

EAST LoTHIAN COUNCIL

Licensing Standards

From: Licensing Standards Officer

To: C. Grilli
Clerk to the Licensing Board

Date: 13th November 2023

Subject: LICENSING (SCOTLAND) ACT 2005

PREMISES LICENCE REVIEW

DRAGON WAY, 27C LINKS ROAD, PORT SETON, EAST LoTHIAN EH32 0DU

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On 8th November 2023, I received intimation in terms of Section 38(3)(b) of the licensing (Scotland) Act 2005 of the intention of the Licensing Board to review the Premises Licence in respect of the above premises.

In terms of Section 38(4) of the Act, I have prepared this report outlining information relevant to the review for the consideration of Licensing Board Members.

Licensing Standards Officer

Premises Licence Review

**Dragon Way
27C Links Road, Port Seton, East Lothian EH32 0DU**

Licensing Board November 2023

Licensing Standards Officer's Report

In 2009 Yuen On Yip was granted a Premises Licence in respect of the above restaurant and take away on conversion from the 1976 Act.

The premises manager named on the licence is Shu Keung Yip.

On 9th December 2021, Shu Keung Yip's personal licence was revoked as the mandatory training requirements had not been completed. There has been no application to appoint a new premises manager. As a result, there should have been no sales of alcohol at the premises since Dec 2021. Should any sales of alcohol have occurred or continue this would be a breach of the premises licence condition and offence under the Licensing (Scotland) Act 2005.

Therefore, the sale of alcohol should not have taken place at the premises for the last 2 years.

On 31st July 2023 the Clerk to the East Lothian Licensing Board wrote to all Premises Licence Holders advising of the Annual Fee due in respect of their licence, requesting payment by 1st October 2023. It was intimated at this time that payment was a mandatory condition of the Premises Licence, in terms of Section 27(1) of the Licensing (Scotland) Act 2005 and failure to pay may be treated as a breach of Premises Licence. Details of payment method were included in this letter.

On 9th October and 2nd November 2023, the Clerk to the Board sent additional letters of reminder to the premises address. No response was received.

By the time of the Licensing Board meeting, on 27th October 2023, payment of the mandatory annual fee had still not been made. As a consequence, the Licensing Board instructed that a review of the Premises Licence would take place.

On 2nd November 2023, the Clerk to the Board sent another letter of reminder to the premises licence holder's address. No response was received. This letter was hand delivered by the LSO to the premises address and the premises licence holder address.

On 8th November 2023, the Clerk to the Board sent a letter to the licensee with a further reminder that they had not paid their mandatory annual fee and since this was a breach of a condition of their Premises Licence they would require to make payment of the outstanding fee and also appear at the Licensing Board on 23rd November 2023 to explain the reason for the stated breach of licence.

By 13th November 2023, no payment had been received from the licensee.

Since 2018 the premises licence annual fee has been paid on the following dates:

06/11/2018

12/09/2019
22/09/2020
06/10/2021
11/11/2022 (late fee)

On investigation it appears that the premises is operating as a takeaway under the name “Kong’s Kitchen by Dragon Way”, however no alcohol advertised for sale on the menu displayed.

Licensing Board's Powers on Review

Licensing (Scotland) 2005 Section 39 (1) At a review hearing in relation to any premises licence, the Licensing Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the steps mentioned in subsection (2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.

(2) Those steps are—

(a) to issue a written warning to the licence holder,

(b) to make a variation of the licence,

(c) to suspend the licence for such period as the Board may determine,

(d) to revoke the licence.

(3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.

Licensing Standards Officer

