

SCOTTISH BORDERS COUNCIL SCOTTISH BORDERS LICENSING BOARD

MINUTE of Meeting of the SCOTTISH BORDERS LICENSING BOARD held via Microsoft Teams on 23 April 2021 at 10.00 am

Present:- Councillors J. Greenwell (Convener), J. Brown, N. Richards, D. Paterson, S. Scott, R. Tatler, E. Thornton-Nicol, G. Turnbull T. Weatherston.

In Attendance:- Managing Solicitor (Property and Licensing), Licensing Services Team Leader, Licensing Standards and Enforcement Officers (I. Tunnah and M. Wynne), Inspector J. McGuigan and PC Sharon Lackenby, Police Scotland, Democratic Services Officer (F. Henderson).

CONVENER

The Convener opened the meeting and welcomed Members of the Licensing Board and members of the public to Scottish Borders Licensing Board's open on-line meeting. He explained the meeting was being held remotely in order to adhere to guidance on public meetings and social distancing currently in place due to the Covid-19 pandemic.

1.0 MINUTE

The Minute of Meeting of 26 March 2021.

DECISION APPROVED.

2.0 LICENCES DEALT WITH UNDER DELEGATED POWERS

For Members' information there had been circulated copies of lists of licences dealt with under delegated powers for the period 17 March 2021 to 12 April 2021.

DECISION NOTED.

ORDER OF BUSINESS

The Chairman varied the order of business as shown on the agenda and the Minute reflects the order in which the items were considered at the meeting.

3.0 LICENSING (SCOTLAND) ACT 2005:

Section 20: Application for Provisional Grant/Grant of Premises Licence. Consider the following applications for Provisional Grant/Grant of Premises Licence.

(a) **Cockburnspath Community
Enterprise Limited**

Cockburnspath Community Shop
Callender Place
Cockburnspath
TD13 5XY
Provisional

Self-contained single storey lock up shop unit.

Licensed hours applied for:

Off Sale

Monday to Sunday 10.00am – 10.00pm

On Sale

None

Representations received:

Police Scotland - none

Licensing Standards Officer - none

Health - none

Other - none

There had been circulated copies of an application for the provisional grant of a premises licence together with the proposed Operating Plan and layout plan. Mr Tunnah, Licensing Standards and Enforcement Officer advised that the premises had operated as a village shop for a number of years, however, had not traded for sometime. The Cockburnspath Community Shop Enterprise had been established and it was proposed to offer a full range of products including alcohol. No objections had been raised and Police Scotland had no comments.

The Convener welcomed Mrs Gray, Vice Chair of Cockburnspath Community Shop to the meeting via Microsoft Teams. Mrs Gray advised that a small farm shop had been operating but was outwith the Village and the arrival of the portacabin which would be fitted out as a Village Shop would provide residents with a range of goods including bread, milk, papers, limited alcohol and tobacco.

**DECISION
GRANTED.**

(b) James Henderson

18 Ferniehill Court
Kelso
TD5 7LA
Provisional

The premises is a single room office on the upper floor within a two storey dwelling. The proposal is to use the room as a distribution / dispatch point for remote sales (online and telephone orders) of the Company's alcohol products. Sales to be on an Off-Sales basis only, with no public access to the dwelling.

Licensed hours applied for:

Off Sale

Monday to Sunday 10.00am – 10.00pm

On Sale

None

Representations received:

Police Scotland - none

Licensing Standards Officer - none

Health - none

Other - none

There had been circulated copies of an application for the provisional grant of a premises licence together with the proposed Operating Plan and layout plan. Mr Tunnah, Licensing Standards and Enforcement Officer advised that the Mr Henderson had held a personal licence for many years and provided a bar catering service for large outdoor functions. Mr Henderson was a responsible

licence holder who wished to diversify his business and provide Hampers including alcohol. There would be no public access to the premises. There were no objections and Police Scotland had no comments.

Mr Henderson was unable to attend the meeting due to work commitments and had agreed that Mr Tunnah speak on his behalf.

**DECISION
GRANTED.**

DECLARATION OF INTEREST

Councillor Paterson declared an interest in the following item of business in terms of Section 5 of the Councillors Code of Conduct and left the meeting during the discussion.

4.0 **Section 29: Application for Variation of Premises Licence.** Consider the following application for Variation of Premises Licence (applicant cited to attend.) (Copies attached)

(a) **Anthony Al Khoury** Night Safe Bistro
12 High Street
Hawick

Amendment to licence and operating plan:-

- a change to the core On Sale Hours –

Current On Sale Hours

12.00 noon – 12 midnight Sun
11.00am – 11.00pm Mon to Wed
11.00am – 12 midnight Thurs
11.00am – 1.00am Fri & Sat

Proposed On Sale Hours

11.00am – 12 midnight Sun
11.00am – 11.00pm Mon to Wed
11.00am – 1.00am Thurs, Fri & Sat

- a change to the core Off Sale Hours –

Current Off Sale Hours

None

Proposed Off Sale Hours

11.00am – 10.00pm Mon to Sat

- the addition to the permitted activities referred to in question 5 (columns 2, 3 & 4) of the Operating Plan, to include live performance, both within and outwith core hours.

There had been circulated copies of an application for the variation of premises licence. Mr Tunnah, Licensing Standards and Enforcement Officer explained that the premises, which had previously been a Bank was a sit in restaurant, however during lockdown had been unable to operate as the operating plan attached to its licence did not allow for alcohol to be sold as off sale with the takeaway food service. Following discussion with the Licensing Standards and Enforcement Officer, Mr Khoury had decided to update his operating plan and had included live music which was what had raised the objection from Mr and Mrs Shaw. There were no changes to how the business would be operated. The Police had no comments. There had been one objection received from Mr and Mrs Shaw who occupied the residential premises above the restaurant.

The Convener welcomed Mr Khoury, Applicant and Mr Shaw, Objector to the meeting via Microsoft Teams. Mr Khoury explained that under his current operating plan, he was unable to sell alcohol with takeaway food. Mr Khoury was therefore updating his

operating plan which included Live Music, should he wish to provide live music in the future, there was currently recorded music which was included in the operating plan.

Mr Shaw explained that on discussion with Mr Khoury, he had advised that there would be no live music and that was all well and good, however Mr and Mrs Shaw were concerned that should Mr Khoury change his mind or the premises change hands there would be no recourse. Mr Shaw went onto advise that alterations had recently been carried out at the restaurant, which included the removal of the false ceiling, resulting in noise carrying up to the premises above, which he felt would increase should live music be allowed. Mr Shaw confirmed that he did not have an objection to the application per se but only to the possibility of live music being provided.

Mr Khoury confirmed that the false ceiling had been removed and that sound proofing had been installed. Following considerable discussion, Mr Khoury agreed to remove the request for Live Music and the Committee unanimously agreed to grant on that condition.

DECISION

GRANTED as amended that the request of live music be removed.

5.0 Section 33: Application for Transfer of Premises Licence

There had been circulated copies of an application to Transfer the premises Licence in respect of the Eildon Centre, Coldstream from Mr Derek O'Donnell to Mr Donald Moffat together with a letter from Melrose & Porteous, Solicitors & Estate Agents dated 15 April 2021.

The Convener welcomed Mr Moffat to the meeting via Microsoft Teams. Mr Moffat explained that he owned the property and had leased it to Mr O'Donnell in whose name the current Premises licence is held but who was no longer the tenant of the premises. Members were advised that Section 34 of the Licensing (Scotland) Act 2005 makes provision for a person other than the licence holder to make application to transfer the licence. The letter submitted by Mr Moffat's legal agents, Melrose & Porteous confirmed the position as stated by him in support of the transfer so that he could continue to operate his property as a licensed premises.

In the circumstances detailed and taking into account that Mr Moffat had previously held a Personal Licence with no concerns, the Committee agreed to grant the transfer.

DECISION

GRANTED.

URGENT BUSINESS

Under Section 50B(4)(b) of the Local Government (Scotland) Act 1973, the Chairman was of the opinion that the item dealt with in the following paragraph should be considered at the meeting as a matter of urgency, in view of the need to make an early decision or to keep Members informed.

6.0 HOSPITALITY RE-OPENING

The Managing Solicitor (Property and Licensing) advised that as lockdown eased, the covid regulations would change on 26 April 2021. Some licensed premises had outside areas in their operating plan but others did not and he was seeking approval from the Committee to allow applications for occasional licences to be fast tracked for those within the Board's Policy Statement requirements where outside areas are not included within their premises licence operating plan as restrictions are eased. Table service would be a

requirement and the licensing team were anticipating a number of applications. There had been discussion with Police Scotland and Inspector McGuigan outlined the measures in place as hospitality venues were opened. The members requested that the implications for the use of outdoor spaces be communicated on their behalf and officers confirmed that the trade were provided with regular updates impacting on their business operation.

**DECISION
AGREED**

- (a) **that applications for occasional licence received in respect of unlicensed outdoor areas be fast tracked by officers where they are in line with the Board's Policy Statement**

- (b) **That changes impacting on the operation of licensed premises continue to be communicated to affected businesses**

PRIVATE BUSINESS

Before proceeding with the private business, the following motion should be approved:

“That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 14 of Part 1 of Schedule 7A to the aforementioned Act.”

7. **MINUTE**

The private Minute of Meeting of 26 March 2021 had been circulated.

**DECISION
APPROVED.**

The meeting concluded at 10.53 a.m.