



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

**THURSDAY 26 JANUARY 2023  
ONLINE PLATFORM MEETING**

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**Board Members Present:**

Councillor L Bruce (Convener)  
Councillor C Cassini  
Councillor F Dugdale  
Councillor G Gilbert  
Councillor G McGuire  
Councillor J McMillan

**Clerk of the Licensing Board:**

Mr C Grilli, Service Manager – Governance

**Attending:**

Ms G Herkes, Licensing Officer  
Ms A Rafferty, Licensing Officer  
Ms K Harling, Licensing Standards Officer  
Ms L Gillie, Team Manager – Democratic and Licensing  
PC I Anderson, Police Scotland  
Insp D Wardell, Police Scotland

**Committee Clerk:**

Ms B Crichton – Committees Officer

**Apologies:**

None

**Declarations of Interest:**

Item 2: Cllr McMillan declared an interest due to contact with the premises as part of his role as Spokesperson for Economic Development and Tourism.

**1. MINUTES FOR APPROVAL**  
**East Lothian Licensing Board, 24 November 2022**

The minutes were agreed as an accurate record of the meeting.

*Sederunt: Councillor McMillan left the meeting.*

**2. MAJOR VARIATION**  
**No. 12 Hotel & Bistro, 12 Quality Street, North Berwick**

The application sought to vary the operating plan to change the core hours from 11am to 9am Monday to Sunday for an additional facility to allow non-residents to have alcohol with breakfast. A request was also made for activities that might be available outwith core hours in a hotel, such as TV sport in the bedrooms, background music, and bar meals/restaurant facilities. There had been no objections from the public, NHS, community council, or planning. The Licensing Standards Officer (LSO) noted that the hours requested were outwith Board policy, and asked that the policy be carefully considered in respect of early opening. Police Scotland had submitted an objection on the grounds of preventing crime and disorder and protecting and improving public health. Their objection related to the sale of alcohol commencing at 9am, noting this would be in conflict with Board policy and the Scottish Government's recommendation for on sales not to exceed 14 hours per day.

Alistair Macdonald, the applicant's agent, was present to speak to the application, accompanied by Sean McCashey from No. 12 Bar & Bistro. Mr Macdonald reiterated that the serving of alcohol would only be to those having breakfast. This was a facility currently available to hotel guests, and Mr Macdonald suggested that it would simplify the bistro's policy if all customers could be served alcohol with their breakfast; currently requests for this facility had to be turned down. He suggested that the number of drinks could be limited to two, and thought that drinks such as a Bloody Mary or prosecco would be most popular. He said the applicant understood the Scottish Government's recommendation that a premises should serve alcohol for not more than 14 hours per day, but highlighted that Board policy stated that the premises should provide further information if making such an application. He noted the small size of the restaurant, at only 25 seats, and felt that the grant of the major variation would be unlikely to set any precedent, as the only other licenced premises offering breakfast in the area was the Marine Hotel. He highlighted that the police and LSO had not indicated how any of the licensing policies or objectives could be infringed, and said that the small number of drinks in a social setting was not going to cause public nuisance or increase children and young people's exposure to alcohol.

Mr Macdonald and Mr McCashey responded to questions from Members. Responding to questions from Councillors Dugdale and Cassini, Mr McCashey said that alcohol would only be served with a plated meal. Responding to a question from Councillor Gilbert, Mr Macdonald said that drinks would be an ancillary offer to breakfasts, and drinks would be served by the glass, i.e. bottles of wine should not be sold. Mr McCashey agreed to the Convener's and Councillor Cassini's suggestion that a breakfast drinks menu be produced.

*Sederunt: Councillor McGuire joined the meeting.*

Karen Harling, LSO, highlighted the additional activities requested as part of the major variation application, to which she held no objection. She recommended wording for an additional condition; "alcohol served between 9am-11am to be accompanied by a substantial plated meal with a limit of two drinks per person".

PC Iain Anderson said that the police objection was based only on the hours being outwith Board policy, but felt this had been covered by Mr Macdonald. He advised that the premises caused no issues. Police Scotland also had no objection to the premises' change of name. Inspector Dougie Wardell also asked the premises to clearly advertise what was on offer to make patrons aware of what was available at breakfast time.

Mr Macdonald confirmed his client was happy to accept the LSO's suggested condition, and would also be happy to accept any condition that specified that no bottles of wine could be served. He confirmed that the change of name was to No. 12 Hotel and Bistro.

The Convener called an adjournment to allow Members to discuss the application in private session. Upon their return, he confirmed that Members were minded to grant the major variation application, with conditions that alcohol served between 9am-11am must be accompanied by a substantial plated meal, with a limit of two drinks per person, and that alcohol served between 9am-11am be served only by the glass, and not by the bottle. This was confirmed by roll call vote. Members supported the application unanimously, with the additional conditions. Carlo Grilli, Clerk of the Board, noted that Councillor McGuire did not cast a vote as technical issues meant he had been unable to hear the whole application.

### **Decision**

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

- alcohol served between 9am-11am must be accompanied by a substantial plated meal, with a limit of two drinks per person; and
- alcohol served between 9am-11am must be served only by the glass, and not by the bottle.

***Sederunt:** Councillor McMillan re-joined the meeting.*

### **3. EXTENDED HOURS APPLICATION The Mercat Grill, 10 Whitecraig Road, Musselburgh**

The application sought an occasional licence extension from 12 midnight to 4am to hold an event to screen the Super Bowl 2023. Police Scotland had submitted an objection on the basis that the event did not fulfil the criteria of being a special event of local or national significance, and due to the potential for antisocial behaviour and break out noise. The LSO report made no objection but recommended conditions that: a personal licence holder be in attendance throughout the event; the event be invitation/ticket only and limited to no more than 40 persons; attendance must include the consumption of a meal; last orders to be called by 2.45am and comprises no more than one drink per customer; the sale/supply of alcohol to be terminated no later than 3am with a drinking up time of no later than 4am by which time the premises should be closed; and staff to ensure that customers are advised to be considerate of others and leave quietly.

Graham Blaikie, applicant, spoke in support of the application and read a letter he had previously sent to Licensing Board Members. The letter covered: information on the successful Super Bowl event held at the premises in 2022; information on some of the patrons and assurances as to their behaviour; assurances as to the presence of a

personal licence holder throughout and that a risk assessment would be undertaken prior to the event; an appeal for the event to be considered to be local or national significance, as referred to in the Licensing (Scotland) Act 2005; and an account of the good relationships fostered with the Mercat Grill's neighbours. He also requested that up to 50 attendees be allowed so no one would be disappointed.

Mr Blaikie responded to questions from Members. He said that he held the personal details of all attendees, as everyone got in touch with him to purchase tickets. He knew the attendees well as they were regulars at American football screenings. He said there would be no drinks promotions, which would go against the principles of the Licensing (Scotland) 2005 Act, but attendees would be provided with plenty of food. He gave an account of measures to minimise noise disruption; no one would be allowed in the conservatory, and only a few people would be allowed out to smoke at any one time.

The LSO said Mr Blaikie was an active member of the East Lothian Licensing Forum, and commented that the premises was well run. She referred to her report and proposed conditions, and said that she had no objection to increasing the permitted number of attendees to 50, so long as all had prepaid tickets and details were noted. She said that she and Mr Blaikie had spoken at length about the event.

PC Anderson said that Police Scotland had objected in 2022; the Board had given permission for the event to go ahead, and there had been no incidents. He noted that any calls to police about the premises had been minor matters that had not been related to alcohol or violence.

The Convener commented that the event was of international significance. Inspector Dougie Wardell responded that any event of local or national significance would be considered on a case-by-case basis. Responding to a question from Inspector Wardell, Mr Blaikie confirmed that all attendees would be locals. Inspector Wardell felt that if only 40-50 people were interested in East Lothian, the event could perhaps not be considered of local or national significance. He noted the lower capacity of taxi firms for late-night events in East Lothian when compared to Edinburgh. He said that Police Scotland did not object to previous management of the event. He wondered whether a precedent may be set for other international events.

The LSO clarified that it was also open to the Board to extend hours for a special event or occasion catered for on the premises, so there was no restriction to only events of local or national significance.

Councillors McMillan and Dugdale said, given the various reassurances, they were minded to grant the application, subject to the LSO's recommended conditions. Councillor McGuire said that Mr Blaikie had run past events well, and felt that the participants were more interested in the match than alcohol. He thought the event would promote American football and the premises in East Lothian.

The Convener was a fan of American football, but felt that a special event or occasion was a subjective term. Each case had to be taken on its own merits, and had to have the confidence of the Board. He was also happy to grant the application, subject to the LSO's recommended conditions. He moved to a roll call vote, and Members voted unanimously to grant the application.

## **Decision**

The East Lothian Licensing Board agreed to grant the major variation, subject to the LSO's recommended conditions, namely:

- a personal licence holder to be in attendance throughout the event;

- the event to be invitation/ticket only and limited to not more than 50 persons;
- attendance must include the consumption of a meal;
- last orders to be called by 02.45am and comprises no more than one drink per customer;
- the sale/supply of alcohol to be terminated no later than 3am, with a drinking up time of no later than 4am, by which time the premises should be closed; and
- staff to ensure that customers are advised to be considerate of others and leave quietly.

#### **4. OCCASIONAL LICENCES**

##### **Buck & Birch, Unit 9, Merryfield Business Centre, Macmerry**

Buck & Birch had been called to a Board hearing in August and October 2022 by the LSO due to the number of repeated occasional licence applications, contrary to Board policy of a maximum of three months. At the October Board, occasional licences were granted until 5 January 2023, and the agent, Mr Macdonald, informed the Board that it was expected that a premises licence application would be lodged in the following weeks. The LSO had submitted a report to inform the Board of tasting events advertised on the company website in November 2022, despite there being no provision for on sales within the occasional licences granted. She wrote to Buck & Birch, and Mr Waites agreed that the events would stop. The LSO then wrote to Buck & Birch to inform them that the occasional licences would expire on 5 January 2023, but found that the full range of products was still available on the website on 6 January 2023. Sales after this date would be illegal without a licence, but no test was completed to check whether the products could be purchased. The licensing team received eight applications on 19 December 2022 for occasional licences to cover a period of 15 January to 4 April 2023.

Further, the LSO became aware of concerns in relation to the delivery of a Buck & Birch product, which had been delivered through Royal Mail standard delivery and left inside an open porch at the delivery address. It was not handed to a person, signed for, and no age verification checks were completed at the time of delivery. The LSO wrote to Mr Waites with corrective guidance, and he responded with concern and detailed that the company were in the process of changing courier.

The LSO had expressed concern in her report that the applicant did not fully understand his responsibilities as a licence holder. She highlighted that the current delivery operation was open to abuse, and could potentially allow the delivery of alcohol to children and young persons. She requested that the Board consider whether the granting of the occasional licences would continue to be consistent with the licensing objectives and if further breaches were likely to occur. She also asked the Board to consider the reasons behind the continued delay in the submission of a premises licence application.

The Clerk of the Board noted that a provisional premises licence application had been lodged the previous day.

Alistair Macdonald, the applicant's agent, was present to speak to the application, accompanied by Rupert Waites, applicant. Mr Macdonald gave an account of actions towards lodging a provisional premises licence. He advised that a Section 50 Certificate had been required from the planning authority, and an application had been made. The planning authority advised that because tastings would take place on the premises, a planning application was required, which was later submitted by the client's architect. Mr Macdonald said the planning authority later advised that a planning application was in fact not required, the architect could withdraw the

application, and thus a Section 50 Certificate was released. The provisional premises licence application was then lodged, and it was hoped this would be heard at the April Board meeting. Mr Macdonald said that a full premises licence application required certificates from food hygiene and building standards. The Food Hygiene Certificate had already been obtained, but the building warrant covered other units; more work was required to resolve this issue before a full premises licence application could be lodged. He said that it was never the intention for Buck & Birch to operate on occasional licences for an extended period of time.

Mr Macdonald apologised for the oversight when an occasional licence had been overlooked, meaning that the licences expired on 6 January. He said that alcohol tastings were a grey area; if the premises charged for the alcohol, it was considered to be an on sale, but some premises charged instead for a tutorial. Mr Macdonald had advised Mr Waites that on sales be included in occasional licence applications going forward. He said that Mr Waites had previously used Royal Mail's alcohol delivery service, but had now undertaken to use a courier for alcohol deliveries, and asked the Board to accept that some mistakes had been made previously.

Mr Waites thanked Members for their patience, and said that the police and the LSO had been helpful throughout the process. He said the hold ups with the planning authority had been frustrating. He confirmed that because some of the occasional licences had been missed, the business was currently offline and not selling directly to the public.

The LSO referred to her report dated 10 January 2023. She said a lot of assistance had been provided to help the business adhere to the terms of the legislation and their occasional licences. She noted that the industry was regulated, and Mr Waites was applying as a personal licence holder for occasional licences; he therefore needed to take a greater overview of the other staff. It was her view that the tasting events should only have been conducted had on sales been part of the occasional licences. She had given advice to close down the company website after occasional licences had expired on 5 January 2023. She was concerned about the alcohol delivery issues, and policy and process needed to be considered. She had also spoken with Mr Waites about changing to a courier where age verification could be undertaken.

Mr Waites responded to questions from Members. He said that all staff received the industry standard two hours of training. Mr Waites delivered the training, and the records were available to view. He said that there were only three other members of staff, whose activities included taking stock to markets.

Responding to a question from the Convener, Mr Waites said that he had been disappointed in the Royal Mail delivery being left unattended. He said that the business took this aspect of trading seriously, and had upgraded to a new and more expensive service, as they would hate for one of their products to get into the wrong hands.

PC Anderson confirmed that trading on the Buck & Birch website had been taken down immediately after Police Scotland had spoken with Mr Waites following expiry of the occasional licences.

Councillor McMillan commented that it was reassuring to have Mr Macdonald acting on behalf of Buck & Birch. He was also reassured to hear from Mr Waites about lessons learned. He noted the LSO's comments about the need to remember that Buck & Birch were acting in a regulated industry, but was nevertheless minded to grant the occasional licence applications. The Convener echoed Councillor McMillan's comments. He was satisfied that the delivery service had been upgraded, and glad to hear reassurance from Mr Waites that this aspect of the business was taken seriously.

He may take some of the issues experienced with the planning authority offline, but noted that the provisional premises licence application had now been lodged.

The Convener then moved to roll call vote on the occasional licence applications, and Members were unanimously minded to grant.

### **Decision**

The East Lothian Licensing Board agreed to grant the occasional licence applications.

## **5. GRANT OF PERSONAL LICENCE Stephen Stevens**

The application for a personal licence had come before the Board on the basis of representation from Police Scotland, which requested that the application be refused for the purposes of preventing crime and disorder and securing public safety licensing objectives. They stated that the applicant, due to his conduct and repeat offending, demonstrated a blatant disregard for the law.

Stephen Stevens, applicant, was present to speak to the application. He explained that at the time of making his application, he felt the convictions would not apply because one had been “thrown out of court”, and the other had resulted in a fiscal warning. He explained that the incidents had occurred during lockdown, which he described as being a difficult time for relationships. He said that matters had now been resolved with his wife and he was trying to move forward with his career. He reassured Members that his previous behaviour would not be repeated in the future.

Mr Stevens responded to questions from Members. He advised that he had previously been an assistant manager at the Victoria Inn in Haddington, but looked to move away from this position. He had an interview for another premises later in the week, and hoped to find a role as a pub manager or assistant manager.

PC Anderson confirmed that one conviction, rather than being “thrown out of court” had resulted in admonishment, where a guilty verdict was recorded but the offender received no punishment.

Members resolved to hear the remainder of the application in private session to be able to discuss restricted matters contained within the police letter.

## **SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION**

The East Lothian Licensing Board agreed to exclude the public from the remainder of item 5.

## **5. GRANT OF PERSONAL LICENCE Stephen Stevens**

### **Decision**

The East Lothian Licensing Board refused the personal licence application.