

MINUTE of MEETING of the SCOTTISH BORDERS
LICENSING BOARD held in Committee Rooms 2 & 3,
Council Headquarters, Newtown St Boswells on Friday
21 April 2017 at 10.00 a.m.

Present:- Councillors W. Archibald (Convener), J. Campbell, J. Greenwell, B. Herd, G. Logan, D. Paterson, J. Torrance, T. Weatherston, B. White.
Apology:- Councillor R. Stewart.
In Attendance:- Managing Solicitor Property and Licensing, Licensing Team Leader, Licensing Standards and Enforcement Officers (Mr I. Tunnah and Mr M. Wynne), Democratic Services Officer (K. Mason), Inspector T. Hodges, PC C. Lackenby, Police Scotland.

1. **MINUTE**

The Minute of Meeting of 17 March 2017 had been circulated.

**DECISION
APPROVED.**

2. **LICENCES DEALT WITH UNDER DELEGATED POWERS**

For Members' information there had been circulated copies of a list of licences dealt with under delegated powers for the period 8 March to 12 April 2017.

**DECISION
NOTED.**

3. **LICENSING (SCOTLAND) ACT 2005:**

- (a) **Section 45(7):** The Board considered the following application to Extend Period of Provisional Premises Licence:-

Martin McColl Ltd

27 The Square
Kelso

1 year extension granted June
2016

There had been circulated copies of a letter dated 13 April 2017 from DWF, LLP asking the Licensing Board to authorise a further extension of the time available to their client, Martin McColl Limited to apply for Confirmation of Provisional Premises Licence. The letter explained that the Licensing Board had granted an extension last year until 22 June 2017 on the basis of estimates as to completion of agreed works with Building Standards and Planning to cover the works and take into consideration the requirement for Listed Building Consent. All these were now granted although rather than being resolved before Christmas it took until March 2017 to finalise. A further small change was required to the licence plan to reduce the display area to 6.2m² and an application for a Minor Variation had been drafted for submission to the Board.

Mr David Crank, Solicitor DWF, LLP was present accompanied by Mr Morrison, Area Manager, Martin McColl Ltd. Mr Crank confirmed that a further extension was being applied for because there were various outstanding issues and Section 50 certificates were still to be obtained. It was noted that fire safety measures in the basement had now been resolved. Members discussed the application and it was agreed to grant an extension for a further 9 months rather than the 6 months applied for.

(ii) **Christopher Lambton**

Laurel Bank Tea Room &
Bistro Bar
Broughton
Biggar

Amendments to Operating Plan and Layout Plan:

- Change Core Hours:
On Sale - 11.00am - 12.00midnight Sunday to Thursday and 11.00am - 1.00am Friday and Saturday (currently 11.00am -11.00pm Monday to Saturday and 12.00pm - 11.00pm Sunday).
Off Sale - 10.00am - 10.00pm Monday to Sunday (currently 11.00am - 10.00pm Monday to Saturday and 12noon - 10.00pm Sunday)
- Change No to Yes in seasonal demand and explanation as per Licensing Board policy.
- Addition of Activities within Core Hours: Theatre, Films, Gaming, Indoor/Outdoor Sports and Televised Sport.
- Addition of Activities outwith Core Hours: Televised Sport.
- Change explanation in respect of activities outwith core hours.
- Change terms of Children and Young Persons access.
- Change capacity of premises from 50 persons to 46 maximum.

There had been circulated copies of two letters of observation from P. Middlemass and M. Brownlie advising there were no objections in principle but raising their concerns in regard to noise emanating from the premises which they had experienced and seeking assurances it would be kept to a reasonable level.

Mr M. Wynne referred to the application and the alterations taking place within the premises which had resulted in the opportunity for updating and future proofing the operating plan, all in accordance with the Board's Policy.

Mr C. Lambton was present. He briefed Members on how the establishment had grown organically since 2004 and stated he felt it was now time for a rethink on how everything fitted together. A new kitchen was being constructed in a new build extension to the rear of the building and the bar was being relocated to the space currently occupied by the existing kitchen, with walls and ceilings stripped out to form one large bar/coffee lounge. He acknowledged the concerns raised by neighbouring premises and confirmed that he would ensure measures were in place to address the concerns raised.

**DECISION
GRANTED.**

(c) **Section 20:** The Board considered the following applications for Grant/Provisional Grant of Premises Licence:-

(i) **Fatheha Khanom**

The Taste of Bengal
4 Station Buildings
Dovemount Place
Hawick
Grant

Licensed Hours applied for:

On Sale

Sunday to Thursday 11.00am - 12.00midnight

Friday & Saturday 11.00am to 1.00am

Off Sale

Monday to Sunday 11.00am - 10.00pm

There had been circulated copies of:-

(a) a letter dated 7 March 2017 from Police Scotland. Inspector Hodges advised that in terms of Section 21(4)(a)(i) and (ii) of the Licensing (Scotland) Act 2005, neither the applicant or any connected person had been convicted of any relevant offence. Police Scotland was unable to confirm the existence of any foreign offence in respect of the applicant or any connected person. Inspector Hodges further advised that concerns regarding the layout plan had now been addressed to the satisfaction of Police Scotland.

(b) letters of objection from Ann Napier and Andrew Aitken expressing concerns regarding loud music, swearing, crowds gathering to drink and to smoke in the street along with general anti-social behaviour caused by drunkenness.

Mr Tunnah advised that the premises closed around the time of transition. Mr Khanom had now resurrected the premises as a restaurant and wanted his business to be licensed.

Mr Aitken was present. He stated that he was against licensing the business until 1.00am and referred in detail to the terms of his letter.

Mr Khanom was present. He explained that his business did not operate until 1.00am and generally closed at 10.30pm during the week and at 11.30pm during the weekend. Customers usually had one drink with a meal. He was not offering a huge amount of alcohol and would be selling lager and wine. The premises was a small restaurant with 28 seats. He went on to explain that at the moment because the premises was not licensed customers could bring their own alcohol to the restaurant and consume as much as they wished. He felt that he would be able to control the amount of alcohol consumed on the premises if it was licensed and that would lead to less disruptive behaviour by patrons as they left.

Members acknowledged the concerns raised by Mr Aitken and Ms Napier and stressed the need for strict measures to be put in place by the licence holder to ensure their concerns were dealt with.

**DECISION
GRANTED.**

(ii) **Motor Fuel Limited**

Shell Service Station
Edinburgh Road
Jedburgh
Provisional

Licensed Hours applied for:

On Sale

None

Off Sale

Monday to Sunday 10.00am - 10.00pm

There had been circulated copies of a letter dated 27 March 2017 from Police Scotland. Inspector Hodges advised in terms of Section 21(4)(a)(i) of the Licensing (Scotland) Act 2005, the applicant had not been convicted of any relevant offence. Further in terms of section 21(4)(b)(ii) of the Licensing (Scotland) Act 2005, Jeremy Clarke – a connected person – had been convicted of the following foreign offence:- 7 June 2013 - Court of Preliminary Investigation No. 5, Marbella, Spain – Driving a Mechanically Propelled vehicle while unfit through drink or drugs – Fine 10.00 Euros per day for 4 months - Disqualified from driving.

Mr Tunnah explained that whilst the premises were exempt in terms of the 2005 Act, he was of the opinion that they met the requirement to be granted a licence because it was the main source of fuel and groceries in the local area

Ms Stephanie Hands, Solicitor, Hill Brown Licensing was present, she was accompanied by Danny Wright, Area Manager for the premises licence holder. Ms Hands gave background information relating to Motor Fuel Limited. With reference to the Licensing (Scotland) Act 2005 she submitted that the local community was reliant on the premises as a principal source of either fuel or groceries, therefore the premises fitted into the exemption criteria. She referred to the survey already circulated to Members which had been undertaken by her last week to evidence this. The application had been submitted to enable the Company, which provided a vital resource to the local community, to diversify. In response to Members' questions, it was noted that the parking area was obvious to members of the public using the premises. Ms Hands referred to Jeremy Clarke's conviction and explained that Mr Clarke regretted his actions; this had been a serious error of judgement. Mr Clarke was a founding Director of the Company and he was not involved in the day to day running of the business.

**DECISION
GRANTED.**

(iii) **Christopher Grindell**

Magnums and More Ltd
Station Yard
Sprouston Road
Kelso
Provisional

Licensed Hours applied for:

On Sale

None

Off Sale

Monday to Sunday 10.00am -
10.00pm

No representations had been received.

Mr Tunnah advised that the business would take the form of remote sales, specialising in bottles the size of a magnum and above.

Mr Grindell was present. He advised the business would operate as a distribution centre for online and telephone orders.

**DECISION
GRANTED.**

(iv) **R & A Peebles Ltd**

Panna Restaurant
Dean Park/Northgate
Peebles
Provisional

Licensed Hours applied for:

On Sale

Monday to Sunday 11.00am - 12midnight

Off Sale

None

There had been circulated copies of letters of objection from Mr Iain Gordon, Mr Sam and Mrs Evelyn Ferguson, Councillor Catriona Bhatia and Matt and Mariella Cunliffe. The objections related to the on sale hours applied for because they were considered to be excessive and unreasonable given the residential nature of the surrounding area. Concerns were also expressed relating to noise and disturbance for the residents of Dean Park.

Despite being cited to attend, the applicant was not present and it was agreed that consideration of the application be continued to the next meeting of the Board.

DECISION

AGREED that consideration of the application be continued to the next meeting of the Board.

(v) **Scottish Borders Brewery Ltd**

Born In the Borders
Transport Interchange
Stirling Street
Galashiels
Provisional

Licensed Hours applied for:

On Sale

None

Off Sale

Monday to Sunday 10.00am -
10.00pm

There had been circulated copies of a letter dated 7 April 2017 from Police Scotland. Inspector Hodges advised in terms of section 21(4)(a)(i) and (ii) of the Licensing (Scotland) Act 2005, that neither the applicant nor any connected person had been convicted of any relevant offence. Police Scotland were unable to confirm the existence of any foreign offence in respect of the applicant or any connected person. Under the terms of Section 22(1)(a) of the Licensing (Scotland) Act 2005, the Chief Constable made the following objection in relation to the application. The premises is in the terminal building for the local bus service and the Borders Railway in the town centre of Galashiels. Within the building there is a waiting area and a small café. As such the building is busy at all times of the day with a cross section of the public and is a popular meeting place for local youths. Since the building opened in 2015, there had been a significant number of incidents of anti-social behaviour including a number of violent crimes. The issues resulted in the Local Authority, who owned and ran the building trialing a pilot scheme with a private security company to assist staff at the building to deal with the daily incidents reducing the need to contact the Police on every

occasion. The pilot ran from October 2016 – January 2017 between the hours of 8.00 pm and 1.30am (when the last bus left). Nevertheless because of the number and severity of incidents the Police were called to attend and deal with matters on a frequent basis. A copy of an anti-social behavior report was also circulated which evidenced the concerns raised. It was the Police position that a number of these incidents were directly related to alcohol consumption. The addition of an Off Sale facility would provide an on-site source of alcohol that neither the staff nor the building owners could deal with without significant changes to the policies and procedures currently being employed. The sale of alcohol would allow those attending or waiting for transport to purchase alcohol, which could exasperate the problem for bus or train companies. Whilst it was appreciated that the public could buy alcohol elsewhere in the vicinity, from the various current off sale premises, and bring it with them, the desire of the applicant to sell alcohol did not mean that there was a requirement for such a facility. There was also a safety concern given that the rail platform was not staffed and no supervision was available to those who might purchase alcohol and choose to consume it. Again it was appreciated that alcohol could be purchased elsewhere, however if granted this facility would prove further access to alcohol that would not normally be available. Having consideration for the Preventing Crime and Disorder and Securing Public Safety Licensing Objectives the Chief Constable respectfully requested the Board to carefully consider the objection to the application.

Mr Tunnah advised that the applicant intended to sell and showcase draft beers and other alcohol products in line with his Born in the Borders theme. The alcohol would form a small display and there would be quite a premium on the price. He confirmed the application was in line with the Board's Policy and Licensing objectives.

Mr Henderson the applicant was present. He referred to Galashiels being a centre of excellence for brewing and distilling and he wished to make available locally produced alcohol to tourists and commuters. He advised that the sale of alcohol would not extend after 6.00pm and it was not his intention to exacerbate anti-social behaviour.

Mr Henderson answered questions from Members of the Board relating to his application. He stated that the hours applied for were to allow flexibility on an occasional basis but given the concerns raised submitted that his application be amended for core hours to terminate at 6.00pm.

VOTE

Councillor White, seconded by Councillor Greenwell, moved that in terms of the Preventing Crime and Disorder licensing objective of the Licensing (Scotland) Act 2009 that the licence be granted between 10.00am and 6.00pm.

Councillor Herd, seconded by Councillor Logan, moved as an amendment that taking into account the Preventing Crime and Disorder and Securing Public Safety objectives of the Licensing (Scotland) Act 2009, the licence be refused.

On a show of hands, Members voted as follows

<i>Motion</i>	-	7
<i>Amendment</i>	-	2

Accordingly the application was granted.

DECISION

GRANTED as amended from 10.00am – 6.00pm.

(vi) **Scottish Borders Brewery Ltd**

Born In the Borders
Tweedbank Kiosk
Tweedbank Railway Station
Tweedbank, Galashiels
Provisional

Licensed Hours applied for:

On Sale

None

Off Sale

Monday to Sunday 10.00am -
10.00pm

There had been circulated copies of a letter dated 7 April 2017 from Police Scotland. Inspector Hodges advised that in terms of section 21(4)(a)(i) and (ii) of the Licensing (Scotland) Act 2005, neither the applicant nor any connected person had been convicted of any relevant offence. He was unable to confirm the existence of any foreign offence in respect of the applicant or any connected person. Under the terms of Section 22(1)(a) of the Licensing (Scotland) Act 2005, the Chief Constable made the following objection in relation to the application. The premises is a portable structure at Tweedbank rail station, which was erected to provide tea / coffee and light refreshments. The station is not staffed and there is no regular supervision of the area including the platform. The application raised safety concerns should alcohol be available to purchase on an Off-Sale basis and could then be consumed immediately while there was free movement around the platform. While it was appreciated that alcohol could be purchased elsewhere, it would not normally be available at this location. Having consideration for the Securing Public Safety Licensing Objective the Chief Constable respectfully requested the Board to carefully consider the objection to this application.

Mr Tunnah advised that the application was in similar terms to the previous application. A refreshment kiosk was now located at Tweedbank Train Station and Mr Henderson's intention was the same as the above application.

Mr Henderson answered Members' questions and advised that his staff would be well trained; the site was open and transparent and CCTV cameras were in operation. He acknowledged the concerns raised by Police Scotland and amended the terminal core hour to 6.00pm.

DECISION

GRANTED as amended from 10.00am – 6.00pm.

- (d) **Section 56: Application for Occasional Licence.** The Board considered the following application for Occasional Licence:-

Christopher Lightfoot
3 Kirkbrae, Ettrick Terrace, Selkirk
15 June 2017 - 12.00noon -
1.00am
16 June 2017 - 10.00am - 1.00am
(Selkirk Common Riding)

There had been circulated copies of

(a) a letter dated 22 March 2017 from Police Scotland. Inspector Hodges advised that in terms of section 58(1)(a) of the Licensing (Scotland) Act 2005, the applicant sought to operate a licensed entertainment marquee with an open bar between Thursday 15 and Friday 16 June 2017 with operating hours of Thursday 15 June 12.00 midday to 01.00am, Friday 16 June 10.00am to 01.00am. The location of the marquee was a private garden in Selkirk town centre, which was surrounded by residential properties. This posed a risk of public nuisance from the disco, live music and patrons dispersing from the venue. The applicant had used an old application form which did not seek additional information in relation to the description of activities and children and young people which was contained in the current application form. As a result there was no indication as to the expected numbers attending the venue or of the children and young people expected to attend. Also there was no indication if SIA stewarding would be in place, which would be expected in these circumstances. The garden area had a 20' drop at one side and although there were railings in place, there appeared to be no measures in place to ensure that anyone attending could not access that section of the garden area, which could pose a risk if any intoxicated person leaned over the railing. In relation to the licensed hours the application was confusing, the applicant had stated in section 5 of the application that local singers and festival music would take place from 08.00am and in section 6 that children and young persons would be present from 08.00am. This was in conflict with the licensed hours the applicant stated in section 4. The Scottish Borders Licensing Board Statement of Licensing Policy, paragraph 7.3 detailed the circumstances when the Board would consider an application for hours commencing prior to 11.00am and in excess of 14 hours in a 24 hours period. However, paragraph 7.5 required applicants to show how they would comply with the Licensing Objectives for such applications. Given the early start and the location being in a residential area, the application was inconsistent with the Preventing Public Nuisance licensing objective. Finally paragraph 12 of the Board Policy stated that the Board should consider the impact of occasional licence applications in relation to the Licensing Objectives and its Overprovision Statement. There were five licensed premises in close proximity to the venue, which might impact on overprovision. For these reasons, and in terms of Section 58(1)(a) of the Licensing (Scotland) Act 2005, Police Scotland objected to the application specifically in relation to the grounds for refusal at Section 59(6)(c) of the same Act in respect of the Securing Public Safety, and preventing Public Nuisance licensing objectives. Further it had come to the attention of Police Scotland that Mr Lightfoot failed to inform the Licensing Board that he had completed his five year refresher training as required by the Act. As a result his personal licence was revoked in 2015. Therefore, on the date stated on the application he was not a competent applicant for the licence applied for. Since this information came to light he had submitted a new application for a personal licence on 22 March 2017.

(b) a letter dated 30 March 2017 from Mr M Wynne. Mr Wynne advised

he objected to the granting of the licence on the following grounds:- in his opinion serious consideration should be given as to this being an appropriate venue for such an event even if the event was thought to be in any way appropriate. The area was surrounded by predominantly residential properties with a few retail outlets. It was situated just off Market Place, Selkirk with at least five other fully licensed premises in the close proximity. The open side of the proposed marquee would look directly across the road to the windows of residential flats. It would be difficult to see how the obvious noise levels would not cause extreme nuisance or disturbance. There was a drop of approximately 20 feet from the proposed location onto the A7 main arterial road with a metal railing along the edge of the garden area. This measured approximately 4 feet high. This caused considerable concern in relation to the safety of the persons attending the event or indeed items falling from the elevated position onto the pavement or roadway below. The main entry to the proposed venue would require customers passing through a residential area with a sheltered housing complex nearby. It would be difficult to see how any noise containment could be achieved. The proposed event was not part of the Official events linked to the Common Riding Celebrations. The applicant stated that he had run a similar event in the past as a private party with no sale of alcohol. In Mr Wynne's opinion a private party in this garden/car park area might well have caused no reported issues in the past. However to try and compare a private party, with those attending being predominantly invited, to an open door event with proposed free entry, free hog roast and the sale of alcohol, is most certainly not a comparable situation. There was adequate fully licensed on-sale premises in the immediate vicinity of the town centre to be able to accommodate those involved in the common riding celebrations. If the entertainment was to be live and discotheque music, Mr Wynne considered it extremely difficult to envisage such an event taking place without a considerable number of complaints from residents in the surrounding properties. The application also indicated Children and Young Persons access with no reference to numbers likely to be attending or whether or not they would be supervised. The hours applied for children and young person's access were 08.00am until 08.00pm. Children and Young Person's access to most licensed premises in the Board's area would be subject to conditions such as dining or attending a pre-arranged private function. In Mr Wynne's opinion Children and Young Person's access to this open event would be inappropriate. Mr Wynne respectfully suggested that granting this licence would be contrary to the Licensing Objectives - Protecting Children From Harm, Preventing Public Nuisance and Securing Public Safety. He concluded by advising that the location was totally inappropriate and not fit for purpose.

(c) letters from Vivien Ross (whose garden was accessed from Chapel Street Car Park Just outside Mr Lightfoot's house) and Mrs Margaret Holroyd (who lived next door to Mr Lightfoot) in support of the application.

Mr Lightfoot was present. The Managing Solicitor advised that Mr Lightfoot wished to table late submissions in the form of brief letters from neighbours supporting the application.

ADJOURNMENT

The meeting adjourned at 11.30am to enable Members to read the additional correspondence.

Mr Lightfoot referred to private parties which had taken place in previous years at the same venue during the common riding. There was no difference in his intentions, although the numbers attending might be less, the entertainment

would be the same. Granting a licence would ensure the event was more controlled. In the past there had been no complaints regarding music or the overspill of people leaving the party. Previously there were no limitations on how much drink those attending could consume. If a licence was granted there would be more control over the sale and consumption of alcohol. He referred to concerns about the safety of the premises and advised although the railings were 4 feet high, he was willing to put in extra precautions if requested. He confirmed that SIA Stewarding would be in place. Members discussed the application.

VOTE

Councillor Weatherston, seconded by Councillor Paterson, moved that the licence be granted with appropriate policies/conditions in place.

Councillor Logan, seconded by Councillor White, moved as an amendment that taking into account the Protecting Children from Harm, Preventing Public Nuisance and Securing Public Safety objectives of the Licensing (Scotland) Act 2005, that the licence be refused.

On a show of hands, Members voted as follows

<i>Motion</i>	-	4
<i>Amendment</i>	-	5

Accordingly the application was refused.

DECISION

AGREED that the application be refused.

PRIVATE BUSINESS

4. **DECISION**

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 14 of Part I of Schedule 7A to the Act.

5. **Minute.** The Board approved the Private Section of Minute of Meeting of 17 March 2017.

The meeting concluded at 12.25 p.m.