

**East Lothian Licensing Board**

**Annual Function Report**

**In accordance with Licensing (Scotland) Act 2005**

**Section 9A**

**1 April 2023 – 31 March 2024**



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**APPENDICES**

Appendix 1 - Statement of Licensing Policy 2023 to 2028

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* 1. **Introduction - East Lothian Licensing Board**
	2. East Lothian Licensing Board ("the Board") is the licensing authority for the local government area of East Lothian for the purposes of the Licensing (Scotland) Act 2005.
	3. The current Board, comprises of six elected members of East Lothian Council, namely Councillors Lachlan Bruce (Chair), Cher Cassini, Fiona Dugdale, Neil Gilbert, George McGuire and John McMillan.
	4. The Board is responsible for the licensing functions set out in paragraphs 1.5 and 1.6 below within East Lothian.
	5. East Lothian shares borders with the City of Edinburgh, Midlothian and Scottish Borders Councils and covers around 680 square kilometres benefiting from 82km of coastline. Around 109,500 (National records of Scotland (30 June 2021)) people live within the area, which stretches from the former mining parishes of Tranent and Prestonpans, and Musselburgh in the west to the fishing community of Dunbar in the east, from the tourist resorts, such as North Berwick on the Firth of Forth to the farming lands of Garvald and Whittinghame on the border with Berwickshire. The main administrative centre for East Lothian is based in Haddington. The increase in population is around 1.6% from 2020.
	6. The Licensing (Scotland) Act 2005 as amended ("the Act") makes provision for regulating the sale of alcohol and the operation of licensed premises on which alcohol is sold.
	7. Under the Act, Licensing Boards are responsible for considering applications for:-
* premises licenses
* occasional licenses
* provisional licenses
* temporary licenses
* personal licenses
* transfer of premises licenses
* variation of premises licenses
* extensions of licensing hours
* the sale of alcohol by retail and
* the supply of alcohol in members clubs
	1. **The Licensing Objectives**
	2. The Act sets out the following five licensing objectives ("the licensing objectives"):-
* preventing crime and disorder
* securing public safety
* preventing public nuisance
* protecting and improving public health
* protecting children and young persons from harm
	1. The licensing objectives provide a basis for the administration of the licensing regime. They also provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. Breach of the objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence or an occasional licence may be based on any one or more of the licensing objectives.
	2. In exercising its functions under the Act, the Board is required to have regard to the licensing objectives.
	3. **The Licensing Board**
	4. Board meetings are generally held monthly from 1st April to 31st March each year, with the exception of July & December. These meetings are held to determine the applications as shown in Appendix 1.
	5. Applications before the Board are dealt with in an open and transparent manner in accordance with licensing legislation and its five year statement of licensing policy - 1st November 2023 to 31st October 2028. A copy of the Board's statement of licensing policy is shown at the link in appendix 2. The policy is supplemented by an extensive number of appendices. These show the amount of consultation and research that was undertaken in reaching the terms of the policy and provides additional guidance and assistance to those who seek to apply for premises licences, to those who wish to object or make representations or ask for a review of a licence.
	6. The [Statement of Licensing Policy](https://www.eastlothian.gov.uk/downloads/file/27884/statement_of_licensing_policy_2018-2023) (Appendix 1) continues to promote the five licensing objectives that provide the pivotal foundation of the current licensing regime. A summary of the policy is as follows:
* Guidance on planning for local public events
* Additional suggested good practice in respect of promotion of all five Licensing Objectives
* BYOB (Bring Your Own Bottle) policy
* Licensed hours for on and off sales.
* Extended hours applications.
* Notification to the Police and LSO of 18th and 21st birthday parties
* Information and guidance on Minimum Unit Pricing
* General Extension to Licensed hours in respect of the festive period, which is set for each year.
* Occasional Licence applications, repeat occasional licences and occasional licence use with provisional premises licences
* Presumption against granting occasional licences in respect of events predominantly organised for children unless the applicant can justify to the Board why alcohol is required.
* Overprovision statement.
* Board business procedure.
* Annual Fees - those who fail to pay their mandatory annual fee on or before the due date of 1st October each year will be automatically called to a review of their premises licence at the November Licensing Board meeting.
* Information on Licensing Standards Officers.
* New information on miscellaneous topics including members clubs; excluded premises; outdoor areas; smoking, management of premises; duty to trade; notification required when premises are to close and cease trading; dissolved companies or sole traders and the need to transfer the premises licence within 28 days; guidance on deliveries of alcohol to customers; Layout Plan requirements; activities to be listed in the operating plan; social media; climate change strategy.
* Appendix containing approved local conditions for premises and occasional licences.
	1. Information and assistance continue to be made available to persons wishing to apply for a licence, make representations or lodge objections, or raise a review of a licence.
	2. The Board is aware of the need to ensure that the licensing process is accessible to all. Assistance is therefore always available on request for those who require special arrangements to access any part of the process.
	3. At the monthly meetings, the Board tries to make the process as informal as possible and consistent with the carrying out of the Board's quasi-judicial function. The Board always attempts to follow best practice in enforcement including adoption of standards, which will, in its actions, be proportionate, accountable, consistent, transparent and targeted.
	4. **Decisions of the Board**
	5. Each application for new premises licences or variations of licence, which were other than a minor variation, was decided on its own merits. Please see appendix 2.
	6. During the course of the year, the Board received applications for both Occasional Licences and Extended Hours. The breakdown of these are shown in appendix 2. Agendas and reports for all Board meetings are available to view at [East Lothian Licensing Board | East Lothian Council](https://www.eastlothian.gov.uk/meetings/committee/53/east_lothian_licensing_board)
	7. In assessing applications, the Board uses a number of different sources of information to enable it to reach determinations. These sources include reports from Community Councils, Local Residents, the East Lothian Licensing Forum, the Licensing Standards Officer, Police Scotland, National Health Service, application objectors, material from local and national news on alcohol issues and misuse, Alcohol Focus Scotland (AFS) and established legal licensing practitioners. This information is supplemented by research data and notes sourced from the NHS, Police, AFS and annual licensing conferences.
	8. The requirement to include a full description of proposed activities in operating plans, or a full business profile and risk assessment in addition to the formal application form has reduced the number of objections received to new premises and variation applications.

**4.5** There are currently 273 licensed premises in East Lothian, 116 licensed for on & off consumption, 87 off-sales only and 70 on consumption only. There are a further 13 Provisional premises licenses – 7 licensed for off-sales and 6 licensed for on & off sales.

**4.6** The Licensing Board also determine Personal Licence applications. The Chief Constable is notified of all such applications and reports on to the Board in respect any relevant criminal convictions held by individual applicants or their suitability in relation to being fit and proper persons to hold a licence. Appendix 2 shows a breakdown of the number of applications received and outcomes of reviews.

**5.0 Licensed Hours**

* 1. In granting licences the Board recognises that licensing hours are important to individual licensed premises, but can have a wider impact for an area. Balanced against this, the Board does not wish to unnecessarily inhibit the development of thriving and safe evening and night time local economies, which are important for investment, employment and tourism. The Board considers that the On Sale policy hours are appropriate for East Lothian and represent a balance between the interests of the public, residents, licensed businesses and patrons of licensed premises.
	2. For applications relating to premises licences and occasional licences, the Board's general policy on the licensed hours for the sale of alcohol for consumption on the premises is:-

11.00 am to 11.00 pm Monday to Wednesday (inclusive)

11.00 am to 1.00 am Thursday to Saturday (inclusive)

11.00 am to 12.00 midnight on Sunday

* 1. In terms of the Act, the sale of alcohol for consumption off the premises is not permitted before 10.00am and after 10.00pm. The Board's policy is that the maximum available licensed hours of 10.00am to 10.00pm each day are generally appropriate for off sales. However, each application will be assessed on its own merits against these licensed hours and the Board will wish to ensure that the licensing objectives are being promoted in such applications. If this is not demonstrated, the Board may refuse to grant applications or grant reduced hours for off sales.
	2. Each application for a premises licence is assessed on its own merits against the on sale policy hours appropriate to the type of activity for which a licence is being sought. Where an application received is requesting licensed hours exceeding 14 hours, the Board will require further information for the consideration of such applications and the Board will take into account the effect of granting such a licence will have on the area.
	3. Should an application be received in respect of opening earlier than 11am, the Board will expect the applicant to justify their request and demonstrate measures that promote the five licensing objectives.
	4. The Board is amenable to persuasion that On Sales premises would benefit from one additional hour of opening earlier in the morning providing the case relates to a sporting club where competitions and tournaments commence regularly in the early morning or to a significant type of tourist attraction, such as a distillery, which conduct early morning tours. As such, there are 10 premises in East Lothian with a 10.00am opening and 1 premise with a 9.00am opening hour.

Extended hours applications are individually assessed on their own merits. When the extended hours sought are in respect of on sale premises and fall outwith on sale policy hours appropriate to the applicant's premises, the applicant is required to demonstrate to the Board that there are good reasons for the hours sought and that the hours are appropriate in the circumstances. The applicant is required to provide the Board with sufficient information to enable a decision to be made in this regard. This information will include:-

* the hours sought;
* a description of the special event or occasion;
* the proposed activities to take place during these hours;
* when each activity will take place;
* why the event or occasion is considered to be special;
* why the event or occasion cannot take place within the on sale policy hours appropriate to the applicant premises.

The number of applications received this year was 12.

* 1. **Licensing Board Training**
	2. As stated at the beginning of this report, our Licensing Board comprises six members who were elected in the local council elections in May 2022.
	3. All 6 Board members received a day's training from Alcohol Focus Scotland, in licensing legislation and Board functions. This included a post training examination, which all were required to pass with a minimum of 75%. The same course was supplemented by the Clerk to the Board, a Legal Advisor, 2 Licensing Officers and the Licensing Team Leader, and the Licensing Standards Officer. The range of licensing expertise in attendance at this course afforded a significantly enhanced learning experience for the new members of the Board.
	4. The Board recognises the need for continuous development of understanding and awareness of licensing law and practices, and having up to date knowledge of the effects of alcohol on people across East Lothian. This is essential to making informed licensing decisions.
	5. **Licensing Forum**
	6. The role of the Licensing Forum is to keep under review the operation of the Licensing Act in the East Lothian area and to give advice and make recommendations to the Board in relation to those matters as the Forum considers appropriate. The Forum is the community's voice on alcohol licensing issues.
	7. The Forum was first established in 2007. It is very pleasing to report that the current Forum continues to go from strength to strength. The composition of membership is as follows:
* NHS Lothian representative
* MELDAP representative (Mid and East Lothian Drug and Alcohol Partnership)
* Police Scotland representative
* East Lothian Council’s Licensing Standards Officer
* Various local licensees

|  |  |
| --- | --- |
| **Name** | **Organisation** |
| Graham BlaikieChair | Licensee(Mercat Grill) |
| Stuart Baxter | Community(Member of local Community Council/Resident in Forum area) |
| Arindam Podder | Licensee(Queen Margaret University) |
| Karen Harling | Licensing Standards Officer |
| Kat Burke | Health Board |
| John Thayers | Health(Recovery Quality Assurance Officer, MELDAP) |
| PC Lee Wilson | Police Scotland |

|  |  |
| --- | --- |
| Input is also sought on an annual basis from Community Councils, senior school pupils and the recently formed Police Scotland Youth Volunteers Group. |  |
|  |  |
|  |  |

* 1. East Lothian Licensing Forum meets on a quarterly basis at venues across the county. The differing needs of interested parties are accommodated by varying the times of meetings to include morning, afternoon and evenings.
	2. In relation to keeping abreast of local issues, a Board member normally attends Forum meetings. The member feeds back the views of the Board to Forum members and vice versa.
	3. The current Forum frequently sets up working group meetings to address important licensing issues.
	4. The Licensing Board is legally required to meet with the Forum at least once a year.
	5. **Reviews**
	6. In the period 1st April 2023 to 31st March 2024 there were 5 premise licence reviews brought before the Board.
	7. In the period 1st April 2023 to 31st March 2024 there was 1 personal licence review brought before the Board.

**9.0 Licensing Consultations**

There are no new consultations for 2023 but the outcome of the Scottish Government consultation on the fee structure for Occasional Licences and frequency of their use is still outstanding. East Lothian Licensing Board welcomes this consultation as the current fee set by legislation for an occasional licence is only £10 per licence. This does not cover the cost of processing such applications and an increase in fee is long overdue, and that review of the frequency of use by some may need to be capped to level the playing field for licensees, outside caterers and non-profit making casual users.

* 1. **Conclusion**
	2. The Board is pleased to report that licensed premises in East Lothian have been well run and generally problem free in the last year. Once more the Board congratulates and thanks the licensed trade in its efforts in promoting and upholding the licensing objectives and complying with the Board's policy.
	3. The Board also recognises the efforts of the many officers and partners involved in ensuring that licensed premises in East Lothian are compliant with the requirements of the array of licensing legislation and regulations. It is also indebted to the Licensing Standards Officer and the many others.
	4. It is recognised that while there is no doubt that East Lothian licensed premises are well run, the Board will continue to ensure that there is no complacency in promoting good practice and the licensing objectives in the period 2024-2025.

**Appendix 2 - Licensing statistics for year 2023 to 2024 (1 April 2023 to 31 March 2024)**

|  |
| --- |
| **Premises licence** |
| Licences in force on 31 March 2024 | 273 |
| 1. on sales only
 | 70 |
| 1. off sales only
 | 87 |
| 1. on and off sales
 | 116 |
| Applications received |  |
| 1. on sales only
 | 2 |
| 1. off sales only
 | 4 |
| 1. on and off sales
 | 2 |
| Applications refused under section 23 | - |
| Applications granted under section 23 | 7 |
| Applications for review of licence under sections 36 and 37 resulting in: |  |
| 1. written warning
 | - |
| 1. variation
 | - |
| 1. suspension
 | 1 |
| 1. revocation
 | 5 |
| 1. no action
 | - |
| **Provisional licence** |
| Licenses in force on 31 March 2024 | 13 |
| 1. on sales only
 | - |
| 1. off sales only
 | 7 |
| 1. on and off sales
 | 6 |
| Applications received | 10 |
| 1. on sales only
 | - |
| 1. off sales only
 | 9 |
| 1. on and off sales
 | 1 |
| Applications refused | - |
| Applications granted | 9 |
| **Occasional licence** |
| Number of occasional licenses granted | 859 |
| **Extended licence** |
| Number of extended licenses granted | 12 |
| **Personal licence** |
| Personal licence in force on 31 March 2024 | 988 |
| Applications received under section 72 resulting in: |  |
| 1. refusal
 | 1 |
| 1. grant
 | 201 |
| Proceedings taken under section 83 resulting in: |  |
| 1. endorsement
 | - |
| 1. suspension
 | - |
| 1. revocation
 | - |
| 1. no action
 | - |
| Proceedings taken under section 84 resulting in: |  |
| 1. endorsement
 | - |
| 1. suspension
 | - |
| 1. revocation
 | 1 |
| 1. no action
 | - |
| Proceedings taken under section 86 resulting in: |  |
| 1. endorsement
 | - |
| 1. suspension
 | - |
| 1. revocation
 | - |
| 1. no action
 | - |
| Revocation of personal licence under section 87(3) | - |
| **Applications to the Licensing Board** |
| Premises | 2 |
| Major variations | 19 |
| Occasional | 79 |
| Extended hours | 2 |
| Provisional | 6 |
| Extension of Provisional  | 2 |
| Personal | 3 |
| Review | 9 |

Section 23 – Determination of premises licence application

Section 36 – Application for review of premises licence

Section 37 – Review of premises licence on Licensing Board’s initiative

Section 72 – Application for personal licence

Section 83 – Procedure where Licensing Board receives notice of conviction

Section 84 – Conduct inconsistent with the licensing objectives

Section 86 – Suspension of licence after multiple endorsements

Section 87(3) – Licence holder’s duty to undertake training