



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

**THURSDAY 24 JUNE 2021
ONLINE PLATFORM MEETING**

Board Members Present:

Councillor F Dugdale
Councillor J Goodfellow
Councillor J Henderson
Councillor J McMillan (Convener)

Clerk of the Licensing Board:

Ms K MacNeill, Service Manager – People and Governance

Attending:

Ms M Winter, Licensing Officer
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Mr R Fruzynski, Licensing Standards Officer
PC G Bairden, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor W Innes
Councillor L Bruce

Declarations of Interest:

None

Due to restrictions imposed during the COVID 19 pandemic, the East Lothian Licensing Board determined to proceed with the meeting by way of video conferencing.

**1. MINUTES FOR APPROVAL
Licensing Board 22 April 2021**

The minutes of the East Lothian Licensing Board meeting of 22 April 2021 were approved as a true record of the meeting.

**2a. PERSONAL LICENCE APPLICATION
Jack Byrne**

This application had been withdrawn.

**4c. GRANT OF A PROVISIONAL PREMISES LICENCE
Barney's Coffee Shop, 39 High Street, East Linton**

The application sought a provisional premises licence for on sales within the café and outdoor drinking facilities, to hold tasting events, and for off sales to include the sale of wines and spirits, online sales, and home delivery. There were no objections from the police, NHS, planning, or community council. The LSO had proposed conditions that there be no obstruction of the pedestrian footway, no amplified entertainment, and that the outside area be closed not later than 8pm to prevent disturbance. Six public objections had been received on the basis of overprovision, noise, litter, and obstruction to the pavement and post box.

Mr Gareth Pickles, applicant, was present to speak to his application. Ms Jennifer Christie, Mr Alan Christie, and Ms Jennifer Cunningham, objectors, were also present.

Mr Pickles provided a summary of the business' history, and had become a personal licence holder when the business looked to widen their offer to alcohol sales. The café wished to offer sparkling wine with afternoon tea or lunch, to host small events, and to be able to remain flexible under Covid restrictions. He noted public objections to outdoor drinking and was happy to retract this from the application. He stated that there were no plans to run parties at the premises.

Rudi Fruzynski, LSO, advised that the premises had thus far operated under occasional licences. PC Bairden confirmed that Police Scotland had no objection to the application, and advised that there had been no recorded incidents at the premises. He reassured the Board that any antisocial behaviour issues would be dealt with as individual complaints.

Objectors spoke to their submitted objections. Mr Christie felt that neighbours' amenity was being challenged. He noted that no alcohol had been consumed outside thus far, and the shop had been closed after 4pm, which was why there had been no complaints raised under temporary licences. He raised concerns about the frequency of events, and was concerned that the premises opening after 4pm would lead to increased noise and food odours, and also concerns about the patrons' use of the outdoor area restricting access to the post box. He was happy to support drinking inside the premises but objected to the consumption of alcohol into the evening in the outdoor area.

The seating arrangements of the outdoor area were established; there would be two tables each with four chairs. Mr Pickles advised that a permit for use of the pavement

had been in place but had run out during lockdown. The outcome of the current application was still awaited due to the previous application having been lost.

Ms Christie described the proximity of the outdoor area to her property and the effect this had on the amenity of neighbours. She described patrons sitting on her property's doorstep and the obstruction caused by bikes.

Members suggested that an earlier terminal hour for use of the outdoor area could be considered, as the street became quieter in the evening and the area was mostly residential. Mr Pickles wished to listen to objections and work with the community. He suggested that the outdoor area could be removed from the licence application. Mr and Mrs Christie confirmed that their main concerns had related to drinking in the outdoor area, and they would therefore be willing to withdraw their objections on this basis. Ms Cunningham's objections relating to the obstruction caused by those using outdoor tables were also taken into account by the Board.

The Convener called for an adjournment to allow Members to discuss the application further.

Councillor Dugdale thanked Mr Pickles for taking objectors' concerns into account, and was minded to grant the application on the basis that the outdoor area would not be a licenced area. Councillor Henderson was also minded to grant the application on this basis, and added a personal note of sympathy regarding patrons using the outdoor tables and causing obstruction; she asked that the licensing team pass on relevant details to objectors so they could report any issues of public safety.

The Convener praised the applicant's desire to work with the community and noted the reports of a well-run business from the police and LSO. He was minded to grant the application and urged the applicant to take a proactive role in the management of the outdoor seating area.

Decision

The Board unanimously granted the provisional premises licence, excluding the outdoor area, and subject to the LSO-raised standard conditions.

***Sederunt:** Councillor Goodfellow joined the meeting.*

2b. PERSONAL LICENCE APPLICATION

Manish Kumar

The Board considered Mr Manish Kumar's personal licence application. This application had been continued from the January meeting of the Licensing Board to allow the applicant's case relating to the sale of alcohol to an underage person to progress through the court system.

Mr Manish Kumar, applicant, was present to speak to his application, along with Mr Alistair Macdonald, agent.

Mr Macdonald advised that the case had concluded with a procurator fiscal's warning in March of 2021, and noted that this disposal was not a conviction. Mr Macdonald said that Mr Kumar had learned his lesson from this incident; there had been no further incidents since this time, and Mr Kumar had would continue to be careful to discharge his responsibilities with regards to Challenge 25.

PC Bairden confirmed that no further incidents had been recorded since October 2020. Mr Kumar himself had made calls to Police Scotland with concerns regarding an adult trying to buy alcohol for youths; PC Bairden felt that this meant Mr Kumar had learned from the incident.

The LSO added that Mrs Penman, the Depute Premises Manager, was a highly professional person. He advised that there had been no complaints identified by Licensing Standards since the initial review.

Mr Kumar thanked the Board for considering his application once more and confirmed he would remain vigilant and would contact the police should issues arise in his store.

Councillor Dugdale commented that while the Board took protection of young people from harm very seriously, Mr Kumar appeared to have developed a proactive response to issues around the sale of alcohol to youths. She was minded to grant the application. Board Members echoed these comments and were also minded to grant Mr Kumar's application.

Decision

The East Lothian Licensing Board unanimously agreed to grant the personal licence.

3. NOTIFICATION OF OFFENCE – PERSONAL LICENCE HOLDER Jaspal Singh Gill

Notification of an offence had been made by Jaspal Singh Gill, personal licence holder. Mr Singh had been called to a hearing to consider his continued holding of a personal licence.

Mr Singh was present at the hearing, and was represented by Mr Alistair Macdonald.

Mr Macdonald advised that Mr Singh, who had been a personal licence holder since 2014, had been convicted of driving under the influence of alcohol in 2019. Notification of this offence had been overlooked at a time of significant stress, where his father was very unwell, causing Mr Singh to travel to India several times around this period. Mr Macdonald described Mr Singh's business, where he was the principal of a well-known Indian takeaway company in Edinburgh called Slumdog, employing around 20 people. Mr Macdonald said Mr Singh was ashamed of his error of judgement, and had had no issues prior to this conviction. Mr Singh had bumped into a parked car while driving home after a night out. He subsequently pled guilty at court and was fined, banned from driving for 12 months, and attended a drink driving rehabilitation scheme.

Mr Singh apologised for his actions and reiterated that he had had no issues prior to this incident.

PC Bairden raised the potential consequences of driving under the influence, and said this was something Police Scotland took very seriously, but thought it was positive that Mr Singh had spoken at the meeting. He reminded Mr Singh that personal licence holders were obliged to notify the authorities of any convictions within one month. The LSO did not know Mr Singh and therefore could not speak to his character, but said that those who showed remorse were deserving of a second chance.

Board Members said they had listened to Mr Singh's sincere apology; they felt he had taken cognisance of the situation and they unanimously agreed to allow Mr Singh to retain his personal licence.

Decision

The East Lothian Licensing Board noted the conviction but would take no further action against Mr Singh.

4a. GRANT OF A PROVISIONAL PREMISES LICENCE Carlyle House, 51 High Street, Haddington

The application sought a provisional premises licence for a café, with private dining area including restaurant facilities, and an outdoor drinking area, and to run functions and live performances. No objections had been raised by the NHS, police, community council, planning, or by the public. The LSO had suggested some standard conditions: no obstruction of the pedestrian footway; no amplified entertainment outside; and the outdoor area to be closed by 8pm.

Ms Mhairi Mackenzie-Robinson was present to speak to her application, accompanied by Mr Alistair Macdonald, agent.

Mr Macdonald provided some background information to Carlyle House opening as a café, and gave information about the applicant's other businesses within the sector. He advised that functions would generally take place upstairs unless an attendee had a mobility issue and would be unable to manage the steep stairs. He confirmed that his clients were happy to accept the conditions raised by the LSO.

Councillor Henderson requested that the language around unaccompanied children and young people be tightened up on the application. It was agreed that unaccompanied children over the age of 11 could be admitted access to the premises before 3pm.

PC Bairden confirmed that Police Scotland held no concerns about the premises, and the LSO commented that the café was a lovely environment and very popular. No issues had been raised while the premises operated under occasional licences.

All Board Members were minded to grant the application.

The Convener wished the applicant well, and commented that the café had the potential to expand Haddington's reputation.

Decision

The East Lothian Licensing Board unanimously agreed to grant the provisional premises licence, subject to standard conditions raised by the LSO and an amendment to the wording around entry of unaccompanied children.

4b. Margiotta, 6D Hall Crescent, Gullane

The application sought a provisional premises licence for off sales, background music to be played, and hot food takeaway which may contain alcohol. No objections had been received from the NHS, police, community council, planning, or the public. The LSO had raised standard conditions relating to installation and upkeep of a suitable CCTV system, reporting all theft of alcohol to the police, and that any deliveries of alcohol adhere to Board policy.

Mr Franco Margiotta, applicant, was present to speak to his application, accompanied by Mr Alistair Macdonald, agent.

Mr Macdonald provided some background to the Margiotta family's stores, who were keen to expand further into East Lothian. The Gullane store had opened the previous day and had already received positive feedback. East Lothian suppliers were now being used across the eight Margiotta stores, including stores situated in Edinburgh. He confirmed his clients were happy to accept the LSO's suggested conditions; he noted that the store did not currently carry out deliveries but would adhere to Board policy should they do so in the future.

Questions were raised by Councillor Henderson about the layout plan and display of alcohol, and the LSO confirmed that the display of alcohol was of adequate visibility to staff and was also covered by CCTV. He reiterated that thefts of alcohol should be reported to the police. Mr Macdonald added that the family were experienced store operators and had taken the potential for theft of alcohol into account in their store design; staff were also trained to watch for signs of theft. Councillor Henderson confirmed she was comfortable that this would be adequately monitored.

PC Bairden confirmed that Police Scotland were satisfied with the layout of the store and were happy that the alcohol display would be close by for staff to be able to monitor the area and stop potential theft of alcohol becoming an issue.

Councillor Goodfellow commented that if Margiotta's Gullane store was as successful as their Aberlady operation, it would be another excellent addition to the community. He also noted the adequate parking spaces offered by the store. Councillor Henderson also appreciated Margiotta bringing their stores to East Lothian. The Convener commented that promotion of local suppliers was important to the area, and wished the store continued success. All Members were minded to grant the application.

Decision

The East Lothian Licensing Board unanimously agreed to grant the provisional premises licence, subject to standard conditions raised by the LSO.

5a. GRANT OF A MAJOR VARIATION OF A PREMISES LICENCE The Watchman (formerly Mallard Hotel), East Links Road, Gullane

The application sought to change the name of the premises from the Mallard Hotel to the Watchman Hotel, increase on sales hours to 1am on Friday and Saturday and to 12 midnight on Sunday, to play recorded music, for outdoor drinking to take place outwith core hours, for live performances to take place at functions during permitted extended hours, to add TV sports as an activity, and to increase the on sale capacity from 150 to 180. No objections had been received from the NHS, police, community council, or the public. Planning had advised that there was no record of the grant of planning permission for use of beer garden/external area. The LSO had raised conditions whereby: no amplified entertainment could take place in the outdoor area; staff would monitor this area regularly; and the terminal hour for outdoor drinking would be 10pm.

Mr Ken Marnoch was present to speak to the application, accompanied by Mr Alistair Macdonald, agent.

Mr Macdonald provided background information on the hotel, which was now owned by three local families. He noted that no adverse comments had been received from

officers, and advised that should a planning application become necessary for use of the outdoor area, this would be made. Mr Marnoch commented that the owners were keen for the hotel to become a destination venue that matched its setting of Gullane, and had been appreciative of community support.

PC Bairden confirmed that Police Scotland raised no objection to the application and looked forward to working with staff in the future. The LSO was pleased that suggested conditions had been accepted and thought the changes made to the hotel looked positive.

Councillors applauded the new owners' commitment to the hotel and wished them success with their venture. All Members were minded to grant the application.

Decision

The East Lothian Licensing Board unanimously agreed to grant the major variation of the premises licence, subject to conditions raised by the LSO.

5b. Winton Castle, Pencaitland

The application sought to extend the licenced area to include a potting shed, and to be able to host meetings and small parties. No objections had been received from the public, NHS, planning, police, community council, or LSO.

Fay Hardwick was present to speak to the application.

PC Bairden confirmed there were no objections from Police Scotland, and the LSO advised that the licensees had cooperated fully in relation to the application.

Board Members were happy to grant the application. The Convener commented that the premises were good neighbours, praised their contributions to Scouting, and was delighted that the venue would continue to prosper.

Decision

The East Lothian Licensing Board unanimously agreed to grant the major variation of the premises licence.

5c. Co-op, 41 Links Road, Port Seton

The application sought to vary the store's activities by adding a home delivery offer and recorded music. No objections had been received from the public, NHS, planning, police, community council, or LSO.

Ms Audrey Junner, agent, was present to speak to the application. Ms Junner confirmed that all checks would be in place for home deliveries relating to alcohol.

PC Bairden confirmed that the police held no objection to the application. The LSO advised that the Co-op had made applications to add home deliveries to operating plans across many of its stores. He confirmed the store had been happy to accept the standard conditions relating to home deliveries, including delivery drivers being trained in alcohol sales, Challenge 25, and no alcohol being left unattended at a customer's home.

All Members were minded to grant the application.

Decision

The East Lothian Licensing Board unanimously agreed to grant the major variation of the premises licence.

5d. Co-op, 32 Hopetoun Drive, Haddington

Ms Junner confirmed that this application was on the same terms as the other Co-op application heard at item 5c.

The LSO commented that the Co-op in Haddington was a popular store which presented no problems.

The Convener raised maintaining road safety was of great importance since the store was located at a busy junction.

Members were minded to grant the application. Councillor Goodfellow decided to abstain from voting due to having been absent for the discussion due to technical issues.

Decision

The East Lothian Licensing Board agreed to grant the major variation of the premises licence.

5e. Macmerry Miners Welfare & Social Club, Main Road, Macmerry

The application sought to remove the requirement for a personal licence holder to be present at functions and to alter this to a requirement that a committee member be present at functions. The application also sought to vary the layout and operating plan to add an outdoor drinking area, with operating hours of 12 noon to 9pm Monday-Sunday, and to add a restaurant and bar meals. Objections had been raised by Police Scotland after the premises had required considerable intervention due to antisocial behaviour in the past. The LSO had also raised various conditions: the beer garden to be supervised by staff on a regular basis and monitored by CCTV; the outdoor area to be seated only; plastic containers to be used in the outdoor area; no amplified entertainment in the outdoor area; and the terminal hour for the outdoor area to be 9pm.

Ms Leah Horeckyj and Ms Fay Fleming, committee members, were present to speak to the application.

Ms Fleming confirmed that an application with planning was currently being progressed for use of the outdoor area. The area would seat 24 people across six benches. She confirmed that the club would be happy to install a CCTV system in the front garden area and to accept all of the LSO's suggested conditions. Ms Fleming suggested that a trial period be instated should Board Members have any concerns. She advised that the club was currently a failing business; the premises had a large capacity but it was felt that having a beer garden would be a great asset to the social hub, particularly during the pandemic where people often felt more comfortable sitting outdoors. Ms Fleming suggested that only members of the club could have use of the outdoor area,

and confirmed that 18th and 21st birthday parties would not make use of this area. She advised that the garden did not back onto a residential area. She said that the community wanted to have a social area for drinking, and felt that the club was unlikely to survive should they not be able to open an outdoor area; club closure would also impact upon community events which used the premises. She hoped that the new committee would be given an opportunity to prove the club could be well run. Ms Horeckyj added that access to the garden area would be through the club only. She reported that the committee did not anticipate noise causing a significant issue as the garden area was on a main road.

Ms Fleming answered questions from Board Members. She advised that when a new manager was appointed, this person would become the premises licence holder. She described Covid measures in place, how children would be supervised, and some of the skills and experience held among committee members. She also confirmed that the garden area was visible from the bar.

The idea of a trial period was raised, as the applicants wished to be able to build trust with Police Scotland and the Licensing Board. The Clerk of the Board advised that a trial period could not be granted and that a review of a licence could only be called due to concerns over licensing objectives.

PC Bairden said that Police Scotland's concerns still stood regarding the potential for antisocial behaviour, and concerns as to whether the number of patrons using the outdoor area could be managed. At full capacity, the club represented one of the largest venues in East Lothian, and would require professional stewarding. The premises had required significant police intervention in the past. He suggested that operating under occasional licences could provide a good starting point for the outdoor area. He also confirmed that Police Scotland would not find it acceptable for a function to run without a personal licence holder present.

The LSO referred to photographs of the beer garden as part of his report and asked that standard conditions be applied should this area be licensed. He noted complaints and issues raised with Licensing Standards about the management of functions at the club. He reported that the club indicated that they allowed event organisers to manage events themselves, but he stated that the licensees were responsible for the management of events. He also advised that 18th and 21st parties had to be reported to Police Scotland at least 14 days in advance. He also noted that as the premises was already licensed, it would not qualify for the grant of an occasional licence.

Ms Fleming responded to comments. She took on board police comments, but felt that a stigma was now attached to the club and hoped for an opportunity to run the beer garden well. She stated that the club was never at capacity other than on gala day; and the lounge area was currently operating at half capacity.

The Convener called for an adjournment to allow Board Members to discuss the application in private.

The Convener was happy for the club to be allowed to serve food. He encouraged an increase in the number of personal licence holders among committee members. He proposed that a maximum of 18 adults be allowed in the outdoor area, and asked that the club abide by the good practice of signing patrons in and out. Table service would be required in the outdoor area, and CCTV must cover the outdoor area. No amplified music could be played outdoors and the terminal hour would be 7.30pm. The Convener also stipulated that notices be displayed regarding suitable behaviour. Ms Fleming and Ms Horeckyj confirmed that they were happy to accept these conditions.

Other Members were minded to grant the application. Councillor Goodfellow said he admired those who had joined the committee to keep the community hub running, and Councillor Henderson hoped the variation to the licence would assist the club through difficult times.

Decision

The East Lothian Licensing Board unanimously agreed to grant the major variation of the premises licence, subject to the following conditions:

- The outdoor area to have a maximum capacity of 18 adults and a terminal hour of 7.30pm;
- Table service to be adopted in the outdoor area, and a sign-in policy to be adopted through the pandemic;
- The outdoor area to be covered by CCTV;
- No amplified music to be played in the outdoor area;
- Notices to be displayed regarding behaviour of patrons;
- Plastic containers to be used in the outdoor area; and
- No change would made to the requirement for a personal licence holder to be in attendance at functions.

6. REVIEW OF PREMISES LICENCE Maitlandfield House Hotel, 24 Sidegate, Haddington

A hearing had been called to review the premises licence of the Maitlandfield House Hotel on the basis on non-payment of the annual licence fee.

Ms Stacey-Marie McWaters, licence holder, was present, accompanied by her father, Mr David McWaters.

The Clerk of the Board provided a summary of contact with the premises, and noted the mandatory condition that payment of the annual fee must be made. She gave an account of payment options available for premises who had suffered financially due to Covid-19. She stated that the full £500 fee remained outstanding and the Maitlandfield House Hotel was the only premises in East Lothian that had failed to make payment.

Ms McWaters provided an account of contact with the licensing office, in which she had raised concerns that since the privilege to sell alcohol had been lost for at least six months during the pandemic, some compensation would be expected in the form of an extension to the licence or credit against a future fee. Mr McWaters added that mandatory closures had meant that the licence could be used for only 5 months of the 12 months for which the premises had paid. He advised that the Maitlandfield would be able to pay the fee, but a deep injustice in that premises had been expected to pay for the full year when mandatory closures had prevented the sale of alcohol for a significant period. He noted that the Maitlandfield was not a public bar, and did not make a profit from alcohol sales, which he said had been very low over the previous two years when compared to the £500 per year licence fee. Ms McWaters added that loss of the licence would close the premises down, and advised that staff employment had had to be secured through the owners' own resources during the pandemic.

Sheila Fitzpatrick, Team Manager – Licensing & Landlord Registration, advised that premises were allowed to open in mid-July and had to close once more in mid-October. She advised that there was a period of around three and a half months where a change to business model could have been accommodated. Ms McWaters acknowledged the decision taken to slowly rephrase the opening of the premises.

The LSO referred to his report dated 1 June 2021, and reported that he had held several discussions with the McWaters. He referred approaches taken by different Licensing Boards and had received 19 responses to enquiries made. Only Aberdeen City had made any reduction to the licence fee (by one third), while others had allowed payment by instalments, which East Lothian had also allowed. He stated that the annual licence fee was not for a provision of service to the premises, but rather for the maintenance of the licensing system in the local authority area.

The Clerk of the Board added that the licence fee was set against the running cost of the licensing service. She noted that Aberdeen City's approach had been notable, but that the area had stayed in full lockdown for longer than the rest of the country and had also had a surplus on their previous year's budget; East Lothian did not have the same scope to reduce any fees as the licensing service broke even.

The Convener called for an adjournment to allow Board Members to discuss in private.

The Convener stated that the Board had no choice but to ask that the full fee be paid within seven days, failing which the premises licence would be revoked. He expressed sympathy for those within the hospitality industry and took on board the points made by the licence holders. However, the mandatory licence fee would nevertheless have to be paid in full.

The Board noted the licence holder's undertaking to pay the full fee that afternoon.

Decision

The East Lothian Licensing Board unanimously agreed that the premises licence would be revoked should the fee not be paid in full within seven days.

Signed

Councillor J McMillan
Convener of East Lothian Licensing Board