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**POLICE  
SCOTLAND**

Keeping people safe

CHIEF CONSTABLE'S REPORT TO THE  
EAST LOTHIAN LICENSING BOARD  
FOR THE PERIOD  
1<sup>ST</sup> April 2013 to 31<sup>ST</sup> March 2014

## **NOT PROTECTIVELY MARKED**

### **Foreword**

It gives me great pleasure to present my Annual Report for 2013/14, in accordance with section 12 A Licensing (Scotland) Act 2005.

Since April 2013 Police Scotland has faced and overcome many challenges set against a backdrop of competing demands, budget constraints and organisational change. However, throughout this period we have remained focussed on delivering a local service that addresses local issues and needs, balanced against national priorities.

To date our success speaks for itself with crimes of violence now at it lowest recorded level in 38 years, in addition to a reduction in disorder and antisocial related offences. This is welcome news and means that there are now fewer victims of crime living and working in Scotland. However, there is no room for complacency and what is evident is that the link between alcohol misuse with incidents of crime and offending; victimisation and health related harm continues to negatively impact on individuals, families and communities on a daily basis.

Police Scotland can, however, continue to make a difference and working collaboratively with the licensed trade, partners and local communities we will continue to strive towards improved standards and compliance across the licensed trade; address business practices that result in excess alcohol consumption and vulnerability; address the sale and supply of alcohol to children and young people and identify and tackle localities most affected by the misuse of alcohol and related incidents of crime and offending. In addition, Police Scotland will continue to support both our partners, in terms of health promotion and improvement, and legitimate local traders who make a positive contribution to local economies and communities.

Throughout 2013/14 Police Scotland has been working steadily towards harmonising our approach towards licensing, balanced against the need to deliver a local service that reflects and addresses local issues and concerns. Our focus has centred on enforcement activity, complemented and supplemented by a number of supportive prevention and intervention measures, designed to improve licensing standards, reduce violence and positively influence behaviour and cultural attitudes across Scotland.

This report outlines what activity has been undertaken over the last twelve months for East Lothian and what steps we will take in 2014/5 to ensure we continue to improve on our performance and positively improve the lives of the people of Scotland - keeping people safe.

Sir Stephen House QPM  
Chief Constable  
Police Scotland

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## **Police Scotland Licensing Overview**

### **Structure**

Following the inception of Police Scotland in 2013; a two tier structure for Licensing was adopted, to support both national and local priorities and service delivery.

A national licensing policy unit (NLPU) which sits within Licensing and Violence Reduction Division has overall responsibility for determining and delivering national licensing strategy and policy. The NLPU also provides advice and support to Divisional Licensing teams as well as other specialist functions.

Dedicated Licensing teams are located in each of the 14 local Divisions and are responsible for the day to day management of licensing administration, complying with statutory requirements as well as addressing any issues that may arise within licensed premises within their local area.

### **National perspective**

Licensing and Violence Reduction Division.

Licensing and Violence Reduction Division (LVRD) is a specialist division which, as stated, exists to support each of the 14 divisions across Police Scotland. Working with divisional licensing teams we shape the policy and strategy around the police licensing function.

The licensing policy unit provide practical and tactical advice and support to operational officers, supervisors, commanders and police licensing practitioners on actions that can contribute to the safe and legitimate operation of premises licensed to sell alcohol.

We seek to ensure that legislation governing the sale and supply of alcohol is applied consistently across each division and that all opportunities are taken to address the illegal or irresponsible sale, supply or consumption of alcohol. This is with the intention of preventing violent crime and disorder. The application of alcohol legislation continues to evolve through case law and statutory instruments. As such policing tactics require to be continually developing to keep pace with these changes.

All of this activity is done in support of the National Police Scotland priorities;

## **NOT PROTECTIVELY MARKED**

### **National Priorities:**

Reduce violence, disorder and antisocial behaviour  
Protect the public  
Increase road safety and reduce road crime  
Tackle serious and organised crime and terrorism  
Effectively police major events and threats  
Maintain high levels of public confidence in policing  
Deliver our equality and diversity outcomes

The licensing policy unit currently has a focus on the following priorities;

### **Effectively police major events and threats**

Events and festivals around the country where alcohol is supplied are placing increasing demands on policing. As we strive to protect the public it is recognised that the management of alcohol consumption is a crucial part of event management.

Experiences from events have informed the view that there should be a move towards agreed alcohol management plans which set out how alcohol sale and supply and alcohol risk are to be controlled.

It is intended that these plans should be made available to the licensing board and will form the basis of any enquiry the board make following an application. This will allow the board to set expectations around public safety and reduce the impact some events might have on the wider community.

### **Reduce violence, disorder and antisocial behaviour**

LVRD will scrutinise the most serious incidents of violence and disorder linked to licensed premises to inform the tactics the police might develop and use to solve the underlying problems causing these incidents. Engagement with the affected licensed premises whilst attempts are made to identify the solutions to identified problems. This activity is reported to the Chief Constable on a weekly basis.

The NLPUs are currently developing partnerships, which will assist in a better understanding of the challenges faced by the licensed trade. Where possible there will be engagement with premises and companies which rarely come to the attention of the police. This is with the intention of identifying good practice and the hope that this can be shared across the trade. This approach will enable Police Scotland to further work together with local communities and key partners preventing alcohol related crime and offences

## **NOT PROTECTIVELY MARKED**

### **Tackle serious organised crime and terrorism**

LVRD identifies opportunities to impact on serious and organised crime groups who may seek to exploit the licensed trade, either by making attempts to become involved in the running of, or ownership of 'legitimate' enterprises, or by seeking to influence or intimidate legitimate operators in furtherance of their criminal enterprises.

The licensing policy unit has identified that there are considerable opportunities to impact on organised crime groups in our communities. There has been a concerted effort made to research and engage key stakeholders involved with the regulation of businesses such as HMRC and the Insolvency Service in order to map out how information gleaned by each agency can be fused together towards a focussed joined up disruption against SOCG licensed businesses.

Working in collaboration with the Police Scotland, Organised Crime and Counter Terrorism Interventions Unit, ways to deter serious and organised crime groups from gaining access to legitimate licensed premises have been identified as have methods of disrupting them within or depriving them of already established businesses.

To this end the Licensing Policy Unit has developed staff in terms of Intelligence and Financial Investigation disciplines in order to develop intelligence about organised crime groups involved in licensing and also to initiate money laundering enquiries where unlawful conduct and recoverable assets are identified through the licensing process. There is close liaison with the Civil Recovery Unit at the Crown Office where licensed premises have in the process of enquiries been identified as a vehicle for unlawful conduct and fraud.

### **Strategic Focus 2014 - 2015**

With the intention of harmonising licensing practice across the country, Police Scotland has introduced training and seminars, which will ensure there is continuous professional development for staff in licensing departments.

Inn Keeper software has been purchased by Police Scotland and will be available for use across Scotland from late spring in 2015.

The licensing policy unit will continue to support the operational activity of licensing teams across Scotland as we look to develop a consistent standard in relation to reporting to licensing boards and the application of the Licensing (Scotland) Act 2005.

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## **NOT PROTECTIVELY MARKED**

### **East Lothian Licensing Board Area.**

The Licensing Board area is policed by J Division, the Lothian's and Scottish Borders Division, which includes West, Mid, East Lothian and the Scottish Borders.

Chief Superintendent Imery is the Divisional Commander who has the responsibility for all day-to-day policing functions.

The Local Area Commander Chief Inspector Andrew Clark is based at Haddington. He is responsible for performance management, community engagement, partnership working and the daily management of local personnel.

Mr Clark is supported by two sector Inspectors, Andrew Harborow who is based at Tranent and Alan Hogarth who is based at Haddington.

The East Lothian Licensing Boards are attended by either Inspector Harborow or Inspector Hogarth.

### **Local Policing Priorities**

Following our public consultation process, the policing priorities for East Lothian, as set out in our Local Policing Plan 2014 are as follows;

- Reducing Antisocial Behaviour
- Tackling Substance Misuse
- Reducing Violence
- Protecting People
- Tackling Serious & Organised Crime
- Making our Roads Safer
- Reducing Housebreaking

The Command Area of East Lothian serves 101,360 local residents along 40 miles of coastline and in an area covering 262 square miles. The policing headquarters sit in the historic market town of Haddington.

## **NOT PROTECTIVELY MARKED**

### **OPERATION OF THE LICENSING (SCOTLAND) ACT 2005**

The Licensing Department in East Lothian consists of one Constable based at Haddington Police Station.

A Sergeant, Inspector and Chief Inspector are based at Dalkeith Police Station and provide additional licensing support.

The Licensing Officer is responsible for processing all correspondence received from the Licensing Board. The officer reviews applications on behalf of the Chief Constable as part of the consultation process in conjunction with the Area Commander.

This consultation process forms part of the Police support of the Licensing Objectives.

This section concentrates on how the Act has been applied to support the Licensing Objectives and the Local Policing Plan for East Lothian.

#### **Summary**

The following objections/representations and reviews have been submitted.

<b>Objections / Representations &amp; Licence Reviews</b>		<b>Total</b>
Section 22 Objections / Representations		<b>49</b>
Premises Licence (Sec 36)	On Sale	<b>0</b>
	Off Sale	<b>1</b>
Personal Licences (Sec84A)	On Sale	<b>0</b>
	Off Sale	<b>1</b>

In East Lothian there were 527 reported incidents in licensed premises between 1<sup>st</sup> April 2013 and 31<sup>st</sup> March 2014, this is a decrease on previous years. The proactive use of exclusion orders and anti social behaviour legislation has contributed hugely to this reduction.

During this period there was 1 Premises Licence Review and 1 Personal Licence Review following an incident, which involved the sale of alcohol to a minor in the Wallyford area. The Boards decision to suspend the licence in this case sent a clear message to the licensed trade that this type of irresponsible sale would not be tolerated in East Lothian.

There was another premises closed due to the company holding the premises licence being dissolved. This resulted in 3 persons being charged with a contravention of Section 1 of the Licensing Scotland Act 2005 and a report being submitted to the Procurator Fiscal.

## **NOT PROTECTIVELY MARKED**

### **East Lothian Licensing Board Statement of Licensing Policy (2013-2016)**

The East Lothian Licensing Board Statement of Licensing Policy was also updated during this reporting year to include a statement in relation to overprovision in East Lothian. After consultation the Board took the decision that East Lothian had sufficient on and off sales outlets and that there should be a rebuttable presumption against the grant of an application for a new premises licence or the increase in capacity of an existing premises licence within the Board's area as a whole. Police Scotland has welcomed the Board's decision in relation to overprovision.

#### **Problem Solving**

A great deal of work is undertaken to prevent crimes and offences occurring in and around licensed premises. Police Scotland are actively working with the licensed trade to problem solve issues before there is any need for an application to be made for a review of a premises licence.

Police Scotland utilise an intervention process as part of our operational policing toolkit. An intervention is a formal agreement entered into between the licensing department and premises licence holder, designed to assist premises management to reduce alcohol fuelled violence and other incidents of note which are directly linked to their premises. The process involves meeting with those responsible for the premises and agreeing an action plan with crime prevention/reduction recommendations provided by the licensing department in close consultation with the licence holder. This is recorded on an intervention form, a copy of which is given to the licence holder, with the original copy kept for future reference. Every intervention agreement follows SMART objective settings:

Specific  
Measurable  
Achievable  
Realistic  
Timed

The premises would then become 'monitored'. At the conclusion of a mutually agreed period, if there are no further issues identified then the intervention agreement will have been deemed to be complied with and there will be no further requirement for police action. If further incidents of note occur within the premises, or if the licence holder has failed to implement the terms of the intervention, they can expect that the next incident may lead to an application for a review of a premises licence. The intervention document may be presented as evidence as part of an application for a premises licence review. Pending a review hearing the premises would then become 'problematic'.



## **NOT PROTECTIVELY MARKED**

During the period 1<sup>st</sup> April 2013 – 31<sup>st</sup> March 2014 there were  
12 Monitored Premises and  
1 Problematic Premises  
in the East Lothian area.

### **Partnerships**

#### **Events Planning Operations Group (SAG)**

A SAG is a partnership group, which includes representatives from the Police, Council, Fire and Rescue Service, Scottish Ambulance Service as well as the organising agency.

During this reporting year there was a successful SAG in relation to the very high profile event of the 142<sup>nd</sup> Open Golf Championship 2013 at Muirfield, Gullane, which welcomed 142,036 spectators over the course of a week.

The East Lothian licensing officer played an active role in these meetings and was involved in the policing of the licensed bars within the event.

#### **Best Bar None (BBN)**

BBN is a national award scheme supported by the Home Office and aimed at promoting responsible management and operation of alcohol licensed premises. The aim of BBN is to reduce alcohol related crime and disorder in a town centre by building a positive relationship between the licensed trade, police and local authorities.

The process of becoming recognised by BBN includes meeting minimum standards and culminates with an award night with category winners and an overall winner. Responsible operators are recognised and able to share good practice with others.

January 2014 saw two licensed premises in Musselburgh attaining a silver award.

#### **Pub Watch**

Pub watch is an initiative run by local pubs/clubs to tackle crime and antisocial behaviour in and around their premises. The schemes are run by local licensees but are advised by local community police officers.

## **NOT PROTECTIVELY MARKED**

There are a number of pub watch schemes operating in East Lothian all of which are working well and have achieved their goal of reducing risk and maintaining a safe and secure social environment for staff and customers.

RASP – a pub watch scheme covering the Tranent & Musselburgh area is also working with Anti Social Behaviour Teams at East Lothian Council to discuss the possible use of Anti Social Behaviour Orders (ASBO's) against people who persistently flout barring orders imposed by the pub watch.

### **East Lothian Council Anti Social Behaviour Teams (ASBO)**

In April 2013, Police Scotland in conjunction with East Lothian Councils ASB Team saw a Musselburgh resident becoming the first in the county to receive an ASBO barring him from all 'on sales' licensed premises in East Lothian following a series of violent offences committed in and around licensed premises.

Police Scotland is committed to keeping people safe and improving the quality of life for residents in East Lothian.

The following licensing offences have been reported to the COPFS

<b>Number of offences reported to COPFS</b>	<b>Total</b>
Section 1 (Unlicensed sale of alcohol)	<b>2</b>
Section 63 (allowing consumption out with permitted hours)	<b>1</b>
Section 102 (sale of alcohol to a child)	<b>2</b>
Section 105 (sale on behalf of a child)	<b>8</b>
Section 111 (Drunk persons within licensed premises)	<b>0</b>
Section 114 (DPM not to be drunk)	<b>0</b>
Section 115 (Disorderly conduct within licensed premises)	<b>7</b>
Section 116 (Refusal to leave licensed premises)	<b>7</b>

### **Who Are You**

December 2013 saw the introduction of an input by licensing officers, to local pub watches and persons involved in the licensed trade, this related to Rape & Sexual Violence linked to the night time economy and excessive supply of alcohol.

The film was made by an organisation 'Who are you' from New Zealand and is used with their permission and full support.

It is a very worthwhile, ongoing programme that was well received by the licensed trade in East Lothian with a large number participating.

**PREVENTING THE SALE OR SUPPLY OF ALCOHOL TO CHILDREN OR YOUNG PEOPLE**

Police Scotland can make a positive impact on the future outcomes for children and families, by addressing the sale and supply of alcohol to young persons and working with our partners, taking the appropriate action to address both the potential and actual misuse of alcohol within the early years.

**Activity**

Intelligence suggests that children are no longer buying alcohol themselves but utilising 'agents' to purchase alcohol for them or alternatively accessing it from home.

It has become increasingly difficult for children to walk into any 'off sale' premises and purchase alcohol.

The introduction of a 'Challenge 25' policy from 1<sup>st</sup> October 2011 encourages anyone who is over 18 but looks under 25 to carry acceptable ID when they want to buy alcohol. It is a criminal offence to use false or borrowed ID to gain entry to licensed premises or to buy alcohol.

Officers will continue to routinely proactively visit premises licensed for 'off sales' to ensure that they are aware of their responsibilities under the 2005 Act and in particular in the run up to school holidays.

Likewise officers will continue to routinely proactively visit premises licensed for 'on sales' to ensure that management have taken all appropriate measures to prevent the sale or supply of alcohol to young people under age.

The provision of 'Test Purchasing', in terms of Section 105 of the principal legislation, is a tactic that is used where there is an underlying body of evidence to suggest alcohol is being sold from a particular off sales premises to a person under age. Police Scotland, East Lothian Command Area, will continue to consider the use of this tactic as and when required.

There were no Test Purchase operations carried out in East Lothian during the reporting year.

**NOT PROTECTIVELY MARKED**

### **TACKLING SERIOUS AND ORGANISE CRIME (SOCG)**

Serious and organised crime has far reaching consequences that affect a large proportion of society and the economy. Those involved have spread their activity into an increased variety of criminal enterprises including illegal drugs, money laundering, fraud, human trafficking, fake goods, and the licensed trade.

It is important to highlight that all applications submitted in respect of the Licensing (Scotland) Act 2005 are scrutinised in terms of the applicant (whether individuals or companies), the premises and the activity applied for; to ensure that granting the application will not be a contravention of the Act, Board Policy Statement or detrimental in relation to any of the five Licensing Objectives and any connection to Serious and Organised Crime.

This process includes interrogation of police computer systems, checks with external databases e.g. Companies House and, if relevant, scrutiny of financial arrangements. The police licensing officer will thereafter interview individuals. Where the application falls short in respect of any of the aforementioned areas, an objection or representation will be submitted to the East Lothian Licensing Board for consideration.

**NOT PROTECTIVELY MARKED**

**EAST LOTHIAN**

**Meeting 28 May 2015 at 10:00am in Council Chambers, Town House, Haddington, East Lothian**

**Licensing (Scotland) Act 2005**

Variation (Major)(s)	Applicant	Date Received	Comments
1 THE GOTHENBURG THE GOTHENBURG 227-229 HIGH STREET PRESTONPANS EAST LOTHIAN EH32 9BE	CAROL ANNE BLACK	31 March 2015	To vary the licence to add the courtyard as an outside drinking area for alfresco dining from 11am to 9pm, Monday to Saturday & 12.30pm to 9pm on Sunday. Televised sport to be provided during core licensed hours.





**POLICE  
SCOTLAND**

Keeping people safe

Date: 21<sup>st</sup> April 2015

Your Ref:

Our Ref: J/LIC/3705/HB

The Clerk of the Licensing Board  
East Lothian Council  
John Muir House  
Haddington  
East Lothian  
EH41 3HA

The Lothians and Scottish Borders Division  
Dalkeith Police Station  
Newbattle Road  
Dalkeith EH22 3AX

Tel: +44 (0)131 663 2855

Fax: +44 (0)131 654 5507

Textphone: +44 (0)131 311 3944

Email: [LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk](mailto:LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk)

Web: [www.scotland.police.uk](http://www.scotland.police.uk)

Dear Madam

**LICENSING (SCOTLAND) ACT 2005 - REPRESENTATION  
APPLICATION FOR VARIATION – SECTION 29  
APPLICANT: ANNE TAYLOR  
PREMISES: GOTHENBURGH, 227-229 HIGH STREET, PRESTONPANS**

I refer to the above application and in terms of Section 22(1)(b) of the Licensing (Scotland) Act 2005, I make the following representation in relation to the application, with reference to the proposed variation.

The applicant is requesting to licence the outside courtyard area for alfresco dining.

I would request that this area is clearly delineated and kept secure with access to the area being through the licensed premises itself. This is to prevent persons accessing the outside courtyard area from out with the premises and to prevent alcohol being taken from this area into the bylaw area.

It is noted that the terminal hours for the courtyard area would be 2100 hours and the police would support this due to the close proximity of residential properties.

**EAST LOTHIAN COUNCIL  
LICENSING**

**27 APR 2015**

[scotland.police.uk](http://scotland.police.uk)



@PoliceScotland



PoliceScotland

RECEIVED

Submitted for your consideration.

Yours faithfully

A solid black rectangular box used to redact the signature of the Divisional Licensing Officer.

Divisional Licensing Officer



**Winter, Maree**

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**From:** Winter, Maree  
**Sent:** 28 April 2015 08:42  
**To:** [REDACTED]  
**Subject:** Major Variation - Gothenburg  
**Attachments:** gothenburgh layout plan.pdf; Gothenburg - police letter.pdf

Hi

Please see attached letter from Police Scotland regarding your application for the alfresco dining area. I have also attached a copy of the layout plan they want delineated.

Regards  
Maree  
Licensing Admin Assist.  
Licensing, Administration & Democratic Services  
East Lothian Council

# EAST LoTHIAN COUNCIL

## Licensing, Administration and Democratic Services

**From: R. Fruzynski**  
**Licensing Standards Officer**

**To: K. MacNeill**  
**Clerk to the Licensing Board**

**per:**  
**ref:**

**per**  
**ref:**

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Date: 13 May 2015

**Subject: LICENSING SCOTLAND ACT 2005**  
**PREMISES LICENCE APPLICATION (MAJOR VARIATION) – APRIL 2015**

**Premises: The Prestoungrange Gothenburg, 227-229 High Street, North Berwick, East Lothian EH39 4HE**

I refer to the above subject and can confirm that the premises have been visited and inspected in relation to application for a Premises Licence variation.

My comments on this application are as follows:

- The premises are very popular as a restaurant with middle-aged and older patrons. This is not generally a young person's pub.
- The premises are very well managed and there have been no complaints received concerning noise or the general operation of the bar, restaurant or upstairs function suite.
- The management team actively consult the Licensing Standards Officer on a regular basis concerning their licensed activities.
- The application seeks to add outdoor dining facilities in respect of a small number of tables. The licensed area is confined to the east side of the premises, which is bounded by Redburn Road North, and stops approximately 2.5 metres short of a very high rear wall, which divides the Gothenburg from the neighbour's garage and gardens at 2 Redburn Road. A selection of photographs has been included with my report to provide Board members with a better idea of the layout of the area sought to be licensed.
- The area immediately to the rear of the Gothenburg's kitchen, commonly referred to as the Secret Garden, comprises a spacious patio. This area is immediately behind the very high divisional wall, between the pub and 2 Redburn Road. It is not open or accessible to the public and will not form part of the alfresco dining area applied for.
- The delivery gate shown at the south east corner of the proposed dining area has never actually been used to receive deliveries. The reason for this is to provide consideration for the neighbours, to avoid disturbance. All deliveries are accepted via the front door of the premises or via the locked front gate, which is on the High Street.
- It is intended that front gate be kept closed in order that patrons access the premises through one of the two front doors. This will afford staff complete control of entry to the external dining area and prevent nuisance access by unwanted persons.
- As part of the planning conditions for the external area there will be no outdoor entertainment, amplified music, television or the like in the area to prevent neighbour disturbance. In addition planning restrictions already require that no sound of entertainment from inside the premises is

- permitted to be audible in the outdoor dining area.
- In relation to other issues, legislation requires that smoking is prohibited inside premises to which the public are allowed access on payment or otherwise. Smoking is however permitted in all outdoor areas and this would include the proposed uncovered alfresco dining area, even if the tables are covered by parasols.
  - The management has intimated that the capacity of the premises will not be increased as the current capacity of 230 is never realised at any time and it is more likely that diners will, on the limited occasions when the weather is nice, move out of the main dining room into the alfresco area thereby redressing the balance of numbers.
  - On Tuesday 12<sup>th</sup> May 2015, I was invited by the Gothenburg management to a meeting with neighbours to discuss any concerns or objections they had to the proposed variation. On attendance, I learned that the three parties objecting to this application had been in contact and declined to attend as they generally felt that the proposed meeting would not resolve the noise problems they anticipate will occur should this application be granted.
  - A personal licence holder is on duty at all times the premises are open for business.

Following due consideration, I have no objection to this application.

Photographs of the proposed outside dining area are shown below.

Prestoungrange Gothenburg – View from front gate showing the east side of the premises intended to be licensed as an alfresco dining area.



Continued on next page:

Prestounrange Gothenburg – view showing open gate leading into the rear of the premises which is referred to as the Secret Garden. This garden is not accessible to the public, as the gate is always kept closed, and is not part of the area to be licensed.



The houses beyond the Secret Garden are those occupied by the objectors to this application.



Prestoungrange Gothenburg – a view showing the intended alfresco dining area, 2.5 metres in front of the boundary wall with 2 Redburn Road.



R. Fruzynski  
Licensing Standards Officer

**EAST LoTHIAN COUNCIL**

**Internal Memorandum**

**From:** Development Control Manager      **To:** Clerk to the Licensing Board  
**Per:** Neil Millar      **Per:** Licensing Board  
**Cc:**

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**Date:** 4<sup>th</sup> May 2015

**LICENSING (SCOTLAND) ACT 2005**

**Re: Consultation response**

**Address:** The Prestongrange Gothenburg, 227-229 High Street, Prestonpans  
**Application type:** Variation other than a minor variation

In December 2014, planning permission (Ref: 14/00615/P) was granted for a change of use of the external courtyard area to form an outdoor dining area at this premise.

Conditions 1 and 2 of planning permission 14/00615/P state that:

*'The outdoor dining area use approved by this grant of planning permission shall only be used by patrons and staff of the licensed premises between the hours of 1100 and 1800 any day of the week' and,*

*'There shall be no public entertainment, amplified music, amplified vocals or live music played in the outdoor dining area hereby approved and no amplified music, amplified vocals or live music played inside the premises shall be audible in the outdoor dining area'.*

I note that the variation applied for in this licensing application seeks to extend the hours of use of the external outdoor area from 11am to 9pm. Accordingly, a planning application to vary condition 1 of planning permission 14/00615/P would be required in this instance.

## Winter, Maree

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**From:** Grant, Shona  
**Sent:** 08 April 2015 10:12  
**To:** Winter, Maree  
**Subject:** FW: major variation - Gothenburg  
**Attachments:** major variation - gothenburg app..pdf; gothenburgh layout plan.pdf

Maree

I refer to the attached application for a Major Variation of the Premises Licence at The Gothenburg, Prestonpans and would advise as follows.

**The proposed outside dining area is located in close proximity to residential properties and has the potential to cause noise disturbance to those living nearby.**

**I would recommend that the outside area only be utilised until 2000 hours instead of 2100 hours. Furthermore no amplified music or speech permitted in the outside dining area at any time.**

Regards

Shona

Shona Grant | Principal Environmental Protection Officer | East Lothian Council | John Muir House | Haddington | EH41 3HA |  
Tel. 01620 827336 | Email. [sgrant@eastlothian.gov.uk](mailto:sgrant@eastlothian.gov.uk) | Visit our website at [www.eastlothian.gov.uk](http://www.eastlothian.gov.uk)

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**From:** Winter, Maree  
**Sent:** 02 April 2015 11:45  
**To:** Grant, Shona; Devine, Brian; Fairgrieve, Frank  
**Subject:** major variation - Gothenburg

Hi

Please find attached.

Regards  
Maree  
Licensing, Administration & Democratic Services  
01620 827867



**EAST LoTHIAN COUNCIL**  
**ENVIRONMENT**  
**ENVIRONMENTAL HEALTH AND TRADING STANDARDS**

**Internal Memorandum**

**From:** Environmental Health Partnership Manager  
**per:** Andrew Douglas  
**ref:** AD/AC

**To:** Litigation & Licensing  
**per:** M Winter  
**ref:**

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Date: 7 April 2015

**Subject:** Licensing (Scotland) Act 2005  
Section 29 Application for Variation other than a Minor Variation  
The Prestoungrange Gothenburg, 227 – 229 High Street, Prestonpans

I refer to the application dated 27 March 2015 received on the 7 April 2015 attaching a copy of the Application for Variation other than a Minor Variation together with the Layout Plan for the above named premises.

I have no objections to the application for “Variation other than a Minor Variation”.

Andrew Douglas  
Senior Environmental Health Officer

# STATEMENT

The Prestoungrange Gothenburg does not expect to see any change in capacity of customers outwith our current Operating Plan.

After demand during the last 5 years we wish to offer existing customers the opportunity to take refreshments and food in the Spring and Summer months in our Courtyard Alfresco Dining Area, especially our families, John Muir Way walkers and cyclists whom frequent the premises on a daily basis.

Signed.....



Dated. 27<sup>th</sup> MARCH 2015

EAST LoTHIAN COUNCIL  
LICENSING

15 APR 2015

RECEIVED

13.04.2015

Ref:-

KmacN/mjw/EN/L/L1

To Whom it may concern,

Our objections to the Gothenburg getting a license to allow people to drink alfresco in their courtyard.

As dicussed at the meeting for the fine dining license this is just an excuse to create an area to Smoke and drink outside. When they have functions on people have been allowed out in the courtyard and as there is no supervision people just gather there. On one occasion we counted over thirty people gathered in this small walled area, this means that the noise affects the surrounding homes. We ourselves have had to phone the Gothenburg to complain about this noise.

When the license committee visited the Gothenburg for the fine dining license one councillor asked if they where going to serve alcohol and both licensee's said no. It now looks as if this has just been a ploy to further this application. The initial was to serve food till six o'clock now they want the license to nine o'clock

At fine dining site visit I pointed out that it is illiegal to smoke within the curtilage of the building to which the Gothenburg solicitor said it was not. One of the councillors reminded her that I was right and in fact illegal.

Televised sport in the courtyard will also lead to a higher noise level and so more inconvenience to surrounding area. As you are aware a lot of sports such as football,rugby,boxing and others go on past nine o'clock at night. Which begs the question for extentions to show such events. If there is football on the television there will without doubt be youngsters climbing up and sitting on the wall.

On another note is there going to be any supervision on the courtyard as I have already had to chase children of my wall and garage roof, and have been told by parents the kids are only playing.

Before this license is considered I also feel Health and Safety and the Fire and rescue services should be involved as the courtyard is also a means of fire escape route. The number of people in this small should also be taken into consideration.

*Yours Sincerely*

[REDACTED]  
08.05.15

Dear Mrs Black,

With reference to your letter regarding Drinks License. We do not see a meeting would resolve any problems we have regarding noise nuisances or any other problems that we have already stated in our letter of objection.

Yours Sincerely

EAST LoTHIAN COUNCIL  
LICENSING

15 APR 2015

RECEIVED

R.E. VARIATION OF LICENCE TO THE GOTHENBURG.

DEAR MS MACNEILL,

I WISH TO RAISE AN OBJECTION  
TO THE PROPOSED VARIATION OF LICENCE TO THE  
GOTHENBURG, HIGH STREET, PRESTON PANS FOR  
THE FOLLOWING REASONS :-

1) I OBJECTED TO THE ORIGINAL PLANNING  
LICENCE FOR ALFRESCO DINING AS I COULD  
SEE THEIR NEXT MOVE WOULD BE TO APPLY FOR  
A DRINKS LICENCE.

2) THE DINING AREA IS TOO CLOSE TO THE GARDENS  
OF SEVERAL NEIGHBOURS WHICH WILL LEAD TO  
A DISRUPTION TO OUR LIVES FROM EXCESSIVE  
NOISE AND FROM CIGARETTE SMOKE.

P.T.O.

- 3) THE FIRE DOORS WHICH SHOULD REMAIN CLOSED ARE REGULARLY LEFT OPEN, STAFF STAND OUTSIDE DURING THEIR BREAKS AND THEIR CONVERSATIONS CAN CLEARLY BE HEARD.
- 4) TELEVISED SPORT CAN ONLY LEAD TO FURTHER DISRUPTION AS PATRONS WILL MOVE OUTSIDE DURING INTERVALS TO DRINK AND HAVE A SMOKE.
- 5) THE ABOVE OBJECTIONS CARRY PREVIOUS HISTORY AS DURING FUNCTIONS BEING HELD PEOPLE HAVE BEEN OBSERVED MOVING OUTSIDE WITH THEIR DRINKS.
- 6) IT WAS MY UNDERSTANDING THAT UNDER ANTI SMOKING LEGISLATION, SMOKING SHOULD NOT BE WITHIN THE BOUNDARY OF A LICENCED PREMISE.
- FINALLY IT IS MY BELIEF THAT THIS DINING AREA WILL BE USED MORE FOR STOKING AND DRINKING THAN FOR EATING.

YOURS FAITHFULLY,



EAST LoTHIAN COUNCIL  
LICENSING

16 APR 2015

RECEIVED

Dear Sir / Madam,

Licensing (Scotland) Act 2005  
Application for variation (Major)  
Premises - The Goldenburg High St.  
Preston pans.

With reference to the above new amendment I wish to object to the variation to the premises licence.

As I am 90 years old and unable to go out I enjoy sitting at the back door. I feel the noise this would cause would stop me from sitting out.

yours faithfully



East Lothian Licensing Board  
 John Muir House  
 Haddington  
 EH41 3HA

EAST LOTHIAN COUNCIL  
 RECEIVED  
 15 MAY 2015  
 LEGAL & PROCUREMENT

13<sup>th</sup> May 2015

Ref: KMacN/mjw/EN/1/L1

I am writing with regards to the above Application – Variation of Premise Licence  
 The Prestoungrange Gothenburg, 227 – 229 High Street, Prestonpans, EH32 9BE.

We have received copies of the objections from our neighbours. We decided to invite our neighbours along on Tuesday 12<sup>th</sup> May 2015 at 10.30am for a coffee to see if we could maybe alleviate some of their concerns. We also arranged for Mr Rudi Fruzynski as our local Licensing Standards Officer to come along to offer an independent view. Unfortunately they did not wish to attend our meeting. I have enclosed copies of all correspondence. We wish to address their objections prior to our hearing-

Re: [Redacted]

- The main entrance to our function room is monitored every time there is a function by each senior member of staff. We discourage customers from gathering in the courtyard as we are ever mindful of disturbing the neighbours.
- We did not have a solicitor present at the site meeting
- We did not have nor do we have any intension of showing televised sport or having music in our courtyard.
- Our courtyard will be constantly monitored by the staff on duty and the side gate will be closed so the only access will be via the bar or café doors.
- With regards to children being on the wall and garage roof I recall this incident and it was when we were closed as Mr & Mrs Brown informed me that they had had to call the Police.

## The Prestoungrange Gothenburg





Re [REDACTED]

- Mrs Blackley's back garden is separated from the Gothenburg by a garage leading on to a 12ft high wall and also the rear garden of 2A Redburn Road, Prestonpans so it is quite some distance from our Courtyard.

Re [REDACTED]

- Our courtyard is separated from the garden of 2C Redburn Road by a garage leading on to a 12ft high wall and the gardens of 2A & 2B Redburn Road.
- The fire doors are not in the courtyard.
- There will be no televised sport shown or music played in the courtyard.
- We carefully monitor the side doors leading onto the courtyard during functions as we do not want our customers to disturb the neighbours especially when customers are leaving to go home.
- People are allowed to smoke outside.

The Gothenburg over the years has established a well run, family orientated environment and because of a growing demand from our regulars for an outdoor space we now wish to explore and try this new venture of an informal Alfresco Dining area.

We feel as a valuable asset to the community it would be an opportunity to offer our loyal customers the choice of sitting outside a couple of months of the year (weather permitting of course) and enjoy taking food and refreshments in our walled private courtyard.

As always the Management and staff will ensure that The Goth standards are continued as we pride ourselves in being a well run community orientated business. This will always include as standard practice the monitoring of outdoor tables and customers throughout service.

The courtyard will only be accessible via our James Fewell Bar and The Redburn Café doors as the side gates will be kept closed. We have no intension of showing any televised sports or playing music in our courtyard as we are well aware we are part of a residential area and always behave responsibly as a licenced business.

The Prestoungrange Gothenburg

Mr & Mrs D Brown



7<sup>th</sup> May 2015

Dear Mr & Mrs Brown

We are writing to you to extend an invitation to yourselves to meet with myself Carol, Anne & Andrew to listen, and discuss any concerns you may have with our recent application for the use of our Courtyard as an Alfresco food and refreshments are.

We thought it might give us the opportunity to have a chat over a coffee and see if we can resolve and alleviate any problems/concerns you think may arise.

We suggest Tuesday 12<sup>th</sup> May 2015 at 10.30am. The Licensing Standards Officer is also available to come along to our meeting on this day. If this is not suitable for you please contact us on 01875 819922 to arrange another mutually convenient day & time.

Yours sincerely

Prestoungrange Gothenburg

Main Copy

Hand Delivered

7/5/15

MR & MRS J SNEDDEN

[Redacted]

10/5/15

Dear Sir/Madam;

We will be unable to attend the meeting on the Gotherborg on 12<sup>th</sup> May.

We feel that however the Gotherborg address our concerns the fact remains (effresco food and refreshments is only another nuisance for her garden. Have the customers can take their drinks out from the bar to have a smoke instead of going out to the pavement in the main street.

As the courtyard is lower than our gardens my noise and laughter vibrates off the walls then spreads and outwards. Perhaps you should come into our gardens and have a listen.

We have had previous experience of this when there has been events held in the hall. People have come outside with drinks to have a smoke and

the staff have been unaware they were there. Their voice levels increased due to the drink and the language has been deplorable.

Yours faithfully  
[Redacted]

Mr & Mrs Snedden

7<sup>th</sup> May 2015

Dear Mr & Mrs Snedden

We are writing to you to extend an invitation to yourselves to meet with myself Carol, Anne & Andrew to listen, and discuss any concerns you may have with our recent application for the use of our Courtyard as an Alfresco food and refreshments are.

We thought it might give us the opportunity to have a chat over a coffee and see if we can resolve and alleviate any problems/concerns you think may arise.

We suggest Tuesday 12<sup>th</sup> May 2015 at 10.30am. The Licensing Standards Officer is also available to come along to our meeting on this day. If this is not suitable for you please contact us on 01875 819922 to arrange another mutually convenient day & time.

Yours sincerely

Prestoungrange Gothenburg

Main Copy - hand delivered

7/5/15



Dear Mr Black,

I will not be attending your meeting on the 12<sup>th</sup> May 2015 I cannot see any discussion would stop noise nuisance coming from a beer garden, as you are aware there has been problems from this area before. I am 90 years old and not able to get about on my own now, if this plan goes ahead I will not be able to sit out in my back garden

Yours sincerely



Mrs M Blackley



7<sup>th</sup> May 2015

Dear Mrs Blackley

We are writing to you to extend an invitation to yourselves to meet with myself Carol, Anne & Andrew to listen, and discuss any concerns you may have with our recent application for the use of our Courtyard as an Alfresco food and refreshments are.

We thought it might give us the opportunity to have a chat over a coffee and see if we can resolve and alleviate any problems/concerns you think may arise.

We suggest Tuesday 12<sup>th</sup> May 2015 at 10.30am. The Licensing Standards Officer is also available to come along to our meeting on this day. If this is not suitable for you please contact us on 01875 819922 to arrange another mutually convenient day & time.

Yours sincerely

Prestoungrange Gothenburg

Main Copy

Hand delivered

7/5/15

EAST LoTHIAN LICENSING BOARD

LICENSING (SCOTLAND) ACT 2005, SECTION 29  
APPLICATION FOR VARIATION OTHER THAN MINOR VARIATION

This application should only be completed by the Licence Holder of the appropriate Premises Licence or their Agent.

SECTION 1: TYPE OF VARIATION

This application for Variation other than a Minor Variation of Premises Licence is made under Section 29(5) of the Licensing (Scotland) Act 2005 in order to vary-  
(Tick all relevant boxes)

- Any of the Conditions to which the Premises Licence is subject
- Any of the information contained within the Operating Plan
- The Layout Plan
- Any other information contained or referred to in the licence (including any addition, deletion or other modification).

(Provide Details)

.....

SECTION 2: PREMISES LICENCE DETAILS

2(a) Licence Number of Premises

EL042

2(b) Name and Address of Premises

THE PRESTOUNGRANGE GOTHENBURGH  
227 - 229 HIGH STREET  
PRESTONPANS

Post Code	EH32 9BE	Phone No.	01875819922
-----------	----------	-----------	-------------

2(c) Full Name and Address of Current Licence Holder

CAROL ANNE BLACK

3  
H  


Post Code		Phone No.	01875810962
-----------	---	-----------	-------------

**SECTION 3: NATURE OF VARIATION**

Complete the relevant section(s) regarding the variations sought:-

**3(a) Variation to the Conditions to which the Premises Licence is subject**

Provide details of the Condition(s) to be varied and the variation being sought

N/A

**3(b) Variation to the information contained within the Operating Plan of the Premises Licence**

Provide a copy of the proposed operating plan and highlight below the proposed changes. (See Note 1)

**CHANGE TO 5(d) -THE COURTYARD WILL BE USED AS AN ALFRESCO DINING AREA FROM 11AM – 9PM. MEALS & SNACKS WILL BE SERVED IN THE COURTYARD AS WELL AS TEAS/COFFEES, SOFT DRINKS AND ALCOHOLIC BEVERAGES TO ACCOMPANY MEALS & SNACKS. CURRENT ON SALES CONSUMPTION IS STATED AS 230 AND IS UNLIKELY TO CHANGE AS THE ENHANCED FACILITIES ARE DUE TO CURRENT CUSTOMER REQUESTS DURING SUMMER MONTHS. \*STATEMENT ATTACHED**

**CHANGE TO 5(g) – TELEVISED SPORT TO BE PROVIDED DURING CORE LICENSED HOURS - YES**

**3(c) Variation to the Layout Plan of the Premises Licence**

7 Copies of the proposed Layout Plan **must** accompany this application. (See Note 2)

In addition please provide details below of the proposed change to the layout of the Premises.

**THE COURTYARD ALFRESCO DINING AREA TO PROVIDE OUTDOOR FACILITIES FOR EXISTING CUSTOMERS**



**3(d) Variation to any other information contained or referred to in the licence**

Provide details below of any other variation sought to the Premises Licence  
(e.g. Alteration to the description of the premises contained within the Premises Licence)

**SECTION 4: LICENCE TO BE AMENDED**

(See note 3 below)

Does the appropriate Premises Licence accompany this application?

YES

NO

If the answer is **NO**, please provide an explanation.

I am unable to produce the Premises Licence because...

- The licence has not yet been issued by the Board
  - The licence has already been returned to the Board in respect of an earlier application for variation or transfer
  - Other (provide details)
- .....

**SECTION 5: FEE PAYABLE**

The fee payable in respect of the application for variation is **£150**

If the application is submitted alongside an application for Transfer of Premises Licence then the combined fee for both applications will be **£170** (see note 4 below)

If submitted with an application for transfer, please specify the order in which the applications are to be considered-

- Application for Transfer of Premises Licence followed by Application for Variation
- Application for Variation followed by Application for Transfer of Premises Licence

**DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT**

*If signing on behalf of the applicant please state in what capacity.*

I confirm that (a) the contents of this Application are true to the best of my knowledge and belief; and (b) the appropriate fee of £      is enclosed.

Signature



..... (See note 5 below)

Date

..... 27<sup>th</sup> MARCH 2015 .....

Capacity: APPLICANT

**If agent, please provide name, address,  
phone number and (if applicable) email address**

.....  
.....  
.....

**Note 1:**

Please note that the proposed Operating Plan **must** contain any aspects of the current Operating Plan that are to be preserved should the variation be granted. (e.g. If the current Operating Plan allows a premises to have 'live performances' but this is not requested on the proposed Operating Plan then the Licensing Board would view such an omission as a request to have 'live performances' deleted from the Operating Plan of the Premises.)

**Note 2:**

Please refer to Paragraph 5 of the Premises Licence (Scotland) Regulations 2007 regarding the format of Layout Plans.

**Note 3:**

The appropriate premises licence (including summary licence, operating plan and layout plan) must be returned to the Licensing Authority in order that the licence documents can be updated to reflect the details of the variation. If you are in possession of the appropriate Premises Licence but unable to provide said licence with this application, you must ensure the licence is forward to the Licensing Authority within 14 days in order to complete the process of variation.

Please note also that once the variation is completed, any certified copies of the appropriate Premises Licence must also be updated to reflect the details of the variation.

**Note 4:**

This refers to an application to Transfer the Premises Licence made under either Section 33(1) or Section 34(1) of the Licensing (Scotland) Act 2005

**Note 5:**

**Data Protection Act 1998**

The information on this form will be used to update the Premises Licence of the appropriate premises. Accordingly, the information contained on this form may be held on an electronic public register which may be available to members of the public on request.

**Contact Us:**

**East Lothian Licensing Board**  
Licensing Office  
John Muir House  
Haddington, East Lothian  
EH41 3HA

**Phone:** 01620 827217 / 827867 / 820114  
**Fax:** 01620 827253  
**Email:** [licensing@eastlothian.gov.uk](mailto:licensing@eastlothian.gov.uk)

FOR OFFICE USE ONLY		
<i>Received &amp; Receipt No.</i>	<i>System Updated</i>	<i>Licence Issued</i>

**EAST LOTHIAN LICENSING BOARD MEETING**

**28<sup>th</sup> May 2015 at 10am in Council Chambers, Town House, Haddington**

**Licensing (Scotland) Act 2005**

<b>Premises</b>	<b>Applicant</b>	<b>Date received</b>	<b>Comments</b>
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**Application for Premises Licence Review**

<b>2 DAY TO DAY 26-28 BRIDGE STREET TRANENT EH33 1AG</b>	<b>Police Scotland</b>	<b>14<sup>th</sup> May 2015</b>	
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East Lothian Council  
Licensing

14 MAY 2015

RECEIVED



**POLICE  
SCOTLAND**

Keeping people safe

Date: 13<sup>th</sup> May 2015

Your Ref:

Our Ref: J/LIC/3705/HB

The Lothians and Scottish Borders Division  
Dalkeith Police Station  
Newbattle Road  
Dalkeith EH22 3AX

The Clerk of the Licensing Board  
East Lothian Council  
John Muir House  
Haddington  
East Lothian  
EH41 3HA

Tel: +44 (0)131 663 2855  
Fax: +44 (0)131 654 5507  
Textphone: +44 (0)131 311 3944

Email: [LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk](mailto:LothianScotBordersLicensingEastMid@Scotland.pnn.police.uk)  
Web: [www.scotland.police.uk](http://www.scotland.police.uk)

Dear Madam

**LICENSING (SCOTLAND) ACT 2005 – SECTION 36  
PREMISES LICENCE REVIEW APPLICATION  
DAY TO DAY, 26- 28 BRIDGE STREET, TRANENT**

The Chief Constable, in terms of Section 36(1) of the Licensing (Scotland) Act 2005, hereby makes application to the Licensing Board in terms of Section 36(3)(a) & (b) of the Act, for a review of the premises licence in respect of the premises known as Day to Day, 26-28 Bridge Street, Tranent.

The Chief Constable makes application on the grounds that in terms of Section 36(3)(a) of the Act, on grounds that one or more of the conditions to which the premises licence is subject has been breached, namely;

- ***Alcohol is not to be sold on any premises except under and in accordance with a premises licence granted under this Act in respect of the premises.***

Also, in terms of Section 36(3)(b) of the Act, on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely;

- ***Preventing crime and disorder***

The premises operates as a licensed grocers and are licensed to sell alcohol Monday to Sunday 1000hrs until 2200hrs.

Following a transfer application in January 2014, Umar Irshad, born 31/07/1994, 513 Gilmerton Road, Edinburgh became the licence holder.

In support of this application, the following information is provided for consideration.

In terms of Section 105 of the Licensing (Scotland) Act 2005, the Chief Constable may authorise a young person to buy or attempt to buy alcohol to determine whether an offence is being committed.

The use of young persons to conduct test purchase operations provides police with an effective tool in the fight against underage sales and represents an important safeguard against underage drinking and the resultant antisocial behaviour that adversely affect many communities.

A standard operating procedure, which ensures operations are carried out safely, fairly and effectively, was prepared only after consultation with various stakeholders, including:

- Scotland's Commissioners for Children & Young People;
- Society of Chief Officers for Trading Standards in Scotland;
- Association of Chief Police Officers in Scotland;
- Convention of Scottish Local Authorities;
- Scottish Executive Enforcement Advisory Group on Age Restricted Sales; and
- Crown Office.

The operating procedure provides that a test purchase operation may be carried out on premises for any of the following reasons:

- Where there is intelligence to suggest that alcohol is being sold illegally to persons under 18 years of age from specific licensed premises;
- Where there is intelligence indicating that persons under 18 years of age are consuming alcohol in the locality where the licensed premises are situated; and/or
- Where the premises are in a locality in which all premises are being subjected to test purchase operations in a non-discriminatory manner, to raise awareness in relation to the illegal sale or purchase of alcohol in licensed premises.

Young persons recruited as test purchasers must be aged between 16 and 16½ years at the time of a test purchase operation and they are assessed on their appearance, level of maturity and general character prior to deployment. If the officer in charge of an operation believes that the young person looks older than 16½ years of age, the young person will not be used in the test purchase operation.

The test purchaser is told that all questions asked by the seller must be answered truthfully. The test purchaser must state their correct age if challenged and if the initial attempt to buy alcohol is refused, the test purchaser must not try to persuade or coerce staff to make a sale. In short, licensed premises will pass a Test Purchase Operation if they simply challenge the test purchaser regarding his or her age. In addition, compliance with the requirement for licensed premises to have an age verification or "Challenge 25" policy in place and the proper training of staff, in accordance with the legislative provision, will provide premises with further safeguards against failing a test purchase operation.

As such, it was decided to conduct a test purchase operation in the East Lothian area. A total of 5 'off sale' licensed premises were tested within the town of Tranent. Only 1 failed.

The test purchase operative used was a 16 year old female. She was given a full briefing prior to the operation and informed that she must answer any questions required of her by staff truthfully.

About 2100 hours on Saturday 14<sup>th</sup> March 2015, plain clothes officers entered the premises trading as the Day to Day, 26-28 Bridge Street, Tranent to carry out a risk assessment. The test purchaser then entered the shop and selected a bottle of blue WKD from open display and took it to the service counter. She was sold this alcohol by a male now known as Omar Javed who was working behind the counter. The premises licence holder Mr Umar Irshad who was also behind the counter participated in the sale by issuing change to the test purchaser. Neither Mr Omar Javed or the licence holder Mr Umar Irshad asked the test purchaser her age or for identification. The test purchaser left the shop and surrendered the alcohol to plain clothes police officers outside.

Plain clothes police officers then entered the premises and spoke with both males. They informed the licence holder, Mr Umar Irshad and Mr Omar Javed that they had failed a test purchase.

Police officers found the licence holder and male member of staff to be uncooperative throughout. They stated that they were unable to return the marked original £10 noted hand over by the test purchaser, that the tills had been cashed up and they were unable to retrieve it from the safe. They could not provide a till receipt that correlated to the sale of alcohol. The licence holder Mr Umar Irshad, when asked about the CCTV stated that it was not working at the time and so could not provide police with footage of the sale.

The licence holder Mr Umar Irshad when asked, could not produce his personal licence, stating that he did not know where it was, neither could he produce a training record for Omar Javed. Mr Irshad stated that Omar Javed was just a friend who was visiting the shop and did not work there. When police asked Mr Javed his name he refused to give this and after about 10 minutes he eventually produced a drivers licence as identification. The licence holder in this time also refused to give the male member of staffs name and refused to confirm his identity.

The licence holder and Omar Javed were then cautioned and charged with a contravention of Section 102 of the Licensing (Scotland) Act 2005. They were informed that the police would carry out a retest within the next 14 days. The circumstances of this test purchase fail were reported to the licensing officer.

On Wednesday 18<sup>th</sup> March 2015, enquiries were made by the licensing officer with East Lothian Council Licensing Department, when it was established that the premises had been operating without a designated premises manager since 25<sup>th</sup> January 2015. The previous one, Nosheen Iqbal having informed East Lothian Council by way of letter that she was no longer the premises manager. This now was well over the 6 week time scale allowed by the Licensing (Scotland) Act 2005 for the replacement of a designated premises manager.

That same day, the licensing officer, along with the police officers involved in the test purchase operation, attended at the premises. The licence holder Mr Umar Irshad was not present but a female member of staff agreed to contact him. It was explained to the female member of staff that she could no longer sell alcohol, as there was no designated premises manager for the premises. She duly complied with this request.

The licence holder Mr Umar Irshad arrived at the premises a short time later and it was explained to him that because the premises did not have a designated premises manager, that he could no longer sell alcohol until a minor variation had been submitted to East Lothian Council. Mr Irshad appeared to be unaware that the previous designated premises manager, Nosheen Iqbal had left.

Mr Irshad was then asked where his personal licence was, he duly produced this from a back office area within the premises. When asked by the licensing officer what the situation was with Omar Javed who was also involved in the sale, Mr Irshad produced a training record for him, it was noted that this training had been signed off by Mr Irshad himself some months prior.

Mr Irshad was then cautioned and charged with a contravention of Section 93 (duty to produce personal licence), Section 1 (prohibition of unlicensed sale of alcohol) and Section 141B (vicarious liability) of the Licensing (Scotland) Act 2005.

It was reiterated to the licence holder Mr Irshad that he could not sell alcohol until he had appointed a new designated premises manager, by way of a minor variation, to East Lothian Council. Following a phone call to his father, Mr Irshad became very argumentative and stated that paperwork had been submitted to the council and that we were incorrect and that he was the designated premises manager for the premises.

It was explained to the licence holder Mr Irshad that a check had been made with East Lothian Council that morning to confirm there was no current designated premises manager and no minor variation in the process and that he could not sell alcohol until this had been rectified.

The licence holders attitude throughout this visit was very dismissive of the fact he had failed a test purchase and that he was operating without a premises manager.



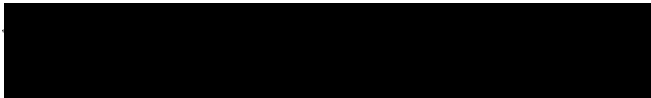
On Thursday 19<sup>th</sup> March 2015, East Lothian Council Licensing Department received a minor variation in respect of the designated premises manager who was to be Nazran Ahmed born 10/04/1970, 513 Gilmerton Road, Edinburgh, Personal Licence Holder EL574.

On Friday 27<sup>th</sup> March 2015, the premises were subject to a re test and subsequently passed on this occasion.

On Monday 13<sup>th</sup> April 2015, the Edinburgh Procurator Fiscal issued a Fiscal Warning to Mr Umar Irshad, in relation to all four offences detected.

The Chief Constable requests that the Licensing Board consider the aforementioned grounds for review and take such steps as it consider necessary or appropriate for the purposes of the licensing objectives under the terms of Section 39(2) of the Act.

Yours faithfully

A solid black rectangular redaction box covering the signature of the Inspector.

Inspector Harborow



**EAST LOTHIAN LICENSING BOARD MEETING**

**28<sup>th</sup> May 2015 at 10am in Council Chambers, Town House, Haddington**

**Licensing (Scotland) Act 2005**

<b>Premises</b>	<b>Applicant</b>	<b>Date received</b>	<b>Comments</b>
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**Premises Licence Review**

3 ELPHINSTONE ARMS MAIN STREET ELPHINSTONE EH33 2LT	Police Scotland	28 <sup>th</sup> February 2015	
---	-----------------	--------------------------------	--



**Our Reference: KMacN/dr/EN/L/Review**

**Date: 27<sup>th</sup> April 2015**

MacDonald Licensing Limited  
21a Rutland Square  
Edinburgh  
EH1 2BB

Dear Sir

**LICENSING (SCOTLAND) ACT 2005 – SECTION 36(3)(b)  
NOTIFICATION OF REVIEW HEARING CONTINUATION  
ELPHINSTONE ARMS – MAIN STREET, ELPHINSTONE**

East Lothian Licensing Board at its meeting held on 23<sup>rd</sup> April 2015 agreed to continue the review hearing for the above Premises Licence to the 28<sup>th</sup> May 2015 Licensing Board Meeting to allow you to consider and take clients instructions of the reports lodged by Building Control and the Fire Service. The Review will now be held in the Council Chambers, Town House, Haddington at 10am.

I attach a copy of the notification letter of 4<sup>th</sup> March and I draw your attention to the 4th paragraph requiring the applicant is to clarify the future management arrangements for the premises to the Licensing Board.

I also attach a copy of the email of 17<sup>th</sup> March that was sent to you and which contained copies of the report from Building Control and the Fire Service, along with a read receipt showing that it was opened by your office.

I also attach a copy of an email of 16<sup>th</sup> April that was sent to you by the Council's committees team that additionally contained copies of the reports in question.

Please note that it is the custom and practice of East Lothian Council and East Lothian Licensing Board to conduct as much of its business by way of email as possible rather than use Royal Mail.

If you have any queries regarding this matter, please don't hesitate to contact me.

An agenda will follow in due course.

Yours faithfully

Kirstie MacNeill  
Clerk to the Licensing Board

**Licensing Office : 01620 827217 / 827867  
E-mail : [licensing@eastlothian.gov.uk](mailto:licensing@eastlothian.gov.uk)**

Cc. Margaret Dodds – 



The Clerk  
East Lothian Licensing Board  
John Muir House  
Haddington  
East Lothian  
EH41 3HA

**10 March 2015**  
**Our Ref: C14/8**

Dear The Clerk

**Elphinstone Arms, Main Street, Elphinstone, Tranent**

I refer to the recent citation for the Review Hearing for the Elphinstone Arms, at the instance of the Police.

I note that the Licensing Board Meeting, later this month, cannot be held on the proposed date of 26<sup>th</sup> March and your proposal was to move this to 25<sup>th</sup> March.


As explained I am unable to attend that day, as I am taking a full Personal Licence Training Course which lasts all day, and is fully booked!

I would request that the Review Hearing be postponed to the April Board, or such other date as the Board consider appropriate.

I am happy to do whatever is necessary to facilitate this, including the waiving of the relevant period during which the Hearing should take place.

Kind regards

Yours sincerely

  
Alistair I Macdonald  
Director

East Lothian Council  
Licensing

19 MAR 2015

Received

## Elworthy, Debbie

---

**From:** Elworthy, Debbie  
**Sent:** 18 March 2015 15:34  
**To:** 'Alistair Macdonald'  
**Cc:** MacNeill, Kirstie; Licensing  
**Subject:** RE: Elphinstone Inn

Alistair

Kirstie is happy to agree to the postponement of the review hearing to the April Board meeting on the basis that you are prepared to waive entitlement for the hearing to take place within the 6 week review request period.

The Board meeting is due to take place on 23<sup>rd</sup> April at 10am in the Town House, Haddington.

Kind Regards

Debbie

Debbie Elworthy (Richardson)  
Licensing Administration Officer  
Licensing, Administration and Democratic Services  
John Muir House  
Haddington  
T. 01620 827217  
E. [delworthy@eastlothian.gov.uk](mailto:delworthy@eastlothian.gov.uk) or [licensing@eastlothian.gov.uk](mailto:licensing@eastlothian.gov.uk)

---

**From:** Jill Carrigan [<mailto:jill@macdonaldlicensing.com>] **On Behalf Of** Alistair Macdonald  
**Sent:** 18 March 2015 13:12  
**To:** Elworthy, Debbie  
**Subject:** Elphinstone Inn

Dear Debbie

I attach a copy of a letter we are sending to you.

Kind regards

Yours sincerely

Alistair I Macdonald  
Macdonald Licensing

Macdonald Licensing (Scotland) Limited (SC388451)  
21a Rutland Square  
Edinburgh  
EH1 2BB

LP182 Edinburgh 2

Tel: 0131 229 6181  
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[www.macdonaldlicensing.com](http://www.macdonaldlicensing.com)

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EAST LoTHIAN COUNCIL

26 FEB 2015

RECEIVED



**POLICE  
SCOTLAND**

Keeping people safe

Date: 12<sup>th</sup> February 2015

Your Ref:

Our Ref: J/LIC/3705/HB

The Lothians and Scottish Borders Division  
Dalkeith Police Station  
Newbattle Road  
Dalkeith EH22 3AX

The Clerk of the Licensing Board  
East Lothian Council  
John Muir House  
Haddington  
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Web: [www.scotland.police.uk](http://www.scotland.police.uk)

Dear Madam

**LICENSING (SCOTLAND) ACT 2005 – SECTION 36  
PREMISES LICENCE REVIEW APPLICATION  
ELPHINSTONE ARMS, MAIN STREET, ELPHINSTONE**

The Chief Constable, in terms of Section 36(1) of the Licensing (Scotland) Act 2005, hereby makes application to the Licensing Board in terms of Section 36(3)(b) of the Act, for a review of the premises licence in respect of the premises known as Elphinstone Arms, Main Street, Elphinstone.

The Chief Constable makes application on the grounds that in terms of Section 36(3)(b) of the Act, on grounds relevant to one or more of the licensing objectives as articulated at Section 4(1) of the 2005 Act, namely;

- ***Preventing Crime and Disorder***
- ***Securing Public Safety***
- ***Preventing Public Nuisance***
- ***Protecting and Improving Public Health***

The premises operates as a licensed public house and is licensed to sell alcohol

Monday to Wednesday – 1100 – 2300  
Thursday to Saturday – 1100 – 0100  
Sunday – 1100 - midnight

[scotland.police.uk](http://scotland.police.uk)  @PoliceScotland  PoliceScotland



The premises are currently closed following an application for review made on behalf of the Chief Constable, which was heard at a Licensing Board Hearing on Thursday 28<sup>th</sup> August 2014. The Licensing Board were satisfied that the grounds for review was established and suspended the premises licence for 6 months.

The following information is provided in support of this review request:

East Lothian Licensing Board granted the transfer of the premises licence to 'Elphinstone Arms Limited' back in February 2010, Margaret and Scott Dodds were both listed as 'Directors' of the company according to Companies House records – SC368929.

In the interim period, this had changed, because on checking Companies House records on 24<sup>th</sup> February 2014 it showed William Dodds listed as the sole Director, Margaret Dodds and Scott Dodds having resigned from the company. East Lothian Council have not been informed of this change in 'connected persons' and so it is unclear as to when this actually happened but Companies House records indicate that it may have been around 28<sup>th</sup> February 2011.

Caledonian Heritable Limited are the 'guarantors' for the property in relation to the bank loan taken out by Scott Dodds who is currently the owner of the property.

In previous years the premises has not come to the attention of the police other than when on the 18<sup>th</sup> November 2011, officers had cause to visit the premises during a police operation, which involved swabbing of toilets within licensed premises for traces of controlled drugs. Police officers attended and swabbed the male toilets for traces of cocaine, this test proved positive on several surfaces in the male toilets and advice was provided to staff at the time, regarding preventative measures that could be carried out (Margaret and Scott Dodds).

On 30<sup>th</sup> December 2011, a similar police operation was carried out within the premises and in the ladies toilet, the test again, proved positive for traces of cocaine.

On 6<sup>th</sup> January 2012, acting on information from reliable sources, a search warrant was granted to search the home address of Scott Dodds, which was the dwelling directly at the rear of the premises, as well as the licensed premises, under the terms of the warrant. At this time a personal amount of diazepam was recovered from Scott Dodd's home address, to which he admitted ownership.

Over the weekend of the 22<sup>nd</sup> and 23<sup>rd</sup> February 2014 there were 2 incidents which occurred within the vicinity of and at the premises, details of which are as follows:

At 2242 hours on Saturday 22<sup>nd</sup> February 2014, a call was received from a member of the public stating that a male, (Scott Dodds) was being assaulted outside the Elphinstone Arms, Main Street, Elphinstone, by two males.

On police arrival the two males had made off but the injured party (Scott Dodds) was traced to within the Elphinstone Arms. An ambulance was contacted but Scott Dodds declined medical attention and refused to give any details to the police as to what had happened stating "he would sort it himself". Scott Dodds was also under the influence of alcohol, having been drinking in the Elphinstone Arms, so arrangements were made to speak with him the following day when he was sober. Subsequently Scott Dodds has refused to give any statement to the police in relation to this incident.

Enquiries were made with the designated premises manager, Margaret Dodds who was working in the Elphinstone Arms that night, she confirmed that whilst her son (Scott Dodds) was escorting two males away from the premises a short time later, whilst outside, Scott was attacked by two different males. It is unclear at this time, but it is assessed that the two males that had attacked Scott Dodds had been waiting outside the premises for Scott to make an appearance on the street before attacking him.

The following night at 1904 hours on Sunday 23<sup>rd</sup> February 2014, a call was received from a female member of the public (patron) reporting that there were approximately twenty males outside the premises with their faces covered, trying to get in. She believed they were in possession of weapons but no weapons had actually been seen. Police attended at 1914 hours but the males had left prior to their arrival.

Enquiries were made with Margaret Dodds, William Dodds and the patrons within the premises and it was established that 15 – 20 males, majority of whom were wearing balaclavas, had been seen coming along the road by a patron, who was standing outside the premises having a cigarette. He retracted back inside the premises and locked the doors. As the masked males approached the premises they started to bang on the door of the pub demanding to get in. They left a short time later, having failed to gain entry to the premises.

There were approximately 10 patrons within the premises at the time, who the attending police officers observed to be alarmed and visibly shaken by the incident. Margaret and William Dodds were also present but not Scott Dodds. Enquiries are still ongoing by CID officers in relation to this incident, and it has been established that both of the above incidents are related.

Following information received, it is assessed that these masked males were looking for Scott Dodds that night, and that if Scott had been within the premises, they would have gained entry. It was only when they realised Scott Dodds was not present, they left. The persons believed to be responsible for these incidents have a long history of violent offending and there is a real concern that they will continue with this feud, possibly returning to the premises, as Scott Dodds is known in the local community as having strong connections to the premises, placing the safety of members of the public in real danger. Scott Dodds continues to refuse to cooperate with the police in their enquiries.

On Monday 24<sup>th</sup> February 2014, licensing officers were made aware of the two incidents and on checking the premises licence it was discovered that 'Elphinstone Arms Limited' SC368929, who were the licence holders, had in fact dissolved, according to Companies House records, on 9<sup>th</sup> March 2012.

Later that day, following confirmation from East Lothian Council Licensing Department that no 'transfer' had been lodged, licensing officers attended at the premises and informed the designated premises manager, Margaret Dodds and her husband, William Dodds that the licence 'ceased to have effect' due to the company 'Elphinstone Arms Limited' being dissolved and lack of transfer application.

Scott Dodds was also present within the premises, his face badly swollen and both eyes bruised.

At the time of the visit there were approximately 6-8 patrons within the premises drinking and so Margaret Dodds cleared the premises and closed the doors. It was explained to her and her husband, William Dodds, that the premises could no longer sell alcohol.

Enquiry reveals that whilst Elphinstone Arms Ltd SC368929 was dissolved on 9<sup>th</sup> March 2012, a second company named 'The Elphinstone Inn Ltd' number SC413538 was incorporated on 21<sup>st</sup> November 2011 with William Dodds as Director.

The Board may be aware that on Friday 28<sup>th</sup> February 2014, a letter was received by East Lothian Council and forwarded to Police Scotland, Divisional Licensing Officer. This had been sent by a "Elphinstone Resident". Within the letter the author states:

*"that since the pub opened with Margaret Dodds and her son Scott, the place has been a nightmare, Margaret is serving my son who is 15 years old with drink and her son Scott is giving all the young boys cocaine" it goes on to say that they think it "should be shut for good because all the young men are getting hooked on drugs and it is not good for the village".*

At 0900 hours on Thursday 6<sup>th</sup> March 2014, an arrangement was made for Margaret, William and Scott Dodds to attend at Dalkeith Police Station, where they were interviewed in relation to an offence under Section 1 of the Licensing (Scotland) Act 2005, with regards to the unlicensed sale of alcohol. William and Scott Dodds refusing to answer any questions put to them by licensing officers, however, Margaret Dodds did confirm that Scott Dodds owns the building that the Elphinstone Arms occupies and that Scott and William help out in the premises "on odd occasions". When asked who Malcolm Fleming was, Margaret Dodds stated he was a "friend of Scotts" but again she also refused to answer the majority of questions put to her by licensing officers.

At the conclusion of the interviews all three were then cautioned and charged with a contravention of Section 1 of the Licensing (Scotland) Act 2005 and a report was sent to the procurator fiscal.

On 8<sup>th</sup> April 2014, the Procurator Fiscal deemed that there was sufficient enough evidence to proceed with this but in the interests of justice gave a Fiscal's Warning to all three accused persons.

Scott Dodds has also in the past been charged with possession of cocaine back in June 2005, when he was seen by police officers to throw a wrap of cocaine from his vehicle window and attempted to drive off from the Granada Services, Musselburgh in an effort to evade detection. He was reported to the procurator fiscal for this offence and several

other Road Traffic offences but a plea of 'not guilty' was accepted for the drug possession.

Since the closure of these premises Margaret Dodds had applied to East Lothian Licensing Board to continue trading by way of occasional licences and as the Board members may be aware these occasionals were refused at the Licensing Board Hearing on 27<sup>th</sup> March 2014, on the grounds that they were inconsistent with one or more of the licensing objectives, namely 'preventing crime and disorder' and 'securing public safety'.

On 11<sup>th</sup> April 2014, The Elphinstone Inn Ltd SC413538 was dissolved and struck off at Companies House. It should be noted that at no time since 2010 have these premises submitted any accounts. In fairness to other operators within the licensed trade who have had to endure difficult trading conditions, details of this matter have been passed to HMRC and Inland Revenue for further enquiry.

Since then a new application for a premises licence was lodged, with the licence holder/applicant being a company called 'M F Publicans Ltd' the sole connected person listed as Malcolm Fleming, The Flat Elphinstone Arms, Main Street, Elphinstone.

Licensing Officers made contact with the applicant and on Tuesday 1<sup>st</sup> April 2014 Mr Fleming attended at Dalkeith Police Station, at the request of the police, to facilitate a routine interview in relation to the new premises licence application. Mr Fleming confirmed his name and date of birth but refused to confirm his home address, stating "no comment" when asked if he lived at the Flat, Main Street, Elphinstone. He stated at this time that he has been advised by a solicitor to "say nothing" and to answer no questions.

It was explained to Mr Fleming that this was a routine interview which is carried out with all new applicants, giving the police an opportunity to engage with licence holders and establish what experience etc if any the applicants have in the licensed trade. Mr Fleming maintained his stance of answering no further questions and stated that he wanted to leave the police station, which he did, along with the designated premises manager, Margaret Dodds, who had conveyed Mr Fleming to the meeting.

On Wednesday 2<sup>nd</sup> April 2014, licensing officers met with one of the directors of Caledonian Heritable, who confirmed that Mr Fleming leased the flat and the premises from Scott Dodds (landlord) for the sum of £1250.00 per month. M F Publicans Ltd was a new company set up to facilitate becoming the premises licence holder.

Companies House records showed that M F Publicans Ltd was set up on 4<sup>th</sup> October 2013 with Mr Malcolm Fleming as the sole director at that time.

On Thursday 24<sup>th</sup> April 2014, at a further Licensing Board Hearing, following an objection from the police, the Board granted Elphinstone Arms a new premises licence with Malcolm Fleming (MF Publicans Ltd) as the licence holder and Margaret Dodds as designated premises manager. At that hearing Malcolm Fleming, Margaret Dodds and her solicitor, gave assurances that Scott Dodds would not be allowed within the premises, that CCTV would be utilised and reassurances of full cooperation by the management, when dealing with the police.

On Wednesday 21st May 2014, a call was received from Margaret Dodds stating that someone had tried to set fire to the premises overnight. On police and fire attendance that morning it was noted that significant fire and smoke damage had been caused to the front door and the internal hall/vestibule of the premises. An internal fire door, which was closed, had prevented further damage to the remainder of the premises and the adjoining residential flat. Examination by the Fire Investigation Unit suggests that some form of accelerant had been poured into the letterbox and down the front door of the premises.

Following the recent Licensing Board Hearings the management assured the Board that CCTV had been fitted and would be utilised. On examination of the CCTV following the fire-raising overnight on 20<sup>th</sup> / 21<sup>st</sup> May 2014, it was established that the CCTV had not been recording.

On Friday 23<sup>rd</sup> May 2014, Police Scotland's Criminal Investigations Department visited the premises and spoke with Scott Dodds, who was repainting the front door of the premises. The premises manager Margaret Dodds was also spoken to and in conversation stated to the CID officers that Scott Dodds worked in the premises on a Monday, Tuesday and Thursday, "helping out". Neither Scott or Margaret Dodds knew who was responsible for this recent fire-raising but suggested that there was an ongoing feud with a local Tranent family which stemmed back several years.

On Tuesday 27<sup>th</sup> May 2014, the divisional licensing officer received a phone from the premises licence holder Malcolm Fleming, who stated that he had moved out the premises, including the adjoining flat, following the recent fire-raising. He stated he did not want anything more to do with the premises and that he wished to 'surrender' the premises licence. A check of the Companies House records related to M F publicans Ltd reveals that the previous day, Monday 26<sup>th</sup> May, Malcolm Fleming had terminated his Directorship and Margaret Dodds had been appointed as the sole Director.

Malcolm Fleming confirmed that he was resident and asleep within the adjoining flat when the fire-raising occurred and that he had a genuine fear for his safety, as a result of the ongoing issues connected to the premises. He also stated that he had been taken into hospital on Wednesday night following "severe chest pains".

On Wednesday 28<sup>th</sup> May 2014, an email was received from East Lothian Council Licensing Department with a copy of a letter from Malcolm Fleming attached, confirming that he had signed the directorship of MF Publicans Ltd over to Margaret Dodds and that he had nothing more to do with the company, lease or the premises, Elphinstone Arms. He also stated that he had moved out of the flat and was now residing with his sister in Tranent.

On Friday 30<sup>th</sup> May 2014, following the fire raising, an application for a 'Closure Order' was made to East Lothian Licensing Board, by the police. This was granted at the hearing, by the Board for a period of 3 months, pending a review hearing and at 1730 hours that same day the 'Closure Order' was served on Margaret Dodds at the premises.

On Friday 30<sup>th</sup> May 2014, later that night, Malcolm Fleming called the police to report that he had been threatened by Scott Dodds and that he had received several abusive phone calls, from both, Margaret and Scott Dodds, in relation to the premises being closed down. A statement was obtained from Malcolm Fleming, during which he states that Scott Dodds had threatened to "fucking kill him" during a telephone conversation and that Margaret Dodds is blaming him for the closure of the premises. Fleming also stated that Scott Dodds had turned up at his brother in law's pub in Tranent, looking for him and also his place of work, in Midlothian. Fleming stated that he believed Scott Dodds would have the ability to carry out these threats and appeared genuinely concerned for his personal safety.

On Saturday 7<sup>th</sup> June 2014, in the early hours of the morning, a 999 call was received from Scott Dodds reporting that the premises were on fire. It is believed that a neighbour discovered the fire and in turn alerted the Dodds family who were within their home address. On police and fire attendance the premises were reported to be "well alight". There was extensive damage caused to exterior as well as the interior of the building. An insurance claim has been submitted for an estimated £80,000 worth of damage. CCTV was seized from the premises following this second fire and an ongoing police investigation is being carried out in an effort to trace those responsible for starting the fire.

On Monday 16<sup>th</sup> June 2014, Scott Dodds was detained and interviewed in relation to the threats allegation towards Malcolm Fleming. Scott Dodds gave a 'no comment' interview with police and was later released from custody due to insufficient evidence to prefer any charges.

On Thursday 28<sup>th</sup> August 2014, following a request by Police Scotland, a review hearing was held in respect of the premises licence. The grounds for review were substantiated and the Licensing Board suspended the licence for 6 months. The chair suggesting that this would allow time for the premises to come under 'new management'.

Police investigations into the second fire-raising, have been ongoing and have resulted in a DNA match from a sock, which was recovered near the premises. The DNA recovered belongs to a significant individual with connections to serious and organised criminality.

As the Board will be aware, Police Scotland's objections about the ongoing running of these premises, the current management, the lack of cooperation with police and the significant concerns we have for the safety of all concerned and the residents of Elphinstone was raised at three previous Licensing Board Hearings. With these previous incidents in mind, the fire-raising, the connection made following the DNA recovery and the admission from both Margaret and Scott Dodds that they are currently involved in a long running dispute, it is felt that the likelihood of disorder on, or in the vicinity of the premises will continue, should this premises be allowed to re open.

Due to the very serious nature of the fire-raising incidents and the connection between the premises and Scott Dodds, and the evidence of an ongoing dispute remains unchanged from the previous Licensing Board hearings.

It is the view of the Chief Constable that these premises seek to re-open in a similar manner to their previous operation, with no amendments to their governance, having consistently failed to submit accounts and with a clear and present danger to the community due to the families conduct and animosity between the Dodds and others. It is our submission that there is an overwhelming body of information which clearly evidences that these premises have operated in a manner which is inconsistent with the following objectives as articulated within Section 4 of the Licensing (Scotland) Act 2005, namely;

- Preventing Crime and Disorder
- Securing Public Safety
- Preventing Public Nuisance
- Protecting and Improving Public Health

Only a wholesale regime change in the management and operation of these premises as suggested by the chair at the review hearing in August 2014 will ensure the community of Elphinstone have a facility that will enhance the village and provide a safe environment where alcohol can be sold responsibly without fear of disorder, violence or other significant concern.

The Chief Constable recommends that in order to further the licensing objectives specified above, the Licensing Board consider all options when considering this submission including the revocation of the premises licence.

Yours faithfully



Chief Inspector Andrew Clark

# EAST LoTHIAN COUNCIL

## LICENSING, ADMINISTRATION AND DEMOCRATIC SERVICES

**From: Rudi Fruzynski**  
Licensing Standards Officer

**To: Kirstie MacNeill**  
Clerk to the Licensing Board

---

Date: 03 March 2015

**Subject: LICENSING (SCOTLAND) ACT 2005**  
**PREMISES LICENCE REVIEW – ELPHINSTONE ARMS, MAIN STREET,**  
**ELPHINSTONE, EAST LoTHIAN EH33 2LT**

On Tuesday 26<sup>th</sup> February 2015, I received intimation in terms of Section 38(3) (b) of the licensing (Scotland) Act 2009 that the Licensing Board had decided, on receipt of an application from Police Scotland, to review the Premises Licence in respect of the above premises.

In terms of Section 38(4) of the Act I have prepared a report for the consideration and information of Licensing Board Members. My comments are as follows:-

- Following the review of the Premises Licence in August 2014, I can confirm that the Elphinstone Arms have remained closed for business.
- On Monday 2<sup>nd</sup> March 2015, I met with Mrs Margaret Dodds who confirmed that Scott Dodds is the owner of the Elphinstone Arms; Caledonian Heritable Ltd is the guarantor of the loan on the premises and that Mrs Dodds is the sole director of the company running the pub.
- The premises remain in a damaged condition since the arson attack on 7<sup>th</sup> June 2014.
- It is likely that the insurance claim in respect of the fire damage will be settled within the next 3 – 4 weeks.
- Plans for the future of the premises continuing to trade as a pub are uncertain at this stage, but will very much depend on the outcome of the forthcoming review.
- Police Scotland investigations into the arson attacks on the premises continue.
- As stated in previous reports, during the course of the operation of the Elphinstone Arms Premises Licence, the LSO regularly visited the premises when it was found that Margaret Dodds was approachable, very helpful and ran the pub without any identified issues.

This report is submitted for the information of Licensing Board members.

R. Fruzynski  
Licensing Standards Officer



## Elworthy, Debbie

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**From:** Fairgrieve, Frank  
**Sent:** 16 March 2015 17:30  
**To:** Elworthy, Debbie  
**Cc:** MacNeill, Kirstie; Banks, Andrew  
**Subject:** Elphinstone Arms, Elphinstone

Kirstie / Debbie

As discussed.

I visited the premises today, 16<sup>th</sup> March 2015 and found the building to be in the same condition as it was immediately after the previous fire incident. The building has suffered fire damage and further investigation has found that no remediation works have commenced.

The building has been assessed by ourselves and currently we would not consider it to be in such a condition that would require us to issue any statutory notices under the Building Scotland Act 2003.

I would however confirm that in our opinion the building is currently not in a suitable condition to operate as a licensed premise as it still requires remediation works to deal with the fire damage issues.

I trust this clarifies matters.

Regards

Frank

F Fairgrieve MRICS MIFireE | Principal Building Standards Surveyor | East Lothian Council | John Muir House | Haddington  
EH41 3HA | T. 01620 827357 | E. [ffairgrieve@eastlothian.gov.uk](mailto:ffairgrieve@eastlothian.gov.uk)

**Elworthy, Debbie**

---

**Subject:** FW: Elphinstone Arms, Elphinstone

---

**From:** Devine, Brian [REDACTED]  
**Sent:** 17 March 2015 12:40  
**To:** Elworthy, Debbie  
**Subject:** RE: Elphinstone Arms, Elphinstone

Hi Debbie

As requested following our telephone conversation, I write to confirm that I cannot provide comment or report on the present condition of this building. I would provide advice/comment on any issues where Building Control find non-compliance with building regulations. Following restoration, I would be able to attend to carry out an audit of the fire safety measures within the property. One comment I would make, however, would be that if the property has a basement, adequate fire separation should be provided. But, Building Control should stipulate this in any case.

Regards

Brian

**Our Reference: KMacN/dr/EN/L/Review**

**Date: 4<sup>th</sup> March 2015**

MacDonald Licensing Limited  
21a Rutland Square  
Edinburgh  
EH1 2BB

Dear Sir

**LICENSING (SCOTLAND) ACT 2005 – SECTION 36(3)(b)  
NOTIFICATION OF REVIEW HEARING  
ELPHINSTONE ARMS – MAIN STREET, ELPHINSTONE**

East Lothian Licensing Board has received a request for a review of the Premises Licence of the above premises and I enclose a copy of that request for your information. The Licensing Board decided to accept this request for a review of the Premises Licence, in terms of Section 36 of the Licensing (Scotland) Act 2005. As a result of a review, the Licensing Board may issue a written warning, may impose an additional condition on the Premises Licence or may suspend or revoke the Premises Licence.

A Review Hearing will be held in Council Chambers, Town House, 56 High Street, in Haddington. We will notify you the date as soon as it has been arranged as we cannot hold the hearing on the original date of 26<sup>th</sup> March 2015.

The Licensing Board has asked Mr Rudi Fruzynski, Licensing Standards Officer, to prepare a report into this matter for their consideration at the Hearing. Mr Fruzynski may contact you/your client and any information you can give him will be taken into account when he prepares his report.

The Licensing Board has also asked that the applicant advises them of the future management position for the premises.

If you have any queries regarding this matter, please don't hesitate to contact me.

An agenda will follow in due course.

Yours faithfully

Kirstie MacNeill  
Clerk to the Licensing Board

**Licensing Office : 01620 827217 / 827867  
E-mail : [licensing@eastlothian.gov.uk](mailto:licensing@eastlothian.gov.uk)**

Cc. Caledonian Heritable Ltd. - [REDACTED]  
Margaret Dodds - [REDACTED]  
Police Scotland - Haddington



**REPORT TO:** East Lothian Licensing Board

**MEETING DATE:** 28 May 2015

**BY:** Clerk of the Licensing Board

**SUBJECT:** Records Management

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**6**

## **1 PURPOSE**

- 1.1 To advise the Board that the records management plan (RMP) of East Lothian Licensing Board and supporting evidence have been accepted by the Keeper of the National Records of Scotland as proper arrangements for the management of East Lothian Licensing Board's public records.

## **2 RECOMMENDATIONS**

- 2.1 To note that the RMP has been approved and to authorise officers to keep it under general review and to carry out any review required by the Keeper.
- 2.2 To authorise officers to implement the plan and the improvement plan.

## **3 BACKGROUND**

- 3.1 On 23 October 2014 the Board noted the requirement under the Public Records (Scotland Act 2011) for the Board to submit an RMP and agreed to adopt the East Lothian council's RMP.
- 3.2 The Council approved its RMP at its meeting in October 2014 and the joint RMP was submitted in December of that year.
- 3.3 The Keeper has approved the RMP along with the supporting evidence submitted and in reaching that determination he has stated that he expects the Board to fully implement the plan and to meet its full obligations under the Act. The Keeper's findings are contained in the report at Appendix 1.

- 3.4 The Act also requires the Board to keep its plan under review and, if the Keeper so requires, to carry out a review.
- 3.5 The RMP was agreed under certain conditions highlighted in Appendix 1 that take the form of an improvement plan. The plan as approved lasts for 5 years.
- 3.6 The Licensing officers have already attended training on records management and are taking steps to address the required improvements in relation to records keeping. In doing this they are being supported by the Council's Records Manager and his officers.

**4 POLICY IMPLICATIONS**

- 4.1 None

**5 EQUALITIES IMPACT ASSESSMENT**

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

**6 RESOURCE IMPLICATIONS**

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

**7 BACKGROUND PAPERS**

- 7.1 None

<b>AUTHOR'S NAME</b>	Kirstie MacNeill
<b>DESIGNATION</b>	Clerk of the Licensing Board
<b>CONTACT INFO</b>	01620 827164
<b>DATE</b>	20/5/15

## **Public Records (Scotland) Act 2011**

### **East Lothian Council East Lothian Licensing Board Assessment Report**

## **The Keeper of the Records of Scotland**

**5<sup>th</sup> January 2015**

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## 1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came fully into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor record keeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

## **2. Executive Summary**

This report sets out the findings of the Keeper's assessment of the RMP of **East Lothian Council and East Lothian Licensing Board** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on **5<sup>th</sup> November 2014**.

The assessment considered whether the RMP of East Lothian Council and East Lothian Licensing Board was developed with proper regard to the 14 elements of the Keeper's statutory Model Records Management Plan (the Model Plan) under section 8(3) of the Act, and whether in this respect it complies with it and the specific requirements of the Act.

The outcome of the assessment and the Keeper's decision on whether the RMP of East Lothian Council and East Lothian Licensing Board complies with the Act can be found under section 7 of this report with relevant recommendations.

## **3. Authority Background**

East Lothian borders the City of Edinburgh, Midlothian and the Scottish Borders. Its administrative centre is Haddington, although its largest town is Musselburgh.

The council area was created in 1996, replacing the East Lothian district of the Lothian region. The district had been created in 1975 under the Local Government (Scotland) Act 1973, consisting of the old county of East Lothian plus the burghs of Musselburgh and Inveresk, which until then had been in the county of Midlothian.

Licensing is the responsibility of licensing boards under powers contained in the Licensing (Scotland) Act 2005. Local licensing boards have wide discretion to determine appropriate licensing arrangements according to local needs and circumstances and their own legal advice. Each local government area must have a licensing board. East Lothian Licensing Board consists of 6 Board members.

#### 4. Keeper's Assessment Process

The RMP was assessed by the Public Records (Scotland) Act Assessment Team on behalf of the Keeper. Assessors used the checklist elements listed in section 5, to establish whether East Lothian Council and East Lothian Licensing Board's RMP was developed with proper regard to the elements of the Model Plan and is compliant with the Act. The assessment also considered whether there was sufficient supporting evidence of such compliance.

Key:

G	The Keeper agrees this element of an authority's plan.		A	The Keeper agrees this element of an authority's plan as an 'improvement model'. This means that he is convinced of the authority's commitment to closing a gap in provision. He will request that he is updated as work on this element progresses.		R	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Keeper may choose to return the RMP on this basis.
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## 5. Model Plan Elements: Checklist

**East Lothian Council and East Lothian Licensing Board**  
 For the purposes of this assessment the two scheduled authorities will be describes as ‘East Lothian Council’ or ‘the Council’

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>The Council has appointed Jim Lamond, Head of Council Resources as the individual with overall responsibility for records management in East Lothian Council.</p> <p>This appointment is confirmed by a covering letter from Angela Leitch, Chief Executive (evidence 4)</p> <p>Mr Lamond chairs the Project Board for the Electronic Document and Records Management System (<b>see element 4</b>).</p> <p>Mr Lamond chairs the Records Management Steering Group. Membership of this board is made clear from a sample minute sent to the Keeper as evidence 3. Alex Fitzgerald sits on this group (<b>see element 2</b>). Kirstie MacNeill sits on this board.</p> <p>East Lothian Licensing Board has appointed Kirstie MacNeill, Clerk of the Licensing Board, as the individual with overall responsibility for records management in East Lothian Licensing Board.</p>

			<p>This appointment is confirmed by a covering letter from Ms. MacNeill (evidence 5).</p> <p>The Keeper agrees that East Lothian Council has identified an appropriate individual to undertake this role.</p> <p>The Keeper agrees that East Lothian Licensing Board have identified an appropriate individual to undertake this role.</p>
<p>2. Records Manager Compulsory element</p>	<p>G</p>	<p>G</p>	<p>The Council has appointed Alex Fitzgerald, Records Manager as the individual with the operational responsibility for the records management plan.</p> <p>This appointment is confirmed by a covering letter from Angela Leitch, Chief Executive (evidence 4).</p> <p>This appointment is clearly stated in the RMP which has been approved by the Clerk to the Licensing Board. Thus it can be agreed that the Licensing Board are content that Mr Fitzgerald has operational responsibility for Licensing Board records.</p> <p>The Records Manager holds a qualification in archives and records management field. This is confirmed by the Job Outline provided by to the Keeper (evidence 34)</p> <p>Mr Fitzgerald is part of the Records Management Steering Group, the EDRMS Project Board (see element 4), the Freedom of Information Working Group (see element 15) and the Information Security Forum (see element 8).</p> <p>Mr Fitzgerald wrote the <i>Information and Records Management Policy</i> (see element 3). Also he edited and adapted the <i>Business Classification Scheme and Records Retention Schedule</i> (see elements 4 and 5)</p> <p>The above demonstrates that Mr Fitzgerald has a detailed knowledge of the records</p>

			<p>management provision in East Lothian Council.</p> <p>The Keeper agrees that East Lothian Council has identified an appropriate individual to undertake this role.</p>
<p>3. Policy Compulsory element</p>	<p>G</p>	<p>G</p>	<p>East Lothian Council has an operational and approved <i>Records Management Policy</i> (version 1.5 dated June 2013) a link to which has been supplied to the Keeper <a href="http://www.live365.com/index.live?curl=http://www.live365.com/web/components/top/loginpage.live">http://www.live365.com/index.live?curl=http://www.live365.com/web/components/top/loginpage.live</a></p> <p>The Council have provided a link to minutes of the cabinet meeting (evidence 2) at which the <i>Information and Records Management Policy</i> was approved (11<sup>th</sup> June 2013 – “The Cabinet agreed to approve the <i>Information and Records Management Policy</i> and adopt it as Council policy”). The minutes show that Mrs A Leitch, Chief Executive; Dr R Gertz, Data Protection, Freedom of Information &amp; Surveillance Law Compliance Officer and Mrs K MacNeill, Corporate Legal Adviser (<b>see element 1</b>) were present.</p> <p>As this document is published online, the Keeper can agree that it is published to all staff. The RMP states (page 4) “all Council policies once approved by the appropriate formal process are made available to both members of staff and also to the public via electronic means” The Keeper commends this approach.</p> <p>Mr Fitzgerald wrote the <i>Information and Records Management Policy</i> (<b>see element 2</b>).</p> <p>The RMP (page 4) includes an ‘action’ point to review the <i>Information and Records Management Policy</i> before June 2016.</p> <p>The Keeper agrees that East Lothian Council has an approved and operational</p>

			<p><i>Records Management Policy</i> that is available to appropriate council employees.</p>
<p>4. Business Classification</p>	<p><b>A</b></p>	<p><b>G</b></p>	<p>East Lothian Council have a full (213 page) <i>Business Classification Scheme</i> which is published online at <a href="http://www.eastlothian.gov.uk/downloads/file/3630/retention_schedules_june_2014">http://www.eastlothian.gov.uk/downloads/file/3630/retention_schedules_june_2014</a> (see <b>Publication under 'General Comments' below</b>). The Keeper acknowledges that this scheme features records relating to the Licensing Board.</p> <p>The <i>Business Classification Scheme</i> is based on the Local Government Classification Scheme - <a href="http://www.irms.org.uk/resources/information-guides/198-local-government-classification-scheme-v203">http://www.irms.org.uk/resources/information-guides/198-local-government-classification-scheme-v203</a> and has been adapted by Alex Fitzgerald (see element 2).</p> <p>The classification schema chosen by the Council is a functional one to make it more "resilient to organisational change". This must remain a business decision for the Council, but the Keeper notes that a functional structure is currently considered best practice for an organisation of the size and complexity of a local authority.</p> <p>As with many large public authorities, the Council operates several structured electronic document management solutions alongside shared drives and hard copy records systems. This arrangement has developed over time with separate solutions adopted by separate service areas. This makes centralised control over records complicated.</p> <p>In response to this, the Council is currently undertaking a survey of local service areas to determine the exact position (a sample survey sheet has been provided to the Keeper as evidence 7). Once complete the business classification could be imposed on the shared drives and physical file storage more effectively (see <i>Records Management Survey</i> under General Comments below). <b>The Keeper would like to know when this survey is complete and potentially view the "targeted</b></p>

			<p><b>plan of implementation of classification Scheme” planned for 2015 (RMP page 6).</b></p> <p>This results of this work will fundamentally effect elements 5 and 11 <b>(see below)</b>.</p> <p>As explained above, East Lothian Council currently operate several document management systems within their separate service areas. The Council acknowledges that the restructuring of the shared areas to reflect a functional business classification will be completed gradually over approximately 5 years (RMP page 6). The Keeper agrees this is a reasonable timeframe for this major project.</p> <p>The RMP suggests that it is possible that the Civica Electronic Document and Records Management System, which the Council currently licenses, may be rolled out as the ‘Corporate EDRMS solution’. A decision has not yet been taken on this proposal. Mr Lamond <b>(see element 1)</b> chairs the Project Board for the Electronic Document and Records Management System. Alex Fitzgerald sits on this board <b>(see element 2)</b>. <b>The Keeper requests that he is kept informed on the development of this proposal and that he may view the outcome of the “EDRMS Review” planned for 2015 (RMP page 6). He would be especially interested in information regarding any alternative solution should the Civica proposal be rejected.</b></p> <p>The progress of the adoption of the business classification scheme can be followed on the East Lothian Council Action Plan which makes up part of the approved RMP. For example “Development of targeted Plan of implementation of Classification Scheme” is scheduled for March 2015.</p> <p>East Lothian Council contracts out some of its functions to third parties including an ALEO. Evidence that proper arrangements are in place to ensure that the terms of the RMP apply to these third parties has been provided to the Keeper (evidence 7a -</p>
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			<p>d).</p> <p>The RMP indicates (page 5) that a restructuring of the paper file store <u>may</u> be undertaken as part of this project. The Keeper will be interested to know what decision is taken regarding this.</p> <p>The Keeper agrees this element of the submitted RMP under 'Improvement Model' terms. This means that he is convinced that East Lothian Council has made a firm commitment to restructure their hybrid document management systems around their published business classification but requires to be updated as the project progresses.</p>
<p>5. Retention schedule</p>	<p>A</p>	<p>G</p>	<p>Please refer to comments against element 4.</p> <p>East Lothian Council's <i>Business Classification Scheme</i>  <a href="http://www.eastlothian.gov.uk/downloads/file/3630/retention_schedules_june_2014">http://www.eastlothian.gov.uk/downloads/file/3630/retention_schedules_june_2014</a>          (see element 4) features retention decisions against each record series. These are based on the Scottish Council on Archives Records Retention Schedules  <a href="http://www.scottisharchives.org.uk/projects/toolsstandards/retentionschedules">http://www.scottisharchives.org.uk/projects/toolsstandards/retentionschedules</a>          and adapted for use in the Council by Alex Fitzgerald (see element 2)</p> <p>As with the <i>Business Classification Scheme</i>, a project is in place to impose these retention decisions on the hybrid record systems currently operating. This project is commencing with a full survey of the Council's service areas. The target date for completion of this project is 2018. <b>The Keeper requires East Lothian Council to keep him up-to-date on progress.</b></p> <p><b>The Keeper agrees this element of the submitted RMP under 'Improvement Model' terms. This means that he is convinced that East Lothian Council has made a firm commitment to apply their published retention schedule. He</b></p>

	A	G	<p><b>requires to be updated as the project progresses.</b></p>
<p>6. Destruction Arrangements Compulsory element</p>	<p>The RMP states (page 7) "There are currently a range of different destruction arrangements in place across the Council all focused on ensuring that information is destroyed securely."</p> <p>The survey (see <i>Records Survey</i> under General Comments below) will help those arrangements to be implemented fully in line with the published retention schedule (see <b>element 5</b>).</p> <p>The results of the survey will also help with what is described as a 'physical file backlog' (RMP page 6).</p> <p>Paper: The Council have a contract with external document shredding organisation (Shred-It) and operate internal secure shredding using Shred-It units and some in-house shredders. These comply with recognised standards. The process of destruction and quality of shredding is explained in the RMP (page 7). A destruction certificate has been provided as evidence (evidence 12). <b>The Council is planning to set protocols for use of internal shredders. The Keeper requests sight of these protocols when they are available.</b></p> <p>Hardware: All electronic data storing assets are processed by a specialist destruction company (Tes-Amm) who destroy to EN15713:2009 (Secure Destruction of Confidential Material) standard. A destruction certificate has been provided as evidence (evidence 9). The destruction of hardware is overseen by the Infrastructure and Security Team Leader. The Licensing Board's equipment is managed by the Council's IT Department.</p> <p>Back-Ups: Out of date backup tapes are shredded onsite by (Tes-Amm). Backup tapes are held for one year to serve as both a safeguard against accidental</p>		

			<p>deletions and for business continuity purposes (<b>see element 10</b>). Tapes are then re-used and overwritten with newer versions of data. The Licensing Board's records are backed up as part of the Council's system.</p> <p>Electronic: There is an acknowledgement that the irretrievable destruction of records held electronically is problematic. The Council has instigated an approved action plan to address this. The RMP (page 8) explains how the destruction of electronic records occurs currently (where it does) and provides a statement regarding the current thinking of how the process will work once the retention schedules are properly imposed. <b>The Keeper accepts that the Council has properly identified a gap in provision and has appropriate mechanisms in place to close that gap.</b></p> <p><b>The Keeper agrees this element of the Council's plan on Improvement Model terms and requires to be updated as the project discussed under elements 4, 5 and 11 progresses.</b></p>
<p>7. Archiving and Transfer Compulsory element</p>	<p>G</p>	<p>G</p>	<p>East Lothian Council transfer records to its own Archive Centre for permanent preservation.  <a href="http://www.johngraycentre.org/">http://www.johngraycentre.org/</a></p> <p>The individual identified at element 2 above is the Archivist at the Council.</p> <p>The Keeper has been provided with a copy of the Acquisitions Policy of the Council as evidence that proper arrangements are in place (evidence 15). He has also been provided with a link to the Archive information page (evidence 14) that shows appropriate arrangements are in place for preservation of records and for public access where appropriate.</p> <p>The East Lothian Archivist's job description has been provided (evidence 16).</p>

			<p>The Keeper notes from the <i>Action Plan</i> that two new documents are planned relating to the preservation of the Council's records (RMP page 10). <b>The Keeper requests that they are forwarded to him when appropriate.</b></p> <p>The Keeper agrees that East Lothian Council has proper arrangements in place for the archiving of its records as required by the Act.</p>
<p>8. Information Security Compulsory element</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The Council has a single page <i>Information Security Policy</i> dated October 2011 and signed by Chief Executive, Angela Leitch. It is supported by a detailed <i>Security Policy Manual</i>. Because of the sensitive nature of this manual the Council has opted not to share it with the Keeper. The Keeper accepts this as appropriate. The covering letter from the Head of Council Resources (<b>see element 1</b>) indicates that the Council has approved the submitted plan and therefore has approved the statements regarding information security made under element 8 (page 9). The Keeper agrees that this provides evidence of the existence of a <i>Security Policy Manual</i>.</p> <p>The Chief Executive has overall responsibility for the <i>Information Security Policy</i>.</p> <p>The <i>Information Security Policy</i> states that it is the policy of the Council to ensure that all staff will be provided with information security training. A sample screen-shot from the training module has been provided (evidence 27)</p> <p>The council has an Information Security Forum and an Information Security Manager who chairs this forum. Mr Fitzgerald is part of the Information Security forum (<b>see element 2</b>).</p> <p>The Council have supplied a copy of their <i>IT Acceptable Use Policy</i> (evidence 20). All users of the Council's systems are required to sign up to this policy.</p>

			<p>The Council has provided the Keeper with a link to their <i>IT Service Plan</i> (version 1.5 August 2013) which includes the following statement: "A key challenge for IT is to maintain a secure environment for data while enabling Council staff to work flexibly and efficiently with access to all relevant information." This plan is available online at: <a href="http://www.eastlothian.gov.uk/download/downloads/id/8156/ict_strategy-march_2014">http://www.eastlothian.gov.uk/download/downloads/id/8156/ict_strategy-march_2014</a></p> <p>The Council's security system aligns with ISO27001 Information Security Management standard.</p> <p>The <i>Information Security Policy</i> is due for review in December 2015. <b>The Keeper requests that, if any changes result from the review, he is provided with the updated version.</b></p> <p>The Keeper agrees that East Lothian Council appreciate the importance of information security and have an <i>Information Security Policy</i> approved at the highest level.</p>
<p>9. Data Protection</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The Council has combined the Keeper's elements 9 and 14.</p> <p>The Council has a full explanation of their Data Protection responsibilities on their website: <a href="http://www.eastlothian.gov.uk/info/704/data_protection_and_freedom_of_information/535/a_guide_to_the_data_protection_act_1998">http://www.eastlothian.gov.uk/info/704/data_protection_and_freedom_of_information/535/a_guide_to_the_data_protection_act_1998</a></p> <p>This area of the site includes instructions for subject access enquiries under "Your Rights to Requesting Information from East Lothian Council".</p> <p>The Council is registered with the Information Commissioner registration: Z5759571.</p>

		<p>The Council has provided the Keeper with their <i>Data Protection Policy</i> (evidence 26).</p> <p><b>The Council is initiating procedures to register East Lothian Licensing Board with the Information Commissioner. The Keeper requests that he is provided with the Board's registration number when it becomes available.</b></p> <p>The Council's corporate induction includes a section on data protection and every employee handling personal information must undergo DP training every two years. A sample screen-shot from the training module has been provided (evidence 27)</p> <p>Each service area has a Data Protection Compliance Officer.</p> <p>The East Lothian Data Protection Officer's job description has been provided (evidence 24).</p> <p>The Council shares information with public bodies and others using the Pan Lothian Protocol (link provided to the Keeper as evidence 25) and standard template data sharing agreements.</p> <p>The Council has provided their <i>Register of Agreements</i> as an example of the organisations that the Council enters into data sharing agreements with.</p> <p>The Keeper agrees that East Lothian Council has properly considered their responsibilities under the Data Protection Act 1998. Furthermore he agrees that East Lothian Council have considered the records management implications of information sharing as is appropriate.</p>
10. Business Continuity	A	<p>The <i>Information Security Policy</i> (see element 8) states that it is the policy of the Council to ensure that it maintains business continuity planning.</p>

<p>and Vital Records</p>		<p>East Lothian Council has a Risk Management Strategy, version 2 dated 2012, details of which are published online. <a href="http://www.eastlothian.gov.uk/download/meetings/id/14163/04_council_risk_management_strategy">http://www.eastlothian.gov.uk/download/meetings/id/14163/04_council_risk_management_strategy</a></p> <p>To support this strategy the Council is currently developing service level Continuity Plans. The local approach is a sensible one. These should be available, at least in part, by early 2015. <b>The Keeper requires the Council to send a sample, redacted if necessary, of these when they are completed.</b></p> <p>The local continuity plans will be developed according to guidelines available to service heads as a document <i>East Lothian Council Business Continuity Management System</i>. The stated purpose of this document is to allow service areas to build "robust, effective and flexible Business Continuity plans" (page 7). This document is dated 2014 and approved by an introduction from Chief Executive, Angela Leitch. Section 14 of the <i>Business Continuity Management System</i> deals with the recovery of records. The Keeper has been provided with a copy of this document (evidence 30).</p> <p>The <i>Business Continuity Management System</i> discussed (page 5) the appointment of 'Single Points of Contact' within service areas for continuity management purposes. These contacts (and a deputy for each) will be trained on business continuity process. This commitment forms part of the introduction to the guidance signed by Angela Leitch, Chief Executive. Setting up these 'points of contact' is the responsibility of the Emergency Planning and Risk Manager, Sandy Baptie.</p> <p>The Keeper has also been provided with the Business Continuity Plan template (evidence 31) that service areas will be working to as they develop their local area plans. The Keeper thanks the Council for this and accepts it as clear evidence that</p>
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			<p>there is a commitment to develop this element.</p> <p>East Lothian Council has a Business Continuity Planning Group overseeing the above process and reporting, through the Head of Communities and Partnerships, to the Chief Executive.</p> <p><b>The Keeper is happy to agree this element of East Lothian's RMP under 'Improvement Model' terms. This means that he convinced that the Council intends to develop business continuity plans for its service areas and has explained a coherent strategy to enable this to be done.</b></p>
<p>11. Audit trail</p>	<p><b>A</b></p>	<p><b>G</b></p>	<p><b>Please refer to comments against element 4.</b></p> <p>As explained under element 4 above, East Lothian Council operate several electronic systems within different service areas as well as shared drives and paper records. A programme is underway to investigate the possibility of greater centralised control of the records held in these systems. This programme has been initiated by surveying current holdings at a local level.</p> <p>An audit trail function is supposed in most electronic systems However, the RMP states (page 14) "There is a need to explore the details of these software applications and confirm the scope and method of their recording".</p> <p>Evidence for the recording of paper record moves has been supplied (evidence 32).</p> <p>It is likely that considerable work will be required to properly account for records held on shared drives even where local practices have been formalised.</p> <p>The RMP notes (page 14) the value of sharing good practice between service areas. The Keeper commends this principle.</p>



			<p>The Keeper can agree this element on 'Improvement Model' terms. This means that he is convinced that tighter oversight of record location and of version control will result from the project set out in the approved Action Plan. As with elements 4 and 5 above he requests that he is kept up-to-date with the project as it progresses.</p>
<p>12. Competency Framework for records management staff</p>	<p>G</p>	<p>G</p>	<p>The RMP states that the Council Records Manager (see element 2) must hold a qualification in archives and records management. The Keeper cannot insist on this under PRSA but agrees it is an entirely appropriate business decision for an authority of the size and complexity of a local authority.</p> <p>This statement is confirmed by the Job Outline provided by to the Keeper (evidence 34).</p> <p>The East Lothian Archivist's job description has also been provided (evidence 16).</p> <p>The <i>Information Security Policy</i> (see element 8) states that it is the policy of the Council to ensure that all staff will be provided with information security training.</p> <p>The Council have supplied a copy of their <i>IT Acceptable Use Policy</i> (evidence 20). All users of the Council's systems are required to sign up to this policy.</p> <p>The Council's corporate induction includes a section on data protection and every employee handling personal information must undergo DP training every two years.</p> <p>The Council operates an online records management training module. A sample screen-shot from this module has been provided (evidence 27)</p> <p>New policies, including the <i>Records Management Policy</i> (see element 3) and the</p>

			<p><i>Information Security Policy (see element 8)</i>, are intimated to Council staff via an e-news alert.</p> <p>The Council have included a sample screen-shot of the records management page of their intranet, ELNet (evidence 42).</p> <p>The <i>Business Continuity Management System</i> discussed (page 5) the appointment of 'Single Points of Contact' within service areas for continuity management purposes. These contacts (and a deputy for each) will be trained on business continuity process.</p> <p>Licensing Board staff receive training as Council employees.</p> <p>The Keeper agrees that the individual who will carry the responsibility for having day-to-day responsibility for implementing the RMP will have appropriate skills for the role. Furthermore, the Keeper acknowledges that East Lothian Council considers records management training for appropriate staff.</p>
<p>13. Assessment and Review</p>	<p>G</p>	<p>G</p>	<p>The Council's Internal Audit team have already reviewed the records management to create a baseline. There is commitment in the RMP that they will revisit this following the Keeper's agreement. A reporting structure has been explained. The involvement of Internal Audit is commended.</p> <p>A link to the work of the Internal Audit Manager and their team has been provided to the Keeper.</p> <p>The 'Background' paragraph in the RMP (page 3) states "The following plan is designed to be responsive to the changing environment in which we operate and timings may alter based upon any new information." The Keeper appreciates the recognition of these practicalities.</p>

			<p>The RMP includes an 'action' point to review the <i>Information and Records Management Policy</i> before June 2016 (page 4).</p> <p>The RMP states (page 10) that "The ISMS [Information Security Management System] is continually updated to ensure it meets requirements to allow the Council to deal with new and evolving threats". The Council commits to arranging a security review by an External agent (RMP page 11). The <i>Information Security Policy</i> is due for review in December 2015. <b>The Keeper requests that, if any changes result from the review, he is provided with the updated version.</b></p> <p>The Council has committed to a Data Protection Health Check in December 2016. <b>The Keeper would be interested in the results of that check, if appropriate.</b></p> <p>The Keeper agrees that East Lothian Council have made a firm commitment to review their RMP as required by the Act and have explained who will carry out this review and by what methodology.</p>
14. Shared Information			<p>The Council has chosen to combine a response to elements 9 and 14. This is perfectly acceptable. <b>Therefore see element 9 above.</b></p>
15. Freedom of Information	G	G	<p>The Council has chosen to make a feature of Freedom of Information compliance as part of its RMP. Although the Keeper has not included this as a separate subject in his Model Plan, he agrees it is entirely appropriate to address it as the Council has.</p> <p>The Council has provided their Freedom of Information Policy (evidence 44).</p>

		<p>Each service area has a Freedom of Information Compliance Officer.</p> <p>The East Lothian FOI Officer's job description has been provided (evidence 24).</p> <p>Mr Fitzgerald is part of the Freedom of Information Working Group (<b>see element 2</b>).</p> <p>A sample screen-shot from the FOI training module has been provided (evidence 27)</p> <p>An assessment of East Lothian Council by the Scottish Information Commissioner, under FOI, can be found at <a href="http://www.itspublicknowledge.info/ScottishPublicAuthorities/Practice/AssessmentReportingandAction.aspx">http://www.itspublicknowledge.info/ScottishPublicAuthorities/Practice/AssessmentReportingandAction.aspx</a></p> <p>In which the Commissioner states "Overall, East Lothian Council manages FOI well. The Council's robust FOI structures and procedures, with emphasis on providing guidance and support to staff via a well organised, knowledgeable and experienced central FOI team, merit particular mention."</p> <p>The Keeper agrees that East Lothian Council has properly considered their responsibilities under the Freedom of Information (Scotland) Act 2002.</p>
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## **East Lothian Council and East Lothian Licensing Board**

**For the purposes of this assessment the two scheduled authorities will be describes as ‘East Lothian Council’ or ‘the Council’**

### Version

The assessed plan is Version Two approved on 19<sup>th</sup> December 2014. The author of the plan is Alex Fitzgerald (**see element 2**).

The plan makes it clear that it is a joint plan for both East Lothian Council and for the East Lothian Licensing Board. This is agreed by the Keeper.

The submitted plan is accompanied by covering letters from Jim Lamond, Head of Council Resources and Kirstie MacNeill, Clerk of Licensing Board approving the submission (**see element 1**).

The RMP includes an Action Plan 2014-19. By including this within the plan the Council can be assured that the Action Plan is approved at the appropriate level. The Action Plan is mapped against the elements of the RMP. For example, under element 4, “Development of targeted Plan of implementation of Classification Scheme” is scheduled for March 2015. The Keeper commends the inclusion of the Action Plan in the RMP.

The RMP has followed the elements of the Keeper’s Model Plan other than combining elements 9 and 14 and adding element 15 ‘Freedom of Information’.

### Records Management Survey

East Lothian Council are currently undertaking a large-scale survey of its service areas to determine what information assets are held locally and in what format. This survey commenced in September 2014 and quotes PRSA. The results of this survey will greatly influence the development of systems in the future and therefore elements 4, 5 and 11. The process how this will be done is explained in the action plan that makes up part of the submitted RMP. The Keeper has been provided with a sample of the

survey document (evidence 7). The Keeper commends the involvement of record creators in the service areas in the design of any system.

Publication

Much of the evidence package submitted with the RMP is published on the East Lothian Council website, for example the business classification is at <http://www.eastlothian.gov.uk/downloads/file/3630/retention-schedules-june-2014>. The Keeper commends this approach.

## 6. Keeper's Summary

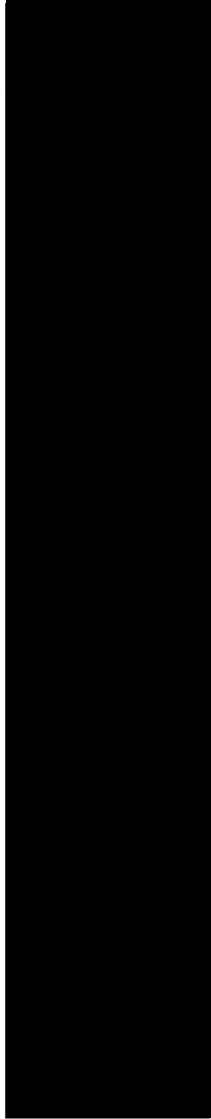
Elements 1 - 14 that the Keeper considers should be in a public authority records management plan have been properly considered by East Lothian Council and East Lothian Licensing Board. Policies and governance structures are in place to implement the actions required by the plan.

## 7. Keeper's Determination

Based on the assessment process detailed above, the Keeper agrees the RMP of East Lothian Council and East Lothian Licensing Board.

- The Keeper recommends that East Lothian Council and East Lothian Licensing Board should publish its agreed RMP as an example of good practice within the authority and the sector.

This report follows the Keeper's assessment carried out by,



.....  
**Pete Wadley**  
Public Records Officer

.....  
**Robert Fotheringham**  
Public Records Officer

## **8. Endorsement of Report by the Keeper of the Records of Scotland**

The report has been examined and is endorsed under the signature of the Keeper of the Records of Scotland as proof of compliance under section 1 of the Public Records (Scotland) Act 2011, and confirms formal agreement by the Keeper of the RMP as submitted by East Lothian Council and East Lothian Licensing Board. In agreeing this RMP, the Keeper expects East Lothian Council and East Lothian Licensing Board to fully implement the agreed RMP and meet its obligations under the Act.



.....  
**Tim Ellis**  
Keeper of the Records of Scotland