

MINUTE of MEETING of the WEST LOTHIAN LICENSING BOARD of WEST LOTHIAN COUNCIL held within COUNCIL CHAMBERS, WEST LOTHIAN CIVIC CENTRE, LIVINGSTON, on 13 OCTOBER 2017.

Present – Councillors Peter Heggie, Harry Cartmill, Bruce Fairbairn, Dom McGuire, George Paul

Apologies – Councillors Chris Horne, Tom Kerr

1. DECLARATIONS OF INTEREST

There were no declarations of interest made.

2. MINUTE

The Board confirmed the Minute of its meeting held on 8 September 2017 as a correct record. The Minute was thereafter signed by the Convenor.

3. APPLICATION FOR PREMISES LICENCE - FESTIVAL STORES, 51 MAIN STREET, KIRKNEWTON

The applicant was in attendance and represented by Mr Alistair Macdonald of Macdonald Licensing, Edinburgh.

The Depute Clerk referred the Board to the report on the application.

Mr Macdonald made submissions in support of the premises licence application.

Inspector John Fleming confirmed that Police Scotland had no objections to the application.

Douglas Frood, Licensing Standards Officers confirmed he had no adverse comments to make in relation to the application.

The Board had an opportunity to question the applicant and his representative.

Mr Macdonald had an opportunity to sum up before the Board made its decision.

Decision

To grant the application for a premises licence.

4. APPLICATION FOR VARIATION OF PREMISES LICENCE - LIVINGSTON'S RESTAURANT, 52 HIGH STREET, LINLITHGOW

The applicant was in attendance and was represented by Mr Jim Carlin, Sneddon Morrison Solicitors.

The Depute Clerk referred the Board to the report on the Variation of Premises Licence application.

The variation sought in the application was as follows:-

- To change the name of the premises on the licence to “Livingroom at Livingston’s”;
- To change the operating plan of the premises to state that the licence holder will operate the premises according to seasonal demand by making applications for extended hours and by taking advantage of extensions of permitted licensed hours approved by the Board for all licensed premises in West Lothian for the Christmas and New Year season;
- To change the operating plan to include club or other group meetings etc and recorded music as permitted activities on the premises in addition to the supply of alcohol to be provided within core licensed hours;
- To change the answer to question 6(b) in the operating plan, regarding the terms under which children and young persons will be allowed entry to the premises, to state that young person will be allowed unaccompanied access to the premises for the purposes of having a meal or working as kitchen staff and to state that children will be allowed access for the purpose of having a meal when accompanied by a parent, guardian, or other responsible adult.
- To change the answer to question 6(d) in the operating plan to state that children shall be permitted entry to the premises from 11am until 10pm each day and young persons shall be permitted entry to the premises from 11am until midnight each day;
- To change the answer to question 6(e) in the operating plan to state that children and young persons will be allowed entry in the restaurant, toilets and outdoor areas shown shaded on the layout plan and to include all access and egress thereto and therefrom;
- To change the answer to question 7 in the operating plan to increase the capacity of the premises from 52 to 60;
- To replace the current layout plan for the premises with the proposed new layout plan to show the extension to both the restaurant and the outdoor drinking areas.

Mr Carlin made submissions in support of the application.

Inspector Fleming confirmed that Police Scotland had no objections to the application.

Douglas Froom, Licensing Standards Officer confirmed he had no adverse comments to make in relation to the application.

The Convener informed the Board that Councillor Dom McGuire had attended a site visit to the premises

Councillor McGuire advised the Board of his site visit.

The Board then had an opportunity to question the applicant's representative.

Following questions the Board adjourned to a private session.

After the private session all parties returned.

The Depute Clerk explained the legal advice that had been given to the Board in the private session was that a licence could not be refused on the basis of speculation or a particular consequence, unless it was supported by evidence based on fact. The Clerk advised that factual evidence was required to support a decision that the granting of the application would be inconsistent with one or more of the licensing objectives.

Mr Carlin accepted the legal advice that had been given.

#### Decision

To grant the variation of premises application.

#### 5. APPLICATION FOR VARIATION OF PREMISES LICENCE - BISTRO 52, 50 - 52 WEST MAIN STREET, UPHALL

The applicant Mr Andrew Henderson was in attendance and unrepresented. He confirmed that he was ready to proceed without representation.

The Depute Clerk referred the Board to the report on the Variation of Premises Licence application. The Depute Clerk confirmed that a site visit had taken place with Councillor Dom McGuire.

The Depute Clerk advised that a written objection had been received from a Mr Jenkins. Mr Jenkins had also advised that he would be unable to attend the hearing and requested that the Board consider his written objection.

The variation sought in the application was as follows:

- To change the answer to question 6(d) in the operating plan to allow children and young persons access to the premises until 10pm each day.

Mr Henderson made submissions to the Board in support of his application.

Inspector Fleming confirmed Police Scotland had no objections to make

to the application.

Douglas Frood, Licensing Standards Officer confirmed he had no adverse comments to make in relation to the application.

Councillor Dom McGuire advised the Board of his site visit.

The Board then had an opportunity to question the applicant.

The Depute Clerk advised the Board that the basis of the objection was a planning issue and not a proper licensing consideration that could be used to justify a decision to refuse the application.

#### Decision

To grant the variation of premises licence application.

#### 6. APPLICATION FOR VARIATION OF PREMISES LICENCE - ASLAM CONVENIENCE STORE, 24-26 GOSCHEN PLACE, BROXBURN

The applicant's representative Mrs Aslam was in attendance at the hearing and confirmed she was ready to proceed without representation.

The Depute Clerk explained the procedure that would be followed.

The Depute Clerk referred the Board to the report on the Variation of Premises Licence application. He also confirmed that a site visit had taken place with Councillor Dom McGuire.

Mrs Aslam made submissions to the Board in support of the application.

Inspector Fleming confirmed that Police Scotland had no objections to the application.

Douglas Frood, Licensing Standards Officer confirmed he had no adverse comments to make in relation to the application.

Councillor Dom McGuire advised the Board of his site visit. He noted that the alterations had already been carried out prior to consideration by the Board.

The Board then had an opportunity to ask questions of the applicant's representative.

The Depute Clerk explained that the legislation was not clear regarding the stage at which a refit should take place in relation to the consideration of a variation application relating to that refit. The Board was advised by the Depute Clerk that a number of previous variation applications for refits had been granted retrospectively by the Board.

#### Decision

To grant the variation of premises licence application.

7. UPDATE REPORT- DELHI'S WINTER, REGENT CENTRE, LINLITHGOW

The Board considered a report (copies of which had been circulated) by the Clerk to the Licensing Board providing an update on an application that had called at the Board meeting on 8 September 2017.

The report advised that on re-examining the decision made by the Board on 8 September 2017 in relation to restricting the terminal hour for children and young persons to 10pm, it was considered that the Board acted outwith its legal powers.

In deciding to restrict the terminal hour for children to 10pm the Board considered the terms of its policy at section 9.4. The Board noted that the current operating plan for the premises permitted children and young persons to be on the premises until midnight every day.

However, the law did not permit the Board to vary the operating plan for the premises when considering an application for a non-minor variation. The law did allow the Board to vary the conditions of the licence but this would only be appropriate if it was connected to the variation application and if there was information before the Board that it was necessary to do so based on the licensing objectives.

Therefore the Board's decision to vary the terminal hour for children and young persons as stated in the operating plan for Delhi's Winter was ultra vires and did not have legal effect.

This did not affect the decision made by the Board on 8 September 2017, granting the variation application as this part was within the Board's legal powers.

The report recommended that the Board note that the decision to vary the terminal hour for children and young persons was ultra vires and did not take effect; and

Note that an updated premises licence was issued to the licence holder in accordance with the variation sought by the licence holder in his application and subject to conditions 13.1 to 13.3 of the Board's policy.

Decision

To note the terms of the report.

8. CHIEF CONSTABLE'S ANNUAL REPORT

The Board considered the Chief Constable's Annual Report (copies of which had been circulated) for the West Lothian area. The report outlined what activity had been undertaken over the previous twelve months which provided an opportunity to outline how services would be delivered over the coming year.

Police Scotland continued to face an increasing range of demands against the backdrop of a challenging financial environment, however Police Scotland would continue to work in partnership at a local and national level to ensure community safety.

The report went on to advise that there had been success in preventative problem solving approach, with officers and staff resolving issues proportionately and at the earliest opportunity.

The year ahead would see the approach continue to be based on prevention and collaboration to ensure the most efficient and effective service delivery.

### Decision

To note the terms of the report.