



REPORT TO: LICENSING COMMITTEE ON 10 OCTOBER 2018

SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR GRANT OF A LATE HOURS CATERING LICENCE (Case No. LHC/18/006)

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1. REASON FOR REPORT

- 1.1 To consider an application for the grant of a late hours catering licence received on 3 September 2018.
- 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 3 June 2019.

- 3.2 In light of circumstances detailed within this report, it is appropriate that this matter be dealt with by the Licensing Committee.
- 3.3 At the Committee meeting on the 21st March 2018 (para 6 of the minute refers) the Committee resolved to require foreign convictions certificates form all licence applicants where the applicant had lived outside the UK for a period of 6 months or more.
- 3.4 The applicant originated from outside of the UK but has been in the UK for a considerable time. The applicant has held a licence before. The applicant is of the opinion that the Committee's policy should not apply to him and that he should not be required to produce a foreign convictions certificate. The applicant believes in all the circumstances the requirement is disproportionate and allegedly discriminatory. Further information is set out in the equalities and consultation sections of the report below.
- 3.5 The applicant has been invited to attend the meeting.

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 application will be consulted upon with the Chief Constable, Fire Scotland, the Environmental Health Manager, the Development Services Manager and the Licensing Standards Officer.

The Equalities Officer has been consulted in relation to an equality impact assessment and the proportionality of the policy and the results of that assessment have been circulated separately.

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