

## NOTICE OF MEETING

### MIDLOTHIAN LOCAL LICENSING FORUM

**Venue:** Committee Room, Midlothian House

**Date:** Friday 14<sup>th</sup> November 2014

**Time:** 10.00 am

### AGENDA

|   |   |                |
|---|---|----------------|
| <b>1</b>  | Welcome and Apologies   |                |
| <b>2</b>  | Minutes of the previous meeting <ul style="list-style-type: none"> <li>• Forum meeting – 15<sup>th</sup> August 2014</li> <li>• Action plan</li> </ul>                      |                |
| <b>3</b>  | Minutes of the licensing Board – latest approved minutes:<br>28 <sup>th</sup> October 2014 (minutes not yet available)<br>2 <sup>nd</sup> September 2014 (minutes attached) | <b>P</b>       |
| <b>4</b>  | Licensing Forum Recruitment campaign  | <b>V</b>       |
| <b>5</b>  | Overprovision – granting of extended hours in the overprovided area   | <b>V</b>       |
| <b>6</b>  | Supply of alcohol to youngsters by "dealers" who buy from off sales shops and pass on to under age teenagers & younger.   | <b>V</b>       |
| <b>7</b>  | Scottish Government Drink Drive Campaign  | <b>V</b>       |
| <b>8</b>  | Police Licensing update – Jim Leslie  | <b>P (TF?)</b> |
| <b>9</b>  | Pub watch update – Jim Leslie/ Jim Royan/ Kenny Simpson   | <b>P (TF?)</b> |
| <b>10</b>   | Best Bar None   | <b>P</b>       |
| <b>11</b>   | Future meeting dates  | <b>P</b>       |
| <b>12</b>   | Any Other Business  |                |
| <b>13</b>   | Date of next meeting:<br>13 <sup>TH</sup> February 2015 (TBC)   |                |
| <b>(R) = report attached (V) = verbal update (TF) = to follow</b> |   |                |

**MINUTES of MEETING** of the **LOCAL LICENSING FORUM** held in the Committee Room, Midlothian House on 15<sup>th</sup> August 2014 at 10.00 am.

**Present:-**

**Representatives of Residents within the Forum's Area:** Jim Church (Chair); Derek Couper, Alistair Mackintosh

**Representatives of holders of premises licences/ personal licences:** Adam Bolton (The Laird & Dog)

**Representative of Police, Health, Education, Social Work, Midlothian Council:** Chief Inspector Jim Royan, PC Jim Leslie, John Thayers

**In Attendance:** - Rosie Kendall, Community Safety Manager, Magda Clark, Community Safety Development Officer

**Apologies:** David Logan, Jim Sherval (NHS Lothian), Grahame Boyd (Fire Scotland), Moira Malcolm, Kevin Anderson.

**1. Minutes of the previous meeting**

It was noted that the Best Bar None presentation planned for this meeting has been delayed until the November meeting. It was suggested that applications for the scheme should be sent with personal or premise licence application forms.

*Action: FL to look into whether Best Bar None applications can be included with license application forms*

*Action: JL to prepare an update on Police licensing for the next meeting*

The Minutes of the Meeting of 16<sup>th</sup> May 2014 were submitted and approved as a correct record by Chief Inspector Jim Royan and Derek Couper

**2. Licensing Board minutes 6<sup>th</sup> May 2014**

It was noted that the Board granted an application for a license extension for the Golden Goose which did not comply with the Scottish Government principle that premises should not be allowed to open for longer than 14 hours. JL highlighted that the Police submit objections to all applications which go against this principle. There are various issues associated with allowing longer opening hours:

- The possibility that someone could drink for longer than 14 hours continuously
- Issues surrounding premises closing at the same time and crime/ ASB as people leave.

It was also noted that license holders are responsible for ensuring they serve alcohol appropriately. It is also the case that premises closing at different times can have an impact on crime and ASB as people move from one premise to another.

As the overprovision statement may assist the Board in controlling the extension of hours, the Forum agreed to note this issue and possibly submit questions to the Board at a future date.

**3. Licensing Board approach to license applications where criminal convictions are pending.**

The Forum discussed inconsistencies in the Board's approach to handling applications when convictions are pending.

The legislation states that convictions must be taken into account. At present it does not refer to pending convictions however sec 73 of the act Subsection 4 in Jack Cummins third edition of Licensing (Scotland) Act 2005 states:

" As a result of an amendment introduced by the CJLA (sch.6 para.12) the Chief Constable may recommend the refusal of an application 'for the purposes of any of the licensing objectives' even where no conviction for a relevant offence or foreign offence has been reported. Previously, he could only recommend refusal where a conviction was reported and that recommendation was restricted to the purposes of the 'crime prevention objective.'"

This allows the Board to take preventative and proactive action prior to the completion of criminal proceedings.

In some cases applicants with pending convictions have been granted a license on the basis that this can be reviewed if the license holder is convicted at a later date. In other cases an incident at a licensed premise was dealt with prior to the trial (The Rowan tree Inn).

It is noted that criminal proceedings work on the basis of beyond reasonable doubt however in exercising the licensing principles the Board should work on the basis of 'balance of probability'

*Action: RK to write to the Board on behalf of the Forum requesting what their approach is to the application of stated case law such as 'McKenzie v Renfrew District Licensing Board', which sets a precedent to expedite licensing matters potentially prior to the conclusion of criminal proceedings. The Board is also to be asked how they ensure consistency when handling applications where pending convictions are involved.*

#### **4. Air weapons and Licensing (Scotland) Bill**

The Forum discussed key proposed changes to the Licensing Scotland Act. These include changes such as:

- Amendment of the licensing objective in relation to children to also include young persons;
- Amendment of the duration of a licensing policy statement to align with the term of Local Government elections;
- Inserting a fit and proper person test in relation to the issue or continued holding of a premises or a personal licence;

The Forum agreed that overall the proposed changes appear to be positive and will support the work of the Forum and the Board.

*Action: RK to circulate a summary of the proposed changes and prepare a draft response to the consultation. Forum members to provide comments.*

#### **5. Midlothian over provision statement**

RK provided an update on overprovision statement progress. The Board discussed the Forum's recommendations in June and agreed to draft a statement for discussion at their next meeting on 2<sup>nd</sup> September.

JT highlighted that the East Lothian statement states that the whole area is overprovided. Since the statement came into effect the Board has noted that the quality of license applications has significantly improved.

The Forum queried the time taken for the Board to produce the overprovision statement. The Forum asked that it be made clear to the Board that if a decision is not made soon then the Forum will expect the Board to produce a statement for the Scottish Government explaining the reason for this.

The overprovision statement will not just affect the number of premises but also capacity and opening hours.

The Forum notes that in considering overprovision, the Board must take into account the 5 licensing objectives. It was noted that economic detriment is only associated with one of the objectives. Should the Board determine there is no overprovision on the basis of concerns about economic detriment the Forum agreed the Board should be asked to provide evidence on this.

*Action: RK to write to the Licensing Board explaining that the Forum's expectation is that an overprovision statement will be agreed by 2<sup>nd</sup> September.*

*Action: AB/JC to attend the Licensing Board meeting on 2<sup>nd</sup> September*

## **6. Licensing Forum web site**

The Forum agreed the proposed content of the web page.

*Action: RK to finalise the web page*

## **7. Licensing Forum recruitment campaign**

The recruitment campaign will be launched in September. It is hoped this will raise awareness of the work of the Forum and attract new members. The campaign will include the following:

- Production of the new web page

Targeting the public via:

- An article in Midlothian News
- Press release
- information on social media (Facebook and twitter).

Approaching the following:

- Senior pupil councils (possibility for a rotation system)
- MYPAS
- Pub Watch members, The new Morrison's store license holder (these were discussed at the last meeting)
- Community Council members
- Forum membership applications to be sent out with notification of license approval.
- Staff at licensed premises

RK highlighted that if young people are unable to commit to attending meetings they could be added to the circulation list to provide comments and suggestions via e-mail.

*Action: JC to speak to Colin Taylor regarding approaching senior pupil councils*

*Action: JT to look into whether any MYPAS service users would be interested in participating*

*Action: RK to co-ordinate the campaign including liaising with the Council*

*Communications department to arrange a photo for the Midlothian news article (AB, JC and DC agreed to participate)*

*Action: AB to ask his younger staff if any of them would be interested in joining the Forum*

## **8. Any other business**

The Forum discussed whether Pub Watch is currently operating in Midlothian and in which areas. This included whether the licensing Board could request compulsory membership as a condition when granting licenses.

*Action: JR to produce an update on Pub Watch for the next Forum meeting*

## **7. Date of Next Meeting**

The Forum noted that the next scheduled Forum meeting was due to take place on **14<sup>th</sup> November at 10.00am** in Midlothian House, Committee Room, Buccleuch Street, Dalkeith.

The meeting terminated at 11.30am

Licensing Forum action log

| meeting date | Action  | Lead  | Status      | Note   |
|--------------|---|-------|-------------|--|
| 16/05/14     | RK to undertake a recruitment campaign  | RK    | Pending     | RK to co-ordinate the campaign including liaising with the Council Communications department to arrange a photo for the Midlothian news article (AB, JC and DC agreed to participate)<br>Recruitment campaign undertaken X applications received |
| 16/05/14     | RK to look into creating a Forum web page   | RK    | Pending     | Draft page presented 15/8. RK to finalise<br>created   |
| 16/05/14     | AB to attend licensing Board meetings with JC attending as required.  | AB/JC | In progress | AB/JC to attend the Licensing Board meeting on 2 <sup>nd</sup> September   |
| 16/05/14     | RK to approach Frances Little to ask her to provide a presentation on Best bar None at the August Forum meeting                       | RK    | Pending     | FL on leave 15/8 Has been invited to 14/11 meeting<br>Written update to be provided  |
| 16/05/14     | JL to approach the Police licensing department to ask if they would be willing to provide a presentation at the August Forum meeting. | JL    | Pending     | JL to prepare an update on Police licensing for the next meeting<br>On agenda  |
| 15/8/14      | FL to look into whether Best Bar None applications can be included with license application forms                                     | FL    | new         |  |

Licensing Forum action log

| meeting date | Action  | Lead | Status | Note   |
|--------------|---|------|--------|--|
| 15/8/14      | RK to write to the Board on behalf of the Forum requesting what their approach is to the application of stated case law such as 'McKenzie v Renfrew District Licensing Board', which sets a precedent to expedite licensing matters potentially prior to the conclusion of criminal proceedings. The Board is also to be asked how they ensure consistency when handling applications where pending convictions are involved. | RK   | new    | <p>The Board are aware of the precedent of cases such as McKenzie v Falkirk District Licensing Board 1991 which permits the Board to consider matters prior to the conclusion of criminal proceedings. The Board is also aware that the precedent does not imply any form of guilt, nor change the standard of proof in any hearing before the Board, nor fetter their power to seek further information in terms of section 38 (5) of the Licensing (Scotland) Act 2005.</p> <p>The Board ensure consistency in treating cases involving pending cases (and specifically not considering such matters to be pending convictions) by following the requirement and test in section 74 (6) of the Act that they must be satisfied that it is necessary for the purposes of any of the licensing objectives before they can refuse a personal licence application.</p> |

Licensing Forum action log

| meeting date | Action   | Lead | Status    | Note   |
|--------------|--|------|-----------|--|
| 15/8/14      | Air weapons and Licensing (Scotland) Bill: RK to circulate a summary of the proposed changes and prepare a draft response for circulation to the Forum. Forum members to provide comments. | RK   | Completed | RK submitted response  |
| 15/8/14      | Overprovision: RK to write to the Licensing Board explaining that the Forum's expectation is that an overprovision statement will be agreed by 2 <sup>nd</sup> September.                  | RK   | Completed | Overprovision statement agreed   |
| 15/8/14      | Recruitment campaign: JC to speak to Colin Taylor regarding approaching senior pupil councils  | JC   | new       | JC is awaiting a response  |
| 15/8/14      | Recruitment campaign: JT to look into whether any MYPAS service users would be interested in participating   | JT   | new       | JT has contacted Paul at MYPAS. JT will drop him an email to see if he has managed to identify an interested young person. The alternative would be to have a representative from MYPAS who could raise the work of and issues arising from the Forum with groups of young people. |
| 15/8/14      | Recruitment campaign: AB to ask his younger staff if any of them would be interested in joining the Forum  | AB   | new       |  |
| 15/8/14      | JR to produce an update on Pub Watch for the next Forum meeting  | JR   | new       |  |



Licensing Forum action log

|            |  |    |           |  |
|------------|--|----|-----------|--|
| Completed  |  |    |           |  |
| 16/05/2014 | RK to arrange for board minutes to be circulated as soon as they are available | RK | Completed | RK has been added to distribution list and will forward on any minutes when received |
| 16/05/2014 | RK to submit the above comments to the Licensing Board                         | RK | Completed | Discussed at June Board meeting. Awaiting draft statements                           |

**MINUTES of MEETING of MIDLOTHIAN LICENSING BOARD** held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith, on Tuesday, 2 September 2014, at 10am.

**Present:** - Messrs Constable (Chairman), Coventry, Thompson, Wallace, Montgomery, Milligan, Imrie, Bennett and Mrs Russell.

**Apologies:** - Mr Rosie

**1. Minutes**

The Minutes of the Meeting dated 17 June 2014 were submitted and approved.

**2. Licensing (Scotland) Act 2005 – Application for Personal Licence –  
Melissa Ireland**

After considering the report by Police Scotland, and having heard from Ms Ireland's agent, Mr Clancy who advised the Board that his client deeply regretted the offence, the Board granted the Application.

**3. Licensing (Scotland) Act 2005 – Application for Personal Licence –  
Dale Iwaniec**

The Board noted Mr Iwaniec's non attendance at the Meeting and agreed to continue consideration of the Application at the Meeting on 28 October 2014.

**4. Licensing (Scotland) Act 2005 – Application for Variation of Premises  
Licence – Co-operative Food, 78 High Street, Bonnyrigg**

The Board noted that the Application had been withdrawn.

**5. Licensing (Scotland) Act 2005 – Application for Variation of Premises  
Licence – Flotterstone Inn, Biggar Road, Milton Bridge, near Penicuik**

With regard to the Application by Archibald Still, the Board noted all reports were satisfactory and granted the Application.

**6. Licensing (Scotland) Act 2005 – Application for Variation of Premises Licence - Lidl, 5a Newmills Road, Dalkeith**

With regard to the application by Lidl UK GmbH, the Board noted all reports were satisfactory and granted the Application.

**7. Licensing (Scotland) Act 2005 – Application for Variation of Premises Licence - Lidl, High Street, Penicuik**

With regard to the application by Lidl UK GmbH, the Board noted all reports were satisfactory and granted the Application.

**8. Licensing (Scotland) Act 2005 – Application for Variation of Premises Licence - Little Italy, 3 Edinburgh Road, Penicuik**

With regard to the application by Roberto Pia, after considering all reports and having heard the applicant's agent, Alistair Macdonald who agreed that the terminal hour for the outside drinking area shall cease at 10pm, the Board granted the Application and agreed that seven updated layout plans be lodged as soon as possible. The Board also advised the applicant that the correct permissions would require to be obtained from Midlothian Council regarding the public footpath.

**9. Licensing (Scotland) Act 2005 – Application for Variation of Premises Licence - The Rowantree Inn, 5 Eskview Road, Mayfield, Dalkeith**

With regard to the application by Partnership of Norman Martin and Ernest Savage, after considering all reports and having heard the applicants' agent, Alistair Macdonald, who agreed that all live band performances shall cease at 11pm. Mr Wallace dissenting, the Board granted the Application and agreed that a sound assessment be carried out at the premises by the Licensing Standards Officer.

**10. Licensing (Scotland) Act 2005 – Notice of Conviction – Martin McColl Limited – 23-25 Main Street, Gorebridge, 59 Newton Church Road, Danderhall and 11 Jarnac Court, Dalkeith**

The Board noted the recent relevant convictions and agreed to take no further action.

**11. Gambling Act 2005 – Application for Provisional Statement – Betting Premises Licence – Unit 2, former Staiside Inn, Rosewell Road, Bonnyrigg**

With regard to the Application by Coral Racing Limited, the Board noted all reports were satisfactory and granted the Application. The Board also agreed that the Application for Confirmation of the Provisional Statement be delegated to the Chairman and two members when lodged.

**12. Licensing (Scotland) Act 2005 - Overprovision Statement**

After considering the report by the Clerk to the Board, the Board agreed on 7 votes to 2 that there was an overprovision of Premises Licences in Dalkeith and agreed that the Board's Policy Statement be amended accordingly.

**13. Licensing (Scotland) Act 2005 – Air Weapons and Licensing (Scotland) Bill**

The Board noted the terms of the report by the Clerk to the Board on the proposed effect of the Air Weapons and Licensing (Scotland) Bill and agreed that the Clerk submit comments to the Scottish Government.

The Meeting terminated at 11.05am.

## **Best Bar None update for 2014/15**

- Initially 6 venues signed up however we now have 4 remaining and these are:  
The Black Bull – Dalkeith c/o Audra Coombe  
The Blacksmith's Forge – Dalkeith c/o James Paton  
Esk Valley Table Table – Eskbank c/o Ashley Hadden  
The Leadburn Inn – Penicuik c/o Iain Dempster
- The independent assessor from Training Scotland is in the process of carrying out the assessments and all four of the premises are happy and ready to facilitate this.
- At this stage there is no reason to suggest the premises will not get through the process with either a Bronze, Silver or even Gold award where appropriate.
- Soon after the assessment, the scoring booklets be graded with a view to handing out the awards early 2015 well in advance of the start of the 2015-16 Best Bar none session.
- As a result of getting through the scheme, premises will not only have the award itself to display, but they will be offered the chance of advertising in the recognised periodical 'DRAM' .
- On a local level, the opportunity for recognition through a bespoke community safety brochure is being considered, and the Penicuik BID are on board also.
- It is hoped that as the numbers of premises who get through the process increase, positive word will assist in the recruitment of premises for next year.
- Presently working on the format of the award ceremony, to be held January 2015.

### **With regard to 'recruitment':**

The scheme has its own natural year which runs April thru to December.

Presently letters of awareness raising / invite are sent out to all licensed premises in Midlothian. This year 55 were sent out to all pubs. The process included a few months for applications to be received and thereafter information packs to be sent out to those who have joined. The summer months are time for the premises to prepare as they see fit, and the autumn is the time for the assessments prior to the awards being granted around Christmas. Thus the implications for sending invites out at other times of the year are it could result in less preparation time.

Other avenues for raising awareness could include messaging existing pubwatch schemes at their March/April meeting; use of the Penicuik BID; raising general awareness at time of granting a licence.....

## **Midlothian Local Licensing Forum – Future Meeting Arrangements**

Report by Rosie Kendall, Acting Community Safety Manager

### **1 Purpose of Report**

To seek the approval of the Forum to extending the principles of the previously adopted meeting schedule and based on it agree a meeting schedule for 2015.

### **2 Background**

At its November 2013 meetings, the Forum has normally agreed to fix a meeting schedule for the following year, based on a quarterly meeting cycle of February; May; August; and November, each year.

Meetings are normally held at 10.00am.

The agreed meeting schedule could be supplemented from time to time should the need arise with additional meetings, dates for which would be notified to Forum Members as soon as practical.

In addition, a date for the Annual Joint Meeting with the Midlothian Licensing Board Members also requires to be identified.

### **3 Meeting Schedule for 2014**

The current schedule of meeting dates only covers 2014, with the last scheduled meeting being Friday 14th November 2014. An extension to the existing meeting schedule therefore requires to be approved in order to establish meeting dates for the Forum during 2015.

In addition, consideration also needs to be given to arrangements for the annual joint meeting with Members of the Midlothian Licensing Board.

### **4 Report Implications**

#### **4.1 Resource Implications**

There are no resource implications arising directly from this report.

#### **4.2 Risk Implications**

In accordance with the new Licensing (Scotland) Act 2005, each local authority must establish a Local Licensing Forum (LLF) for their area, which is required to meet on at least four occasions including an annual Joint Meeting with Members of the local Licensing Board. Failure to do so could impede the discharge of business.

#### **4.3/**

### **4.3 Policy Implications**

#### **Strategy**

There are no strategy implications arising from this report.

#### **Consultation**

No consultations have been undertaken in connection with this report.

#### **Equalities**

An equalities impact assessment has not been required in connection with this report.

#### **Sustainability**

There are no sustainability implications arising from this report.

### **5 Recommendations**

The Forum is invited to:-

- (a) approve a Schedule of Meetings for 2015 based on the previously agreed timetable, as follows:-

Friday 13 February;  
Friday 15 May;  
Friday 14 August; and  
Friday 13 November.

Meetings would normally be held at 10.00am on those dates;

- (b) note that the agreed meeting schedule could be supplemented from time to time should the need arise with additional meetings, dates for which would be notified to Forum Members as soon as practical; and
- (c) consider arrangements for the Annual Joint Meeting with Members of the Midlothian Licensing Board.

**1 November 2014**

**Report Contact:**

**Rosie Kendall**

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**Background papers:**