



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

**THURSDAY 28 SEPTEMBER 2023
ONLINE PLATFORM MEETING**

Board Members Present:

Councillor L Bruce
Councillor C Cassini
Councillor F Dugdale
Councillor N Gilbert
Councillor G McGuire
Councillor J McMillan

Clerk of the Licensing Board:

Mr C Grilli, Service Manager – Governance

Attending:

Ms A Rafferty, Licensing Officer
Ms G Herkes, Licensing Officer
Ms K Harling, Licensing Standards Officer
Sgt G Wood, Police Scotland
Sgt D Wardell, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

Declarations of Interest:

None

**1. MINUTES FOR APPROVAL
24 August 2023**

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

**2. PROVISIONAL PREMISES LICENCE
Carfrae Farm Shop, Garvald, Haddington**

The application sought a provisional premises licence. 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 a recommended condition relating to the delivery of alcohol, noted below.

Trudi Cueto and Eric Linklater, applicants, were present to speak to the application. Ms Cueto advised that Section 50 certificates from planning and food and hygiene had been submitted as part of the application. She informed Members that an application had also been submitted to building standards but had received no update on the status of the application.

Karen Harling, Licensing Standards Officer (LSO), welcomed the application, having worked with the applicants for some time. She advised that recent changes meant that much of the content of her first report was no longer of relevance. She advised that the two distinct areas of alcohol display originally noted in the application had not adhered to the Act, and accommodation had been removed. She also noted an error in calculation of the display area, which she confirmed to have increased to a capacity of 4.3m². She highlighted her recommended condition in relation to home deliveries.

Sergeant Gail Wood advised that Police Scotland had no objections to the grant of the licence.

Councillor McMillan asked how deliveries would be managed, and Ms Cueto responded that Royal Mail would undertake age verification checks. She advised that their current courier, APC, did not deliver alcohol. She had applied for an account with Royal Mail, but until this was accepted, alcohol would only be delivered personally. She advised that few deliveries included alcohol; it was not heavily advertised and generally was restricted to deliveries of hampers.

The Convener wished the applicants luck with their venture, and formally proposed the LSO's recommendations relating to alcohol deliveries. Councillor McMillan 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 recommendation:

- Should a service of delivery of alcohol to customers be conducted, the terms of the Licensing (Scotland) Act 2005 Section 119 and those of the Board's statement of licensing policy on deliveries of alcohol should be complied with.

3. MAJOR VARIATION OF PREMISES LICENCE
a. The Green, 70 Court Street, Haddington

The application sought to vary the premises licence to include a pool table. The application had attracted no objections from the police, NHS, planning, or community council. The LSO raised concern over the inclusion of a pool table on the basis of safety and creating an unsuitable atmosphere for children. She highlighted a complaint made from neighbours relating to the change of character and atmosphere of the premises and an incident of sectarian singing. Her report noted that the premises was not part of Pub Watch and had stopped selling food. The report also questioned whether the premises' policy on children and young people aligned with Board policy. There had been one public objection relating to opening hours and closing times, although opening hours were not changing as part of the application.

Stephen McGowan, applicant's agent, spoke to the application, and was accompanied by Colin Lawson, Local Area Manager for Greene King. Mr McGowan made clear that the application sought only to add a pool table. He referred to the public objection, and said that the objector had mistakenly thought that later licensed hours had been requested. He advised that, in response to the complaint, customers and staff had been reminded and retrained regarding use of the outdoor area. He said there was zero tolerance for sectarian singing and the complaint had highlighted an unfortunate one-off incident. He said that he would be happy to take the LSO's comments on children's access offline for the purposes of a future application, and acknowledged the LSO's recommendation regarding children's access to the pool table. He apologised for his client's oversight and reported that the pool table had been removed right away when this had been highlighted.

Sergeant Wardell advised that the premises had been discussed with local Councillors. Police intended to add additional scrutiny to the premises after concerns had been raised. He felt that introduction of a further attraction such as a pool table would not be advisable. He said that The Green had not previously required police attendance, but having reopened as The Railway, it had come to police attention more often. He said that concerns had been raised about sectarian singing and patrons causing disturbance until the end of trading hours. He expressed that he would not be keen for the application to be granted.

Mr McGowan responded that Sergeant Wardell's comments were not appropriate under the circumstances, as Mr McGowan had not been given notice of the objection. He raised concern over the legality of these comments being taken into consideration when no formal objection had been raised by Police Scotland licensing officers in repose to the consultation. Mr Grilli acknowledged that some of Sergeant Wardell's points could not be accepted by Members in their deliberations.

The LSO said she noticed the pool table in operation when visiting the premises, and confirmed it had been taken out of commission and not used since this time. She would welcome a future application to address the access of children and young people and would work with the applicant on this matter. She would also discuss the most appropriate means to address the applicant's membership of Pubwatch offline. She recommended that Members consider the application in terms of children's access to the pool table and the impact this would have on this area of the premises.

Councillor McMillan sought assurance from Mr McGowan on his relationship with the licence holder and on their management of a more troublesome crowd. Mr McGowan had represented Greene King for over ten years. He advised that Mr Lawson was the representative of the licence holder; Mr Lawson met regularly with the tenant running

The Railway, particularly considering some of the concerns raised recently. He said that Greene King considered themselves to be responsible licence holders, and Mr McGowan reassured Members that the tenant was an experienced publican who ran other premises in the area. He said that the Greene King wanted the premises to remain a positive part of the local community and would look to engage with the objector over his concerns. He reiterated his concerns over Sergeant Wardell's remarks within this forum, however, he said that the licence holder wished to engage with the police and wanted The Railway to be a family-friendly premises. Councillor McMillan responded that he would welcome engagement with the objector and the wider community. He felt reassured by the good supervision by staff and experience of the higher management.

Responding to a question from Councillor Dugdale, Mr McGowan said that the applicant would be happy to agree to the LSO's suggested condition whereby the pool table would only be accessible to under-12s if accompanied by an adult.

Responding to questions from Councillor McGuire, Mr McGowan confirmed that the pool table was on the ground floor and highlighted its position on the location plan. Mr Lawson advised that food was not currently being served due to a lack of staffing after The Railway's tenant had also taken on a new café in Prestonpans at the same time. He advised that there were plans to relaunch a food offer in the future. In the meantime, external catering could be provided for functions.

The Convener noted that should children 0-11 be excluded from the pool table area, this would effectively exclude them from the premises. Mr McGowan said that his clients would prefer children to be allowed access to the area under supervision, and said that further consideration would be given to the access of children and young people to the wider premises under a fresh application. He felt that allowing children 0-12 use of the pool table only under adult supervision would be a proportionate condition. The LSO responded that the licence currently allowed children access only to the raised area, which used to be used to serve meals. She would not recommend the application be granted where children be allowed in the area unsupervised. She was keen for management to undertake a risk assessment to ensure children were safe in this area, as space became tight when the pool table was in use. Mr McGowan said that his client would be happy to agree to a written risk assessment.

Councillor Cassini commented that if children were not allowed to access the pool table and food was also not served, then there would be no reason to welcome children onto the premises at all. Mr McGowan responded that the applicant wanted to have the flexibility for children to access the pool table area under supervision, and added that adults may wish to play pool with their children or grandchildren.

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

Upon their return, the Convener said that Board Members had concerns around the operation of the premises, but they noted various undertakings to work with the LSO. He noted that children were still able to access the premises despite there being no food offer available. He stated that Members wished to add two conditions: the pool table may only be used by children aged 0-12 if accompanied by a responsible adult; and a written risk assessment relating to use of the pool table must be provided and shall be available for inspection by the Board, LSO, and Police Scotland. He said that the Board would keep a close eye on developments at the premises and looked forward to the applicant coming forward on the undertakings made as part of the hearing.

Councillor McMillan said that engagement with neighbours was needed over concerns with noise and singing. While this was not strictly relevant to the application, he still felt it was important for the applicant to take the objection and complaints into account.

Councillor Gilbert commented that while the premises was not serving food, it was effectively a public bar. He hoped that the management would do their best to deter children from coming in until a food offer could be relaunched.

Councillor Dugdale formally seconded the two conditions proposed by the Convener.

The Convener moved to a roll call vote, including conditions relating to a risk assessment and the supervision of children. Votes were cast as follows:

| | | |
|----------|---|---|
| Grant: | 4 | (Councillors Bruce, Dugdale, McGuire, and McMillan) |
| Refuse: | 2 | (Councillor Cassini and Gilbert) |
| Abstain: | 0 | |

Decision

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

- A written risk assessment together with written policy in relation to the operation of the pool table shall be available for review/inspection by the Board/LSO/Police Scotland on request and shall be regularly updated.
- The pool table may only be used by children aged 0-12 if accompanied by a responsible adult.

b. Victoria Inn & Avenue Restaurant, 9 Court Street, Haddington

The application sought to vary the premises licence to include indoor and outdoor sports. The application had attracted no objections from the police, NHS, public, planning, or community council. The LSO report raised that no layout plan had been submitted with the application to indicate the location of the pool table, and recommended conditions relating to the supervision of children and young people.

The applicant's agent had made contact prior to the meeting to inform the Board that no one would be available to attend the meeting. The Convener therefore suggested that the application be continued to the next meeting so that a representative could be present. This was confirmed by roll call vote and Members unanimously agreed they were content to continue the application.

Decision

The Board continued the application to the following meeting.

4. OCCASIONAL LICENCES

a. Christopher Nixon, Dunglass Estate, Dunglass, Cockburnspath

The application sought occasional licences for on sales at two weddings. The LSO had made representation to highlight that the terminal hours sought were outwith Board policy.

Susannah Nixon and Christopher Nixon, applicants and directors of Platter and Pop, were present. Mrs Nixon said that it was standard practice that most weddings would have a bar available until 12 midnight, with last orders at 11.45pm. Their catering company worked at the Dunglass Estate and had made applications for occasional licences for two weddings which would take place on Wednesdays.

Sergeant Wood confirmed that Police Scotland had no comments or objections to the application.

The LSO said that Board policy was for the terminal hour on a Wednesday to be 11pm, and the application had come before the Board due to the request falling outwith this time. She had visited the Dunglass Estate and had no issues with the operation of the premises, and had received no complaints relating to operations on the estate.

Councillor Cassini asked about transport to and from the venue to ensure no one tried to drive under the influence and to avoid potential disruption on a weeknight. Mrs Nixon advised that the premises had no neighbours other than family members connected to the venue owners. She reassured Members that there would be pre-booked taxis and transport for anyone who was not staying at the venue.

Councillors McGuire and McMillan asked about the impact on the events should the final hour of on sales not be granted. Mrs Nixon advised that different local authority areas allowed for a terminal hour of midnight through the week, and Platter and Pop's competitors were able to offer on sales at weddings until midnight. She said that not having the final hour would have a significant impact on the experience for the couples and on the venue. She added that little alcohol was sold in the final 45 minutes of the wedding, and staff were experienced in refusing to sell alcohol to anyone who was displaying signs of being intoxicated. She said that couples would feel disadvantaged should their event have to finish an hour earlier than expected. She advised that the company was a living wage employer and the bar being open helped to fund the staff required on site to break down the venue after the event. Mr Nixon added that if couples chose to take their business elsewhere due to an enforced terminal hour of 11pm, this would have an impact on local businesses and taxi firms.

Responding to a question from the applicant, the Convener said that the Licensing Board would rather these matters be addressed through an application for a full premises licence, and suggested that Mr and Mrs Nixon may wish to feed this back to the premises. He added that the economic benefits were not a consideration for the Licensing Board, but acknowledged the care taken by the applicants in the planning and hosting of the events, and also acknowledged that the LSO had no complaints about operations on the estate. He was confident that the applicants could achieve the five licensing objectives and was happy to grant the applications. He said that if Wednesday weddings would be part of the business model going forward, the Dunglass Estate should look to apply for a premises licence.

Councillor McGuire agreed with the Convener's comments. He was minded to grant the applications due to the rural location, but also encouraged the venue to apply for a premises licence.

Councillor McMillan felt there was a difficult decision to be made; he could support the applications based on the comments from the applicants, but was mindful of Board policy requiring a terminal hour of 11pm on a Wednesday. He said that East Lothian was separate from other areas which had their own policies. He acknowledged the weddings were taking place soon and that couples had certain expectations. He was minded to grant the applications, but asked that the venue discuss the possibility of making a premises licence application with the licensing team.

Councillor Gilbert commented that the couples had booked a midweek wedding where the Board policy required a terminal hour of 11pm, and thus he was not minded to support the applications with a terminal hour of 12 midnight. He would welcome the venue owners coming forward to discuss a premises licence.

Councillor Dugdale was reassured that the applicants would meet the five licensing objectives and was minded to grant the applications.

The Convener moved to a roll call vote, and votes were cast as follows:

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|----------|---|---|
| Grant: | 4 | (Councillors Bruce, Dugdale, McGuire, and McMillan) |
| Refuse: | 2 | (Councillor Cassini and Gilbert) |
| Abstain: | 0 | |

Decision

The Board granted the occasional licences.

b. Broxmouth Courtyard, Dunbar

The application sought occasional licences for on sales at three weddings, all taking place on Mondays. The LSO had made representation to highlight that the terminal hours sought were outwith Board policy, and to make the Board aware of previous occasions when similar applications had been made.

Paul Mitchell spoke to the application. He highlighted the significant investment made in the purpose-built wedding venue. He advised that there was now considerable demand for weddings to take place earlier in the week, and said these were often smaller in scale. He advised that for the weddings in question, most guests would be resident on the estate and thus could cause minimal public nuisance due to the remote location. The applications sought terminal hours of 12 midnight for weekday weddings, and he advised that the premises had a provisional licence in place.

Sergeant Wood confirmed that Police Scotland had no comments or objections to the application.

The LSO advised that the applications were made in similar terms to those discussed in the previous item. She confirmed that a provisional licence was in place and the venue were working on confirmation of the premises licence. She advised that current policy required a terminal hour of 11pm Monday-Wednesday. She commended Mr Mitchell on a well-managed premises and advised that no complaints had been received about the venue.

Responding to a question from the Convener, Mr Mitchell advised that he intended to finalise the confirmation to a full premises licence and then apply for a major variation to request a terminal hour of midnight to accommodate weddings taking place earlier in the week. He said he had been unaware of Board policy requiring a terminal hour of 11pm Monday-Wednesday until he had submitted these applications.

Responding to a question from Councillor Dugdale, Mr Mitchell advised that these weddings would have around 26 guests.

The Convener commented that a major variation would mean that full account could be taken of the premises' suitability, and said there was a limit on what could be

achieved under occasional licences. He asked that the applicant seek to apply for a major variation as soon as possible.

Councillor McMillan was reassured by the LSO's reports of the good management of the establishment, and by the applicant's intention to apply for a major variation for a later terminal hour when possible. He felt it would be appropriate to grant these occasional licences.

The Convener moved to a roll call vote, and votes were cast as follows:

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|----------|---|--|
| Grant: | 5 | (Councillors Bruce, Cassini, Dugdale, McGuire, and McMillan) |
| Refuse: | 1 | (Councillor Gilbert) |
| Abstain: | 0 | |

Decision

The Board granted the occasional licences.

c. Thomson's of Tranent, Winton Place, Church Street, Tranent

The application was for occasional licences to cover a period of 25 August 2023 – 11 January 2023. The LSO had submitted a detailed report relating to an incident of alcohol sales when the premises was not covered by a licence. Police Scotland had made no comment on the applications.

Susan and George Thomson were present to speak to the application. Mr Thomson provided background information on the situation at the premises, where delays in building works and building warrants had caused complication in having the premises licence confirmed. He explained that the premises had a provisional licence in place and had been selling alcohol under a series of occasional licences. He said that an amendment to their planning application had now been submitted; he described the flatted development for a housing association, which had been causing some delays in confirming the full premises licence, as being close to completion. He said that a mix up had caused the occasional licence applications to come before the Licensing Board.

Sergeant Wood confirmed that Police Scotland had no comments or objections to the application.

The LSO reminded the Board that the purpose of the discussion was the occasional licence applications, and the issues of the provisional licence and building warrants were separate. She said that the licence holders were George and Susan Thomson, and suggested that both had responsibility for operations. She then described the incident whereby alcohol was sold when no licence was in place. She had become aware on 24 August that no occasional licences were in place to cover alcohol sales at the store, and made Mr Thomson aware that any further sales of alcohol would be a criminal offence. She reported that Thomson then made payment and submitted occasional licence applications to John Muir House in Mrs Thomson's name. She made Mr Thomson aware that Board policy was for occasional licence applications to be made at least 42 days in advance of the date of commencement for due process to be undertaken. She also raised concern over Mrs Thomson's lack of involvement in the process since the applications were being submitted in her name. The LSO recounted that she had advised Mr Thomson that no alcohol sales could be made until the occasional licences had been determined. She reported that she had attended Thomson's of Tranent and found that there was alcohol on display, and witnessed alcohol being sold. She reported the offence to the police and identified herself to staff

and provided contact details. She said that Mr Thomson had called her and admitted that he had not told his wife and daughter that alcohol could not be sold, and had said that he was at fault. The LSO felt that it was Mrs Thomson's duty to take responsibility for the premises.

Responding to a question from the Convener, Sergeant Wood said that there had been no previous issues with the premises. Following the LSO's report of the offence, officers had attended the premises for education purposes to inform the licence holders of the actions they should be taking. Officers made clear to staff that alcohol should not be sold and they covered up the alcohol display.

Councillor McGuire asked why Mr Thomson had not discussed the matter with his wife. Mr Thomson responded that it had been a particularly busy time attending meetings with the housing association who would operate the flats being built.

Responding to a question from the Convener, Mrs Thomson apologised that her husband had not made her aware that alcohol must not be sold and highlighted her exemplary licensing record prior to this.

Responding to questions from Councillor McMillan, Mrs Thomson said that she took the responsibility of her licence very seriously, and told staff that she would rather a sale be lost than made to someone underage or under the influence. She said they had over 20 staff and they were all aware of their responsibilities selling alcohol.

Councillor McMillan commented that it was clear from the LSO's report that things had not been conducted well. He balanced his concerns about who was responsible for the licence and the offence committed, against a wish to support family businesses. He reminded the applicants that they operated in a regulated industry which required compliance, and they would have to ensure paperwork was completed and the five licensing objectives were met in future. He was impressed by Mrs Thomson's commitment to take control of the licensing operations going forward. He was minded to grant due to a previous good record, but said clear adherence to the rules would be required going forward. He hoped never to see a recurrence of such a licensing issue and wished them success in this matter.

Councillor McGuire concurred with Councillor McMillan's comments. He had always found the service to be excellent at Thomson's of Tranent, but said the law had to be adhered to. He said he was keen to support local businesses, and this business did a good deal for their community. The Convener concurred with the comments from Councillors McMillan and McGuire. He was disappointed that alcohol had been sold in an unregulated environment and said he would not speculate on the repercussions should there be another such incident.

The Convener then moved to a roll call vote, and Members unanimously voted to grant the occasional licences.

Decision

The Board granted the occasional licences.

**5. EXTENSION OF PROVISIONAL LICENCE
Whitekirk Hill, Whitekirk, North Berwick**

The Clerk of the Board informed Members that the outstanding Section 50 certificate from building standards had been submitted to officers since the publication of the meeting agenda. The premises licence was now able to be confirmed under delegated powers, and therefore this application no longer required to be heard.

SUMMARY OF PROCEEDINGS – PRIVATE BUSINESS

**6. PERSONAL LICENCE
b. Tony Exelby (continued application)**

The Board granted the personal licence.

a. Amerjeet Singh (continued application)

The Board refused the personal licence.