

**MINUTES OF THE MEETING OF  
EAST LoTHIAN LICENSING BOARD**

**THURSDAY 12 JULY 2012  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Board Members Present:**

Councillor J Goodfellow (Chair)  
Councillor D Grant  
Councillor W Innes  
Councillor F McAllister  
Councillor S Akhtar

**Clerk of the Licensing Board:**

Mrs K MacNeill, Depute Clerk

**Attending:**

Mr J Murdoch, Building Standards Manager  
Mr F Mackay, Principal Environmental Health Officer  
Mr R Fruzynski, Local Licensing Officer  
Insp G Tennant, Lothian & Borders Police  
PC J Leslie, Lothian & Borders Police  
Ms D Richardson, Licensing Admin Officer

**Committee Clerk:**

Mrs F Stewart, Committees Assistant

**Apologies:**

None

## **1. APPLICATION FOR OCCASIONAL LICENCE**

### **(i) Martin Gach – Spiegel Tent, Harbour, North Berwick (Fringe by the Sea event)**

The applicant, Mr Martin Gach, was present.

The Clerk advised that the applicant had applied for an Occasional Licence for the duration of the Fringe by the Sea event, 6-12 August 2012, to permit the sale of alcohol between 11am and 2am each day. In their letter of 27 June 2012, the Police had objected to the hours sought, requesting a terminal hour Monday to Wednesday of 23.00, Thursday to Saturday 01.00 and midnight on Sunday. The Police had also suggested a number of Conditions should the licence be granted.

The applicant explained that a licence until 2am would provide a 'cool down' period for patrons following late night shows, when they can discuss the evening's entertainment. Last year he had been granted a licence until 1am and there had been no complaints of noise. He advised Members that he was working with taxi companies to ensure that patrons left the premises safely and quietly and there would be stewarding on the perimeter to ensure that no-one without a ticket entered. He added that there would be a Personal Licence Holder on duty at all times and that the premises would not necessarily stay open until 2am every evening.

The Police Inspector stated that there were concerns associated with premises having a licence until 2 am, especially on week days. He therefore requested that the applicant revised his application to accord with the policy hours.

The Licensing Standards Officer reported that there had been no problems during this event in 2011 and he therefore had no objection to the hours applied for. He did, however, recommend that if the licence was granted, alcohol was only served until 1.30 am. The applicant agreed to this request.

Councillor Innes was pleased to support this application, describing the Fringe by the Sea as an important festival which attracted many visitors to East Lothian.

### **Decision**

The Licensing Board agreed to grant the Occasional Licence as requested, subject to the following Conditions:

1. The Spiegel Tent, Yurt Marquee and any licensed area around it should be clearly delineated and stewarded by the organiser to ensure that there is no underage persons drinking within the licensed area or marquee and that no alcohol is taken from this area.
2. Access to the bar should be restricted to persons of the age 18 years and over i.e. no children or young persons to be permitted within 1.5m of the bar.
3. Appropriate signage must be clearly displayed within the marquee, relative to age restrictions and the relevant conditions of the licence. Signage should clearly identify:
  - a. No under 18s served alcohol
  - b. Persons who appear to be under the age of 25 will be asked to provide identification

- c. The specific opening and closing times of the bar
  - d. Responsible drinking message
  - e. No smoking signs
4. There should be a personal licence holder present at all times.
  5. Plastic drinking containers should be used throughout the duration of the event.
  6. All reasonable requests made by the Police should be complied with.

**(ii) Martin Gach – Blackadder Church, North Berwick (Fringe by the Sea event)**

The applicant, Mr Martin Gach, was present.

The Clerk advised that the applicant had applied for an Occasional Licence for the duration of the Fringe by the Sea event, 6-12 August 2012, to permit the sale of alcohol between 11 am and 12 midnight each day.

The applicant advised that he had reconsidered this application and was happy to comply with the Police recommendation that the terminal hour be changed to 11 pm each day.

**Decision**

The Licensing Board agreed to grant the Occasional Licence as requested, subject to the Conditions below:

1. Access to the bar area should be restricted to persons of the age 18 years and over i.e. no children or young persons to be permitted within 1.5m of the bar.
2. Appropriate signage must be clearly displayed within the bar area, relative to age restrictions and the relevant conditions of the licence. Signage should clearly identify:
  - a. No under 18s served alcohol
  - b. Persons who appear to be under the age of 25 will be asked to provide identification
  - c. The specific opening and closing times of the bar
  - d. Responsible drinking message
  - e. No smoking signs
3. There should be a personal licence holder present at all times.
4. All reasonable requests made by the Police should be complied with.

**(iii) Ian Rennie – Shed at Belhaven Fruit Farm, Dunbar (Beer and Cider Festival)**

The applicant, Ian Rennie, was not present.

The Clerk advised that a number of issues concerning this application, for an Occasional Licence for the period 27-29 July 2012, had now been resolved. The applicant had amended his application, reducing capacity to 680 and changing the hour by which children must leave the venue to 8 pm.

Both the Police and the Licensing Standards Officer had met with the applicant and had no objections to the application, subject to Conditions being met.

### **Decision**

The Licensing Board agreed to grant the Occasional Licence as per the amended application, subject to the Conditions below:

1. Access to the bar area should be restricted to persons of the age 18 years and over i.e. no children or young persons to be permitted within 1.5m of the bar.
2. Appropriate signage must be clearly displayed within the bar area, relative to age restrictions and the relevant conditions of the licence. Signage should clearly identify:
  - a. No under 18s served alcohol
  - b. Persons who appear to be under the age of 25 will be asked to provide identification
  - c. The specific opening and closing times of the bar
  - d. Responsible drinking message
  - e. No smoking signs
3. There should be a personal licence holder present at all times.
4. All reasonable requests made by the Police should be complied with.
5. Positive measures of entry control should be introduced to prevent uninvited persons gaining access to the event. Legislation on the stewarding of events should also be observed.

## **2. VARIATION OF PREMISES LICENCE**

### **(i) Winton House – Pencaitland, East Lothian**

The Deputy Manager, Morag Morrison, was present.

The Clerk advised that this application had been continued from the Board's meeting on 28 June 2012 to allow a representative from Winton House to attend today's meeting and explain to Members the reason why they wished to change their terminal hour from 11pm to midnight every day.

Ms Morrison stated that Winton House was a family home first and foremost in the market for hosting private and corporate events. She advised that every event was run by an event organiser and the departure of all guests was by pre-arranged transport. She reported that there had been a change in their clientele with more European clients making reservations and often arriving between 8 and 9 pm, impacting on what the management was able to offer guests. Enquiries were increasing and there was a need for the business to remain competitive.

Management also worked with the Economic Development Unit to bring benefits to the local economy.

The Police Inspector referred to the Divisional Licensing Officer's letter of 5 June 2012, pointing out that the request was outside Board Policy.

The Licensing Standards Officer had no objections to the application. He acknowledged that the request was outwith Board Policy but he was satisfied that Winton House was a well run establishment. There had been no reports of noise nuisance from the premises in the past and he did not anticipate that the additional hour in the evening would make a material difference.

Councillor Grant, Local Member, declared his support for this application and was pleased to hear that the management of Winton House was seeking to attract more visitors.

### **Decision**

The Licensing Board agreed to grant the variation in Premises Licence.

## **3. REVIEW OF PREMISES LICENCE**

### **(i) Martin McColl Ltd – 160 High Street, Musselburgh 55 Delta Drive, Musselburgh**

Mr Philip Knight, solicitor, was present to represent Martin McColl Ltd. Mr William Morrison, Area Manager for R S McColl, was also present.

The Clerk advised that the Police had requested a review of the above premises licence following receipt of a letter dated 24 May 2012 advising that the licence holder had been found guilty of two offences in May 2012.

Mr Knight advised that the two offences relating to Health and Safety had taken place in Cornwall. He added that no offences had been committed in Scottish stores and recommended that no further action was taken.

### **Decision**

The Licensing Board agreed to take no further action. The Convenor commented that he hoped that Scottish Ministers would take steps to amend the legislation to avoid the expense and inconvenience of cases such as these coming before the court in future.

### **(ii) Tesco Stores Ltd – Olive Bank Road, Musselburgh Tantallon Road, North Berwick Newton Port, Haddington**

There was no representative present on behalf of Tesco Stores Ltd.

The Clerk advised that the Police had requested a review of the above premises licences following receipt of a letter dated 19 April 2012 advising that the licence holder had been found guilty of an offence in March 2012.

The Licensing Standards Officer, who had been in contact with the licence holder, advised that the conviction was local to one store in England and would not impact upon trade in East Lothian.

### **Decision**

The Licensing Board agreed to take no further action.

### **(iii) Macmerry Miners Welfare & Social Club**

John Bett (Solicitor), Ruth Nisbet (Secretary), Robert Nisbet (Vice President), and Isobel Redpath (Bar Manager), were present.

The Clerk advised that the Police had requested a review of the Premises Licence issued to Macmerry Miners Welfare and Social Club under Section 36(3)(b) of the Licensing (Scotland) Act 2005.

The Police Inspector stated that the Club had breached the Conditions of its licence and summarised the main points from the report which had a detailed summary of incidents attached. It was a particular concern that one entry in the report noted that club members had refused to accept Police advice and had indicated that they would continue to operate the club in conflict with the conditions of their licence. The Inspector advised that the Police had never before requested a review of a club licence in East Lothian, but in this case, they had no alternative but to bring matters to the attention of the Board. In conclusion, he stated that incidents occurring within the vicinity of the premises had demonstrated an unacceptable level of noise, nuisance, disorder, antisocial behaviour and unwillingness of Committee Members to co-operate with Police and Council officials, in contravention of the Scottish Government's licensing objectives.

The Licensing Standards Officer concurred with the Police report. He had submitted his own report to Members and had nothing further to add.

Mr Bett addressed a number of the issues raised in the Police report. Firstly, he challenged the Police's claim that committee members had not complied with Licensing (Clubs) (Scotland) Regulations 2007. He stated that Condition 6 of their licence, restricting the number of guests members could sign in to 6, was *ultra vires* (outwith the power of the Board), citing a successful appeal by Brightcrew Limited against the City of Glasgow Licensing Board. He therefore submitted that the Board had no authority to enforce this condition. Police had advised that the correct procedure for facilitating birthday parties at the Club was to seek an Occasional Licence for each event. However, he claimed that restricting clubs to 12 Occasional Licences per annum was unreasonable.

Secondly, he addressed the issues raised concerning the Signing In book at the Club. He stated that members recognised that there had been failings in this respect in the past, but he reported that new procedures were now in place. Mr Bett also responded to allegations concerning the acceptance of new members, events hosted by non-members, issues surrounding the late night dispersal of patrons from the club and underage drinking. He reported that social memberships were no longer available and staff were now pro-active in ensuring an orderly dispersal of patrons. The Club strenuously denied that any underage drinking had taken place on the premises and he pointed out that neither the club nor staff members had ever been charged with such an offence. Mr Bett also advised that the Club proposed to

appoint a Licensing Liaison Officer as a point of contact for the Police and the Licensing Standards Officer and was seeking quotations for CCTV. In light of his submission, Mr Bett requested that the Board take no further action.

The Police Inspector responded to a number of claims in Mr Bett's statement and Mr Bett provided further details in response to questions from Members.

Members withdrew to discuss the matter further in private.

### **Decision**

The Licensing Board considered that the incidents reported by the Police and Licensing Standards Officer in relation to this premises were serious. They did not accept Mr Bett's assertion that limiting the number of people a member could sign in to 6 was *ultra vires*. They considered that this Condition on their licence was defensible and was not affected by the Brightcrew decision. The reason for the imposition of the condition was directly related to the sale of alcohol and the licensing objectives of preventing public nuisance and preventing crime and disorder.

The Chair indicated that the Board had considered suspending the licence but instead, it would issue a written warning under Section 39 (2)(a) of the Licensing (Scotland) 2005 Act. The Chair also called for reports in 6 months time and looked forward to receiving evidence of an improvement in the affairs of the club in that time.

The Licensing Board agreed to a Variation of Licence to include the following Conditions:

1. The Club must appoint a Licence Liaison Officer by 31 July 2012 and the appointed person must undergo appropriate training.
2. The Club must give 7 days' notice to Police and the Licensing Standards Officer of any 18<sup>th</sup> or 21<sup>st</sup> birthday parties.

## **4. REVIEW OF PERSONAL LICENCE**

### **(i) John Clark – Musselburgh**

The Personal Licence Holder, Mr John Clark, was not present.

The Clerk advised that Mr Clark had contacted the Licensing Office to advise that he would be unable to attend today's meeting. Mr Clark had been present at the June meeting of the Board and had made a statement in respect of the Review of Premises Licence concerning the Auld Brig Tavern in Musselburgh.

Members considered whether to proceed with the Hearing today or to continue the matter. The Chair then advised that the Board would proceed with the review in Mr Clark's absence.

### **Decision**

The Licensing Board agreed to suspend Mr Clark's Personal Licence for a period of 6 months from today's date.

**(ii) William Hogg – Musselburgh**

The Personal Licence Holder, Mr William Hogg, was present.

The Clerk advised that Mr Hogg was the Bar Manager of the Auld Brig Tavern in Musselburgh that had been the subject of a Review of Premises Licence at the June meeting of the Board.

The Police Inspector outlined his concerns relating to a number of incidents that had taken place at the Auld Brig Tavern while Mr Hogg, the designated premises manager, had been on duty. The Inspector considered that it was the responsibility of the Personal Licence Holder to be more pro-active in challenging situations. He advised that the Auld Brig Tavern now had new tenants and it was established that Mr Hogg was still employed there.

Mr Hogg indicated that he would wish to keep his Personal Licence and explained the circumstances surrounding his actions.

**Decision**

The Licensing Board agreed to take no further action.

**ADDITIONAL ITEM OF BUSINESS (Tabled)**

**APPLICATION FOR EXTENSION OF LICENSED HOURS**

**(i) Dolphin Inn, 10 Whitecraig Road, Whitecraig**

The Clerk stated that an application had been received from the Dolphin Inn requesting an extension of licensed hours on Saturday 28 July 2012 between 9am and 11am to permit guests to watch the annual rideout which forms part of the Honest Lad and Lass celebrations. She advised that Councillor McNeil had written in support of the application pointing out that it was a private event for invited guests only. She also advised that the Police objected to the grant of this licence.

The Police Inspector confirmed that he did not approve of early opening and that the hours were outside Board Policy.

The Licensing Standard's Officer reported that no problems had been reported at this event last year and he did not object to the grant of this licence.

**Decision**

The Licensing Board agreed to grant the application.