



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 24 SEPTEMBER 2020
TELECONFERENCE MEETING**

Board Members Present:

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

Depute Clerk of the Licensing Board:

Mr C Grilli, Team Manager – Legal and Procurement

Attending:

Ms M Winter, Licensing Officer
Ms C Shiel, Licensing Officer
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Mr R Fruzynski, Licensing Standards Officer
PC R Duncan, 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 – 7 JULY 2020

The minutes of the East Lothian Licensing Board meeting of 7 July 2020 were approved as a true record of the meeting.

2. PROVISIONAL PREMISES LICENCE 102 New Street, Musselburgh

The application sought a licence for on-sales only for a restaurant serving Indian food with approximately 60-80 covers. There would be no live music. Children would be allowed on the premises, accompanied by an adult, seated away from the bar servery.

No objections had been raised by the public or Police Scotland, NHS Scotland, the Community Council, or by Planning. The Licensing Standards Officer (LSO) had made representations, as contained within his report.

Sau Tai Wong, applicant, was present to speak to the application.

Responding to a question from Councillor Henderson, Rudi Fruzynski, Licensing Standards Officer (LSO), referred to his report dated 4 September 2020. The LSO advised he had met with the leaseholder, Mr Rafeeq, and remarked that Mr Rafeeq had no licensing background. The LSO reported that he had stated to the leaseholder that no alcohol could be sold at the restaurant until a full licence was held, or until occasional licences had been granted. He remarked that there seemed to have been little dialogue between Mr Rafeeq and Ms Wong. The LSO raised concern that the licence application would not adequately serve the leaseholder's needs, noting that the current licence would not allow for birthday parties, or for customers to take home an unfinished bottle of wine. The LSO stated that he had no objection to the grant of the licence and felt the restaurant offering would be of benefit to the community, but noted that it would be a restrictive licence to operate under unless major variation applications were made.

Ms Wong responded that a basic application had been submitted because, when she had spoken to the leaseholder in August, he had not yet decided what kind of licence he would need. She had been advised to make a basic application to get things moving. Ms Wong advised that there had been little communication with the leaseholder due to the COVID 19 pandemic; she had been unaware that Mr Rafeeq was considering offering takeaways.

Councillor Bruce suggested that the application be continued to give time for the applicant and leaseholder to discuss and make amendments. The LSO had no objection to the suspension of the current application, but a new site notice may be required should changes be made to the application, and new letters would have to be issued concerning the altered application. The Depute Clerk of the Board advised that changes discussed previously would constitute major variations; he suggested that the leaseholder may wish to have a provisional licence granted that could subsequently be varied.

The applicant expressed her wish to proceed in a way that would result in a licence that was fit for purpose being granted timeously. The Depute Clerk of the Board

advised that it would still be possible for the leaseholder to trade under the current licence, if granted. He advised that either course of action would likely take the same length of time; however, he noted the benefit of having a licence under which to trade in the meantime, should the applicant choose to proceed with the current licence and subsequently apply for major variations. The applicant confirmed that she wished to proceed with the current application.

The LSO reminded the applicant that, should the Board be minded to grant the application, the licence would not allow for the sale of alcohol until such time as a provisional licence had been confirmed, or until occasional licences had been granted. He advised that major variations could take place after the confirmation of the licence. The applicant stated that she understood this, and advised that Mr Rafeeq did not yet hold a personal licence.

The Convener questioned the times children would be permitted access to the premises, as the application stated “at all times”. The Depute Clerk advised that it was Board policy that children be allowed on premises only until 10pm; should the applicant wish to have an alternative arrangement for larger parties, a major variation would have to be submitted. Ms Wong agreed to this change and would discuss this with the leaseholder.

Responding to a further question from the Convener, the LSO provided further information on Board policy regarding access for children. He further advised that the policy did not specify that children over the age of 12 would have to be accompanied by an adult, and stated that management would enforce rules as they saw fit.

Councillor McMillan stated that he would be minded to grant the application, however, he was disappointed that the application had not benefitted from the professional advice on offer from licensing officers; he urged the trade to access support available to them.

Councillor Bruce echoed Councillor McMillan’s comments and welcomed the application. He looked forward to hearing subsequent applications with variations to ensure the licence would benefit the establishment.

Councillor Henderson had some reservations about the relationship between the leaseholder and tenant, and sought reassurance that the leaseholder would be educated on what the licence did and did not permit; she questioned how this would be policed in the short term. The LSO made a commitment to visit on a regular basis to ensure the conditions of the licence were being adhered to, and suggested that Ms Wong communicate today’s discussions with the leaseholder. Ms Wong stated that Mr Rafeeq was aware that he was not permitted to sell alcohol.

The Convener was in agreement with the conditions discussed. She reiterated that the LSO would be in touch with the leaseholder, and that children would be permitted on the premises only until 10pm.

The Convener then moved to a roll call vote.

Decision

The East Lothian Licensing Board unanimously agreed to grant the provisional premises licence, subject to standard conditions.

3. MAJOR VARIATION OF PREMISES LICENCE

3c Luffness New Golf Club, Aberlady

The application sought to remove Conditions 6 & 7 from the licence (removal of registered clubs conditions), and to add music, live performance, films, gaming, outside drinking within core hours, and charitable events to the operating plan.

No objections had been raised by the public or Police Scotland, NHS Scotland, the Community Council, or by Planning. The Licensing Standards Officer (LSO) had made representations, as contained within his report.

Mary Watkins, Assistant Secretary at Luffness New Golf Club, was present to speak to the application. She advised that the purpose of the major variation was to tidy up the premises licence application and ensure that the operating plan and licence tied in together.

The LSO advised that there had been a great deal of dialogue with officials at the Luffness New Golf Club, which had always been positive. The premises presented no cause for concern. The LSO supported the application, which would bring the club's licence in line with other golf clubs and facilities.

Responding to questions from Councillor McMillan and the Convener, Ms Watkins hoped that the variation would give the club the flexibility to use the facilities they already had, particularly under COVID 19 restrictions. Occasional licence applications had been made to licence that had not previously been used, and these were now being adopted into the club's licence. She advised that business at the clubhouse had been steady, but that the golf course itself remained very busy while many people were not yet back at work. Ms Watkins informed the Board that the club's membership was male only. She stated that it was rare that the clubhouse was open beyond 9pm.

The LSO commented that use of the outdoor area during the COVID 19 period, as permitted under occasional licences, had run without issue.

The Convener moved to a roll call vote.

Decision

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

a The Main Course, Main Street, Gullane

The application sought to add an outside drinking and dining area to the premises.

No objections had been raised by the public or Police Scotland, NHS Scotland, the Community Council, or by Planning. The Licensing Standards Officer (LSO) had made representations, as contained within his report.

Alistair Macdonald, agent, was present to speak to the application. Mr Macdonald provided background information on the premises since its opening. He advised that an area to the rear of the premises, which could be seen from the road, had been operating successfully under occasional licences during the COVID 19 period. This had proved popular with customers, many of whom had indicated that they were more

comfortable to sit outside at such times. The area had been included in the original licence, and the application sought to reinstate this area into the plan and to add outdoor drinking facilities.

The LSO offered his support to the application, and had been impressed with facilities when he had visited during the construction stage. He advised that the yard was near the next-door neighbours, but felt confident that the high wall would provide neighbours with protection from noise. He stated that signs should be displayed to remind customers of Challenge 25, and that no children could come within 1.5m of the bar. His report also asked that there be no outdoor entertainment, and that the terminal hour for use of the outdoor space be 10pm. He also asked that a sign be displayed asking customers to be respectful of neighbours.

Responding to a question from Councillor McMillan, the LSO advised that the government's new guidelines meant that the area/premises should be cleared by 10pm; drinking-up time came before the terminal hour.

Responding to a question from the Convener, Mr Macdonald advised that the rules for the new outdoor area would be the same as they were for the restaurant, i.e. children and young people would not be permitted to remain on the premises after 10pm.

Decision

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

3b Zitto, 10 Quality Street, North Berwick

The application sought to add off-sales hours from 11am to 10pm and to add deliveries and takeaways as additional activities.

No objections had been raised by the public or Police Scotland, NHS Scotland, the Community Council, the LSO, or by Planning.

The LSO expressed his support of the application in its entirety and complimented Mr Macdonald on the supplementary information provided, which had been useful.

Alistair Macdonald, agent, was present to speak to the application. Mr Macdonald provided background information on the premises. He advised that off-sales had never been part of the business prior to the COVID 19 period, but that owners had felt at a disadvantage when they had been unable to offer this facility. The premises were looking to diversify the restaurant's offer to increase the chances of the business' survival should COVID 19 restrictions become a longer-term feature. Mr Macdonald noted that the premises had been pleased with business since they had been able to reopen. He conveyed that the owners had been delighted with the advice and backup provided by licensing and environmental health officers, which had been of great help to the business through the COVID 19 crisis. Mr Macdonald informed the Board that initially, deliveries would be made by staff, who had already received the mandatory two-hour alcohol training; however, should a delivery driver be taken on, this person would also receive the training. He commended the application to the Board.

Councillor Henderson questioned whether alcohol would be restricted to accompanying orders of food. Mr Macdonald confirmed that this would be the case, both for deliveries and takeaways.

Councillor McMillan thanked Mr Macdonald for recognising the work of council officers, and hoped that this positive relationship would continue. Councillor Henderson added that Zitto and other North Berwick businesses had served their community very well during the pandemic.

Decision

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

4. GRANT OF PERSONAL LICENCE Lee Nelson

The Board had received an application for the grant of a personal licence from Mr Lee Nelson. Mr Nelson had been invited to attend the hearing due to police objections to the grant of the licence on the basis of a prior criminal conviction.

PC Rona Duncan referred to the police letter dated 13 August 2020, which advised of the conviction, dated 8 June 2017, of racially-aggravated conduct causing distress and alarm, for which Mr Nelson was fined £180.

The LSO had no comment to make on Mr Nelson's application.

Mr Nelson was present and answered questions from Board Members. Mr Nelson said he was not proud of his actions, which he described as being part of his past life which he had been unable to get away from. He reported that he had been drunk on the night of the incident, and described the bouncer using force, and his own response of using a racist remark. He described his life having moved on since 2017, and informed the Board that he had been in his current workplace for 13 years.

Councillor McMillan questioned why notification of the charge had not been made by both the police and the licence holder. PC Duncan was unsure why the charge had not been reported to the Board, and advised that it was only picked up during checks made for Mr Nelson's most recent application. Mr Nelson stated that he had been a personal licence holder at the time of the incident but had not known to report the charge.

Councillor McMillan questioned why Mr Nelson was applying for renewal one year early. Mr Nelson advised that his workplace had decided to renew his personal licence at the same time as another colleague's.

Responding to further questions from Councillor McMillan, Mr Nelson advised that he was an events/duty manager and felt that his position at his place of work may be affected should the licence not be granted.

The LSO did not know where Mr Nelson worked to be able to provide comment on the running of the premises. However, he supported Mr Nelson's comment that some time had elapsed since his conviction, and that that it appeared to be a one-off situation in terms of his behaviour. He felt that people should generally be given a second chance and supported the application from an LSO perspective. Mr Nelson thanked the LSO for his comments and reiterated that it was not in his nature to behave in this way.

The Convener announced an adjournment to allow the Board to discuss Mr Nelson's application in private.

Councillor McMillan stated that the application had been taken seriously due to the applicant's failure to notify the Board of his conviction. However, the Board was conscious that time had elapsed since the incident. He reminded Mr Nelson that the Board must be notified of any further issues. He remarked that Board Members had heard remorse from Mr Nelson and understood the incident to be out of character for him. He commented that Mr Nelson worked in an industry that was heavily regulated, but this depended on the licensed trade working within the rules. He advised that, having carefully considered the police opinion, the Board were minded to grant the application. Councillor McMillan reminded Mr Nelson that his behaviour would have to be exemplary going forward.

Decision

The East Lothian Licensing Board unanimously agreed to grant the personal licence.

5. FESTIVE HOURS

A report had been submitted by the Clerk of the Licensing Board to ask Members to consider festive hours, and to confirm if any amendments should be made to the policy regarding festive hours this year due to the current COVID 19 pandemic.

Carlo Grilli, Depute Clerk of the Licensing Board, presented the report. He advised, under normal circumstances, that Board policy allowed licenced premises to stay open until 2am for five days over the festive period. The report sought the Board's direction to proceed given the current COVID 19 situation, and sought a decision as to whether the Board wished to remove the aforementioned term within the policy for the upcoming festive period. As one of the Board's objectives was to consider health and safety, the item would provide an opportunity for Members to discuss any concerns. Mr Grilli drew attention to the recommendation for the Board to delegate the matter to officers in consultation with the Convener.

Councillor McMillan expressed that he would be happy to support the recommendation that the Board delegate authority to officers in consultation with the Convener. Mr Grilli responded that the purpose of the recommendation was to allow for quick action and response to any further changes to Scottish Government guidance, should the Board be unable to reconvene promptly. Councillor McMillan commented that there were good communication links through the LSO and networks within the Connected Economy Group; he was happy that the licenced trade would be able to air their views through existing forums.

The Convener was glad to hear that the Board could meet to discuss restrictions further should there be an opportunity, however, she was happy to support the report recommendations.

The Convener moved to a roll call vote.

Decision

The East Lothian Licensing Board unanimously agreed:

- i. that the existing arrangements regarding Festive Hours would remain in place; and
- ii. to delegate to the Clerk of the Board in consultation with the Convener of the Licensing Board to make any changes to the policy relating to Festive

Hours as may be required should further legislation or guidance relating to the festive period be issued by the Scottish Government.

6. CHIEF CONSTABLE'S REPORT TO THE EAST LOTHIAN LICENSING BOARD, 1 APRIL 2019 – 31 MARCH 2020

The Chief Constable of Police Scotland, Mr Iain Livingstone QPM, had submitted a report to the East Lothian Licensing Board for the period 1 April 2019 – 31 March 2020.

PC Rona Duncan was present to represent Police Scotland and took questions on the report.

Responding to a question from Councillor McMillan, PC Duncan expressed that she felt that licensing was run well in East Lothian. Her view was that licenced premises wanted to keep people safe and do the right thing by the area. She felt that Police Scotland had a good relationship with the Licensing Standards Officer, Mr Fruzynski. She stated that there was good communication and records were kept well, meaning officers coming on duty were made aware of recent events. Overall, she had a positive impression of licensing in the East Lothian area.

Responding to Councillor Henderson, PC Duncan confirmed that assurance could be given to East Lothian constituents that the licensing report compared favourably to other local authority areas.

Councillor McMillan commented that the report gave some good examples of collaboration and cooperation. He spoke of the work going on in the background, such as work with community learning, the Antisocial Behaviour Team, and Police Scotland Youth Volunteers. Councillor McMillan expressed gratitude for dialogue with Inspector Harborow and Chief Inspector Neil Mitchell. He highlighted that East Lothian benefitted from having a well-run licensing trade and positive relationships with police colleagues. He asked PC Duncan to pass on his thanks to her colleagues for thier many actions carried out quietly and efficiently to keep people safe.

Councillor Henderson remarked that the culture between the Board and Police Scotland of getting things done and solving problems, avoiding issues becoming overdramatised or appearing in the press, was greatly appreciated. She thanked all involved for their approach.

The Convener echoed her colleagues' comments. She thanked all involved for partnership working between police, the LSO, the trade, the Licensing Forum, and the wider team. She expressed that the report was testament to excellent working relationships, and felt reassured that all of the work that went on produced such positive results.

Councillor Henderson requested that the Committees Team circulated the Chief Constable's Report to the East Lothian Licensing Board to all Elected Members.

Decision

The East Lothian Licensing Board agreed to note the report.

Signed

Councillor F Dugdale
Convener of East Lothian Licensing Board