



MINUTES OF THE MEETING OF EAST LOTHIAN LICENSING BOARD

**THURSDAY 28 JANUARY 2021
ONLINE PLATFORM MEETING**

Board Members Present:

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

Clerk of the Licensing Board:

Ms K MacNeill, Service Manager – People and Governance

Attending:

Ms M Winter, Licensing Officer
Ms G Herkes, Licensing Officer
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Mr R Fruzynski, Licensing Standards Officer
PC Graeme Bairden, Police Scotland
Inspector Stuart Fletcher, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

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 26 November 2020 were approved as a true record of the meeting.

2. PROVISIONAL PREMISES LICENCE Stodola, 109 High Street, Musselburgh

The application sought a provisional premises licence for off-sales. The store had been operating under occasional licences since 18 November 2020.

No objections had been raised by Police Scotland, NHS Scotland, Planning, the Community Council, or the public. The LSO had made representation and asked for some standard conditions to be attached the licence.

Jaroslav Wiatrowski, applicant, and Alistair Macdonald, agent, were present to speak to the application.

Mr Macdonald provided some background information on the applicants and their shops. Mr and Mrs Wiatrowski opened Stodola in Musselburgh in November 2020 and had been licensed for off-sales under occasional licences since that time. Mr Macdonald said his clients were experienced operators and ran three other stores – two in Edinburgh and one in Dalkeith. He explained that delivery of alcohol was not currently in operation, but had been included in the application in case the store wished to begin making deliveries in the future, particularly in the current circumstances where some customers may be shielding, etc. He advised that his clients were happy to accept the conditions raised by the Licensing Standards Officer (LSO), although noted that one condition was not relevant to their operation. Mr Macdonald also advised that a food hygiene certificate had been obtained but the building standards certificate was still pending; it was hoped this would be issued in the near future.

PC Graeme Bairden raised no objections on behalf of Police Scotland and commented that the licence holders seemed to be experienced and the shop seemed to run well.

Rudi Fruzynski, LSO, complimented the applicants on their new store. He had raised standard conditions and concurred with Mr Macdonald that the condition mentioned at 32.2 of the letter dated 9 December 2020 was not relevant as the applicants were not running a café or restaurant. He offered his support to the application.

Councillor Innes supported the application and commented that it was important for local people to experience the culture of their Eastern European neighbours. He wished the applicants well.

Councillor McMillan also welcomed the new Polish store. He expressed his support and hoped that Brexit would not cause the applicants any trouble in their trading.

The Chair supported the application, including the conditions raised by the LSO.

Decision

The East Lothian Licensing Board unanimously agreed to grant the licence subject to standard conditions regarding deliveries.

**3. GRANT OF A PERSONAL LICENCE
Mr Manish Kumar**

An application had been received from Mr Manish Kumar for the grant of a personal licence. The Clerk of the Board noted that Police Scotland had submitted detailed representation but had not made a recommendation for refusal.

Manish Kumar, applicant, and Alistair Macdonald, agent, were present to speak to the application.

Mr Macdonald provided background information to the application, and revisited the circumstances surrounding premises licence review brought to the November Board meeting after Mr Kumar had sold alcohol to an underage young person. At this time, Mr Kumar agreed to withdraw his personal licence application to the City of Edinburgh Licensing Board and lodge it instead with the East Lothian Licensing Board. Mr Macdonald advised that his client did not take issue with any content of the police letter, dated 17 December 2020. He advised that Mr Kumar had not yet heard whether his case would proceed to court; should he receive a conviction, he would notify the Board of this. Mr Macdonald advised that there had been no issues with Mr Kumar's store since the incident; he reported that Mr Kumar had received no formal visits, but nevertheless had been extremely careful with the sale of alcohol. Mr Macdonald said that Mr Kumar seriously regretted his mistake, and had since completed his personal licence course. Going forward, the premises manager of the store would be Mr Kumar, who accepted the privilege and responsibility of holding a personal licence.

Mr Kumar added that the incident had been a mistake and apologised again to the family of the young person. He said that since this time, he had been particularly careful with the Challenge 25 rule. He asked the Board to give him the opportunity to prove that he could abide by Board policy in the future.

PC Bairden had checked with the Crown Office and there was no date recorded for a trial. He advised that he had spoken with the current premises manager, May Duncan, who advised that Mr Kumar's behaviour had been exemplary since the written warning had been issued in December 2020.

The LSO said he had not met Mr Kumar but assured the Board that the store would be well looked after with the involvement of Ms Duncan, who was very professional.

The Convener called an adjournment for Board Members to hold a private discussion.

When the meeting resumed, the Convener delivered the decision of the Board. Members were not happy to grant Mr Kumar's personal licence and decided to continue the application for a period of six months to allow the case to progress through the court process.

Mr Macdonald recognised that this was the Board's decision to make, but noted that it was unlikely that any additional facts would come to light if the case proceeded to court.

Councillor Innes acknowledged Mr Macdonald's pragmatic view in not objecting to the continuation, and formally moved the continuation of the application for a period of six months. Councillor McMillan seconded this proposal. Councillor Henderson and Councillor Goodfellow also supported the Convener's and Board colleagues' sentiments.

Decision

The East Lothian Licensing Board unanimously agreed to continue the application for a period of six months.

4. REQUEST TO EXTEND PROVISIONAL PREMISES LICENCE 10-12 Court Street, Haddington

A letter had been received from Alistair Macdonald, agent, on behalf of Franco Cucchi, licence holder, for a further extension of a provisional premises licence to allow relevant inspections to be carried out.

Mr Macdonald was present to speak to the request.

Mr Macdonald provided a timeline of when applications were made, and advised that an extension had been granted in January 2020 due to delays by builders. Since this time, work had been completed and Building Standards made inspections in March 2020; they had required some further work to be carried out and emergency lighting certificates to be obtained before a completion certificate would be issued. However, lockdown had caused delays to this work being undertaken and further inspections being made. Once Building Standards had issued an approval certificate and a food hygiene certificate had been obtained, it would be possible to finalise the licence. Mr Macdonald stated that all work would have been completed by now but for lockdown restrictions.

Councillor Bruce said he understood the difficulties experienced around completion of work and inspections in lockdown, and suggested that a further year's extension be granted to ensure all processes could be completed. Councillors Goodfellow, Henderson, and Innes supported this suggestion.

Councillor McMillan noted that businesses had felt well supported by officers in Licensing, Environmental Health, and Economic Development, but also supported granting an extension of 12 months to ensure all could be finalised.

The Convener acknowledged the challenging time for businesses and supported extending the provisional licence for 12 months.

Decision

The East Lothian Licensing Board unanimously agreed to grant a 12-month extension of the provisional licence until March 2022.

5. MAJOR VARIATION OF PREMISES LICENCE

a. Auld Brig Tavern, 45 Eskside West, Fisherrow, Musselburgh

The application sought to change the functioning of the bar to permit bar meals and a breakfast service, including outwith core hours, and to permit receptions, club meetings, and performances.

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

Steven Bremner, premises manager, and Niall Hassard, agent, were present to speak to the application.

Mr Hassard advised that the tenants were keen to diversify the business by providing a food offer. The premises had always had a kitchen, and staff had now been trained in terms of allergens. The tenants had also engaged with the LSO and registered as a new food business. The food offer would principally be standard bar meals. The applicants also wished to adjust their opening hours to be able to offer a breakfast service, but no alcohol would be served outwith current licensed hours.

Responding to a question from Councillor Henderson, Mr Hassard advised that there would be no direct impact on the capacity of the pub by the offer of meals. No structural work had been required to the premises, but rather some general upgrading and engagement with Environmental Health regarding the kitchen.

Councillor McMillan was happy to support the application and hoped that Mr Bremner would consider using locally sourced produce. Mr Hassard advised that the group regularly worked with local suppliers.

PC Bairden noted that the premises may be open outwith core hours; he was happy to support this as long as no alcohol was sold.

The LSO reported that the Auld Brig Tavern was a popular and well-run premises, and felt the application would enhance the offer to patrons. He confirmed that kitchen facilities had been available for many years but had not been used. He had regular contact with the premises and raised no objection to the application.

The Convener was happy to support the enhanced offer and diversification of the business.

Decision

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

b. Event Space, Archibald Hope House, Eskmills Park, Musselburgh

The application sought to change the company name, vary the layout plan, and change the premises manager. The Clerk of the Board noted that planning permission had not yet been granted for the use of an outdoor drinking area within the grounds of the premises.

No objections had been raised by Police Scotland, NHS Scotland, by Planning, the Community Council, or the public. The LSO had made representation and asked for some standard conditions to be attached the licence.

Scott Dodds, applicant, and Brian Galbraith, Managing Director, were present to speak to the application.

Mr Galbraith advised that the application was to licence the garden area around the summer house so that drinks could be served outside to wedding guests before carrying on entertainment inside the premises.

PC Bairden advised that he had attended the premises and Mr Galbraith had spoken through the layout. He agreed with the LSO that it would be important to limit the

amount of noise outside at night. He thought it was a professional-looking business offer and raised no objections to the application.

The LSO advised that the premises was very well run and a popular wedding venue. He requested that there be no amplified entertainment or speech in the outside area, as residents in the area had previously complained of disturbances from other premises on the estate. Other than raising the conditions contained within the LSO letter dated 11 December 2020, he was happy to support the application.

The Convener enquired about the terminal hour of the outdoor area. Mr Galbraith advised that the outdoor area would predominantly be used between 2pm – 5pm, but during the COVID pandemic, occasional licences had been granted for use of the summer house and winter bar. However, it was hoped that the usual wedding offer would resume, all being well.

Councillor McMillan clarified that only amplified speech and entertainment would not be allowed in the outdoor area, and supported the application. Councillors Innes, Henderson, Goodfellow, and Dugdale also gave their support to the application, subject to standard conditions raised by the LSO.

Decision

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

c. Lidl, Mercat House, 6 High Street, Prestonpans

The application sought to vary the capacity and layout of alcohol display.

No objections had been raised by Police Scotland, NHS Scotland, by Planning, the public, or the LSO. The Community Council had raised an objection on the basis of overprovision.

Tracey Broomfield, licensing manager for Lidl in Scotland, and Andrew Hunter, agent, were present to speak to the application.

Mr Hunter advised that the application to increase the alcohol display capacity was part of a wider refurbishment of the premises under Lidl's 'Get Fresh' campaign. This would see an increase in the selection of meat, fruit and vegetables, and an increase in the range of Scottish craft beers and craft ciders being rolled out across Scottish stores. To facilitate this, the application sought an increase in day-to-day alcohol display capacity to 62m² and a seasonal capacity of 81m². Mr Hunter advised that alcohol would represent 4.8% of the total display area of the store. The seasonal offer would remain the same as in previous years, but would move position slightly. Mr Hunter advised that Lidl Prestonpans had four personal licence among the staff and 100 stores would be refurbished in this way. Mr Hunter also addressed objections raised by the Prestonpans Community Council. He advised that the changes were part of a wider rollout rather than targeting the area to gain a monopoly on alcohol provision, and also noted incorrect figures regarding the size of the company. Mr Hunter also provided information regarding Lidl Prestonpans' contribution to community causes, such as links with the charities combatting food waste and to provide meals distributed by various groups.

There was discussion regarding the provision of alcohol and the capacity of display in the context of the wider store, with Board Members seeking justification for the increase in display area. Mr Hunter advised that the seasonal display area would

increase because the day-to-day offer would increase to include the additional Scottish craft beers and ciders; the seasonal offer, which would stay the same as in previous years, was then added on top of this. Mr Hunter also added that the alcohol display would not take over additional aisles in store, and referred to a before-and-after comparison document circulated to Board Members the previous day.

PC Bairden thought the store seemed to be very well run by the staff and reported that there had been few incidents relating to alcohol. He raised no objections to the application.

The LSO commented that Lidl Prestonpans was well run and popular with the community. He noted the substantial size of the store and advised that the alcohol display took up less of the overall store than some comparable premises.

Councillor Goodfellow commented that he would have appreciated some justification as part of the application to explain the increase in seasonal alcohol display. Mr Hunter responded that an increase in seasonal display alleviated pressure on staff at a time when the store was at its busiest, and accommodated additional products such as gifts with presentation glasses, etc.

There was further discussion regarding alcohol display capacity, and Councillor Henderson noted that Board policy should perhaps consider density of display to gain a fuller understanding of the alcohol display area.

Councillor Bruce commented that Lidl Prestonpans was well managed. He had sympathy with the Community Council's objection in terms of overprovision in parts of Prestonpans, but felt that comments regarding the size of the parent corporation were not relevant to the discussion. He gave his support to the application and recognised Lidl's support of the Pennypit Trust.

Councillor Goodfellow agreed with Councillor Bruce's comments and also supported the application, noting he had been persuaded by the proportionally lower alcohol display area compared to other supermarkets. Councillor Henderson was in agreement and would also support the application.

Councillor Innes stated that Lidl was a valued retailer and the refurbishment would be welcomed by the community. He had supported increases in alcohol display previously, but felt application represented a significantly larger increase in display capacity. He shared some of the Community Council's concerns and would struggle to support the application.

A roll call vote was called and votes were cast as follows:

Grant application: 5 (Councillors Bruce, Dugdale, Goodfellow, Henderson, and McMillan)

Refuse application: 1 (Councillor Innes)

Decision

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

The Members of the East Lothian Licensing Board had been saddened to hear of the passing of George Hood, Chair of the East Lothian Licensing Forum. The Board would send a letter of condolence to Mr Hood's family.

Signed

Councillor F Dugdale
Convener of East Lothian Licensing Board