

EAST LoTHIAN COUNCIL

Licensing, Administration and Democratic Services

From: Rudi Fruzynski,
Licensing Standards Officer

To: K. MacNeill
Clerk to the Licensing Board

Date: 11th November 2016

**Subject: LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW – NON PAYMENT OF ANNUAL FEES
WHITEKIRK GOLF & COUNTRY CLUB, WHITEKIRK, NORTH BERWICK,
EAST LoTHIAN EH39 5PR**

On Thursday 27th October 2016, I received intimation in terms of Section 38(3)(b) of the licensing (Scotland) Act 2005 of the intention of the Licensing Board to review the Premises Licence in respect of the above premises.

In terms of Section 38(4) of the Act, I have prepared this report outlining the basis of the request for the review, which is submitted for the consideration of Licensing Board Members.

R. Fruzynski
Licensing Standards Officer

Licensing Standards Officer's Report

The annual fee for Whitekirk Golf and Country Club is £700.

In early February 2016 the lease holders of Whitekirk Golf & Country Club closed the premises due to apparent financial difficulties. It was stated by the Premises Manager that the premises would re-open for business in early April, but to date they remained closed.

Contact with the owners of the premises in mid February established that they were hopeful that the leaseholder would fulfil their interest in purchasing the property and grounds, but this does not appear to have happened.

On 29th July 2016 the Clerk to the East Lothian Licensing Board wrote to all Premises Licence Holders advising of the Annual Fee due in respect of their licence, requesting payment by 1st October 2016. It was intimated at this time that payment was a mandatory condition of the Premises Licence, in terms of Section 27(1) of the Licensing (Scotland) Act 2005 and failure to pay may be treated as a breach of Premises Licence.

On 9th August 2016 the LSO emailed a copy of the above letter to Mr Robin Tuer, Partner in the company owning Whitekirk Golf Club. A read receipt was returned.

On 4th October 2016 the LSO again emailed Mr Robin Tuer, requesting him to make contact with the Licensing Board Office immediately, regarding non payment of the annual fee. No response was received.

On 10th October 2016 the LSO emailed Mr Tuer a final reminder of the overdue fee, along with a copy of the original Licensing Office letter dated 29th July, 2016. He returned a read receipt and then responded that he would get in touch. No such contact was received.

By the time of the Licensing Board meeting, on 27th October, 2016, payment of the mandatory annual fee had still not been made. As a consequence, the Licensing Board instructed that a review of the Premises Licence would take place.

On 27th October 2016, the Depute Clerk to the Board sent a letter to the Whitekirk Golf & Country Club, and the following day the LSO emailed a copy of this letter to Mr Tuer, with a further reminder that they had not paid their mandatory annual fee and since this was a breach of a condition of their Premises Licence, the licence, would be reviewed at the Licensing Board on 24th November 2016. However, the review would be waived if the fee was paid prior to the Board meeting. Mr Tuer replied to this email on 31st October stating he would speak to the other directors in the company, but he suspected that they would just surrender the licence.

On 10th November 2016, the LSO sent a further email to Mr Tuer, seeking the decision of his directors on whether the annual fee would be paid or the Premises Licence surrendered. No read receipt or response was received by the time this report was sent to the Licensing Office

At the time of submission of this report (16:00 Friday 11th November 2016), the fee of £700 was still outstanding.

Annual Fee Payment Record

The fee in respect of the premises has always been paid on time and never been in default.

Licensing Board's Powers On Review

Licensing (Scotland) 2005 Section 39 (1) At a review hearing in relation to any premises licence, the Licensing Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the steps mentioned in subsection (2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.

(2) Those steps are—

- (a) to issue a written warning to the licence holder,
- (b) to make a variation of the licence,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence.

(3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.