



Licensing Committee

Wednesday, 17 February 2021

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Committee** is to be held at **remote locations via video conference**, on **Wednesday, 17 February 2021** at **09:30**.

BUSINESS

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests ***
3. **Minute of Meeting on 10 and 17 September 2020** 5 - 8
4. **Minute of Meeting of 2 December 2020** 9 - 10
5. **Application for a Taxi Driver Licence - TD21-001** 11 - 16
6. **Question Time *****

Consider any oral question on matters delegated to the Committee in terms of the Council's Scheme of Administration.

Moray Council Committee meetings are currently being held virtually due to Covid-19. If you wish to watch the webcast of the meeting please go to:

http://www.moray.gov.uk/moray_standard/page_43661.html

to watch the meeting live.

GUIDANCE NOTES

* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

** **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

*** **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

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THE MORAY COUNCIL

Licensing Committee

SEDERUNT

Councillor Gordon Cowie (Chair)
Councillor Louise Nicol (Depute Chair)
Councillor George Alexander (Member)
Councillor James Allan (Member)
Councillor David Bremner (Member)
Councillor Theresa Coull (Member)
Councillor Paula Coy (Member)
Councillor Ryan Edwards (Member)
Councillor Donald Gatt (Member)
Councillor Marc Macrae (Member)
Councillor Maria McLean (Member)
Councillor Ray McLean (Member)
Councillor Derek Ross (Member)
Councillor Amy Taylor (Member)

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MINUTE OF MEETING OF THE SPECIAL LICENSING COMMITTEE

THURSDAY 10 AND 17 SEPTEMBER 2020

REMOTE LOCATIONS via VIDEO CONFERENCE

PRESENT

Councillors Alexander, Allan, Coull, Cowie, Coy, Divers, Edwards, Gatt, A Mclean, M McLean, R McLean, Macrae and Nicol.

IN ATTENDANCE

PC Ray Walker (Police Scotland) Sean Hoath, Senior Solicitor, Sana Sarwar, Solicitor, Joanne Larson, Licensing Standards Officer and Tracey Sutherland Committee Services Officer as clerk to the meeting, all Moray Council.

1. CHAIR

Councillor L Nicol took the Chair.

ADJOURNMENT OF MEETING

Prior to discussion of the business the Committee were advised that the appellant had advised that he wished to be present at the meeting but wasn't available to attend the meeting due to communication issues.

Following discussion the Committee agreed to adjourn the meeting and reconvene at 09.30 am on Thursday 17 September 2020 in order that arrangements could be made that would allow the appellant to attend via mobile phone.

RESUMPTION OF MEETING

THURSDAY 17 SEPTEMBER 2020

REMOTE LOCATIONS via VIDEO CONFERENCE

PRESENT

Councillors Alexander, Allan, Coull, Cowie, Coy, Divers, Edwards, Gatt, A Mclean, M McLean, R McLean, Macrae and Nicol.

IN ATTENDANCE

PC Ray Walker (Police Scotland) Sean Hoath, Senior Solicitor, Sana Sarwar, Solicitor, Joanne Larson, Licensing Standards Officer and Moira Patrick, Democratic Services Manager all Moray Council.

2. CHAIR

Councillor L Nicol took the Chair.

3. DECLARATION OF GROUP DECISIONS AND MEMBER'S INTERESTS

In terms of Standing Order 20 and the Councillors' Code of Conduct, there were no declarations from Group Leaders or Spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Member's interests in respect of any item on the agenda.

4. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – POSSIBLE SUSPENSION OF A TAXI DRIVER LICENCE AND TAXI LICENCE (Case No.1 and 2 of 2020) [Para 14]

A report by the Depute Chief Executive (Education, Communities and Organisational Development) informed the Committee of a decision which was taken on 12 August 2020 by the Head of Governance Strategy and Performance, in consultation with the Chair of the Licensing Committee, to temporarily suspend both the above taxi driver licence and taxi operator licence with immediate effect under paragraph 12 of Schedule 1 to the above Act and to invite the Committee to consider whether to continue the suspension of the licence in question in light of the Chief Constable's request and in accordance with paragraph 11 of Schedule 1 to the Act.

The Committee noted that the licence holder was in attendance. The Chief Superintendent was represented by PC Ray Walker, Police Scotland.

PC Walker addressed the Committee and responded to questions raised by the Committee.

The Applicant declined to address the Committee and no questions were raised by the Committee.

Both PC Walker and the licence holder declined to sum up as they had nothing further to add to their earlier statements and confirmed that they had received a fair hearing from the Committee.

Councillor Aaron McLean moved that the Committee continue the suspension of the licences in question until the expiry dates unless there is a positive outcome from the court case in the appellant's favour, at which time the appellant can seek a review of the suspension.

Councillor Edwards stated that he was happy to support the motion by Councillor Aaron McLean and that the licenses be suspended with immediate effect.

For clarification the Senior Solicitor sought confirmation that the committee was in agreement that both licenses be suspended on the grounds that the license holder has or is likely to cause a public nuisance or cause a serious threat to public safety with immediate effect for the remainder of the term of the licenses and in the event of a successful outcome from the court case the appellant can seek a review of the suspension or apply again if in that time the licenses have expired.

There being no-one otherwise minded, this was agreed.

Minute of Meeting of the Licensing Committee

Wednesday, 02 December 2020

remote locations via video conference,

PRESENT

Councillor George Alexander, Councillor James Allan, Councillor David Bremner, Councillor Theresa Coull, Councillor Gordon Cowie, Councillor Paula Coy, Councillor Ryan Edwards, Councillor Donald Gatt, Councillor Marc Macrae, Councillor Aaron McLean, Councillor Ray McLean, Councillor Louise Nicol

APOLOGIES

Councillor John Divers, Councillor Maria McLean

IN ATTENDANCE

Also in attendance at the above meeting were Sean Hoath, Senior Solicitor, Sana Sarwar, Solicitor, Joanne Larsen, Licensing Standards Officer and Tracey Sutherland, Committee Services Officer.

1. Chair

The meeting was chaired by Councillor Gordon Cowie.

2. Declaration of Group Decisions and Members Interests *

In terms of Standing Order 20 and the Councillors' Code of Conduct, there were no declarations from Group Leaders or Spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Member's Interests in respect of any item on the agenda.

3. Minute of Meeting of 30 September 2020

The minute of the meeting of the Licensing Committee on 30 September 2020 was submitted. Councillor Nicol indicated that her name was missing from the vote at item 3 on the minute and was certain she had voted. The Clerk agreed to check the vote from the meeting and amend the minute.

The minute was approved subject to the above noted change.

4. Sexual Entertainment Licence Report

A report by the Depute Chief Executive (Education, Communities and Organisational Development) presented the Policy Statement and supporting

documents for the provision of a new licensing regime for Sexual Entertainment Venues (SEVs) in Moray.

Following consideration the Committee agreed to:

- i) approve the statement of licensing policy attached at Appendix 1 to the report;
- ii) approve the full licence package including application form, fees and supporting documents to licence SEVs in Moray produced at Appendix 2; and
- iii) a final date for implementation of the complete licensing system for SEVs as 11 January 2021.

5. Annual Functions Report

A report by the Depute Chief Executive (Education, Communities and Organisational Development) sought approval to publish the draft functions report which incorporates a report from the Licensing Standards Officer.

Following consideration the Committee agreed to:

- i) note the draft annual functions report at Appendix 1; and
- ii) approve the final report.

6. Question Time ***

The Committee noted that no further questions were raised.



REPORT TO: LICENSING COMMITTEE ON 17 FEBRUARY 2021

SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (Case No. TD/21/001)

BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND ORGANISATIONAL DEVELOPMENT)

1. REASON FOR REPORT

- 1.1 To consider an application for the grant of a taxi driver licence received on 30 October 2020 subject to an adverse representation received from a consultee.
- 1.2 This report is submitted to Committee in terms of Section III (H) (1) and (2) of the Council's Scheme of Administration relating to exercising the function of the Council as licensing authority for the Moray Council area and issuing and suspending, revoking and refusing applications for all licences in terms of the Civic Government (Scotland) Act 1982.

2. RECOMMENDATION

- 2.1 **The Committee is invited to consider the application in light of the matters referred to in this report and the provisions of the Civic Government (Scotland) Act 1982 and thereafter:-**

- (i) **Grant the licence; or**
- (ii) **Grant the licence and (either or both):**
 - (a) disapply or vary any standard conditions applicable to the licence; and/or**
 - (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject; or**
- (ii) **Refuse to grant the licence.**

3. BACKGROUND

- 3.1 The licensing authority must consider each application within 3 months of its having been made and reach a final decision on it within 9 months. The application must therefore be decided by 30 July 2021. Powers are delegated to the Head of Governance, Strategy and Performance (Monitoring Officer) to grant or where appropriate, renew licences only if there are no objections received from a consultee. In light of circumstances detailed within

this report, it is appropriate that this matter be dealt with by the Licensing Committee.

- 3.2 A letter of representation dated 19 November 2020 was received on behalf of the Chief Constable. The letter was received within the statutory time limit. The letter and a copy of the application have been previously circulated to Committee.
- 3.3 The applicant and the Chief Constable have been invited to attend the meeting. The applicant has been provided with a copy of the Chief Constable's letter.
- 3.4 The applicant has yet to comply with all administrative requirements and still needs to sit a test with Fleet Services and provide satisfactory medical evidence therefore any agreement to approving the licence application is subject to those requirements.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The provisions of licensing directly relate to the priorities within the 10 Year Plan (Moray 2026) in relation to a growing and diverse economy and safer and healthier communities. The various licenseable activities within industry all aid a growing economy in terms of production, retail and the positive effects on tourism. Regulation of the licensed activities contributes to a safer community by ensuring those providing licenseable goods and services are fit to do so.

(b) Policy and Legal

Under the Civic Government (Scotland) Act 1982 where an application for the grant or renewal of a licence is received, a licensing authority can:-

- grant (or renew) the licence; or
- grant (or renew) a licence and in doing so disapply or vary any standard conditions applicable to the licence; or (failing which)
- grant (or renew) a licence and impose additional conditions to the licence; or (failing which)
- refuse to grant (or renew) the licence

Considerations to which the Committee may have regard

In considering whether or not to grant a licensing application, the Committee may have regard to any misconduct on the part of the applicant which in its opinion has a bearing on his fitness to hold a licence. This includes, but is not limited to, previous and spent convictions.

Granting the Application

The licensing authority is **obliged** to grant the licence unconditionally unless it considers that any of the criteria below apply to justify granting it with conditions or refusing it altogether. In granting the application the Committee may choose to grant a licence and disapply or vary any of the standard conditions (i.e. local conditions agreed by the licensing authority) which ordinarily apply to the licence, if there is a justifiable reason for doing so.

Where the Committee is not minded to grant the application unconditionally, it should first move to consider whether the application should be granted with additional conditions. Additional conditions may include conditions restricting the validity of the licence to an area, for example granting a taxi driver licence for Zone 1 or Zone 2 only. Where the Committee chooses to impose additional conditions to a licence, the additional conditions must be reasonable (Paragraph 5 (2) Schedule 1, 1982 Act) and they must not relate to fire safety or any other matter dealt with under the Fire (Scotland) Act 2005. (Paragraph 5 (2A) Schedule 1, 1982 Act)

In addition, it is important that the removal, variation or addition of conditions is not inconsistent with any of the mandatory licence conditions. (Paragraph 5 (2B) Schedule 1, 1982 Act)

Refusal of an Application

There are certain circumstances under which the Committee is obliged to refuse an application to grant or renew a licence. These are provided at paragraph 5(3) of Schedule 1 to the 1982 Act and are:-

- (a) the applicant or, where the applicant is not a natural person, any director of it or a partner in it or any other persons responsible for its management is either:-
 - (i) for the time being disqualified from holding a licence under section 7(6) of the Act; or
 - (ii) not a fit and proper person to be the holder of the licence.
- (b) the activity to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would be refused the grant or renewal of such a licence if he made the application himself.
- (c) where the licence applied for relates to an activity consisting of or including the use of the premises or a vehicle or a vessel those premises are not or as the case may be that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to:-
 - (i) the location, character or condition of the premises or the character or the condition of the vehicle or vessel;

- (ii) the nature and the extent of the proposed activities;
 - (iii) the kind of person likely to be in the premises, vehicle or vessel;
 - (iv) the possibility of undue public nuisance; and
 - (v) public order or public safety or
- (d) there is other good reason for refusing the application.

Where none of these conditions apply, the licensing authority is **obliged** to grant the application.

(c) Financial implications

None

(d) Risk Implications

None

(e) Staffing Implications

None

(f) Property

None

(g) Equalities

In considering this matter the Committee should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In particular:

Article 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Article 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income as a taxi driver.

Article 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim.

A legitimate aim must be a real consideration that is legal and not discriminatory.

Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the subject's circumstances.

(h) Consultations

The Chief Constable was consulted and has submitted a letter of representation as detailed above. There are no other statutory consultees.

5. CONCLUSION

5.1 That the Committee considers the recommendations set out in section 2 of the report.

Author of Report: Sean Hoath, Senior Solicitor
Background Papers: There are no background papers
Ref: SH/LAC

