



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

**THURSDAY 23 NOVEMBER 2023
ONLINE PLATFORM MEETING**

Board Members Present:

Councillor L Bruce (Convener)
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 G Herkes, Licensing Officer
Ms K Harling, Licensing Standards Officer
Sgt G Wood, Police Scotland
PC L Wilson, Police Scotland

Committee Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

Declarations of Interest:

Item 2c – Councillor McMillan due to his involvement with the business on matters of economic development and community sports.

**1. MINUTES FOR APPROVAL
26 October 2023**

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

**2. PROVISIONAL LICENCE
Tiffin Box, 5 High Street, North Berwick**

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.

Alistair Macdonald, agent, was present to speak to the application, and was accompanied by his client, Navtaj Shetra. Mr Macdonald advised that Mr Shetra's brother-in-law was also involved in this application and would become the designated premises manager (DPM). He said the small takeaway had been operating successfully without a licence and would now like to sell alcohol only with food. Mr Macdonald stressed that it would not be possible for customers to request a delivery of only alcohol and that alcohol was an ancillary offer. He said that the business was successful and well run, but a lot of customers asked whether the premises was able to deliver alcohol as part of an order. He hoped that the licence could be finalised for the grant of a premises licence quickly.

The LSO had no further comments beyond those noted in her report, and she highlighted her recommended condition relating to alcohol deliveries.

PC Wilson advised that Police Scotland had no objections to the application, but stressed the importance of training and age verification in the delivery of alcohol.

Responding to a question from the Convener, Mr Macdonald accepted the LSO's recommended condition relating to the delivery of alcohol, and reiterated that the business had put its own condition in place relating to alcohol deliveries being ancillary to the food offer. He said that food delivery was currently undertaken by staff members, and this would be the case going forward. He said that staff working at the premises and undertaking deliveries would have to be trained in selling alcohol, and said there would be a copy of the necessary paperwork available in the delivery van and on the premises. Mr Shetra confirmed that in-house staff would make the deliveries, and records and training would be kept up to date.

The Convener asked why the applicant had applied for a provisional licence when the premises was already operational. Mr Macdonald explained that the business had been desperate to make an application to the November Board since there was no Licensing Board meeting in December; there had not been time to gather the three necessary Section 50 certificates to lodge a full premises licence to be heard in November.

The Convener welcomed the commitments made around staff training and the self-imposed conditions that alcohol would only be delivered with food.

The Convener formally proposed the LSO's recommended condition relating to deliveries, and Councillor McMillan seconded the proposal. The Convener then moved to a roll call vote and Members unanimously supported the application.

Decision

The Board granted the provisional licence, subject to the following condition:

- 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.

b. Garden City, 16 Kitchener Crescent, Longniddry

The application sought a provisional premises licence. The application had attracted no objections from the police, NHS, planning, the LSO, public, or community council. The LSO had submitted a report including a recommended condition relating to the delivery of alcohol, noted below.

Mr Macdonald advised that Mr Shetra would run this premises himself as the DPM. He advised that this premises had also come in for a provisional licence to catch a hearing at the November Board, and would aim to confirm to a premises licence soon thereafter. He said that much of the business was passing trade and catered a different clientele than the two nearby shops. He said the shop had been operating well since Mr Shetra had taken it over a year before; Mr Shetra intended to make alterations to the shop but wished to get the licence in place first. Mr Macdonald said deliveries would not begin immediately, but the shop wished to offer this service to the community. He said that other comments were the same as in Mr Shetra's previous application at item 2a.

PC Wilson advised that there were no objections from Police Scotland, but asked whether there was any policy in place as to whether alcohol would be delivered on its own or whether it would have to be delivered with other goods, and the times deliveries could take place.

The LSO made no further comments beyond her submitted report but highlighted the recommended condition relating to deliveries of alcohol.

Mr Macdonald said the LSO's suggested condition was accepted by his client. He said that in-house staff would undertake the deliveries and would have to be trained. He said that there could be a delivery of alcohol without food in this case; he said this was common for convenience stores. Mr Shetra added that he did not look to push the deliveries service but would appreciate being allowed to make deliveries in case it was requested by local customers.

The Convener was happy to support the application, and had always found the shop to be well run.

The Convener formally proposed the LSO's recommended condition relating to deliveries, and Councillor Dugdale seconded the proposal. The Convener then moved to a roll call vote and Members unanimously supported the application.

Decision

The Board granted the provisional licence, subject to the following condition:

- 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.

Sederunt: *Councillor McMillan left the meeting.*

c. Pans Premier, Unit 3, Meadow House, Monks Meadow, Prestonpans

The application sought a provisional premises licence. The application had attracted no objections from the police, NHS, planning, the LSO, public, or community council. The LSO had submitted a report including a recommended condition relating to the delivery of alcohol, noted below.

The applicant, Vaidota Rai, had confirmed that she was unable to attend the meeting.

The LSO made no further comments beyond her submitted report but highlighted her recommended condition relating to deliveries of alcohol.

PC Wilson confirmed that Police Scotland had no objection to the application.

The Convener said there had been much discussion locally as to whether there would be any shopping provision for the new housing in the south of Prestonpans, and welcomed the shop. He formally proposed the LSO's recommended condition relating to deliveries, and Councillor Dugdale seconded the proposal. The Convener then moved to a roll call vote and Members unanimously supported the application.

Decision

The Board granted the provisional licence, subject to the following condition:

- 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.

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

**3. MAJOR VARIATION OF PREMISES LICENCE
Nicholson News, 29a Links Road, Longniddry**

The application sought to vary the premises licence to change the operating hours to close at 10pm, to add background music, to add deliveries, and to increase the alcohol display area. The application had attracted no objections from the police, NHS, planning, the LSO, public, or community council. The LSO had submitted a report including a recommended condition relating to the delivery of alcohol, noted below.

Mr Macdonald spoke to the application, and was accompanied by his client, Mujahid Nazir. Mr Macdonald said Nicholson News had been in operation for many years, and his client sought to make some changes after taking over as tenant the previous year. Mr Macdonald thought that the previous opening hours had been down to the personal choice of the previous operator, but Mr Nazir now wished to open until 10pm, which was within Board policy. He said that deliveries would not be frequent, but the business wished to have the facility in case a regular customer was not able to come into the shop. The application also sought to add background music and increase the alcohol display area to provide a greater choice to customers. He understood there to be no adverse comments from Police Scotland, and said that the application had been made in connection with a visit made by the LSO.

The LSO said that an inspection had found the premises not to be operating in accordance with its premises licence, and so guidance had been provided relating to submission of a major variation application. She also highlighted her suggested condition relating to deliveries of alcohol.

PC Wilson confirmed there were no objections from Police Scotland.

Responding to a question from Councillor Gilbert, Mr Macdonald explained that the premises licence holder was the landlord, but Mr Macdonald's client was the tenant.

The Convener asked about the points raised in the LSO's report about missing signage and staff training. Mr Macdonald said that notices had been supplied to the shop, and the matter of staff training had been dealt with.

The Convener formally proposed the LSO's recommended condition relating to deliveries, and Councillor McGuire seconded the proposal. The Convener then moved to a roll call vote and Members unanimously supported the application.

Decision

The Board granted the major variation, subject to the following condition:

- 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.

4. PERSONAL LICENCE Samantha McLean

Samantha McLean had made an application for a personal licence and the hearing had been called on the basis of representation from Police Scotland.

PC Wilson advised that Police Scotland did not object to the granting of a licence, but had provided Board Members with information relating to a previous conviction which Ms McLean had disclosed on her application form. He said he did not have immediate concerns or objections to the granting of the licence and noted that Ms McLean would work with a diverse range of patrons in this role.

Ms McLean advised that she had worked with McColl's for nine years and had worked her way up in this time. As she was now into management roles, she wanted to hold a personal licence to be able to run a store fully.

The Convener thanked Ms McLean for disclosing her conviction and asked whether the conviction related to a one-off incident. Ms McLean reassured the Board that no such incident would ever happen again.

Ms McLean responded to further questions from Members. She said she had a promoted position she could move to. She had undertaken training in dealing with abusive customers through McColl's and Morrisons.

Councillor McMillan hoped that Ms McLean understood that there was a huge responsibility on her to operate within the five licensing objectives, but he was minded to grant the application.

Councillor McGuire felt Ms McLean had accepted the error of her ways and moved on, and could now handle challenging situations. As there was no objection from Police Scotland, he was minded to grant the application.

The Convener moved to roll call vote and Members unanimously supported the application.

Decision

The Board granted the personal licence.

5. REVIEW OF PERSONAL LICENCE

Damien Okragly

A review of Damien Okragly's personal licence had come before the Board on the basis of representation from Police Scotland.

Mr Okragly was not in attendance. Mr Grilli, Clerk of the Board, informed Members that Mr Okragly was not using his personal licence but had not indicated that he intended to surrender it. The Committee Clerk had been unable to make contact with Mr Okragly in the days preceding the meeting. Mr Grilli advised Members that they could take a view on revoking Mr Okragly's licence on the basis of police representation, or they could leave the licence in place and continue the hearing until the January Board meeting.

Councillor McMillan expressed his preference to continue the hearing and urged Mr Okragly to attend the meeting.

The Convener moved to a roll call vote and Members unanimously voted to continue the hearing until the January meeting of the Board.

Decision

The hearing was continued until the January Board meeting.

6. NON-PAYMENT OF ANNUAL FEES

a. Giancarlo's, 119 High Street, Tranent

The LSO had submitted a report to inform the Board of non-payment of annual fees.

Mr Grilli advised that fees had still not been received. Before the meeting, it had further been discovered that the current premises licence holder had been dissolved at companies house, and as such, the Licensing (Scotland) Act 2005 (as amended) Section 28(1)(B) provided that the premises licence ceased to have effect. He also drew attention to the Board Policy 37, where the Board took the position that in the case of dissolution, the licence no longer existed as there was no longer any licence holder. Mr Grilli noted that the dissolution had been in place for some time, and therefore recommended that as the licence holder no longer existed, the premises licence should fall.

Mr Macdonald said he had acted for the company when they obtained their licence. He advised that the couple who owned the company had since split up, the restaurant was closed, and his client was not aware of what was going on. He said different

Boards dealt with dissolved companies in different ways because the wording in the legislation was not clear; he said that some Boards took the view that a company being dissolved did not bring the licence to an end, and it was still capable of being transferred by the applicant under Section 34. However, he understood that the Board had taken the opposite opinion some years ago. He said another client was interested in taking the premises over and would want the licence to be in place. Mr Macdonald understood that it was unlikely the Board would allow a transfer to go through unless the annual fees were brought up to date.

Councillor McMillan said that under his economic development role, he would want to help the new business to set up and grow, but he noted that the fee had not been paid and there had been no firm written application or transfer to any other interested party. He asked whether it would be possible to continue the item until the January Board to allow for submission of a transfer application.

The Convener called an adjournment for the Board to take legal advice. Upon their return, he referred to Board Policy 37.1, that the Board took the view that if any licence holder became dissolved or insolvent, the licence would no longer exist unless an application for it to be transferred had been made within 28 days. He could see no other way to proceed than the licence being revoked, and also noted that the fee had not been paid, which would also be grounds for revoking the licence. He said the Board would consider any new application for a premises licence.

Mr Macdonald stressed that dissolving a company did not mean it had become insolvent, and the Convener responded that the policy made provision for both a company becoming dissolved or insolvent.

Councillor McGuire concurred with the Convener's comments and said that the policy was clear on this matter and must be implemented. He said that a new business would be welcomed.

Councillor McMillan also supported the Convener's remarks. He said it was important to encourage new businesses but also for those businesses to work with the Board. He congratulated the LSO for picking up on this point in relation to the dissolution of the company, but thought it was disappointing that there was no request made to transfer the licence.

The Convener moved to a roll call vote, and Members unanimously voted to revoke the premises licence due to the licence holder having been dissolved and the annual fee not having been paid. ***Post-meeting note:** the licence had ceased to exist following the dissolution of the licence holder.*

Decision

The licence ceased to exist following the dissolution of the licence holder.

b. Stodola, 109 High Street, Musselburgh

The LSO had submitted a report to inform the Board of non-payment of annual fees. She advised that the licence holder had not been in contact with her at all.

Mr Macdonald advised that he had only recently become aware that the premises was before the Board for non-payment of fees. He had managed to contact his client and advised that they were advertising for a new tenant. He had made clear to his client

that the annual fee must be paid, or the premises licence must be surrendered. Mr Macdonald said his client had not confirmed either way.

The Convener would allow until the end of the meeting for Mr Macdonald to confirm the matter with his client. He noted that Board policy was that a licence would be revoked should the premises cease to be used for the sale of alcohol, which applied in this case.

Councillor McMillan had read through the LSO's account of the correspondence and said the licence holder had been given a good deal of time to pay the fees, and contact had been attempted through officers.

Councillor McGuire said that the payment of annual fees was an important part of the business which the licence holders had not taken time to deal with, despite reminders being sent. He was minded to revoke the licence if the applicant had not made contact by the end of the meeting.

Councillor Cassini said that the premises was a large shop in Musselburgh which had not informed its suppliers when it had closed. She was aware of attempts by neighbouring businesses to make contact after they had taken deliveries on behalf of the store. She felt there had been a lack of mindfulness around the matter. She was not comfortable with allowing the licence to remain in place and agreed that time should only be allowed until the end of the meeting.

Mr Macdonald undertook to continue to try to contact his client to try to keep the licence alive, and the Board would revisit the item at the end of the meeting.

Decision

The Board agreed to continue the item to the end of the meeting to give Mr McDonald opportunity to contact his client.

c. Dragon Way, 27c Links Road, Port Seton

The LSO had submitted a report to inform the Board of non-payment of annual fees.

Mr Macdonald said he had spoken with the landlords, the Yips. Michael Yip had informed Mr Macdonald that the tenant had written a cheque to pay the annual fees and was trying to find evidence of it being paid. Mr Macdonald said that there was intention to pay the annual fees and asked the Board to allow time for this; he suggested that if a cheque had not been received within a week or two, the licence could be revoked.

The LSO highlighted that Mr Yip's personal licence had expired because he had not completed the mandatory training in December 2021, and confirmed that there should have been no sales of alcohol since this time.

Mr Macdonald agreed that no alcohol should be sold until a DPM had been appointed, but felt that this was a separate issue to the payment of the annual fee. He suggested that the Board may wish to defer the matter to consider a wider review of the premises licence.

The Convener called an adjournment for the Board to discuss the matter with Mr Grilli. Upon their return, Mr Grilli advised that the licensing team had confirmed that payment of annual fees had not been received.

Councillor McGuire commented that the applicant had received several reminders and such chasing up of annual fees should not be required. He was minded to revoke the licence.

The Convener highlighted Board Policy 28 around the duty to pay the annual fee by 1 October and noted officers' various attempts to contact the premises. He raised concerns over whether alcohol had been sold while there was no DPM in place, and further highlighted that if no alcohol had been sold within the last 18 months, this also would have been reason to revoke the licence. He would vote to revoke the licence on the basis of non-payment of annual fees.

The Convener moved to a roll call vote and Members unanimously voted to revoke the premises licence.

Decision

The premises licence was revoked.

d. The Folly Hotel, 1 Station Hill, North Berwick

The LSO had submitted a report to inform the Board of non-payment of annual fees.

The LSO had visited the premises and found it to be closed, with a self-check-in service for guests. She highlighted that Gareth Cotten had moved in November 2021 to be the DPM at a premises in the highlands. Mr Cotten had sent an email in October 2022 asking to remove a DPM, but it had been unclear at this time because there had been no application made to appoint a DPM following Mr Cotten's move.

Mr Grilli advised that payment for this licence had been received recently and asked Mr Cotten if he wished to respond to the LSO's comments.

Mr Cotten said that payment had been made late due the changeover from the summer team to the winter team and staff not having forwarded mail on. He said he had always made a point of keeping the premises licence up to date and had paid within an hour or being made aware that fees were outstanding. He said that self-check-in was in operation because it had been a challenging season in which to find staff; there was now just one live-in staff member during the winter and a low occupancy rate over the period. He said that alcohol had not been sold recently due to a lack of staff. He said that there was only a receptionist, a housekeeper, and a duty relief manager during the summer, and so he had chosen not to sell alcohol recently. He advised that a staff member from the highlands was looking to move back to North Berwick, so he intended to revive café operations from January or February 2024. He advised that this staff member would become the DPM.

The Convener asked when the premises had last sold alcohol, and Mr Cotten thought this had been in summer 2022.

The LSO advised that the premises had not had a DPM in place since Mr Cotten became DPM at the highlands property in November 2021. She advised that Police Scotland had confirmed that no DPM had been appointed following Mr Cotten's move. Mr Cotten responded that his stepson was a licensed premises manager; Mr Cotten was certain he had appointed his stepson as DPM, as he came within a matter of weeks of Mr Cotten's move.

PC Wilson confirmed that police records showed that Mr Cotten had moved as DPM from the Folly Hotel to the Islander Bar on the west coast on 19 November 2021.

The Convener was concerned that the hotel had been selling alcohol without a DPM in place, and asked about plans for the premises going forward. Mr Cotten said there had been a full staff complement until the middle of September, and the hotel was actively recruiting. It was hoped that food and drink could be sold soon. He reported that very little alcohol had been sold in the last couple of years. He said he had taken on the hotel in 2018, had traded through 2019, and then had closed for large portions of 2020 and 2021.

The Convener highlighted Board Policy 36.1 which said that premises which had been closed or ceased the sale of alcohol for a period of 18 months or more, the Board would consider that the premises licence had ceased to have effect. Mr Cotten responded that he could have a DPM appointed by the end of the week.

The Convener called an adjournment to allow Board Members to discuss the matter in private. Upon their return, the Convener outlined some of the Board's concerns, which included late payment of fees, operation of the venue, the lack of a DPM, and whether the self-check-in system met the five licensing objectives. He said that the Board would suspend the premises licence until the January Licensing Board where it was hoped that the Board could consider that there was a DPM and revised operating plan in place so that the sale of alcohol could commence.

The Convener moved to a roll call vote and Members unanimously supported suspension of the premises licence until the January meeting of the Licensing Board.

Decision

The premises licence was suspended until the January meeting of the Licensing Board.

7. CHIEF CONSTABLE'S REPORT TO THE EAST LOTHIAN LICENSING BOARD 2022-2023

The Chief Constable had submitted a report to inform the East Lothian Licensing Board of licensing activities within East Lothian for 2022-2023.

PC Wilson spoke to the report. In his presentation, he drew attention to various statistics. He advised that there had been 145 incidents in licenced premises across the period, which was a decrease from 243 incidents in the previous year. Of the recorded incidents, there had been 26 assaults, 27 disturbances, 10 failures to leave a licenced premises, three incidents in relation to drug use, and 69 relating to the theft of alcohol. He advised that since 1 April 2023, there had been a further 162 incidents recorded, of which 94 incidents related to thefts of alcohol, and said this was becoming a real issue. He advised that there had been one premises, a pub in West Barns, identified as being problematic and the premises licence had been revoked after review by the Board.

PC Wilson then provided commentary on violent crime. There had been 1050 acts of violence recorded in East Lothian, which represented an increase of 15% when compared to the previous year. He advised that an alcohol marker was added to crime reports where alcohol was deemed to be a clear factor in the act of violence. Of the recorded crimes, around 190 had an alcohol marker attached, and the more densely populated areas had higher numbers of alcohol-related violent crimes.

PC Wilson advised that there had been 5197 reports of antisocial behaviour made in the period, and many of these were related to alcohol. He said antisocial behaviour was one of the top priorities for Police Scotland and the East Lothian Community Action Team (ELCAT), and provided some information on the work of ELCAT. He advised of a joint venture with East Coast buses to engage with drivers and young people to make travel safer and to tie in with the free bus passes for young people.

He advised of licensing activities, which had included 99 premises inspections during the period, including both routine and targeted checks. He reported there had been 49 checks carried out since 1 April 2023. He said checks were generally well received by publicans and patrons and he would encourage officers to carry out further checks.

He advised of the *It'll Cost You* campaign in the summer months to combat proxy and direct sales to under-18s, which had also involved the Police Scotland Youth Volunteers speaking with members of the public and shopkeepers and having a question-and-answer session with the LSO.

Regarding future plans, the Violence Prevention and Licensing Coordination Unit was reviewing the viability of offering bystander training. Craig Purvis, the community officer working in Haddington, had obtained a role in this department and it was hoped that East Lothian could become a pilot for such schemes.

PC Wilson referred to the changes to policing at local and national level, including individuals moving onto other roles, and the end of all covid restrictions. He said the LSO had been invited to attend weekly meetings with Police Scotland, and this would result in tasking community officers to deal with issues swiftly. He spoke positively of his working relationship with the LSO and said they had attended several premises together to offer advice and guidance. He hoped he would be able to continue in his role to continue to raise the standards in local alcohol licensing and help tackle some of the local policing priorities.

Councillor McMillan had been glad to have PC Wilson at the joint meeting of the Licensing Forum and Licensing Board the previous day, and felt that all five licensing objectives had been covered well along with input the public health consultant. He commended the work of the Police Scotland Youth Volunteers. He had appreciated working with Craig Purvis as community officer and hoped that the link between Craig Purvis and PC Wilson would benefit the area. He welcomed the preventative early interventions and the proactive approach to engagement and training. He asked how Police Scotland and the Board should continue to work together, and about PC Wilson's thoughts on the style of enforcement required in the area.

PC Wilson reported that licensees were generally responsive, wanted to do their best by their businesses and communities, and wanted to operate properly. He said the first step was to offer guidance, and later enforcement if required. He felt it would be positive to have more members of the licensed trade in attendance at the Licensing Forum, and he and the LSO would promote this.

Councillor McMillan offered his sincere thanks to PC Wilson and to Police Scotland officers for their work with the Board.

Councillor Dugdale welcomed the work of the East Lothian Community Action Team, which she said was very important, and said that strong efforts were made to support and provide activities for young people. She welcomed the bystander training and looked forward to hearing how this would be rolled out. She acknowledged the good partnership working on display and looked forward to this continuing over the coming years.

The Convener acknowledged the value added by PC Wilson in his short time in the role, and asked Sergeant Wood to pass on the Board's thanks for this outstanding work.

The Convener asked whether work could be undertaken to highlight premises which had ceased trading but still held licences. Mr Grilli was happy to take this away and work with the LSO and Police Scotland to try to identify non-trading licensees in the county.

Decision

The Board agreed to note the report.

6. NON-PAYMENT OF ANNUAL FEES
b. Stodola, 109 High Street, Musselburgh

The item was continued from an earlier discussion.

Mr Grilli advised that Mr Macdonald had been in touch after attempting to clarify his client's position. Mr Macdonald thought that the licence may have been surrendered, but Mr Grilli advised that Members may wish to consider revoking the licence for clarity.

The Convener moved to roll call vote and Members unanimously voted to revoke the premises licence for non-payment of annual fees.

Decision

The premises licence was revoked.

Signed

Councillor L Bruce
Convener of East Lothian Licensing Board