

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  
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  
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

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

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

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**

---

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

---

**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 [<mailto:Brian.Devine@firescotland.gov.uk>]

**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: 28<sup>th</sup> May 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 28<sup>th</sup> May 2015 agreed to continue the review hearing for the above Premises Licence to the 24<sup>th</sup> September 2015. The premises licence holder consented to the Licensing Board adding a condition to the current premises licence stating that the premises will not re-open without prior consent having been obtained from the Board.

The Review will now be held in the Council Chambers, Town House, Haddington at 10am on 24<sup>th</sup> September 2015 and the applicant is asked to clarify the future management arrangements for the premises to the Licensing Board at that time.

Please note that it is the custom and practice of East Lothian Council and East Lothian Licensing Board to conduct as much of their business as possible by way of email 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 of the Licensing Board

**Licensing Office : 01620 827217 / 827867**

**E-mail : [licensing@eastlothian.gov.uk](mailto:licensing@eastlothian.gov.uk)**

Cc. Margaret Dodds – 