



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

**THURSDAY 24 AUGUST 2023
ONLINE PLATFORM MEETING**

Board Members Present:

Councillor L Bruce
Councillor C Cassini
Councillor G Gilbert
Councillor J McMillan

Clerk of the Licensing Board:

Mr C Grilli, Service Manager – Governance

Attending:

Ms A Rafferty, Licensing Officer
Ms K Harling, Licensing Standards Officer
PC I Anderson, Police Scotland
Sgt G Wood, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor F Dugdale
Councillor G McGuire

Declarations of Interest:

Item 5a: Councillor McMillan, due to having worked with the applicant on a number of community events.

**1. MINUTES FOR APPROVAL
22 June 2023**

The minutes were approved as an accurate record of the meeting, subject to a correction to the list of attendees.

**2. MAJOR VARIATION OF A PREMISES LICENCE
East Lothian Yacht Club, 26-40 Victoria Road, North Berwick**

The application sought: to remove the seasonal operation restriction to allow the premises to operate year-round; restaurant facilities outwith core hours to open at 8am; to change the description of reception and club meetings to include the hiring of the venue to external organisations; to change the description of indoor/outdoor sports to add yoga/fitness activities to begin from 9am; to add televised sport within and outwith core hours; to delete the 'general statement'; to simplify the policy on children and young persons; and to change the capacity from 160 to 240 persons. The application had attracted no objections from the police, NHS, planning, the Licensing Standards Officer (LSO), public, or community council. The LSO had submitted a report including recommendations, noted below.

Stewart Gibbons, club secretary, spoke to the application. He noted some confusion over the capacity and believed that the change in capacity from 160 persons to 240 persons to be for the whole premises and not specifically for the bar area. He said the bar area was to reduce in capacity from 100 persons to 80 persons.

PC Iain Anderson advised that Police Scotland had no adverse comment to make on the application.

Karen Harling, LSO, had visited the premises to provide guidance, where she had spoken with David Robertson. She reported that the club had been fully compliant and well run. She had no objection to the application, but made some comments. She advised that if the general statement was the description of the premises, it would be required to remain in place. She had made some suggestions as to how the children and young persons' statement could be further simplified, and said that the change in capacity should reviewed and considered by the Board.

Responding to a question from Councillor Bruce, Mr Gibbons felt that the original capacity of 160 person had been too few when spread between the bar, café, and changing area; he noted that there could be a significant number of people within the changing areas getting ready to go out on the water.

Councillor McMillan referred to the steep staircases and asked how the club maintained the safety of people consuming alcohol and accessing these stairs. Mr Gibbons said that a health and safety policy and risk assessments were in place. If people were drinking they would not go downstairs and access the steep staircase. He noted that an additional handrail had been installed, and said the staircase from the upper ground floor to the first floor was wider. He also reported that the reduction in capacity of the bar area from 100 to 80 persons had been at the recommendation of the fire officer.

Councillor McMillan said he was minded to grant the licence, subject to the LSO's recommendations. Councillor Bruce proposed that the LSO's recommendations be adopted, and Councillor Gilbert seconded this proposal.

The Convener moved to a roll call vote, subject to the LSO's recommendations as contained within her report, and the application was granted unanimously.

Decision

The Board granted the major variation, subject to the following LSO recommendations:

- The general statement/description of the premises cannot be removed.
- Question 6a be changed to – Children and young persons who are members of the club are bound by the rules of the club. Children and young persons 11-17 years can enter the bar area and all other areas of the premises unaccompanied. Children 0-10 years must be accompanied in the bar area by a responsible adult at all times.
- Question 6c be changed to – 0-17 years
- Question 6d be changed to 0800 – end of core hours
- Questions 6e be changed to – All public areas

3. VARIATION OF A PROVISIONAL LICENCE Whitekirk Hill, Whitekirk, North Berwick

The application sought to vary the provisional licence to include the immediate environs of the main building and to include nine new holiday lodges, thus allowing provision of alcohol at outdoor events. The application also sought to add a gym and fitness studio; swimming pool with sauna and steam room; a treatment spa; children's indoor play barn and outdoor play area; as well as bouncy castles, inflatables, funfairs, an ice rink, and fireworks. The application had attracted no objections from the police, NHS, planning, public, or community council. The LSO raised no objection but noted that the application requested terminal hour of 1.00am on a Sunday was outwith Board policy.

Jim Wilkie spoke to the application. He advised that the only physical change to the premises since the provisional licence application had been the opening of nine new holiday lodges. Having traded for some time, there were now certain activities which took place in the outdoor areas, and as such, the application sought to licence the outdoor areas.

PC Anderson highlighted that the terminal hour on a Sunday was outwith Board policy.

The LSO reported that she had visited the premises in January 2023, when she had discussed operations with Mr Wilkie and established which activities were not yet listed on the operating plan. They had also discussed inclusion of the lodges as part of the wider licensed area. She asked the premises to ensure that risk assessments had been carried out for activities such as bouncy castles. Her report detailed a change in the operating plan to vary the on sales hour to terminate at 1am, and asked the applicant to justify this request. She also noted that from 7 July to 3 August, the premises had traded without any occasional licences in place. She reported that when she had highlighted this issue to Mr Wilkie, he had said this had been an oversight and agreed to cease the sale of alcohol.

Responding to a question from the LSO, Mr Wilkie advised that entry to the play barn had originally been through the main building, but this had proved to be unworkable. Visitors to the play barn now came through the back of the premises, and this was a fenced off area. He advised that visitors could access the play barn without paying. He noted that officers had recommended that the play barn be excluded from the licensed area. Mr Wilkie said that he did not see this area as being different from a pub garden,

but was happy to agree to the play barn and play area being excluded from the licensed area.

Councillor Gilbert proposed a condition that no alcohol be taken into the play barn and play area, and Councillor Cassini seconded this proposal.

Councillor McMillan commended Whitekirk Hill on their nomination for a Thistle Award for self-catering accommodation as recognition of their investment and good management. He asked about the 1am terminal hour on a Sunday.

Discussion between Mr Wilkie, Mr Grilli, and the LSO established that there had been an error in the operating plan and the application should have stated Saturday 11am-1am and Sunday 11am-12am. Mr Wilkie also reassured Members that there was no music outside, and the only outdoor drinking at weddings was earlier in the evening when the prosecco van was in use. The LSO confirmed that the update to the requested hours were within Board policy.

The Convener asked Mr Wilkie about the period of operation without occasional licences in place. Mr Wilkie apologised to the Board for the oversight, and confirmed that recruitment was underway to increase the business' administrative forces. He hoped that the provisional licence would soon be confirmed into a full licence following a visit from building control.

The Convener moved to a roll call vote, including the condition that no alcohol be taken into the play barn and play area, and the revised hours of Saturday 11am-1am and Sunday 11am-12am. The application was granted unanimously.

Decision

The Board granted the variation of the provisional licence, subject to the following conditions:

- No alcohol may be taken into the play barn and play area

4. EXTENSION OF A PROVISIONAL LICENCE Thomson's of Tranent, Winton Place, Church Street, Tranent

George Thomson had contacted officers to request an extension to the provisional licence due to problems with building control. The provisional licence was due to expire on 29 August 2023. No more occasional licence applications had yet been made for after 24 August 2023.

Mr Thomson spoke to the request. He explained that the building warrant had not yet been completed, as originally, the shop side in the conservation area had been expected to be completed at roughly the same time as the other part of the building. Therefore, one part of the licence was within the conservation area where business had been operating for four years, but the other part in the main hall had been delayed multiple times. Within the last two months, the building warrant had been split to take away the second restaurant and bar area; with these changes, it was hoped that the building warrant could be completed within the next couple of months. An amended planning application had now been submitted which showed the restaurant and bar area as being deleted. This had been replaced with another four flats to add to the 24 flats being built for the local authority and a housing association. He would work with building control to hopefully conclude the work within the next couple of months.

PC Anderson had no objection to the extension of the provisional licence.

The LSO advised that a variation would have to be submitted for the bar and restaurant area to be removed from the provisional licence. She would discuss this with Mr Thomson offline.

The Convener was happy with the approach outlined by Mr Thomson and would welcome a premises licence application coming forward. He described the project as a high quality development which used the space well.

Councillor McMillan commended the Thomson family's work around the town and their engagement with the community. He thanked the LSO for keeping applications on track in terms of detail and accuracy, and would support the application for the extension of the provisional licence.

The Convener moved to a roll call vote, and the application was granted unanimously.

Decision

The Board granted the requested extension to the provisional licence.

***Sederunt:** Councillor McMillan left the meeting.*

5. OCCASIONAL LICENCES

a. Mazzoli Café, 6 High Street, Haddington

The application sought occasional licences for on sales and off sales for a café, takeaway, and home deliveries for the dates 24 August to 15 November 2023. The LSO had made representation to highlight that continued occasional licences had been used to sell alcohol since January 2022. Activities occurring on the premises regularly over a period of at least 3 months would not generally be considered suitable for the grant of an occasional licence and would not be granted under delegated authority as it was largely expected that the premises in question should consider an application for a premises licence.

Paul Kinnoch, applicant, had confirmed ahead of the meeting that he would be unable to attend.

PC Anderson confirmed that Police Scotland had no comments or objections to the application.

The LSO said that the six occasional licences had been brought to the attention of the Board due to Mazzoli Café having operated under occasional licences since January 2022 with no move to make an application for a provisional or premises licence. She reported that Mr Kinnoch was working towards a provisional or premises licence and Ms Harling said she would provide guidance on this.

Responding to a question from the Convener, Ms Harling said that she would give guidance to Mr Kinnoch to apply for a premises licence since the business had been trading for some time and construction and conversion work would be required. She confirmed that Mr Kinnoch would be entitled to apply for a provisional licence; a premises licence took longer to apply for as three Section 50 certificates had to be produced. She suggested that there may need to be a change in East Lothian so that premises who had been operating on occasional licences for the best part of a year would make applications for the required certificates for a premises licence sooner.

The Convener was happy to support the applications at his stage, but felt that operation under occasional licences for 22 months was too long. He hoped to see an application for a premises licence coming forward soon.

The Convener moved to a roll call vote, and the application was granted unanimously.

Decision

The Board granted the occasional licences.

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

b. Carfrae Farm Shop, Garvald, Haddington

The application sought occasional licences for off sales to sell a range of food produce, gifts, and alcohol, from 10am to 10pm Monday to Sunday, 24 August to 15 November 2023. The application had attracted no objections from Police Scotland or the LSO. The LSO had submitted representation to highlight that alcohol had been sold under occasional licences since 9 September 2022. A provisional licence application had been received and would be heard at the September 2023 Licensing Board meeting.

Eric Linklater and Trudi Cueto, applicants, spoke to the application. Ms Cueto advised that the new business had opened in September 2022. She said there had been some confusion over provisional and premises licences and at what stage they needed to be applied for, and thanked the LSO for guidance provided. Ms Cueto advised that a Section 50 certificate had been received from the planning service on 20 July and had now been submitted. Section 50 certificates for building standards and food hygiene had also been applied for. She acknowledged that the business had been running on occasional licences beyond the three months stated within Board policy; she apologised for this and explained this had been partly due to being unfamiliar with the process, and also due to significant caring responsibilities. She was hopeful that the Section 50 certificates would come through and allow progression to a premises licence.

PC Anderson confirmed that the provisional licence application consultation had been received on the 4 August, and Police Scotland had no objections to the provisional licence.

The LSO thanked the applicants for their communication and cooperation. She explained that there was no longer power to grant the provisional licences under delegated powers. She advised that the provisional licence was out for consultation, and she was happy to see movement towards the premises licence.

The Convener was pleased to hear that the applicants were moving through the process towards a provisional licence, and acknowledged that personal circumstances could get in the way of progress. He was happy to support the applications.

Councillor McMillan supported the Convener's comments, and noted the importance of liaising with licensing staff. He highlighted the local support of the business, and felt the operation was in line with the council's strategic goal to become the premier food and drink destination in Scotland. He wished the business well and was happy to support the applications.

The Convener moved to a roll call vote, and the application was granted unanimously.

Decision

The Board granted the occasional licences.

c. Eagle Inn, 75 High Street, Dunbar

The application was for two occasional licences for an outside area in front of the Eagle Inn from 25 August to 21 September 2023. The LSO recommended 4 bistro tables, but permission from roads services allowed five tables. The LSO had also submitted a report including conditions, which are noted below.

Mr Grilli advised that late representation had been made by Dunbar Community Council, and the Convener indicated he would be happy to consider the representation. The Convener read the community council's statement:

“Dunbar Community Council support there being seating outside the Eagle Inn, provided that the licence agreement is adhered to. Dunbar Community Council understands that the same people own the Bear and Bull across the road, and understands that the seating plan has not been complied with here in relation to the unimpeded passage of pedestrians, wheelchairs, etc. The community council are supportive of the plans for outside seating, as long as the plans are complied with.”

Cara Davies spoke to the application on behalf of Sandra Elliot, applicant. Ms Davies explained she had been the tenant at the Eagle Inn for five years, and also owned the Bear and Bull. She had been disappointed to receive a complaint regarding non-compliance at the external seating area at the Bear and Bull. She explained that one of the front barriers had not been in place because it had been found to be a hindrance to the passage of wheelchair-users and prams. An amended layout was now in operation and was being checked regularly. Stickers had been removed from windows to ensure the outside area could be seen, and CCTV cameras also covered this area. Ms Davies had asked for volunteers to undertake a formal assessment in relation to access, and had liaised with roads officers and the LSO on this matter. She said compliance was taken very seriously. She advised that the external seating area outside the Eagle Inn had been in operation in the previous year, and advised that she intended to apply for a major variation to operate the outside area from the following year, per the LSO's advice.

PC Anderson advised that during the period occasional licences were running in the previous year, 20 June to 7 November, only one call had been made to Police Scotland; this had been due to a theft and had nothing to do with the outdoor seating area.

The LSO advised that representation had been made due to no layout plan having been provided, but said the layout plan had since been submitted. She highlighted that the pavement outside the Eagle Inn was wider than the pavement outside the Bear and Bull. She advised that no complaints had been made in relation to access when the outside area was in use in the previous year. She highlighted six conditions contained within her report, which she recommended for all street café-style outside areas.

Responding to a question from the Convener, Ms Davies confirmed that she was happy to accept the LSO's recommended conditions. She said that she had operated under these conditions in the previous year and was comfortable with them.

The Convener acknowledged that people were often keen to sit outside a premises, and he was happy to support the application.

Councillor McMillan was pleased to hear that Dunbar Community Council were keeping an eye on operations on the High Street, but was also reassured to hear Ms Davies' response to their representation. He was happy to support the application.

The Convener proposed that the occasional licences be granted subject to the LSO's recommended conditions, and this was seconded by Councillor McMillan. The Convener then moved to a roll call vote, and the application was granted unanimously.

Decision

The Board granted the occasional licences, subject to the following conditions:

1. No public entertainment, amplified music, amplified vocals or live music played in the outdoor area to ensure the use does not cause nuisance to neighbouring residential properties.
2. The outdoor area should be clearly delineated with removable barriers and all seating and barriers should be removed between 2000-1100 hours.
3. The occasional licence holder to ensure that staff:
 - a. promptly collect all empty/unused drinking glasses and bottles from the outside area; and
 - b. regularly supervise the outside area and its patrons.
4. Alcohol only to be consumed in the licensed area(s) whilst being seated and a notice should be placed in a suitable place in the outside area informing all patrons of such.
5. If the outside area is on council land or a road/pavement then a valid permit/authorisation issued from the East Lothian Council Roads Department must be in place in order to use the occasional licence.
6. An authorised officer of the council or Police Scotland may temporarily suspend the use of the area for reasons of public safety.

Signed

Councillor L Bruce
Convener of East Lothian Licensing Board