



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

**THURSDAY 25 JANUARY 2024
ONLINE PLATFORM MEETING**

Board Members Present:

Councillor L Bruce (Convener)
Councillor C Cassini
Councillor F Dugdale
Councillor N Gilbert
Councillor G McGuire
Councillor J McMillan

Clerk of the Licensing Board:

Mr C Grilli, Service Manager – Governance

Attending:

Ms G Herkes, Licensing Officer
Ms K Harling, Licensing Standards Officer
PC L Wilson, Police Scotland
Sgt S Miller, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

Declarations of Interest:

None

1. MINUTES FOR APPROVAL
Special Meeting of the East Lothian Licensing Board, 21 December 2023

The minutes were approved as an accurate record of the meeting.

2. VARIATION OF PROVISIONAL LICENCE
Monktonhall Service Station, Old Craighall, Musselburgh

The application sought a variation of a provisional licence following a significant refurbishment of the premises, including an increase in alcohol display capacity. The application had attracted no objections from the police, NHS, planning, the Licensing Standards Officer (LSO), public, or community council. The LSO had submitted a report including a recommended condition relating to the delivery of alcohol, noted below.

Andrew Hunter, agent, was present to speak to the application, and was accompanied by his client, Tamer Saoud, of Motor Fuel Group. He said the premises had undergone a significant refurbishment and had recently reopened after a period of closure. He reported there were two additional retail units within the grocery store, which were not part of the application. The store had operated under occasional licences since reopening in early December 2023. His clients would look to confirm the full premises licence in the near future, but had held off until this variation could be processed. He explained that an increase in alcohol display capacity was sought because the store was now larger. He advised that there had been no objections or adverse comments in relation to operation under occasional licences.

PC Lee Wilson, representing Police Scotland, said he had been impressed with the layout of the store when he had visited. He had no issue with the granting of the licence.

Karen Harling, LSO, highlighted her recommended condition regarding deliveries and said there had been no issues with the premises since it had been operating under occasional licences.

Responding to questions from the Convener, Mr Saoud provided an outline of his experience operating other premises throughout East Lothian and Edinburgh, and said there had been no operational issues with deliveries or within the shops. He reported that all of his premises were subject to due diligence checks twice each month.

The Convener, Mr Hunter, and the LSO discussed the suggested condition relating to deliveries and it was established that Mr Hunter was content for the condition to be added to the licence. Mr Hunter confirmed that the Uber Eats model allowed only pre-trained drivers to leave a delivery with a person rather than in a place, which was in line with legislation and Board policy.

Councillor McMillan said he had been reassured by the attitude expressed by Mr Saoud and wished the new business well. He was minded to grant the application.

The Convener formally proposed the LSO's recommended condition relating to deliveries, and Councillor Cassini seconded the proposal. The Convener then moved to a roll call vote and Members unanimously supported the application.

Decision

The Board granted the provisional licence, subject to the following condition:

- Should a service of delivery of alcohol to customers be conducted, the terms of the Licensing (Scotland) Act 2005 Section 119 and those of the Board's statement of licensing policy on deliveries of alcohol should be complied with.

3. EXTENSION OF PROVISIONAL LICENCE Beer Zoo, 35 High Street, Dunbar

The application sought an extension to the provisional premises licence.

Fiona and Dominic Holt were present to speak to the application. Ms Holt advised that Beer Zoo's provisional licence had been granted in 2020 and the premises had opened just before Christmas. She advised that the premises had been granted Section 50 certification by planning and food and hygiene. When applying to building standards, it became clear that the existing warrant, which was a comprehensive warrant put in place by previous tenants for a tattoo removal studio, had expired. She reported that building standards had been unwilling to grant a Section 50 certificate with the expired warrant in place. She advised that an extension to the warrant had been granted, but then there had been no further action following the period of lockdown. She explained that food and safety preferred an indoor toilet, but it had been challenging to find a tradesperson to undertake such a small job. The work was eventually undertaken in December 2023 and inspections had since been carried out. She advised that warrant and Section 50 certificate signoffs were awaited, following which, the Holts intended to confirm a full premises licence. She felt that these signoffs would come soon but felt this was out of their hands. She reported that Beer Zoo had been closed since early January and they were keen to complete all the required work and processes. She said the provisional licence had expired two days previously, but they were keen to have this extended rather than having to start from scratch.

PC Wilson was pleased to hear that Beer Zoo intended to move to a full premises licence and had no objections to the provisional licence being extended.

The LSO supported the extension of the provisional licence and advised that there had been no reported complaints since the premises had run on occasional licences.

Councillor McMillan welcomed the application for a provisional licence extension and thanked the Holts for making Members aware of the timeline. He commented that the premises name and the idea was wonderful, and asked about the method through which the Board might grant such an extension.

Carlo Grilli, Clerk of the Board, suggested two options, either to forego the full application process on the grounds of Section 137 of the Licensing (Scotland) Act 2005 ('the Act'), which would allow the Board to forgive the lapsing of the provisional licence, or that the Board could grant the licence again afresh. He recommended forgiving the lapse of the provisional licence.

Councillor McMillan was minded to forgive the lapse of the provisional licence, and the Convener was in agreement.

Councillor McGuire concurred with his colleagues' comments and commended the applicants for their patience and perseverance. The Convener also commended the applicants for taking steps towards confirming a full premises licence.

The Convener proposed that the Board forgive the lapse of provisional licence under Section 137 of the Act and extend the provisional licence for a period of six months.

Councillor McMillan seconded this proposal, and Members unanimously supported the proposal by roll call vote.

Decision

The Board forgave the lapse in provisional licence under Section 137 of the Licensing (Scotland) Act 2005 and granted an extension to the provisional licence for a period of six months.

4. PROVISIONAL LICENCE The Wee Shop, 3 Blawearie Road, Tranent

The application sought a provisional licence. The application had attracted no objections from the police, NHS, planning, the LSO, public, or community council.

Brian McMahon, agent, was present to speak to the application, and was accompanied by his client, Deepak Kumar. Mr McMahon said that the application would be as expected for a convenience store, including low-level background music and a modest alcohol display area behind the counter. He advised that an application had been made for a provisional licence due to there being plans to move the counter. He highlighted that there had been no representations received and advised that Mr Kumar had been running the store for 12 years.

PC Wilson had attended the store and noted that there had been some reconfiguration. He had no objections to the application.

The LSO advised that she had no suggested conditions since the store would not offer deliveries, but raised a discrepancy with the name of the store. Mr McMahon confirmed that the store would be known as The Wee Shop.

Councillor McMillan remembered The Wee Shop being built and opened, and wished the business well. He asked about any operational changes being made. Mr McMahon advised that only modernisations were planned, including a change to where the counter was facing, a change to the flooring, and a general tidy up of the store. He said that if the Board was minded to grant the provisional licence, this could be confirmed to a full premises licence fairly soon.

The Convener also wished the store well and was minded to grant the application.

The Convener then moved to a roll call vote, and Members unanimously supported the application.

Decision

The Board granted the provisional licence.

5. MAJOR VARIATION OF PREMISES LICENCE Ravelstone House Hotel, 182 North High Street, Musselburgh

The application sought to vary the premises licence by amending local condition 1 (now proposed to read “in the interests of public safety, *unsupervised* children must be excluded from an area of 1.5 metres from any bar servery in the premises”), deleting local conditions 2, 3, and 4, and to: add bar meals, dance facilities, and outdoor

drinking outwith core hours; inflatables, funfair activities, and market stalls in the car park area; amend the wording in relation to admittance of children and young persons; and amend the description of the premises. The application had attracted no objections from the police, NHS, planning, the LSO, or community council. One public objection had been received. The LSO had submitted a report including recommended conditions, noted below.

Lynn Simpson, agent, spoke to the application, and was accompanied by Dean Lawson, licence holder, and Colin Lawson, Designated Premises Manager (DPM). Ms Simpson provided background information on the hotel and detailed the changes being requested as part of the application. She advised that the request for children to be permitted within 1.5m of the bar was to allow for parents who may be carrying their child to place orders at the bar, and she reassured Members that there was no intention to allow children to sit or remain at the bar. She explained that local conditions 2, 3, and 4 were no longer relevant. She detailed the amendments to the operating plan which were requested for the purpose of tidying up the document, ensuring it matched the licence and the business' operations, and to provide flexibility for the premises.

On the topic of events, Ms Simpson advised that an amendment to wording to cover functions taking place outdoors within the car park area was also sought, which may include inflatables, funfairs, music, rides, and market stalls. She advised that any such entertainment would be provided by an external company with appropriate insurance and would usually form part of the Musselburgh Festival week or charity events. She said that all outdoor events would be finished not later than 10pm. She said that an amendment to the access of children and young people was sought to cover 16- and 17-year-olds attending functions without parents, such as at club awards nights. She advised of a robust Challenge 25 procedure in place and said that young people would be seated in the restaurant area rather than the bar. She said that children and young people being allowed to remain until 10pm, rather than to the end of food service, would remove some ambiguity. She advised of alternative car parking spaces and the front and rear of the premises should the car park be used for an event, and she advised of arrangements with neighbouring businesses to use their car parks in the evening after they had closed. She reassured Members that any music played at outdoor events would not be excessive.

PC Wilson supported the LSO's recommended conditions. He advised that police had received six calls regarding the Ravelstone House Hotel in 2023, but only one of those calls had been in relation to excessive noise.

The LSO advised that the application had been made following a visit to the premises which had found that the licence did not fully match operations. She advised of a complaint received regarding the charity event, 'Jordo Fest', but had no other records of complaints regarding functions. She said the applicants had been accepting of her suggested conditions relating to safety of patrons. She supported the changes and welcomed the variation application to ensure the licence was in line with operations.

Responding to a question from Councillor Dugdale, Ms Simpson said that the premises made clear when the car park was being used for events, and vehicles would be parked to block the entry of other vehicles. She said rope barriers would clearly delineate the licensed area.

Councillor Gilbert expressed that there were good reasons children were not permitted within 1.5m of the bar, and asked whether permitting children to be carried to the bar was a new update. The LSO responded that this would be the first time she had seen this condition be changed. Councillor Gilbert therefore proposed that local condition 1 remain in place so children must remain 1.5m from the bar.

Councillor McMillan asked about provisions in place to manage large numbers of people in attendance at events. Ms Simpson noted that the 650-person capacity took account of the whole hotel as well as attendance at events. She advised that staff would monitor the various areas, and her clients were happy to accept the condition that SIA stewards be on duty for events. Ms Simpson also reassured Members that her clients would obtain any further licences required to operate events, such as market trader licences.

Councillor McMillan commented that he had always been impressed by the management of the premises, and the accounts of personal experience of events had provided reassurance.

The Convener asked about steps taken to minimise disruption. Ms Simpson said there would be other noise sources throughout the town on parade night and during festival week. She added that it would not be in the hotel's best interest to have loud music disturbing their guests. She reiterated that events would be finished by 10pm at the latest, with many events finishing earlier.

Councillor Cassini formally seconded Councillor Gilbert's earlier proposal that local condition 1 should not be amended.

The Convener formally proposed the LSO's suggested conditions, and this was seconded by Councillor McGuire.

Councillor Gilbert advised that he would be unable to support the application should local condition 1 be amended per the application's request. The Convener commented that local condition 1 had been added to the premises licence for a reason; he would support Councillor Gilbert's proposed amendment to this application.

Councillor McMillan was happy to support the application on the basis of his experience of the hotel, but would also support Councillor Gilbert's proposal that local condition 1 would remain unchanged. He suggested that drink orders being taken at tables would provide opportunity for parents to make an order without leaving children unsupervised, and felt that the 1.5m rule protected younger children.

The Convener moved to a vote on not amending local condition 1, as proposed by Councillor Gilbert and seconded by Councillor Cassini. Members unanimously supported this amendment to the application.

The Convener then moved to a vote on the LSO's suggested conditions, as proposed by Councillor Bruce and seconded by Councillor McGuire. Members unanimously supported the addition of these conditions.

Finally, the Convener moved to a roll call vote on the application, subject to local condition 1 remaining unamended, and subject to the LSO's suggested conditions. Members unanimously supported the application on this basis.

Decision

The Board granted the major variation, subject to the conditions noted below, and subject to local condition 1 remaining with its current wording, thus:

- In the interests of public safety, children must be excluded from an area of 1.5 metres from any bar servery in the premises.

Conditions:

- Barriers to be used at the entrances and exits to the car park during outdoor events to clearly delineate the licensed area.
- SIA trained staff to be used at entrances and exits to the premises for the duration of events held in the car park and outside area.
- During events in the outside area and car park, plastic glasses to be used and glasses or glass bottles may not be used.
- Use of the outside drinking to cease by 10pm.

6. FULL PREMISES LICENCE
Tynninghame Country Store, Main Street, Tynninghame

The application sought a full premises licence. The application had attracted no objections from the police, NHS, planning, the LSO, or community council. Eighteen public objections had been received. The LSO had submitted a report including recommended conditions, noted below.

Karen Gatherum, agent, spoke to the application, and was accompanied by clients David and Lyndon Wakefield. Ms Gatherum provided background information on the business, which had been operating for over seven years. She advised that three staff members were personal licence holders and all staff had received the mandatory two hours of training. She said the purpose of the application was to offer, for example, a glass of prosecco with afternoon tea, but there were no plans for operational changes. Although the application sought a terminal hour of 10pm, the café would continue to close at 5pm, and the flexibility sought was for future planning for small events. Her clients continued to reside in the village, and they invited anyone with concerns to come to them. She noted the various representations, a recent visit by the Scottish Fire and Rescue Service, and said the premises had been subject to scrutiny to obtain Section 50 certificates. She advised that the LSO had visited the premises and her client had accepted the LSO's recommended conditions. She highlighted the community council's representation that they were in support of the licence other than the terminal hour. She also noted that Police Scotland and the Scottish Fire and Rescue Service had not submitted objection. She described the offer which had been made under occasional licences, and advised that there was support for the offer of wine.

Ms Gatherum then addressed matters raised as part of the submitted objections, including matters raised which she said were not relevant to the licence application, or matters which had been covered by the Section 50 applications and consultee visits. She stated that the café had operated for many years without issue and asserted that the offer of some beer and prosecco would not change this. She argued that an offer of alcohol could contribute to the reduction of traffic and parking issues as customers may be more likely to car share. She said that the consumption of alcohol in the café environment would usually be accompanied by food. She highlighted that there had been no reports of antisocial behaviour associated with the café. She asserted that it was not in her client's interest to allow patrons to become inebriated, and said they were responsible business owners and village residents.

PC Wilson had visited the premises in conjunction with the LSO and had found Lyndon Wakefield to be knowledgeable and responsive to suggestions made on the day regarding possible noise from the outdoor area. PC Wilson supported the LSO's recommended conditions. He said there had been no calls relating to the store and there were no police objections.

The LSO had found staff to be knowledgeable and well trained on both of her visits. She had found the business to be compliant, and said that no issues had been reported to her. She said the business had offered drinks such as mulled wine while operating on occasional licences. She highlighted her suggested conditions and reported that Mr Wakefield had showed her the barriers he intended to use to delineate the outdoor area. She supported the application.

Jenny Vernon spoke against the application. She referred to various photographs submitted to the Board and said her objection was concerned with the premises being unsuitable in terms of site and location. She noted the premises being in a conservation area and its proximity to the road, which was the only through-road in the village. She said the B-listed residential properties adjacent to the beer garden were not referenced within the application. She highlighted the lack of streetlighting, narrow width of the pavement, and the restricted parking, and felt that the operating plan failed to address where customers should park. She felt vehicles parked at the rear of the building could impede an emergency exit. She said that current use of the outdoor area extended beyond the boundary marked on the plans, with use of a bike rack, tables, chairs, and a seesaw. She felt that the limited space for ordering could become congested and noisy. She raised a loss of privacy and amenity for neighbours. She said she had addressed the applicant regarding what was being applied for and what he said he intended to do. She said residents wished to preserve the community. She said objectors had attempted to demonstrate how the granting of the application would be inconsistent with the five licensing objectives, and felt the applicant had addressed the objectives in a minimalist manner.

Karine MacIver spoke against the application on behalf of Andrew Jones. She drew attention to an error in the premises description, which stated the premises was in Haddington. She highlighted that the café sat between private residences. She disputed the disabled access; she said that a ramp would be required for full disabled access to the premises due to there being a step measuring seven inches, and she said the requirement for a ramp had not been mentioned as part of the application. She felt that an increase in the number of tables would make disabled access more difficult. She also disputed whether the bathroom's door width and sink could support disabled access. She felt it was incredible that only one toilet was provided for up to 90 customers.

Anthony MacIver spoke against the application on behalf of Margaret Evans. He highlighted a discrepancy with the proposed capacity of the premises and advised that the operational plan stated 24 persons, but when Ms Evans had attended, there had been seating for 34 persons plus there were four staff. He argued that this part of the application was chaotic, with handwritten and unsigned addenda. He highlighted that the applicant referred to the outside gravelled area as a beer garden, but said the LSO seemed to understand the area as a place for people to have meals; he felt that referral to a beer garden raised question as to the applicant's intended use of the area. He said that tables currently sat outside the boundary of the property as marked in the papers and questioned how the area would be delineated in the conservation village. He asked the Board to consider the application as poorly presented including contradictions and answers which could be challenged, and felt that questions could be raised regarding: current operations; the building capacity; the disabled access and facilities; and the positioning of tables outside the boundary. He was aware of five people who objected to the application, and said none of the objectors had been canvassed by the community council representative. He asserted that the residents of Main Street were very much against the application.

Responding to questions from Councillor McMillan, Ms Gatherum advised that the application would signal no operational changes, other than customers being able to

order a glass of wine with their meal or afternoon tea. Mr Wakefield added that sales of alcohol tended to be very modest and it was their intention only to offer 'grown-up drinks' such as mulled wine at Christmas and Pimm's, and the alcohol would normally be ancillary to food. He felt the submitted objections were about hypothetical situations, but reassured Members that he would never extend opening hours or have entertainment within the courtyard. He said that the application was to respond to requests from holidaymakers and to try to protect a vulnerable business, but was not intended to drive footfall. He advised that tables inside could be removed, the business had accommodated wheelchair users, and staff were trained to help people with disabilities; there had never been issues with disabled access to the premises before. Mr Wakefield stated that the capacity was for 34 patrons. He advised that Tynninghame had inadequate pay and display spaces, and said this led to a self-monitoring situation where potential visitors drove away when parking was full.

The LSO advised that she was not qualified to have an official view on disabled access and toilet provision, but suggested that building standards must have considered the building to be compliant on the basis that they had issued a Section 50 certificate.

Responding to further questions from Board Members, Mr Wakefield advised that he operated from 9.30am and last orders were at 4.30pm; he said it would be lucrative to operate outside of these hours, but he respected the café's residential setting. He said that the business had never played amplified music, and he understood that neighbours wanted to protect that value of their houses. He said that he did not intend to change the aesthetic of the village. In the past, he had used large planters to delineate areas which were licensed, and there would be signage to indicate no alcohol could be taken past this point. He said that the 'beer garden' was the description given by the architect, but the space did not operate as a beer garden. He said that patrons never attended the café solely to drink, and there had been a modest uptake of alcohol when running on occasional licences.

The Convener sought clarity on the terminal hour, as he understood that this should reflect operations. Ms Gatherum advised that a terminal hour until 10pm had been sought to provide flexibility for small group dinners; she said this was not something her clients planned to do all the time, but pointed out that time would be saved in making extended hours applications. She said that the licence could be restricted to closing time but asked that Members consider allowing the later terminal hour to provide this flexibility. Mr Wakefield added that he would not operate in the courtyard in the evenings and would not serve alcohol beyond 5pm. He said he did not wish to alienate his friends in the village and would be happy to apply for extended hours on occasion if necessary.

The Convener called for an adjournment to discuss the application in private session.

Upon the Board's return, the Convener said that Members had listened carefully to the submitted objections and to the presentations of those who had made representation. He addressed some of the issues raised: he said that parking and unsafe driving were matters for the council and police; he acknowledged that professionals had judged the building to meet requirements for disabled access; and he said that lighting was a planning matter. He noted that there were no concerns from the council or LSO while the café had run on occasional licences, but said that neighbours could approach police or the LSO to make the Board aware of any issues. He reminded the business of the importance of supporting all patrons to ensure disabled access. He said the Board trusted that Mr Wakefield would keep to his word about operating until 5pm, and highlighted that when the later hours were used that this must be done sensitively. He proposed the LSO's recommended conditions, and these were seconded by Councillor McGuire.

Councillor McGuire thanked the objectors and said he understood their concerns. He acknowledged that no incidents had been reported since the café had been running on occasional licences. He felt convinced by Mr Wakefield's desire to provide a service and not upset anyone. He felt that little would change following the grant of the licence and he was minded to support the application.

Councillor McMillan had been impressed by Mr Wakefield's willingness to engage and with his concern for his neighbours. He asked that the capacity granted by building standards and in the operating plan be made clear and be adhered to. He also asked that the boundary be clearly marked and staff be mindful of equality legislation.

The Convener moved to roll call vote and Members unanimously supported the application, subject to the LSO's recommended conditions noted below.

Decision

The Board granted the premises licence, subject to the following conditions:

- The outside area must be clearly delineated to ensure patrons stay within the licensed area whilst consuming alcohol.
- No public entertainment, amplified music, amplified vocals, or live music played in the outdoor area to ensure the use does not cause nuisance to neighbouring residential properties.
- Use of the outdoor area to cease by 8pm.

7. UPDATE ON REVIEW OF PREMISES LICENCE The Folly Hotel, 1 Station Hill, North Berwick

The Board had suspended the premises licence, pending review, following a hearing for non-payment of annual fees on 25 November 2023.

Gareth Cotten, premises licence holder, advised of progress made since the November Board meeting. He explained that the LSO had seen the self-check-in sign in winter, but said a housekeeper lived onsite and guests could check-in most hours of the afternoon and evening. He stated that, in these circumstances, guests had no access to the bar, kitchen area, and lobby, so there was no risk of uncontrolled drinking. He advised that a new DPM had been instated, Karin Chisholm, who would live onsite, and reception would be run as normal from the middle of February.

PC Wilson advised that there had been no contact from Mr Cotten since the November Board meeting. The request for Ms Chisholm to be instated as DPM had come in very recently, but there had not been time to process this. He suggested that a change in operating plan may be required to reflect operations. Mr Cotten responded that there would be no change to the operating plan, and the recent changes had only been in place due to a staff shortage.

The LSO noted the hotel's intention to run at full capacity throughout the year. She hoped this would happen, but if it did not, a variation application could be submitted. She had spoken with Karin Chisholm, who would move down from a hotel in the highlands to act as DPM at the premises.

Councillor McGuire asked about the sale and storage of alcohol as the hotel resumed its normal working practices. Mr Cotten advised that there was a bar in the lobby area across from the reception desk, and the reception was open 3pm-10pm. He described minimal sales of alcohol, of up to £500-£600 per year. He advised that the lease depended on the licence remaining in place, so it was important for the business that the premises licence be reinstated. He said that guests could sit in the lobby or take drinks to their rooms, but said the facility was not well used because the hotel was only a short walk from the high street. He agreed that there would never be self-service of alcohol.

Responding to a question from Councillor McMillan, the Convener and Mr Grilli discussed the process by which to proceed with lifting the suspension of the licence. It was suggested that the suspension would remain in place until the DPM application could be processed. PC Wilson advised that one of his colleagues had now processed the DPM application. The LSO advised that a change of DPM was a minor variation, and as such, as soon as the application was received, this would be granted and appear on the licence.

Noting that the application to name Ms Chisholm as DPM had now been processed, the Convener proposed that the licence suspension be lifted, and this was seconded by Councillor McGuire. Members unanimously supported lifting the suspension of the premises licence by roll call vote.

Decision

The premises licence suspension was lifted.

8a. REVIEW OF PERSONAL LICENCE Damien Okragly

A review of Damien Okragly's personal licence had come before the Board on the basis of representation from Police Scotland. This item had been continued from the December Board meeting to give Mr Okragly opportunity to respond to attempts made to contact him and to attend the meeting.

The committee clerk and PC Wilson advised that they had had no recent contact with Mr Okragly. PC Wilson advised that notification had been sent as part of Police Scotland's due process following a guilty verdict. He had previously spoken with Mr Okragly on the phone, and Mr Okragly had reported that he no longer worked in the alcohol industry and may not use his licence in the future.

The Convener said that the review had now appeared on the agenda of two Board meetings and various efforts had been made to reach Mr Okragly. He proposed that Mr Okragly's personal licence be revoked since the convictions involved alcohol and drink driving. Councillor McMillan seconded this proposal.

The Convener then moved to a roll call vote and Members unanimously voted to revoke Mr Okragly's personal licence.

Decision

The personal licence was revoked.

b. Kokulabavan Jeyerasa

The East Lothian Licensing Board had agreed to review Kokulabavan Jeyerasa's personal licence when it had also revoked the premises licence for Nisa Gifford on 21 December 2023.

Mr Jeyerasa was in attendance, and was supported by his employee, Mrs McCulloch.

PC Wilson advised that his comments would be similar to those he made at the premises licence review for Nisa Gifford. He had arranged for several spot checks to be carried out at the premises, and reported that alcohol remained on the shelves, but it had been covered up with appropriate signage. He advised that no breaches had been reported. He summarised that he continued to have concerns about Mr Jeyerasa's ability to effectively manage a licensed premises, particularly around staff training and associated paperwork. He also had concerns about Mr Jeyerasa's overall knowledge of licensing standards, and pointed to Mr Jeyerasa being unaware that he was not allowed to be the DPM for more than one premises.

Mr Grilli invited the LSO to make contribution because it had been the LSO's report which had prompted the premises licence review of Nisa Gifford.

The LSO said that much of the documentation and evidence she had submitted as part of the review of the Nisa Gifford premises licence was relevant to this hearing. She outlined the breaches of premises licence conditions and how she felt these were relevant to Mr Jeyerasa's personal licence. She advised that condition 4 had been breached because no DPM had been in place; Mr Jeyerasa's had failed to appoint a new DPM following Carol McKay's resignation. As Mr Jeyerasa had appointed himself as DPM while already DPM at another premises in Dumfries, his appointment at Nisa Gifford had no effect. She noted that Mr Jeyerasa had claimed he had been unaware he could not be DPM at more than one premises, but highlighted that this was covered as part of the personal licence holder's course.

The LSO advised that her initial visit had been due to non-payment of annual fees, a breach of condition 10. These were subsequently paid, but she noted that the premises had continued to trade after the deadline of 1 October. She reiterated that this was also content within the personal licence holder's course. Following her visit, she had raised concern about staff training and the staff's ability to carry out age verification checks, and had issued a Section 14 notice to the effect that all sales of alcohol must cease until staff members were trained. She advised that this notice was breached by Mr Jeyerasa, and this resulted in the premises review notification. The LSO reported other issues identified on subsequent visits, such as staff giving false names and addresses and pretending to be Mr Jeyerasa. She and PC Wilson believed that control of the premises had been handed over to a man known as Ranjan, and that staff were inexperienced and had received poor training. Following the request to retrain staff, she said it appeared they had been told just to sign paperwork. She felt Mr Jeyerasa had limited knowledge of what the training should entail.

The LSO reported that alcohol had been found outwith the display areas on her first visit, and this had also been found on a subsequent visit, despite discussion with Mr Jeyerasa. As such, a further Section 14 compliance notice was issued. She also became aware of the messy state of the stockroom, including blocked fire exits. She reported that Mr Jeyerasa's claim that a delivery had been made could not be evidenced and was contrary to reports of the staff.

The LSO asserted that Mr Jeyerasa had handed control of the store to Ranjan, who was not responsible or fit. She said Mr Jeyerasa he had allowed the premises to run with untrained and inexperienced staff, thus allowing several breaches of the premises

licence to occur. She suggested that Mr Jeyerasa was not a fit and proper person to hold and personal licence and asked the Board to consider if it was of the same view. She highlighted multiple breaches of conditions that Mr Jeyerasa, as a personal licence holder, should have been able to prevent and was ultimately responsible for. She said that 'fit and proper' was also about the character and nature of the individual, and said that Mr Jeyerasa had demonstrated a propensity to find himself in conflict with the requirements of the Act and the licensing regime. She said he had failed in his responsibilities as a personal licence holder and had demonstrated contempt and disregard for the law and the industry. She highlighted Mr Jeyerasa's failure to remedy the breach in relation to staff training, which he would have been able to do as a personal licence holder. She felt it was evident that Mr Jeyerasa had no regard for the licensing objective of preventing crime and disorder, and said the lack of staff training had implications for all five licensing objectives.

Mr Jeyerasa confirmed that he wished for Mrs McCulloch to speak on his behalf. Mrs McCulloch said that Mr Jeyerasa had felt, following the December review of the Nisa Gifford premises licence, that there had been an element of racism. She said that Mr Jeyerasa had been cognisant of all discussions from the premises licence meeting, and had looked up the licensing objectives and had resolved all of the issues raised previously. She advised that staff training and the refusal book were in place. She raised the difficulties experienced in keeping up with rates bills while unable to sell alcohol. She reported that there were no issues with sales of alcohol at any of Mr Jeyerasa's other stores, and felt that advice had not been given in this case. She said Mr Jeyerasa admitted to errors, and said that a delivery had been made on the day in question and stock still had to be put away. She reported that one employee had lost his job due to not having conducted himself properly in the shop. Mrs McCulloch said that she had reminded Mr Jeyerasa that he must work within legal requirements.

Responding to a question from Councillor McGuire, Mrs McCulloch said that Mr Jeyerasa was aware of his legal responsibilities having gone through personal licence holder training, but had thought that it was not possible to be a DPM to more than one premises within one council area. She reported that Mr Jeyerasa now understood this situation and confirmed that he was aware that the premises licence of Nisa Gifford had been revoked. Mr Jeyerasa added that he had been running the business in Gifford for two years and in this time, there had been no complaints of underage persons being sold alcohol. Responding to further questions, Mrs McCulloch reiterated that alcohol had been sold illegally, but that this had been due to Mr Jeyerasa's misunderstanding as to the law around acting as DPM for more than one premises. The Convener said a misunderstanding did not excuse this error.

Responding to further questions from Councillor McGuire, it was established that the DPM at the Nisa Gifford could not be changed because there was no longer a premises licence in place. A new premises licence application would have to be made before a new DPM could be appointed.

Councillor McMillan asked that officers clarify the effect of personal licence revocation for Mr Jeyerasa. Mr Grilli advised that, should the Board revoke his personal licence, Mr Jeyerasa would no longer hold a personal licence to be able to sell alcohol, train others to sell alcohol, or to act as a DPM of a licenced premises. He suggested that Mr Jeyerasa obtain advice as to when he could reapply for a personal licence following revocation, and said that revocation was a very serious position. He advised that the Board was aware that Mr Jeyerasa was DPM for another premises and he could no longer hold this position should his personal licence be revoked. He said that other Licensing Boards may also consider their position as to whether Mr Jeyerasa could remain a premises licence holder in their areas.

Mr Jeyerasa advised that he was no longer DPM of any licensed premises, and PC Wilson confirmed that Police Scotland records showed that as of the previous day, Mr Jeyerasa had been replaced as DPM at another store.

The Convener then called for an adjournment to allow Members to discuss the matter in private session.

Upon Members' return, the Convener made a statement on behalf of the Board. He strongly refuted Mr Jeyerasa's accusation of racism. He did not believe the Board or its officers had ever acted in such a way, said that the Board treated everyone fairly and considered evidence presented to them. He said that the primary reasons for the decision to revoke the premises licence of Nisa Gifford on 21 December 2023 also directly influenced Mr Jeyerasa's personal licence, due to Mr Jeyerasa being in control of the premises which did not meet the standards expected by the Board. He said the reasons for revocation of the premises licence included: there having been no DPM in place, in breach of condition 4; that staff were operating at the premises without proper training; displaying of alcohol outwith the permitted areas, in breach of condition 13; and the licence holder being unable to follow other regulatory matters in relation to planning, fire safety, food and hygiene, and trading standards. He said these failures represented breaches of the licence and licensing objectives, and he also noted that alcohol remained in place in the store, in contravention of the Act. He said it was clear from submissions that Mr Jeyerasa had not understood his obligations in terms of the premises licence or his personal licence, and as such, it was the opinion of the Board that Mr Jeyerasa was not a fit and proper person to hold a personal licence.

The Convener confirmed with Mr Jeyerasa that he understood the Board were moving to revoke his personal licence, and Mr Jeyerasa confirmed that that he understood this.

The Convener then moved to a roll call vote and Members unanimously voted to revoke Mr Jeyerasa's personal licence.

Decision

The personal licence was revoked.

Signed

Councillor L Bruce
Convener of East Lothian Licensing Board