

MINUTE of MEETING of the SCOTTISH BORDERS  
LICENSING BOARD held in Committee Rooms 2 & 3,  
Council Headquarters, Newtown St Boswells on Friday  
21 October 2016 at 10.00 a.m.

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Present:- Councillors W. Archibald (Convener), B. Herd, J. Campbell, J. Greenwell, G. Logan, D. Paterson, T. Weatherston, B. White.  
Apologies:- Councillors R. Stewart, J. Torrance.  
In Attendance:- Managing Solicitor – Property and Licensing, Licensing Officer (A. Niven), Licensing Standards and Enforcement Officers (Mr I. Tunnah and Mr M. Wynne), Democratic Services Officer (K. Mason), P.C. P. Robertson, P.C. C. Lackenby, Inspector C. Wood (to para 3(a)), Inspector J. Scott (from para 3(b)) - Police Scotland, Joint Director Public Health – Scottish Borders Council and NHS Borders (Dr. T. Patterson).

1. **MINUTE**

The Minute of Meeting of 23 September 2016 had been circulated.

**DECISION  
APPROVED.**

2. **LICENCES DEALT WITH UNDER DELEGATED POWERS**

For Members' information there had been circulated copies of a list of licences dealt with under delegated powers for the period 15 September to 11 October 2016. In response to a question raised about an occasional licence granted for a function held in Selkirk High School, Mr Tunnah advised that this was fundamentally an adult event but young people were in attendance helping to organise the event.

**DECISION  
NOTED.**

3. **LICENSING (SCOTLAND) ACT 2005:**

**DECLARATION OF INTEREST**

Councillor Paterson declared an interest in the following item of business in terms of Section 5 of the Councillor's Code of Conduct and left the Chamber during the discussion.

(a) **Section 29: Application for Variation of Premises Licence.** With reference to paragraph 4(b)(iii) of the meeting of 23 September 2016, the Board considered the following application for Variation of Premises Licence:-

Zing Enterprises Limited

Base Nightclub  
Baker Street  
HAWICK  
TD9 9BW

Amendments to operating plan:

- to increase the terminal hour on Fridays and Saturdays until 3.00am (currently 2.00am); and

- With Question 4 (Seasonal Variations) in the operating plan being varied to read – ‘during the festive period, namely Christmas Eve, Christmas Day, Boxing Day, Hogmanay and New Years Day (regardless of which day of the week these festive days fall on), and at any other times throughout the year, as defined by the Scottish Borders Licensing Board, the premises will operate until 3.00am for the sale of alcohol in accordance with the Licensing Board’s policy in that regard’.

There had been circulated copies of:-

(a) a letter dated 5 September 2016 from Police Scotland. Inspector Wood advised that the variation consisted of a change to core hours on Fridays and Saturdays from a terminal hour of 2.00 am to 3.00 am and changes to the seasonal variation within the Operating Plan. Police Scotland acknowledged that Mr Gillies maintained a well-run establishment and had in the past been a Best Bar None award winner, though it was noted that he was no longer participating in that scheme. He had worked with local officers during the dispersal from the premises to encourage his patrons to leave the area quietly. However, due to competing demands on limited Police resources, it was not always possible to have Officers in the area at closing time. The Scottish Borders Licensing Board Statement of Licence Policy November 2013 – November 2016, paragraph 7.8 stated “The Board will grant applications for times after 2.00 am only in exceptional circumstances”. In recent months the applicant had applied for extended hours applications for local events, which the Board had determined as being exceptional circumstances and granted. There was disparity between Hawick and Galashiels, where there were two similar nightclub premises, which had a terminal hour of 3.00 am. However, the Board had considered similar applications in the past, and had stated that the “exceptional circumstances” in Galashiels was because it was a “university town”. Therefore this application appeared to be based on commercial reasons only with no apparent exceptional circumstances. Mr Gillies applied for the same variation in 2015, to which a number of local residents objected, citing issues with noise, litter and anti-social behaviour. While Mr Gillies worked hard to mitigate these problems he had no control over his patrons at dispersal outwith his premises and there was no change to the circumstances. Therefore it was respectfully requested that the Board consider this with regard to Section 30(5)(c) of the Licensing (Scotland) Act 2005. In terms of Section 22(1)(a) of Act 2005, the Chief Constable was of the opinion that the variation should be refused on the grounds that it would be inconsistent with the licencing objectives of preventing public nuisance. In regard to the proposed change to the seasonal variation, clarity should be sought as to how this would allow the premises to open should any of the festive season dates fall Sunday to Wednesday. Additionally the wording “and at any other times throughout the year” was ambiguous and should be removed from the section.

(b) a letter dated 2 September 2016 from Mr I. Tunnah, Licensing Standards and Enforcement Officer advising that the premises currently operated with hours terminating at 2.00 am on Friday and Saturday evenings, the Board’s Policy Statement clearly stated that hours beyond 2.00 a.m. would only be granted under exceptional circumstances. The applicant had previously applied for a variation to his licence to allow the terminal hour on Friday and Saturday to be extended until 3.00 am. At the Licensing Board in April 2014 the Board decided there were exceptional circumstances and the application was granted subject to it being amended to allow a trial period to gauge whether or not there was any increase in noise nuisance or disorder connected to the later hours. The trial period ran for several months with no adverse effect and no increase in

complaints connected to these later hours. An application to vary the licence on a permanent basis was considered by the Board in February 2015, at that time the Board decided that there were no exceptional circumstances and the variation was refused with the terminal hour for the premises reverting to 2.00 am. Since that time the applicant had applied for extended hours on an occasional basis for various reasons, the Board appeared to have agreed that exceptional circumstances existed for such occasions as Hawick Common Riding, Hogmanay and Hawick RFC's annual sevens tournament as such the applications were granted to allow a terminal hour of 3.00 am on these occasions. However, the Board decided there were no exceptional circumstances linked to Christmas and Halloween celebrations and refused applications for extended hours linked to these occasions. There would appear to have been no increase in disturbance, disorder or complaints linked to the premises as a result of the late hour extensions which were granted. The only other similar premises in the Board's area were situated in Kelso and Galashiels. The premises in Kelso (a much smaller market town) had a terminal hour of 2.00 am while the two night clubs in Galashiels (a similar sized town to Hawick) had terminal hours of 3.00 am on Thursday, Friday, Saturday and Sunday evenings.

(c) a letter dated 29 August 2016 from NHS Borders lodging an objection to the varying of the licence. Dr Patterson advised that the objection was on the basis that the application was inconsistent with Scottish Borders Licensing Policy Statement 2013 – 2016 which stated at paragraph 7.8 - the Board will grant any applications for times after 2.00 am only in exceptional circumstances. The Policy Statement was agreed and approved by all Licensing Board Members on 21 February 2014. In regard to alcohol related harm, the Alcohol Profile was developed by the Local Licensing Forum to assist the Licensing Board in development of the Policy and decision making. The Policy stated that regard would be made to the Alcohol Profile when determining applications. Since 2000, over 70 research studies had demonstrated a significant association between the local number of licensed premises and opening hours in a locality and levels of alcohol related harm. The premises was situated in the intermediate zone of Hawick Central, an area of Scottish Borders which had higher rates of alcohol related antisocial behaviour (56.9 compared with an average of 19.5). Extending the hours to 3.00 am was inconsistent not only with Board Policy but also with the Licensing Objectives of Protecting and Improving Public Health, preventing Crime and Disorder and Preventing Public Nuisance. There was no rationale which suggested there were exceptional circumstances relating to this application. In addition a similar application was refused in January 2015, and there was no change in the proposal to suggest that the Board would wish to reverse that decision.

- (d) (i) an email dated 8 December 2015 – FOI Borders College  
(ii) an email dated 21 December 2015 – FOI Herriot Watt Campus  
(iii) reference dated 16 October 2016 from Mark Messer  
(iv) reference dated 16 October 2016 from Douglas Telfer  
(v) reference dated 15 October 2016 from Councillor Stuart Marshall  
(vi) reference dated 16 October 2016 from Councillor Watson McAteer  
(vii) reference dated 18 October 2016 from Agnes Bell, Eildon Housing  
(viii) reference by email dated 5 October 2016, Kaymarie Hughes, Trustee/Treasurer, Scottish Borders LGBT Equality  
(ix) extract Scottish Borders Licensing Forum Report presented on 4 October 2016 – "Forum's suggested amendments to the Scottish Borders Statement of Licensing Policy".

Mr Gillies was present, represented by Mr Niall Hassard, TLT Solicitors. Mr Hassard referred to the commitment of Mr Gillies towards his business, his staff and the community in Hawick. Hopefully the Board could see that as a business operator Mr Gillies witnessed the substantial negative effects of the 2.00 am licence he currently operated and how this compared to both the occasional extended hours applications and the eight month successful trial period 2014 – 2015 when a 3.00 am licence had been granted. Mr Hassard referred to the hearing in February 2015 when the Board was not satisfied that an exception should be made. Because his submissions at that meeting were lengthy and technical, Mr Hassard reflected that that might have been detrimental to his client.

Mr Hassard in referring to the letter dated 5 September 2016 from Police Scotland said it was gratifying to note that the Police acknowledged how well Base Nightclub was run. The Police had sought to cite public concerns and objections in 2015, none of which were replicated in regard to the current application, he suggested that the absence of any “live objection” from residents, Community Council, Eildon Housing Association, fundamentally disproved the Police assertion that “nothing had changed”. Contrary to the view of the Police, Mr Gillies had clearly been able to exercise control over and / or deal with anti-social behaviour, noise and litter to the satisfaction of the local community. The Police offered no negative evidence in respect of this variation. Mr Gillies had liaised with residents and sought feedback from the objectors and offered to attend a Community Council meeting in advance of the Board hearing to answer questions. Mr Gillies was advised at the Community Council that there was no problem.

In discussing the letter dated 29 August 2016 from NHS Borders, Mr Hassard referred to paragraph 7.8 of the Board Policy, while the paragraph headed alcohol related harm made reference to the Board Policy and consideration of the Alcohol Profile, it failed to fully explain how the one hour extension requested was detrimental. Mr Hassard submitted that whilst the profile was to be considered the Board’s Policy Statement also stated at paragraph 4.6 “The Board strongly considers well run On Sales premises are a preferred and safer environment for alcohol consumption and should be encouraged over drinking in the home or any other unlicensed environment”.

In referring to the letter dated 2 September 2016 from Mr I. Tunnah, Licensing Standards and Enforcement Officer, Mr Hassard said it was rewarding for Mr Gillies to have an Officer acknowledge that the trial period from June 2014 to February 2015 had resulted in no adverse effects. Further Mr Tunnah acknowledged that there had been no increase in disturbance, nuisance or the like during the operation of ad hoc extended hours applications.

Mr Hassard went on to submit that the Board’s Policy Statement at paragraph 7.8 stated that the Board would grant applications for licensed hours after 2.00 am only in exceptional circumstances. The further guidance and explanation offered in the Policy, in his opinion, principally related to applications for one off / occasional events rather than permanent variations. With limited guidance Mr Hassard felt that his submission to the Board in February 2015 was too inward looking, focussing on Base Nightclub’s facts and figures. He considered that Base Nightclub was well ran if not better ran than Indigo and Warehouse and he could see nothing to distinguish Base Nightclub to the detriment of the premises. In referring to the Galashiels nightclubs which had an extension to 3.00 am because Galashiels was a student town, Mr Hassard submitted that lots of students and young people lived in Hawick and during the successful 6 month

trial the footfall was driven primarily by students and/or by young people. Mr Hassard advised that Base Nightclub no longer participated in Best Bar None because during the last 18 months Mr Gillies had to seek additional means of income and secondary employment. He had to curtail staffing numbers at Base Nightclub, therefore he could not commit to the time consuming process relating to being a member of Best Bar None. He went on to advise on the numerous qualifications which Mr Gillies held.

In regard to the documents submitted at (d) above, Mr Hassard referred to the papers provided by Mr Gillies following on from a Freedom of Information request, and said that the Borders College confirmed that from the 3,591 students enrolled, 697 were from the TD1 area (covering all of Galashiels), the percentage of students commuting to college from outwith Galashiels was therefore 80.6%. In relation to Heriot Watt, from the 600 students studying at their campus in Galashiels approximately 400 had listed Galashiels as their term time address. Taking this together there were 4,200 students, approximately 1,100 students living in Galashiels and some 3,100 travelling from other areas of the borders and beyond Galashiels meaning that over 72% of students lived outwith the Galashiels postcode. Whilst Mr Hassard was not suggesting that these 3,000 students came from Hawick he asked members to challenge their own views on whether Galashiels exceptional status could be supported by the number of students living there. Mr Gillies supported numerous local causes, charities and local initiatives as could be seen from the reference provided by Kaymarie Hughes. Mr Hassard also referred to the reference from Agnes Bell, Care Service Co-ordinator, Eildon Housing Association advising they had no complaints or concerns, stating that contact by Mr Gillies with the local staff had ensured on-going positive working relationships. The references from Councillors Marshall and McAteer fundamentally supported the application to address what they saw as an inequality forcing young people in particular to travel outwith the town to seek entertainment. Mr Gillies also supported young people by giving them work opportunities as detailed in the references provided by Mark Messer and Douglas Telfer. Mr Hassard concluded his submissions by referring to the extract from Scottish Borders Licensing Forum Report presented on 4 October 2016, although only a recommendation he considered that their views would echo what Board members had said during consideration of previous applications, that perhaps this part of the licensing Policy Statement needed to be addressed. He asked that the Board consider the application as an exceptional case and that the licence be granted to 3.00 a.m. on Friday and Saturday nights.

Mr Gillies and Mr Hassard answered Members' questions and the application was considered in detail. In regard to the application relating to Seasonal Variations in the operating plan being varied to read – 'during the festive period, namely Christmas Eve, Christmas Day, Boxing Day, Hogmanay and New Years Day (regardless of which day of the week these festive days fall on), and at any other times throughout the year, as defined by the Scottish Borders Licensing Board, the premises will operate until 3.00am for the sale of alcohol in accordance with the Licensing Board's policy in that regard', Mr Gillies advised he was happy for the words "and at any other times throughout the year" to be removed from the application and it was noted that delegated powers would be granted to the Licensing Standards and Enforcement Officer to liaise with Mr Hassard in relation to the wording of the seasonal variation.

## VOTE

*Councillor Weatherston, seconded by Councillor Herd, moved that the application to increase the terminal hour on Fridays and Saturdays until 3.00am be granted on the grounds that all licensing objectives had been met, and exceptional circumstances had been established.*

*Councillor White, seconded by Councillor Campbell, moved as an amendment, that the application to increase the terminal hour on Fridays and Saturdays until 3.00am be granted for a trial period of 6 months on the grounds that all licensing objectives had been met, and exceptional circumstances had been established.*

*On a show of hands Members voted as follows*

*Motion – 4 Votes*

*Amendment – 3 Votes*

Accordingly the application was granted.

## DECISION

### AGREED that

- (a) **the application to increase the terminal hour on Fridays and Saturdays until 3.00am (currently 2.00am) be granted;**
  - (b) **delegated powers be granted to the Licensing Standards and Enforcement Officer to liaise with the Mr Hassard and Mr Gillies regarding the wording of the seasonal variation.**
- (b) **Section 56: Application for Occasional Licence.** The Board considered the following application for an Occasional Licence:-

- (i) Laurence Reid  
MacArts  
Bridge Street  
Galashiels  
29 October 2016 - 2.00pm -  
5.00pm

There had been circulated copies of

- (a) a letter dated 10 October 2016 from Police Scotland. Inspector Scott advised that the applicant sought to operate a licensed bar for a “family disco and fun afternoon” event for parents and children at MacArts, Bridge Street, Galashiels on Saturday 29 October 2016, with operating hours of 2.00pm to 5.00pm. He referred to a similar application in July of this year, which was subsequently refused by the Board. Once again the application referred to a “Big Fish, Little Fish” event and background research from the website showed that The Big Fish Little Fish (BFLF) was an “independent, grassroots music and events crew which put on family raves with all the freedom and excitement of a mini-festival right in the heart of cities and towns”. In addition the following information was taken from the websites frequently asked questions:-

‘BFLS was designed to appeal to both adults and children it was specifically for anyone with young children aged 8 and under. Older siblings/children

were very welcome – but please remember that parents remain responsible for their children at all times (children must not roam about themselves) and that some of the areas are more suitable for younger children i.e. the baby chill out areas and the tents. If you had a 9 / 10 / 11 older year old who loved dancing bring 'em along. They would also be able to make very good crafts from the materials available! Admittance with children only and maximum of 3 children per adult. Maximum of 4 adults per child, all tickets must be bought together and all party to arrive at the same time. Any group where the adults outnumber the children must be pre-approved by BFLF management'.

Inspector Scott submitted that the above text highlighted that the event was for children and that adults would only be admitted if they brought children with them. Having consideration for the Scottish Borders Licensing Board Statement of Licensing Policy November 2013 – November 2016, paragraph 12.1, this event was considered to be a child centered event. For these reasons, and in terms of Section 58(1)(a) of the Licensing (Scotland) Act 2005, the Chief Constable objected to the application specifically in relation to the grounds for refusal at Section 59(6)(c) of the same Act in respect of the Protecting Children from Harm licensing objective.

- (b) a letter dated 6 October 2016 from Mr M. Wynne, Licensing Standards and Enforcement Officer. Mr Wynne advised that the event was being run by a company called “Big Fish, Little Fish” who hosted parties aimed at children aged 0 – 8 years along with accompanying adults. The event would include amplified music for a family disco and would be staffed and stewarded by BFLF staff. Approximately 80 young children and accompanying adults were expected. Scottish Borders Licensing Board Statement of Policy stated under the “protecting children from harm” objective: - “the Board accepts many fund raising and community events benefit from granting of an occasional licence, but would expect any organisation considering applying, to take into account whether or not it was appropriate to have the sale of alcohol forming a normal part of the event with particular regard to the protecting children from harm objective. This should be particularly considered for child centered events related to school, youth or sporting organisations.” Mr Wynne submitted that in his opinion this was a child centered event and was in fact aimed at children under the age of 8 years and to grant a licence for this event would be contrary to the Licensing Board’s Policy Statement and the licensing objective “protecting children from harm”. A similar application from the applicant on behalf of Big Fish, Little Fish was considered by the Board on 22 July 2016 and was refused. The event took place on 24 July 2016 without a licensed bar and was followed by an article on Big Fish, Little Fish website describing it as a success.
- (c) a letter dated 15 July 2016 from Dr Tim Paterson, Acting Joint Director of Public Health (Scottish Borders Council/NHS Borders). Dr Patterson advised that in accordance with the Scottish Borders Licensing Board Statement of Licensing Policy 2013-2016, the Licensing Board would expect an organisation considering applying, to take into account whether or not it was appropriate to have the sale of alcohol forming part of an event, particularly child centered events. Observations were that this event was a child centered event and therefore did not require to sell alcohol. Exposure to alcohol and witnessing adult drinking could influence our children’s future drinking habits. Children and young people had the right to grow up in an environment where communities were safe, thriving and were able to grow up safe from alcohol-related harm. Communities should be created where

alcohol was not required as part of a family fun event. It was hoped that the Board would use its powers to improve our community's relationship with alcohol and implement its Licensing Policy in this regard. Dr Paterson's letter drew the Board's attention to the Alcohol Profile 2014/15 which highlighted Galashiels West as one of the Intermediate Geographies within the Scottish Borders with the highest rates of alcohol related problems, namely (a) alcohol related emergency attendances; (b) alcohol related hospital stays; (c) deaths from alcohol conditions; and (d) alcohol relative anti-social behaviour. The Board was asked to consider this evidence prior to any decision being made.

Mr Laurence Reid, Director / Trustee of MacArts was present. He advised if the application was granted there would be no financial gain for MacArts. He had been present at the last event held in MacArts which Big Fish Little Fish had run and remarked that the event had been exceptionally well organised. He advised that Councillor White had also attended the event as an observer. During the event the organisers had spoken to parents and were advised that it would have been good to be treated as adults and be able to have an alcoholic drink. This was the reason why a further application had been lodged. Members discussed the application. Councillor White agreed to abstain if there was a vote. Councillor Herd moved that the application be granted, but received no seconder.

#### **DECISION**

**AGREED that the application be refused having regard to the Protecting Children from Harm licensing objective.**

The following application was withdrawn:-

(ii) Nicola Douglas

St Margarets RC Primary School  
Livingstone Place  
Galashiels  
28 October 2016 - 7.00pm -  
9.00pm

#### **4. FESTIVE SEASON POLICY HOURS**

It was noted that this year the usual 'Festive Season' days incorporated into Seasonal Variations for the vast majority of Premises Licences fell on Christmas Eve - Saturday, Christmas Day - Sunday, Boxing Day – Monday, New Years Eve – Saturday and New Years Day – Sunday. Normal core hours on a Saturday were until 1.00am, with normal core hours for Sunday and Monday being restricted to midnight. Mr Tunnah, Licensing Standards and Enforcement Officer advised that a large number of Premises Licences had a seasonal variation incorporated into their Operating Plan which allowed opening until 1.00am on these days. The wording of those seasonal variations stated: "Christmas Eve, Christmas Day, Boxing Day, New Years Eve and New Years Day until 1.00am or in line with Board policy." The following paragraphs from the Licensing Boards Current Licensing Policy Statement for Core Hours were highlighted :-

7.3 - As far as on sale hours are concerned, the Board will not normally grant applications for more than 14 hours in any 24 hour period. Where there is no significant entertainment and alcohol consumption is the principal activity, hours should not extend beyond 12.00 midnight Sunday to Wednesday and 1.00am Thursday to Saturday, with a commencement time of 11.00am seven days a week; and

7.5 In relation to festive seasonal hours for inclusion within the premises operating plan, the Board will normally consider acceptable extension of on sale core hours until 1.00am on Christmas Eve, Christmas Day, Boxing Day, New Years Eve and New Years Day.

In the circumstances, it would be practical for the Board to consider that any applications for such extended hours from Premises which did not have a Seasonal Variation included in their Operating Plan, should be dealt with by Officers under delegated powers.

In relation to nightclub premises, there was a variance in core hours within existing Premises Licences. Of the four nightclubs in the Scottish Borders, two were licensed until 3.00am on a Sunday with the latest until 2.00am on Monday (Boxing Day). This being the case the Board were requested to consider festive policy hours for those premises to allow applications to be dealt with under delegated powers also.

Members were reminded that applications for extended hours would be required and need to be submitted timeously to allow them to be referred to the Board in the normal manner in the event that any representations or objections were received.

#### **DECISION**

- (a) **AGREED to grant delegated powers to officers :-**
  - (i) **to grant extended hours during the festive season in accordance with the current Licensing Policy Statement; and**
  - (ii) **to grant extended hours to nightclub premises similar to their normal weekend hours.**
- (b) **NOTED that applications for extended hours would be required to be submitted in the case of those premises where there was no 'Seasonal Variation' currently incorporated within their Operating Plan to cover the festive season.**

#### **ADOURNMENT**

The meeting adjourned from 10.45 am until 11.00 am

#### **PRIVATE BUSINESS**

- 5. **DECISION**  
**AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 14 of Part I of Schedule 7A to the Act.**
- 6. **Licensing (Scotland) Act 2005:**
  - (i) **Section 72: Application for Grant of Personal Licence.** With reference to paragraph 6.1 of the private Minute held on 23 September 2016, Members agreed that the application be granted.
  - (ii) **Section 84A: Personal Licence Review Application.** With reference to paragraph 6.2 of the private Minute held on 23 September 2016, Members agreed that the personal licence be suspended for six months with immediate effect.

**Minute**

7. The Private section of the Minute of 23 September 2016 was approved.

*The meeting concluded at 12.20 p.m.*