchie**

The application sought a licence for on-sales Monday-Wednesday 9am-10pm and Thursday-Sunday 9am-11pm, with activities to include workshops, sampling of non-alcoholic drinks and food, and external areas which may be used for recreational purposes. The premises may be used for range of functions, such as dinners and

meetings. The bowling green would be removed, and a new visitor centre and licensed garden area would be created.

There were five public objections, including one petition signed by 24 residents. The NHS and police raised objections on the basis that the application was outwith Board policy hours, and the police raised a number of further objections. The LSO and Community Council had made no comment.

David Hossack, agent, was present, along with Ian Smith, Ramsay Borthwick, and Rhona Paisley, Diageo representatives. Mr Hossack gave a detailed presentation to the Board on the history of the site, and gave further information on the use of internal and external areas. He noted that, due to the location, visitors rarely 'popped in', but rather come to the distillery as a destination. He advised that the site had been working on a temporary licence since September 2019 whilst works were going on, and noted that there had been no incidents or complaints other than one parking issue. He voiced his clients' disappointment over the large number of objections made to the application. He referred to plans being made to reassure the community that there would be no change to the method of operation at the distillery, and looked in turn at areas of concern around extended hours, outside drinking, antisocial behaviour, and traffic. He reassured the Board that it was not proposed that the bar would open at 9am, but rather that tours would begin at this time and samples would be consumed. He further gave reassurance that his clients were aware that the garden replacing the bowling green was in close proximity to residents' houses; this would be used for occasional functions with a maximum capacity of 50 people, and the consumption of alcohol would be carefully controlled. He stated that coach movements would adhere to planning requirements; although many matters raised in the objections dealt with non-licensing issues, his clients nevertheless wished to address them and provide reassurance to the community.

Inspector Harborow noted that, following meetings with the distillery, the position had moved markedly; no police letter of objection would have been proffered based on the new proposals. He welcomed all changes made to the application. He noted remaining concerns around the wide terminology used regarding functions, and the precedent that may be set to other premises in East Lothian should Board policy of 14 hours' drinking time be breached. He stated that he had heard substantial reassurance and, having heard of the two changes made to the application, now offered representation rather than objection.

The LSO referred to his report dated 9 January 2020, which neither objected nor made representation, but provided information based on current hours. He understood that the proposed extended hours were to provide flexibility so that the licence holder need not make multiple applications for extended hours.

In response to questions from Members, Mr Hossack, Mr Smith, and Mr Ramsay advised the following: the outdoor area was not of a character to host marquees; the distillery would not be marketed as a corporate hospitality venue and the public would be unable to book for weddings/functions; and current visitor numbers were projected to rise from 40,000 per year to 60,000 – 70,000 visitors in 2-3 years' time.

The Convener invited Elaine Horne and Neil Reid to speak to their objections. Ms Horne stated that her home would be significantly impacted by outdoor events and increased traffic. She raised concerns about the offer at the distillery bar from early in the morning. She was also concerned about how visitors would vacate the distillery late at night, and suggested this may lead to large groups congregating as they awaited transport. She also sought assurances as to the number of events to be held.

Mr Reid acknowledged that bus movements were not within the remit of the Board, but also raised concerns about people vacating the distillery at night. He raised further concerns that the proposed maximum of 50 people in the garden area would create a substantial noise, in contrast to the peace and quiet in the village at night currently enjoyed by residents. He advised that the petition had been signed by all residents of Glenkinchie except for one resident employed at the distillery.

Mr Hossack and Mr Smith responded to the objectors. Mr Hossack advised that the bar was meant as a logical follow-on from tours, and not somewhere that visitors would spend the evening drinking for many hours. He advised that his clients would continue to adhere to the restriction on bus movements after 10pm. He indicated that his clients wished to work with their neighbours in the village, and this could be organised more formally. Mr Smith reassured objectors that although 'functions' could suggest weddings or stag dos, this was not being planned, and functions held would not become weekly or even monthly occurrences. He advised that previous events had been small in scale and required only a few taxis to transport visitors at night.

Inspector Harborow questioned how distillery staff intended to stop people staying and drinking at the bar for extended periods of time. Mr Smith reminded the Board that the bar was not for public use, but only for those who had taken a tour; it would be a well-managed part of the visitor experience. Ms Paisley added that dwelling time was short across similar venues in Scotland, with a natural movement of people, and more hot drinks sold than alcohol.

In response to a question from Councillor Henderson, Mr Hossack advised that the outside area would not often be used for the consumption of alcohol. Mr Smith made an undertaking to let the community know about events in advance.

In response to a point raised by Ms Horne, Ms Paisley advised that at peak season, staff currently left at 6pm having undertaken the last tour at 4pm. It was proposed that the last tour would potentially begin at 5pm or 6pm.

The Convener called a short adjournment for the Board to discuss the application.

## **Decision**

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

- Licensed hours are 9am-10pm Monday-Thursday and 9am-11pm Friday-Sunday
- Alcohol may be sold prior to 11am only to those taking part in a formal tour
- Applicant to give two weeks' formal notification of events to all residents, informing them of the nature of the event and contact details should residents wish to get in touch
- Applicant to control exit arrangements by way of signage, asking visitors to respect neighbours and keep noise to a minimum

Signed .....

Councillor F Dugdale  
Convener of East Lothian Licensing Board