

**LICENSING (SCOTLAND) ACT 2005**

**MIDLOTHIAN LICENSING BOARD**

**FUNCTIONS REPORT**

**April 2022 – March 2023**

## **INTRODUCTION – MIDLOTHIAN LICENSING BOARD**

- 1.1 Midlothian Licensing Board (“the Board”) is the Licensing Authority for the local government area of Midlothian for the purposes of the Licensing (Scotland) Act 2005 (as amended) (“the Act”). The current Board which was formed in May 2022 comprises ten Members all of whom are elected members of Midlothian Council. The Board is responsible for the functions set out in paragraphs 1.3 and 1.4 below within Midlothian.
- 1.2 Midlothian Council shares borders with the City of Edinburgh, East Lothian and Scottish Borders Councils. The estimated population is 88,000 however as the fastest growing local government area in Scotland this figure is expected to increase significantly. The area is divided into six Wards of three Councillors totalling 18 Councillors of whom ten have been appointed to sit on the Board. 9 of those Councillors have completed the statutory training required under the Act.
- 1.3 The Act makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold. The number of licensed premises within the Board’s area averaged 217 in number during the period from 1 April 2022 to 31 March 2023 (“the Period”).
- 1.4 Under the Act, Licensing Boards are responsible for considering applications for:
  - Premises Licences
  - Occasional Licences
  - Provisional Licences
  - Temporary Licences
  - Personal Licences
  - Transfer of Premises Licences
  - Variation of Premises Licence
  - Extensions of licensing hours in respect of:
    - The sale of alcohol by retail
    - The supply of alcohol in members’ clubs and
    - The supply of alcohol by relevant voluntary organisations or personal licence holders.

## **2 ANNUAL FUNCTIONS REPORT**

- 2.1 The Air Weapons and Licensing (Scotland) Act 2015 amended the Act to place a statutory duty on Licensing Boards to publish an Annual Functions Report each financial year.
- 2.2 In terms of Section 9A of the Act (which was introduced by section 50 of the Air Weapons and Licensing (Scotland) Act 2015) the Board has an obligation

to publish an Annual Functions Report and to include the following within the Report:

- a Statement explaining how the Board has had regard to the licensing objectives and its policy statement in the exercise of its functions;
- the Board's Policy Statement in exercise of its functions under the Act;
- a summary of decisions taken by each Board over the relevant financial year including decisions taken by officers under delegated powers;
- the number of licences held under the Act in the Board's area including the number of occasional licences issued during the financial year;
- other information as determined as necessary by the Licensing Board

### **3 LICENSING OBJECTIVES**

3.1 The Act sets out the following five Licensing Objectives ("the Licensing Objectives") as set out below:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young persons from harm.

3.2 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, an Occasional Licence or a Personal Licence. Breach of the objectives may provide grounds for reviewing a Premises Licence or a Personal Licence. Conditions attached to a Premises Licence or an Occasional Licence may be based on any one or more of the Licensing Objectives.

### **4 FUNCTIONS OF THE BOARD**

4.1 The functions of the Board are set out in Schedule 1 of the Act and are summarised below:

- Determining the Board's policy for the purposes of a Licensing Policy Statement or Supplementary Licensing Policy Statement;
- Determining for the purposes of any such Statement whether

there is overprovision of licensed premises or licensed premises or any particular description in any locality

- Determining a Premises Licence application/ Provisional Premises Licence application.
- Determining a Premises Licence Variation application where the variation sought is not a minor variation
- Determining an application for the Transfer of a Premises Licence where the applicant has been convicted of a relevant offence or a foreign offence
- Determining a Personal Licence application or a Personal Licence renewal application where the applicant has been convicted of a relevant offence or a foreign offence
- Conducting a hearing in respect of a Review of a Premises Licence
- Conducting a hearing in respect of revoking, suspending or endorsing a Personal Licence
- Making a Closure Order

## **5 HOW THE BOARD HAS REGARD TO THE LICENSING OBJECTIVES**

- 5.1 In exercising its functions under the Act, the Board is required to have regard to the Licensing Objectives as stated at paragraph 3.1.
- 5.2 Promotion of the Licensing Objectives is always at the forefront of the Board's consideration in determining its policies for the purposes of its policy statement.
- 5.3 When determining licence applications, the Board verifies that all applications are consistent with the Licensing Objectives and ensures that any potential issues are addressed through appropriate measures to safeguard full compliance with the Licensing Objectives. Such measures include attaching local and special conditions to licences if necessary.
- 5.4 The Board is confident that it has been able to pursue the crime and disorder objective by taking into account and recognising that certain criminal activity or associated problems may take place or be taking place despite the best efforts of the licensee and the staff working at the premises. In such circumstances the Board will endeavour to take any steps it feels are appropriate to remedy the problem. The Board has strived to promote this objective in the interests of the wider community rather than determining the guilt or innocence of the individual which the Board recognises is a matter for the courts of law.
- 5.5 The Board is confident that it has been able to pursue the Public Safety and Public Nuisance objectives by endeavouring to take any necessary steps it feels are appropriate to address any such problems which may contravene these objectives. In doing so, the Board is mindful that it cannot take into account any issues that are dealt with by other legislation such as the Environmental Protection Act 1990.

- 5.6 The Board is confident that it has pursued the protecting Children and Young Persons from harm objective by applying appropriate conditions to licences with a view to ensuring that children and young persons are adequately protected within licensed premises or at licensed events. There have also been occasions when the Board has not been satisfied that an application sufficiently complies with this objective and on these occasions the Board initially attempted to resolve the position through agreement with the applicant but if this does not prove possible, has refused the application to the extent necessary.
- 5.7 The Board is confident that it has been able to pursue the Public Health objective to mitigate the public health risk when considering licensing applications. NHS Lothian is a statutory consultee and as such is invited to make representations with regard to each application which is considered by the Board and a representative is invited to attend the Board meetings and address the Board accordingly.

## **6 HOW THE BOARD HAS REGARD TO ITS LICENSING POLICY STATEMENT**

- 6.1 The Board is aware that all applications before it are to be dealt with in an open and transparent manner in accordance with licensing legislation and the Board's policy documents.
- 6.2 Information and assistance was made available to persons wishing to apply for a licence, make representations or lodge objections.
- 6.3 The Board, when making their determinations, took into account their Policy Statement and any supplementary arrangements which it had agreed on extended hours for special events of local or national significance and the Board policy hours.
- 6.4 The Board is aware of its quasi-judicial function and its obligation to objectively determine facts and draw conclusions from them. The Board always aims to follow best practice to ensure proportionate, accountable and consistent decision making by listening to all the information provided by applicants, statutory consultees, including Police Scotland, NHS Lothian and the Licensing Standards Officer together with any objectors or other persons making representations then weighing up the relevant information, reviewing this against its policies and coming to an informed decision.
- 6.5 The Board is confident that its Statement of Licensing Policy is sufficiently robust to enable it to make appropriate decisions when the question of over-provision is a consideration.

## **7 DECISIONS MADE BY (OR ON BEHALF OF) THE BOARD**

- 7.1 In the year from 1 April 2022 to 31 March 2023 the Board met 6 times to determine applications. The Board returned to holding meetings in person from 14 November 2022.
- 7.2 Each application for a Premises Licence, Provisional Premises Licence, Variation of a Premises Licence, Occasional Licence or Extended hours was decided on its own merits.
- 7.3 In assessing applications, the Board used a number of different sources of information to enable them to reach determinations. As well as the statutory consultees these sources included others with an interest including Community Councils, local residents, the Licensing Standards Officer, Police Scotland, NHS Lothian, the applicants themselves, Objectors, those making representations for or opposed to applications and established licensing practitioners. As referred to in paragraph 6.5 above, the Board also took into account the information provided in the Alcohol Related Harm in Midlothian 2018 Statistical Profile provided by the Licensing Forum as well as the Licensing Objectives and its Statement of Licensing Policy.
- 7.4 All objections received to any applications were taken into account in the decision making process.

## **8 NUMBER OF LICENCES PROCESSED IN THE BOARD'S AREA**

- 8.1 The Board granted 2 Premises Licences, 4 provisional remises licences whilst 183 Occasional Licenses were granted. The Board also considered 47 applications to vary Premises Licences. This included both major variations which are determined by the Board and minor variations and transfers which must be granted and the Board has no discretion
- 8.2 There were no review hearings in respect of premises during the period.
- 8.3 The Board received 80 new Personal Licence applications during the Period all of which were granted. No review hearings were held in respect of Personal Licence holders.

## **9 OTHER INFORMATION ABOUT THE EXERCISE OF THE LICENSING BOARD'S FUNCTIONS**

- 9.1 **Statement of Licensing Policy**  
The Board has adhered to the terms of its statement of Licensing Policy November 2018 to November 2023 in reaching all its decisions.
- 9.2 **Equalities Outcomes and Mainstreaming**  
The Board has specific duties in terms of the Equalities Act 2010

(Specific Duties (Scotland) Regulations 2012. In particular the Board must publish Equality Mainstreaming Reports every four years. The Board, in conjunction with Midlothian Council, produced such a report in 2019.

### **9.3 Licensing Forum**

The Midlothian Licensing Forum did not meet during the period from 01 April 2022 to 31 March 2023

### **9.4 Statement of Gambling Principles**

During the period, the Board has followed its Statement of Gambling Principles for the period from 31 January 2022 to 30 January 2025 when considering any applications under the Gambling Act 2005.

### **9.5 Licensing Team**

The Council's Legal and Governance Manager has been appointed as Clerk to the Board. The Board is also assisted by a unit of officers who sit within the Council's Integrated Service Support team. The unit consists of a Licensing Supervisor and two Licensing Assistants. They offer guidance and advice in the processing and issuing of licences under delegated powers, provide support to the Clerk and make referrals to the Board. The Licensing Team as a unit ensure that the functions of the Board are fulfilled as efficiently as possible.

## **10 CONCLUSION**

The Board is pleased to report that licenced premises in Midlothian have, in general, been well run and generally problem free during the period covered by this report. The Board is thankful to the licensed trade in its efforts of promoting and upholding the licensing objectives and complying with the Board's Policy.

## **11 ADDITIONAL INFORMATION**

Further information relating to the Board's functions including public access to Agendas and Minutes, its Statement of Licensing Policy, Statement of Gambling Policy, application forms and statutory public adverts can be accessed on the Midlothian Council website via the undernoted link:

[Midlothian Licensing Board](#)