

The logo for the West Lothian Licensing Board is contained within a dark green rounded rectangular border. The text "West Lothian" is in a bold, dark green sans-serif font, and "Licensing Board" is in a lighter green sans-serif font. At the bottom right of the border, there are five small green dots.

West Lothian
Licensing Board

FUNCTIONS REPORT
2018/19

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1. Introduction - West Lothian Licensing Board

1.1 This report has been prepared in accordance with the provisions of Section 9A of the Licensing (Scotland) Act 2005 ("the Act").

West Lothian Licensing Board ("the Board") is the licensing authority for the local government area of West Lothian for the purposes of the Act which makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises in which alcohol is sold.

1.2 The current Board, which was formed in May 2017, comprises eight members, all of whom are elected members of West Lothian Council. West Lothian Council's Licensing Team and Committee Services Team provide administrative support to the Board.

1.3 West Lothian is an area extending to 427 square kilometers bordered by the City of Edinburgh, Falkirk, North Lanarkshire, South Lanarkshire and Midlothian. The population of West Lothian has been steadily increasing over the last decade. It is currently 180,130 and it is predicted to increase throughout the period to 2035 with the population predicted to be 191,053 at 2035 (National Records of Scotland 2014 based population projections).

1.4 West Lothian has both urban and rural areas. There are five traditional towns, namely Armadale, Bathgate, Broxburn, Linlithgow and Whitburn as well as the former new town of Livingston where the council's administration is based. In addition, West Lothian also has 26 villages, some of which have significantly increased in size in recent years.

1.5 Under the Act, Licensing Boards are responsible for considering applications for:-

- premises licences (including provisional premises, transfer, variation and temporary applications)
- occasional licences and extended hours
- personal licences

1.6 The Act is an extremely complex piece of legislation which provides a rigid structure for the processing and determining of applications. It has 150 sections, 7 schedules and over 40 different regulations relating to it. Unsurprisingly the Board's experience is that most applicants rely on the services of specialist licensing solicitors or licensing consultants to make applications on their behalf.

2. The Licensing Objectives

2.1 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

The licensing objectives provide a basis for the administration of the licensing regime and underpin the Board's policy. Whilst the Act creates a presumption of grant if none of the statutory grounds for refusal applies the objectives provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. The Board considers the licensing objectives in determining all applications. The caselaw which has developed since the Act came into effect has been useful in illustrating how the objectives should be applied in practice. The Board recognises in refusing applications all of its decisions must be evidence based and must contain reasons why particular objectives are engaged.

2.2 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. In exercising its functions under the Act, the Board is required to have regard to the licensing objectives.

3. Board Business

3.1 In the year from 1 April 2018 to 31 March 2019, the Board met on a monthly basis where required to determine applications not determined using delegated powers. The annual statistics are shown in Appendix 1.

Applications before the Board were dealt with in an open and transparent manner in accordance with licensing legislation and its statement of licensing policy. In dealing with applications the Board operated in accordance with its rules which were made under Schedule 1 of the Act. The Board's statement of licensing policy and its rules can be accessed via the following links:

https://www.westlothian.gov.uk/media/1039/West-Lothian-Licensing-Board-Statement-of-Licensing-Policy-2018-2023/pdf/policy_statement_2018-2023.pdf

<https://www.westlothian.gov.uk/media/1043/West-Lothian-Licensing-Board-Rules/pdf/boardrules.pdf>

3.2 Reports were prepared by the Licensing Team in relation to each application considered by the Board detailing the background to and practical effect of each application, all comments received from those who responded to notification of the application, any other objections or representations received, relevant sections of the Board's policy, any other legal or procedural issues arising from the application and the powers of the Board including reference to the licensing objectives.

These reports are issued to Board members and applicants seven days prior to each meeting and ensure that fair notice is given as well as an opportunity for all involved to

focus on the relevant issues.

- 3.3 Following extensive consultation both with key stakeholders and the public the Board's statement of licensing policy was reviewed and a revised policy was published in November 2018. The aim of the Policy Statement is to promote consistency of decision making and to provide applicants with an indication of how the Board is likely to approach certain matters and deal with and determine applications. There is a presumption that the Board will follow the terms of this Policy in its determination of individual applications. It remains open, however, for an applicant to make an application which is contrary to the terms of the Policy Statement. In such circumstances, an applicant is required to evidence/demonstrate to the Board good reasons why the Board's Policy Statement should not be followed.
- 3.4 The Board has information regarding the various types of applications which it administers on its webpages which are part of the West Lothian Council website. Information and guidance is also made available to persons wishing to apply for a licence, make representations, lodge objections or request reviews by the Council's Licensing Standards Officer (LSO) and other members of the Licensing Team.

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 reasonable adjustments to access any part of the process. The Board's equality documentation was reviewed in March 2019 and revised documents were thereafter published.

These documents can be viewed via the following links:-

https://www.westlothian.gov.uk/media/1040/Licensing-Board-Mainstreaming-Report-and-Outcome-Plan-2019-2023/pdf/Mainstreaming_Report_and_Outcome_Plan_2019-2023.pdf

https://www.westlothian.gov.uk/media/10671/Equality-Outcomes-Update-2015--2019/pdf/Equality_Outcomes_2015-2019.pdf

The equality outcomes document outlines at paragraph 10 how the public can access the Board's services.

- 3.5 At the monthly meetings, the Board has attempted to make the process as informal as possible whilst having regard to the need to carry the Board's quasi-judicial function. Board members receive regular training in addition to the training prescribed by the Act and in undertaking their role are required to comply with the terms of the statutory Code of Conduct for Councillors which is enforced by the Standards Commission for Scotland. In terms of that code Board members are required not only to act fairly but also be seen as acting fairly. They must not prejudice, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any decision they make in their quasi-judicial role as Board members. They are also bound to only take into account relevant and material considerations and to discount any irrelevant or immaterial considerations. In making decisions Board members are assisted by solicitors appointed by the council who provide legal advice to the Board to ensure that

members are aware of the relevant legislation, statutory guidance and caselaw.

- 3.6 The Board are concerned that many licence holders do not pay their annual fees on time despite this being a mandatory condition of their licences. The Board considers that it does not have adequate powers to deal with this and is concerned about the administrative burden which collecting late payments places on the Licensing Team. The Board suggests that the Government give consideration to introducing late payment fees which Boards could levy in appropriate circumstances.
- 3.7 The Board has also noticed a trend that many licence holders of both on and off sales premises are lodging variation applications without instructing solicitors or licensing agents. Many such applications are incompetent or incomplete and require to be returned to applicants. Some have to be returned for amendment on a number of occasions due to a lack of understanding on the part of licence holders of the legislative requirements. The Board notes that this places an additional administrative burden on the Licensing Team. The Board suggests that the Government gives consideration to introducing re-lodging fees which Boards could levy in appropriate circumstances.

4 Decisions of the Board 2018/19 generally

- 4.1 The legislation requires that each application for new premises licences, provisional premises licences and non-minor variations of licences are referred to the Board for determination. In 2018/19 all of these applications were granted although in one case an application to extend the terminal hour until 2am on Fridays and Saturdays for premises not falling within the Board's definition of a nightclub was refused as it was outwith the Board's policy on licensed hours.
- 4.2 Looking back over the last two years the Board considers that many applications determined at Board meetings were uncontroversial and could have been dealt with using delegated powers if the law was changed to allow this. The Board would urge the Scottish Government to consider changing the law to allow uncontroversial applications to be dealt with using delegated powers as is the case for licensing applications under the Civic Government (Scotland) Act 1982. This would streamline the process, make it simpler for applicants and save time and resources.
- 4.3 In the course of the last year the Board considered five applications for new premises licences, all were for off sales only. One of these was in effect a replacement licence for a premises after its licence was revoked following the dissolution of the company which held the licence. In addition the Board granted six applications for provisional premises licences; four of these were for off sales only with the remaining two involving both on and off sales. In addition, 11 variation applications were granted. An assessment of all 23 applications relating to premises determined in the course of this year (i.e. both new and variation applications) has shown that 12 of these applications were entirely uncontroversial. Of those 12 applications none attracted objections or representations and in all of these cases no grounds for refusal existed and the Board did not impose any additional conditions.
- 4.4 A total of 4 objections were received to 4 different applications for provisional licences, premises licences and non-minor variations. These objections mainly comprised concerns from neighbours over potential antisocial behaviour, litter and parking

problems in the areas surrounding the premises, possible overprovision including commercial issues and potential noise problems. After receiving advice from the Clerk of the Board determined that most of the objections did not relate to a possible ground of refusal. In addition two representations were received in relation to two different variation applications suggesting conditions to impose. In both cases the Clerk of the Board's advice was that it was not appropriate to impose the conditions requested.

The Board notes that there was a licensing appeal in 2017 (*Martin McColl v South Lanarkshire Licensing Board* [HAM –B233-17]) where a Sheriff overturned a decision of the Licensing Board to refuse a premises licence under the licensing objectives of preventing public nuisance and protecting children from harm. Fifteen objections had been received regarding the application and the Sheriff's decision contains a detailed analysis of all the objections which had been taken into consideration by the Board when refusing the application. The Sheriff rejected all the objections as irrelevant to the licensing decision as they related to concerns about what could possibly happen. He said that the question for the Board was whether it was satisfied that it was likely or probable that events which were inconsistent with the specified licensing objectives would be a feature or characteristic of the operation of the premises if the application was granted.

The Board highlights this case as it reflects its experience that many objections received in relation to licensing applications, both from members of the public and other stakeholders such as the NHS, are not based on matters that can be considered by the Board in terms of an alcohol licensing decision under the 2005 Act. Therefore legally they cannot be used to justify a ground of refusal under the 2005 Act. The Board would encourage the Scottish Government to publish guidance for members of the public across Scotland to promote a better understanding of the system.

- 4.5 During the course of the year, the Board received applications for both Occasional Licences and Extended Hours. Occasional licences are required to temporarily licence the sale of alcohol in premises not covered by a premises licence or to allow members clubs to sell alcohol to the public. The number of occasional licences received was 403, none were refused. The Board is concerned about the numbers of occasional licences which are granted each year. The fee for each licence is £10 which is insufficient to cover the costs of administering these.

The Board has noted a new trend of premises operating on back to back occasional licences. Some of these premises have been granted provisional premises licences and apply for numerous occasional licences until the provisional licences are confirmed. Others appear to be testing the water with occasional licences to see how successful their premises are before applying for a premises licence.

The Board welcomes the consultation on occasional licences which was launched by the Scottish Government in April 2019. However, the Board does not believe that this consultation is wide ranging enough. The Board has concerns that many events take place in premises which would not be suitable for the grant of a premises licence. In addition, the Board is aware that due to the terms of the legislation it is prevented from imposing conditions on these licences to require all persons involved in the sale of alcohol to have undergone the training which is required for those carrying out the same role in premises where a premises licence is in force. In addition, given the increase in community fundraising generally the Board is concerned that more and

more voluntary organisations are being formed and that volunteers are now involved in selling large volumes of alcohol at events locally with little knowledge of alcohol licensing requirements and the associated risks.

The Board will be responding to the consultation urging the Government to increase the occasional fee to a realistic level and to limit the numbers of applications which can be made by all applicants in order that such licences would be truly occasional and premises used regularly for the sale of alcohol such as community buildings and wedding venues would be required to have premises licences.

The Board also processed 27 applications from premises licence holders to extend their licensed hours. All were granted.

- 4.6 A breakdown of current Premises Licences is shown in Appendix 1. Numbers of premises licences have remained fairly static over the ten years since the Act was brought into full effect, despite the increasing population in the area. The Board has a list of all premises licences on its alcohol licences webpage

<https://www.westlothian.gov.uk/article/2011/Alcohol-Licences>

- 4.7 Most personal licence applications are determined using delegated powers where no grounds for refusal apply. Appendix 1 details that 264 applications were received. None of the applications were required to be referred to the Board as no relevant offences were notified by Police Scotland and none of the notices included a recommendation from the Chief Constable that the application be refused. All applications were therefore granted using delegated powers.
- 4.8 In addition, 148 applications to renew personal licences granted in 2009 were received between 1 September 2018 and 31 March 2019. Almost all licence holders who applied to renew their licences took the opportunity to carry out refresher training prior to making their renewal applications and so carried out the process of refresher and renewal at the same time.

5 Reviews

- 5.1 The Board considers that the powers which it has to take action following premises licence reviews can be very effective when there are problems with the operation of premises. In its revised policy the Board has introduced a new section 4 entitled "Operating under a Premises Licence – What the Board expects". In this section the Board has outlined the standards which it expects licence holders should meet with particular reference to the application of the licensing objectives. The Board will have regard to this section of its policy when dealing with review applications.

Applications for premises licence reviews can be made by anyone but in practice have only ever been made in West Lothian by Police Scotland or the LSO. In addition, reviews have been undertaken by the Board following notification under Section 44 of convictions relating to licence holders or connected persons. Police Scotland Licensing Officers work closely with local premises and operate a successful system of interventions with problematic premises to draw any issues to the attention of the licence holder at the earliest possible stage. No applications for review were made by Police Scotland this year.

- 5.2 In the period from 1 April 2018 to 31 March 2019 there were two review applications

were dealt with by the Board. One licence was suspended until the annual fee was paid and the other was revoked after the company holding the licence was dissolved. The Board suggests that the Scottish Government give consideration to amending Section 28 of the Licensing (Scotland) Act 2005 to state that when a company holding a licence is dissolved the licence should cease to have effect. This would clarify the position and prevent the Board having to hold a hearing in these circumstances. It is obviously not acceptable that a licence can continue in effect when the licence holder no longer exists.

6 West Lothian Licensing Forum

- 6.1 West Lothian Licensing Board has a properly constituted Forum operating in the area. However, the Forum for the West Lothian area experiences many of the same issues seen with such bodies across Scotland. There has been an increasingly difficult challenge of appointing a Chair and this is in part due to the membership of the Forum. Despite extensive attempts to encourage applications to join the Forum, there still remains a heavy imbalance toward council and health officials, with very little engagement from the licensed trade or general public itself.
- 6.2 The Board is formally required to meet with the Forum at least once per annum. The Board met with Forum members on 13 April 2018 to discuss its response to the preliminary consultation undertaken with key stakeholders in advance of the policy review to help frame and consultation questions.
- 6.3 The role of Licensing Forum is to keep under review the operation of the Licensing Act in the West 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 designed to be the community's voice on alcohol licensing issues. Given the role of the Forum it is a concern that training is not mandatory for Forum members, as it is for almost all others in the alcohol licensing system. The Board is of the view that the role of the Forum should be reviewed and training for Forum members from an independent source should be mandatory.
- 6.4 In relation to overprovision the Board recognises that the only method by which numbers of licensed premises can be controlled by a Licensing Board is by refusal of applications on the grounds of overprovision. The legislation provides that Boards must have regard to statutory guidance issued by the Scottish Ministers in exercising its functions and where it does not follow the guidance must give ministers notice of the decision and the reasons for that.

The guidance states that the Board has a duty to carry out wide ranging consultation prior to the formulation of an overprovision statement. It goes on to state that “the results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached *always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality*”. This is a test which is very difficult to meet and was originally written to target on sales premises which are now decreasing in numbers.

The guidance has been reviewed recently and is the subject of a consultation launched in March 2019. The Board notes that although the amended document provides clearer guidance in some respects, the test remains the same.

7 Conclusion

- 7.1 The Board is pleased to report that licensed premises in West Lothian have been well run and generally problem free in the last year. In this respect 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.
- 7.2 The Board is of the view that a number of parts of the Act need to be reviewed. In addition, the Board suggests that all prescribed application forms should be removed so Boards can use their own forms as councils have always done for civic applications. The shading on the forms is out dated and causes problems when copying these for Board meeting agendas. Prescribed forms are always going to go out of date, for example, the data protection reference is to an out of date Act and there are mistakes in the forms.

This report was approved by the Board on 14 June 2019.

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Liquor Licensing Statistics for Year 2018-19 (Period 01/04/2018 to 31/03/2019)

Local Authority - West Lothian	
Premises Licence Statistics	
Licences in Force on 31 March 2019 (this should equal total of a+b+c)	386
(a) on license only	111
(b) off license only	159
(c) both	116
Applications received during 2018 -19	12
(a) on sale	0
(b) off sale	10
(c) both	2
Applications refused during 2018 -19 under section 23	0
Applications granted during 2018 -19 under section 23	11
Applications for review of premises licence during 2018 -19 under S36 & S37 resulting in:-	1
(a) written warning	
(b) variation	
(c) suspension	
(d) revocation	1
(e) no action	0
Occasional Licence Statistics	
Number of Occasional Licences granted during 2018-2019	403
Personal Licence Statistics	
Personal Licences in Force on 31 March 2019	1,360
Applications during 2018-19 under section 72:-	
(a) refused	NIL
(b) granted	264
Proceedings taken during 2018 -19 under section 83 (notice of conviction) resulting in:-	
(a) endorsement	NIL
(b) suspension	NIL
(c) revocation	NIL
(d) no action	0
Proceedings taken during 2018 -19 under section 84 (conduct inconsistent with licensing objectives) resulting in:-	
(a) endorsement	NIL
(b) suspension	NIL
(c) revocation	NIL
(d) no action	NIL
Proceedings during 2018 -19 under section 86 (multiple endorsements) resulting in:-	
(a) endorsement	NIL
(b) suspension	NIL
(c) revocation	NIL
(d) no action	NIL
Revocations of personal licences during 2018 - 19 under section 87(3) (failure to provide evidence of having undertaken refresher training)	75
Staff employed at 31 March 2019	
Number (full-time equivalent) of licensing standards officers employed	1
number of minor variations determined	103
number of non-minor variations determined	11
number of transfer applications determined	27
number of extended hours applications determined	27
number of personal licence renewal applications received	148