

15/11

OCC 799/22
Adv 19/12

EAST LoTHIAN LICENSING BOARD

APPLICATION FOR OCCASIONAL LICENCE

4

REFERRAL NOTES FOR COMPLETING APPLICATION FORM:-

1. Application to be sent to: Clerk to the Licensing Board
Licensing Division
John Muir House
Haddington
East Lothian EH41 3HA
2. The application requires to be lodged not later than **42 days** prior to the date of the function together with the fee payable of **£10.00**.
3. For marquee or outside events - 4 copies of a detailed plan should be lodged with the application, showing the area and grounds which are required to be licensed.
4. The Board can only consider applications for Occasional Licence applied for by such person whom are listed below:
 - i) the holder of a premises licence
 - ii) the holder of a personal licence and
 - iii) a representative of any voluntary organisation
5. Applicant should advise Council's Environment and Consumer Services Department on 01620 827365 of any intention to prepare and serve food at the function. Applicant should also advise what toilet facilities are to be provided.
6. Applicant should advise Council's Environmental Protection Department on 01620 827365 if they are intending to have live or amplified music.
7. It is the policy of the Licensing Board that events that are predominantly organised for children should not necessarily attract the need for an alcohol licence to be granted in relation to it. Therefore, applicants for events mainly focused towards children and families, where the majority of attendees will be children, young persons and families, will be required to justify why an alcohol licence is required and may be required to attend a Licensing Board hearing for a determination.

East Lothian Council
Licensing
16 DEC 2022
Received

Occasional Licence and Supplementary Information Form
EAST LoTHIAN LICENSING BOARD

APPLICATION FOR OCCASIONAL LICENCE

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand, please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written or typed in black ink. Use additional sheets, if necessary.

You may wish to keep a copy of the completed form for your records.

1. LICENCE DETAILS (see note 1)	
Premises licence number (if applicable)	
Personal licence number (if applicable) EL1244	
Name of voluntary organisation (if applicable)	

2. PERSONAL DETAILS			
TITLE (delete as appropriate): Mr			
Surname	WAITES		
Forenames	Rupert Alan		
DATE OF BIRTH	Day	Month	Year
	25	01	1976
ADDRESS WHERE ORDINARILY RESIDENT TO BE USED FOR CORRESPONDENCE PURPOSES			
<div style="background-color: black; width: 150px; height: 30px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 20px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 20px;"></div>			
Post town	<div style="background-color: black; width: 100px; height: 15px;"></div>	Post code	<div style="background-color: black; width: 60px; height: 15px;"></div>
TELEPHONE NUMBERS <div style="background-color: black; width: 100px; height: 15px; display: inline-block;"></div>			

Daytime	
Evening	
Mobile	██████████
FAX NUMBER	
E-MAIL ADDRESS (if you would prefer us to correspond with you by e-mail)	
rupert@buckandbirch.com	
3. THE PREMISES	
Description of premises	
A single storey unit in Merryfield Business Centre, consisting of bonded production facility and warehouse with separate office space and reception room	
Description of activities to be carried on in the premises – (including number of persons expected to attend)	
A retail shop in our bonded production facility selling our alcoholic liqueurs, spirits and cocktails.	
Complimentary samples may be offered to visitors but no drinks will be sold to consumed on the premises.	
All alcoholic sales would be off sales only and not consumed on the premises.	
A license has previously been granted for similar activity at the premises mentioned	
Full postal address of premises which this application refers to	
Buck & Birch Ltd Unit 9 Merryfield Business Centre Macmerry Industrial Estate Tranent EH33 1ET	

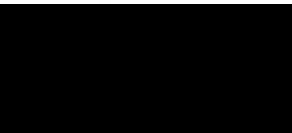
4. DURATION OF LICENCE
From: 15/01/2023
To: 24/01/2023

5. Is alcohol to be sold on & off the premises YES/NO* - Provide relevant details as to hours requested when alcohol will be sold on/off the premises-* delete as appropriate	
Times for sale of alcohol for consumption on premises	Times for sale of alcohol for consumption off premises

NA	Mon to Sat 10am - 6pm
Statement of the times at which any activities other than the sale of alcohol will be carried on in the premises <p style="text-align: center;">Mon to Sat 10am - 6pm</p>	

6. CHILDREN (see note 2)	
This section must be completed where alcohol is for sale for consumption on the premises	
Are children or young persons permitted entry? YES (if answered yes the remainder of this section must be completed)	
Ages of children or young persons permitted entry <p style="text-align: center;">NA</p>	Times at which children or young persons permitted entry <p style="text-align: center;">Mon - Fri 10am - 6pm (ONLY UNDER SUPERVISION OF PARENT/ GUARDIAN)</p>
Parts of premises to which children or young persons permitted entry <p style="text-align: center;">RETAIL SPACE</p>	

7. CHECKLIST	
I have - Please tick for yes	
<ul style="list-style-type: none"> • Made or enclosed payment of the fee for the application 	

8. Signature and declaration by applicant (see note 3)	
DECLARATION	
The contents of this Application are true to the best of my knowledge and belief.	
S 	DATE <p style="text-align: center;">16/12/2022</p>

NOTES

1. Section 56 of the Licensing (Scotland) Act provides that only: –

- **The holder of a premises licence;**
- **The holder of a personal licence; or**
- **A representative of any voluntary organisation**

is eligible to apply for an occasional licence

PLEASE SUBMIT THIS SHEET WITH YOUR OCCASIONAL LICENCE APPLICATION FORM

SUPPLEMENTARY INFORMATION

<p>1. Event</p> <p>(a) Please detail the type of event (e.g. birthday party, anniversary celebration, ceilidh, etc.)</p> <p>(b) What entertainment, if any, will be provided? (e.g. live music, recorded music etc.)</p>	<p>(a) Retail shop selling our range of cocktails and liqueurs for off sales consumption only</p> <p>(b) NONE</p>
<p>2. Attendance</p> <p>(a) Approximately how many people are expected to attend?</p> <p>(b) How is this figure obtained? (e.g. previous events, ticket sales, capacity of venue)</p> <p>(c) In the main, what age group will form the majority of those attending? Tick one box.</p> <p>(d) How is access gained to the event? (e.g. ticket purchased in advance, ticket purchased at the door, private invitation)</p>	<p>20 people per day</p> <p>Having asked potential customers if/ when they would visit</p> <p><input type="checkbox"/> Under 18</p> <p><input type="checkbox"/> 18 - 30</p> <p><input checked="" type="checkbox"/> 30 – 50</p> <p><input type="checkbox"/> over 50</p>

<p>3. <u>Stewarding</u></p> <p>Please note it is an offence under the Private Security Industry Act 2001 to <u>employ</u> unlicensed door stewards.</p>	
<p>Unpaid volunteers performing this function are not covered by the Act, however. More information can be found at <u>Security Industry Authority</u>.</p> <p>(a) Please state the number, if any, of stewards to be employed at the event.</p> <p>(b) Of that number, please state how many will be SIA registered stewards and how many will be volunteers.</p>	<p>(a) NA</p> <p>(b) NA</p>
<p>4. <u>Layout Plans</u></p> <p>Please indicate if -</p> <p>(a) there is a plan attached to a Public Entertainment Licence issued for the premises; or</p> <p>(b) the premises relate to a members club which has been issued with a premises licence; or</p> <p>(c) if neither of the above, please attach a detailed layout plan of the venue with the application</p>	<p>(a) NA</p> <p>(b) NA</p> <p>(c) Attached</p>
<p><u>5. Applications Lodged by Voluntary Organisations or Members Clubs Only</u></p> <p>Please list the dates of previous occasional Licences granted by the Board between 1 January and 31 December</p>	

6. Will alternatives to glass receptacles be provided?	NA
7. To what standard those serving alcohol be trained? Please provide details of any training certificate held	All staff have are qualified to serve and sell alcohol

LICENSING OBJECTIVES **	
All holders of occasional licences must demonstrate how they will promote the 5 Licensing Objectives. Please provide practical examples of what you plan to do to comply with each objective.	
8. How will you prevent Crime and Disorder at the event?	As no alcohol will be served or consumed at the premises there should be minimal risk of and crime or disorder taking place.
9. How will you secure Public Safety at the event?	With numbers restricted in line with current COVID regulations risk to visitors will be minimal.
10. How will you prevent Public Nuisance at the event?	There will be no music or entertainment to cause any noise pollution and being on an industrial estate away negates any risk of upsetting residents

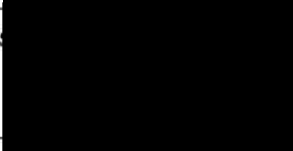
<p>11. How will you promote and protect Public Health at the Event?</p>	<p>All guidelines and regulations relating to COVID and other health issues will be upheld.</p> <p>There will be hand washing facilities in place and staff will wear appropriate PPE.</p> <p>Numbers will be limited to ensure social distancing rules will be adhered to.</p>
<p>12. How will you protect Children from Harm at the Event?</p>	<p>Any children present will be accompanied by a parent/ guardian at all times.</p>

SIGNATURE AND DECLARATION BY APPLICANT DECLARATION

IT IS AN OFFENCE TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

(Criminal Law (Consolidation)(Scotland) Act 1995 Section 44(2)(b))

The contents of this Application are true to the best of my knowledge and belief.

		<p>Date 16/12/2022</p>	
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Herkes, Gillian

From: Rupert Waites <rupert@buckandbirch.com>
Sent: 06 January 2023 13:36
To: Licensing
Subject: Buck and Birch Occasional license amendment

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear sir or madam,

We recently sent in a number of occasional license applications and would like to add to the activities to be licensed that we..

Seek approval and license to sell goods from our shop and also fulfil online orders to be delivered from the same location.

Could you add this to the applications please.

Many thanks

Rupert Waites

EAST LOTHIAN COUNCIL

Licensing Standards

From: K. Harling
Licensing Standards Officer

To: C. Grilli
Clerk to the Licensing Board

Date: 10th January 2023

Subject: LICENSING (SCOTLAND) ACT 2005
REPRESENTATION OCCASIONAL LICENCE APPLICATIONS –
BUCK & BIRCH LTD, UNIT 9, MERRYFIELD BUSINESS CENTRE,
MACMERRY

Applications for occasional licences submitted by personal licence holder, Mr Rupert Waites for the above premises of Buck & Birch were heard at the August 2022 Licensing Board and the October 2022 Licensing board. A representation was made by the Licensing Standards Officer in relation to the premises operating on occasional licences longer than 3 months which is inconsistent with the Licensing Boards Statement of Licensing Policy (see below previous representations).

At the East Lothian Licensing Board hearing on 22nd August the representation for the grant of occasional licence applications for the premises Buck and Birch was heard and considered. The occasional licences were granted until 27th October 2022 and the applicant Mr Rupert Waites was asked to apply for a provisional licence application.

The remaining applications from 28th Oct 2022 – 5th Jan 2023 were heard at the October Licensing Board. Mr Waites was represented by his agent Alistair Macdonald. Mr Macdonald informed the board that applications had been made for section 50 certificates and a layout plan had been produced. It was expected that the application would be lodged in the following few weeks. The board appreciated the work that had happened and were looking forward to receiving the premises application. The board moved to grant the occasional licences until 5th Jan 2023.

To date no provisional/premises licence application for the premises has been received.

Since the October Licensing Board the Licensing Standards Officer has become aware of and given guidance on three concerning incidents as follows.

On 10th November 2022 the Licensing Standards Officer became aware of tasting events that were advertised on the Buck & Birch website. The events included tastings of the entire range of Buck & Birch products paired with canapés in the tasting room at the premises in Macmerry. The event was advertised at a ticket price of £20 per person.

The occasional licence in place at this time, as well as all previous and subsequent licences applied for and granted were for off-sales only. Under the terms of section 3 of the 2005 Act and the concept of sales pursuant to a contract, if the alcohol provided in samples or tastings is accessed by the customer having paid some form of money or money's worth to attend the event, then section 3 makes that a licensable event. On-sale purchases and consumption were taking place at the premises. With there being no on-sales provision on the occasional licence conducting these events is an offence under Section 1 of the Licensing Scotland Act 2005 - Alcohol may not be sold unless under and in accordance with a premises licence or occasional licence granted under the 2005 Act. This information was passed to PC Graeme Bairden.

The Licensing Standards Officer wrote to Mr Waites explaining this breach and asked that the tasting events cease with immediate effect until a licence for on-sales was applied for and granted. Mr Waites agreed to stop the tastings and was advised to consult with his licensing agent. At this time Mr Waites detailed that he was awaiting planning for the premises licence application.

On 16th December 2022 the Licensing Standards Officer wrote to Mr Waites to inform him that the last occasional licence that had been granted expired after 5th January 2023 and as there had been no further occasional applications received or granted, that all sales of alcohol must cease after 5th Jan 2023. Any sales after this time would be illegal and without a licence. This includes online sales and deliveries.

On 6th January 2023, the Licensing Standards Officer checked the website for Buck & Birch in relation to the online shop and found that all products were offered for sale, with the exception of those out of stock. Items could be added to the online basket but no test was complete to see if they could be fully purchased. Section 147 of the Licensing Scotland Act 2005 states:-

“sell”, in relation to alcohol, includes barter and expose to or offer for sale, and related expressions such as “sale” are to be construed accordingly”

Offering to sell the alcohol without a licence is a Section 1 offence –

(1)Alcohol is not to be sold on any premises except under and in accordance with—

(a)a premises licence, or

(b)an occasional licence,

granted under this Act in respect of the premises.

(3) A person who—
(a) sells alcohol, or
(b) F1... allows alcohol to be sold,
in breach of subsection (1) commits an offence.

The Licensing Standards Officer has passed this information to Police Sgt Rachel Stark.

The licensing team received 8 applications for occasional licences from a member of Mr Waites' Team on 19th December 2022.

The occasional licence applications cover a period of 15th January – 4th April 2023.

At the beginning of January 2023, the Licensing Standards Officer was made aware of concerns in relation to the delivery of a Buck & Birch product. The item a bottle of liqueur had been ordered online and requested to be ship to the buyers address. The item was subsequently delivered by Royal Mail through standard delivery where the item was left inside an open porch at the delivery address. The item was not handed to a person, nor signed for and no age verification checks were completed on delivery. The only time that the buyer was required to answer anything about their age was a pop up box on the website asking the user to verify they were of legal age to consume alcohol in their country of residence by pressing either Yes or No.

There were no markings on the package to indicate to the postal worker that the package contained alcohol, nor was it sent using an age verification service. The packaging of the item not marked as fragile and contained a glass bottle.

This concerns the Licensing Standards Officer and is in breach of board policy below:

32.3 When making a delivery that includes alcohol, certain checks should be carried out such as Challenge 25 and checking that the customer is 18 years or over. No orders that include alcohol are to be left in nominated safe places. Staff delivering alcohol must be trained to the same level as staff who sell or supply alcohol in licensed premises. Licensees who use couriers to make their deliveries should ensure that they comply with the checks and standards required by the Licensing Board.

The Licensing Standards Officer wrote to Mr Waites with corrective guidance. Sgt Rachel Stark was also informed of the above. Mr Waites responded that he agreed this was not suitable and he was concerned to hear what had happened. He detailed that they are in the process of changing couriers and would be reviewing and updating the Remote Sales and Delivery Policy.

The Licensing Standards Officer is concerned that the applicant is not fully understanding his responsibilities as a licence holder and adhering to the occasional licences that have been granted.

The current delivery operation is open to abuse and also could potentially allow the delivery of alcohol to children and young persons. This is inconsistent with the licensing objective of protecting children and young persons from harm.

The Licensing Standards Officer requests that the board considers if the granting of the occasional licences would be continue to be inconsistent with the licensing objectives and if any further breaches are likely to occur. In addition it is requested that the board considers the delay in submission of a premises licence application and the reasons for this.

Applications for consideration:

8 Occasional Licence Applications from 15th January – 4th April 2023

I submit this report for the information of the board members.

K. Harling
Licensing Standards Officer

EAST LoTHIAN COUNCIL

Licensing Standards

From: K. Harling
Licensing Standards Officer

To: C. Grilli
Clerk to the Licensing Board

Date: 29th Sep 2022

Subject: LICENSING (SCOTLAND) ACT 2005
REPRESENTATION OCCASIONAL LICENCE APPLICATIONS –
BUCK & BIRCH LTD, UNIT 9, MERRYFIELD BUSINESS CENTRE,
MACMERRY

At the East Lothian Licensing Board hearing on 22nd August the below representation for the grant of occasional licence applications for the premises Buck and Birch was heard and considered. The result being that the occasional licences were granted until 27th October 2022 and the applicant Mr Rupert Waites was asked to apply for a provisional licence application. To date no provisional application for the premises has been received.

As such the below occasional licence applications are outstanding. It is requested that the board consider the application for grant as per the representation below where grant on delegated powers is against board policy.

Applications for consideration:

7 Occasional Licence Applications from 28th Oct – 5th Jan 2023

I submit this report for the information of the board members.

K. Harling
Licensing Standards Officer

EAST LoTHIAN COUNCIL

Licensing Standards

From: K. Harling
Licensing Standards Officer

To: C. Grilli
Clerk to the Licensing Board

Date: 27th July 2022

Subject: LICENSING (SCOTLAND) ACT 2005
REPRESENTATION OCCASIONAL LICENCE APPLICATIONS –
BUCK & BIRCH LTD, UNIT 9, MERRYFIELD BUSINESS CENTRE,
MACMERRY

The Licensing Standards Officer would like to make a representation under Section 21(1) of the Licensing (Scotland) Act 2005 that the Licensing Board review the applications made for occasional license made by the personal licence holder Rupert Waites for the premises Buck & Birch Ltd. I have no objection to the grant of these licenses and on visiting the premises and speaking with Mr Waites he has informed me that he will be submitting and application for a provisional premises licence once he secures and agent to act on his behalf. However, it is only right that the applications submitted and further applications be determined by the board as per the East Lothian Licensing Board Statement of Policy 2018 – 2023.

The premises has been selling alcohol under occasional licences granted since 2020 as follows:

23/11/2020 – 03/01/2021 (just over 1 month, 3 licences)

29/03/2021 – 23/05/2021 (approx. 2 months, 4 licences)

08/10/2021 – 13/01/2022 (approx. 3 months, 7 licences)

01/05/2022 - 29/07/2022 (approx. 3 months, 9 licences)

Further applications were received from 30/07/2022 – 05/01/2023. In order to allow the premises to continue to trade the Clerk authorised the grant 3 of the occasional licences until 28th August 2022.

Extract from East Lothian Licensing Board Statement of Policy 2018 – 2023

20.1 Repeated applications for Occasional Licences for the same premises and which are:

- not for specific events; and/or
- for activities that have been occurring (either in identical or largely similar terms) on the premises regularly over a period of at least 3 months will not generally be considered suitable for the grant of an Occasional Licence and will not be granted by the Board under delegated authority but will require a hearing before the Board. It is largely expected, that the premises in question should consider an application for a Premises Licence.

20.2 Section 59(6) of the Act specifies the grounds for refusal of an application for an Occasional Licence. These grounds include “that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives”. These licensing objectives include: -

- Securing public safety.
- Protecting and improving public health
- Protecting Children and Young Persons from harm

The scrutiny given to an application for a Premises Licence is not available where premises operate under a series of consecutive Occasional Licences. In the interests of securing public safety, and/or, for protecting and improving public health, the Board, considers that it is not appropriate for a premises to operate on a series of consecutive Occasional Licences, rather than apply for a Premises Licence. The Board will require an applicant to explain at a Hearing why an application for a Premises Licence is not being made unless the Clerk of the Board is satisfied that there are good reasons that prevent such an application that are not within the control of the applicant.

It is therefore requested that the board considers the 13 applications covering the period 29th August 2022 – 5th January 2023 for determination as per board policy above and not granted on delegated powers on consultation with Police and the Licensing Standards Officer alone. An example application has been provided for the board from 29th July – 7th August 2022, all subsequent applications are the same with the exception of the dates.

I submit this report for the information of the board members.

K. Harling
Licensing Standards Officer