



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 26 NOVEMBER 2020
TELECONFERENCE MEETING**

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

Attending:

Ms M Winter, Licensing Officer
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Mr R Fruzynski, Licensing Standards Officer
Sergeant Karen Harling, Police Scotland
PC Graeme Bairden, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor W Innes

Declarations of Interest:

None

Due to restrictions imposed during the COVID 19 pandemic, the East Lothian Licensing Board determined to proceed with the meeting by way of video conferencing.

1. MINUTES FOR APPROVAL

The minutes of the East Lothian Licensing Board meeting of 24 September 2020 were approved as a true record of the meeting.

2. REVIEW OF PREMISES LICENCE Day to Day, 26-28 Bridge Street, Tranent

Following Mr Manish Kumar being charged with selling alcohol to a 14-year-old child, a review of the premises licence had been requested by Police Scotland on 29 October 2020 in terms of Section 36(1) of the Licensing (Scotland) Act 2005 on the grounds of improving public safety, protecting and improving public health, and protecting young people from harm.

Mr Kumar and his representative, Mr Alistair Macdonald, were both present at the hearing.

PC Graeme Bairden spoke to the police letter dated 22 October 2020. He described the incident and how it came to the attention of the police. On Friday 2 October 2020, police received a call from a member of the public to inform them that her stepson had purchased alcohol from the premises in question. The young person had described the man who had sold him three bottles of alcohol, and the father had attended the store to challenge Mr Kumar. PC Bairden reported that Mr Kumar stated at this time that the young person had said he was 18 years old and would return to the store with proof of age. PC Bairden advised that officers attended and noted statements, and the young person said that at no time had he been challenged regarding his age.

Responding to a question from Councillor Henderson, PC Bairden advised that the CCTV footage was viewed but could not be seized due to a technical difficulty with making a copy. The footage was subsequently lost because it had been on a time loop.

Mr Macdonald provided the Board with background information to make clear who were the owners, the licence holders, and who ran the store. He advised that Mr Mohammad Ashraf Nadeem held the premises licence, and his son was the owner of the property and ran the shop until the premises were let to Mr Kumar at the beginning of 2020. He advised that Mr Nadeem had an interest in the business, but played no role in the running of the business; the transfer application had now been lodged. When letting the property out, he felt he had satisfied himself that Mr Kumar and his wife were suitable people to take over the business. Mr Macdonald advised that Mr Kumar had been unable to access a training course to become a personal licence holder over lockdown, but had since attended the relevant course and had lodged an application with the City of Edinburgh Council, which had not yet been granted. Mr Macdonald advised that Ms Duncan was the current premises manager and worked for Mr Kumar on a part time basis.

Mr Macdonald advised that his client took issue with the police report only in terms of the alcohol actually sold; Mr Kumar stated that this had been one bottle of alcohol rather than the reported three bottles. Mr Macdonald reassured the Board that Mr Kumar had cooperated fully with police requests regarding CCTV.

Mr Macdonald stressed that Mr Kumar had stated that this had been a one-off incident and mistake, and there had been no issues had arisen before or since. He noted that Mr Kumar had contacted police about young people outside the shop trying to persuade adults to purchase alcohol on their behalf, although the police had not

attended following this report. He advised that Mr Kumar had been trained by Ms Duncan, premises manager, and the alcohol refusal book had been available to police. Since the incident, Mr Kumar had passed his personal licence holder training; Mr Macdonald suggested that Mr Kumar's application to the City of Edinburgh Council for a personal licence could be withdrawn and lodged instead in East Lothian.

Mr Kumar apologised to the Board and to the parents of the young person to whom had had sold alcohol. He said he did not know why he had made this mistake, and had ensured that nothing further of this sort would happen. He confirmed that, other than this incident, no such issues had ever occurred while he had been in retailing.

Regarding Mr Kumar's challenge to the number of bottles of alcohol sold, PC Bairden advised that statements from both the young person and his father confirmed that three bottles of alcohol had been purchased.

The meeting was adjourned to allow Board Members to discuss in private, after which, the Convener invited Members to give their decision and reasons in turn.

Councillor Henderson acknowledged that Mr Kumar still had a journey ahead in terms of charges and court appearances, and therefore felt that a written warning from the East Lothian Licensing Board would be the most appropriate action. She also wished for Mr Kumar to consider lodging his personal licence application in East Lothian.

Councillor Goodfellow echoed Councillor Henderson's comments. He felt strongly that protection of young people from harm was a critical part of Licensing Board policy, and that a 14-year-old managing to purchase alcohol was very serious given the Board's Challenge 25 policy. He hoped that Mr Macdonald would take the salient points of the discussions back to the premises licence holder, who the sanction was being taken against.

Councillor Bruce agreed that the incident had been a serious one, but felt that a written warning was appropriate in the circumstances.

Councillor McMillan echoed Councillor Henderson's request for Mr Macdonald to work with Mr Kumar to bring his personal licence application to East Lothian. He stated that the Board had considered suspending the licence, but felt that a written warning as a minimum would be an appropriate sanction.

The Convener described the incident as serious and regrettable, and said that the Board were mindful of their role in protecting children and young people from harm. She agreed that a written warning was appropriate.

Decision

The East Lothian Licensing Board unanimously agreed that a written warning would be issued to the premises licence holder, and requested that Mr Kumar lodge his personal licence application with East Lothian Council.

3. MAJOR VARIATION OF PREMISES LICENCE

a 102 New Street, Musselburgh

The application sought a major variation of the provisional premises licence to hold birthday parties and functions, to be able to play background music while customers were dining, and to add a food takeaway service and off-sales to enable customers to take home an unfinished bottle of wine. The application also sought to allow children

to remain in the restaurant after 22:00 if in attendance at a prearranged function and accompanied by a responsible adult.

No objections had been raised by Police Scotland, NHS Scotland, by Planning, or the public. Initially a representation had been made by the Community Council in relation to admission of children after 10pm, but the applicant been in touch with the Community Council and this representation had since been withdrawn.

Ms Sau Tai Wong was present to speak to her application. She stated that variations were being sought because the licence for which she had previously applied was too restrictive. Mr Rafiq, who was the tenant, wished to offer takeaway meals, and occasionally host functions. She confirmed that the delivery service would be for food only, and that the only off sales would be for customers to take home an unfinished bottle of wine.

PC Bairden said that as parents/responsible adults should be present at a function, the police would have no particular objection to children staying after 10pm in such instances.

Responding to a question from the Convener, Ms Wong confirmed that children would be allowed to stay after 10pm only at pre-arranged functions and not as a general rule.

Councillor Henderson thanked Ms Wong for returning so quickly after making her initial application, and for the level of detail provided in the new application.

The Convener was comfortable to grant the application having received clarification that children would be allowed to remain on the premises after 10pm at prearranged functions only.

Decision

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

b The Ship Inn, 184 North High Street, Musselburgh

The application sought a major variation to include: breakfast and tea/coffee served from 10:00 including TV sport to be shown; background music; various types of events and functions; and to make home deliveries available. The outside area had also been reconfigured and additional toilets built. Children and young persons would be permitted entry to the restaurant and outside area when the premises were open.

No objections had been raised by Police Scotland, NHS Scotland, by Planning, or the public. Representations had been made by Police Scotland and by Planning, to which the applicant had already responded. The applicant had submitted a retrospective planning application covering the reconfigured car parking spaces to accommodate the new bin store.

Mr Graeme Arnott was present to speak to his application. He stated that the premises had been closed for one year. He felt that the new bin store would be of benefit by bringing refuse collection away from the busier North High Street. He wished to amend the hour that children and young persons were allowed in the bar area to 8pm, and for them to be allowed to remain on the premises until the terminal hour. He advised that the premises were well run by the general manager, and that all families who frequented the premises were known to staff.

Responding to a question from Councillor Henderson, PC Bairden advised that police had attended the premises with the LSO, and reported that the pavement had been fully reinstated. He requested that there be some kind of delineation to keep the two areas distinct from one another. Councillor Henderson requested that this be made a condition, and Mr Arnott confirmed that a barrier could be provided.

PC Bairden supported the application, and commented that the premises were well run by experienced staff.

Rudi Fruzynski, LSO, commented that the premises were popular in Musselburgh and congratulated Caledonian on the newly refurbished area. He had no concerns about the operation and fully supported the application.

Councillor Bruce supported the condition raised by Councillor Henderson for a barrier or delineation between the outdoor area and the pavement. He welcomed the investment made to The Ship Inn, and supported the application.

Councillors McMillan, Dugdale, and Goodfellow also supported the application, including the condition to erect a barrier around the outdoor area, and welcomed the investment made to the premises.

Decision

East Lothian Licensing Board unanimously agreed to grant the major variation to the licence. The following condition was applied:

- A barrier or some form of delineation is to be put in place for the outdoor area.

Signed

Councillor F Dugdale
Convener of East Lothian Licensing Board