



Licensing Committee

Wednesday, 08 February 2023

NOTICE IS HEREBY GIVEN that a Meeting of the **Licensing Committee** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Wednesday, 08 February 2023 at 09:30.**

BUSINESS

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests ***
3. **Resolution**
Consider, and if so decide, adopt the following resolution:
"That under Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Item 8 of business on the grounds that it involves the likely disclosure of exempt information of the class described in the relevant Paragraphs of Part 1 of Schedule 7A of the Act."
4. **Minute of the meeting of the Licensing Committee of 16 November 2022** 5 - 8
5. **Written Questions ****
6. **Application for Grant of a Public Entertainment Licence - Case No PEL-23-001** 9 - 14
Report by Depute Chief Executive (Education, Communities and Organisational Development)
7. **Question Time *****
Consider any oral question on matters delegated to the Committee in terms of the Council's Scheme of Administration.

Item(s) which the Committee may wish to consider with the Press and Public excluded

8. Application for Grant of a Late Hours Catering Licence - Case No LHC -23-001 [Para 14]

- Information relating to action taken, or to be taken, in connection with the prevention, investigation or prosecution of crime.

Summary of Licensing Committee functions:

To deal with all aspects of the issue of licenses by Local Authorities as required by Government; to deal with matters of Licensing and registration not falling within the functions of any other Committee.

* **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.

THE MORAY COUNCIL

Licensing Committee

SEDERUNT

Councillor Paul McBain (Chair)
Councillor Peter Bloomfield (Depute Chair)

Councillor James Allan (Member)
Councillor Neil Cameron (Member)
Councillor Tracy Colyer (Member)
Councillor Theresa Coull (Member)
Councillor John Divers (Member)
Councillor Jérémie Fernandes (Member)
Councillor Donald Gatt (Member)
Councillor Juli Harris (Member)
Councillor Graham Leadbitter (Member)
Councillor Kathleen Robertson (Member)
Councillor Ben Williams (Member)

Clerk Name:	Lindsey Robinson
Clerk Telephone:	07966 120593
Clerk Email:	committee.services@moray.gov.uk

Minute of Meeting of the Licensing Committee**Wednesday, 16 November 2022****Council Chambers, Council Office, High Street, Elgin, IV30 1BX****PRESENT**

Councillor James Allan, Councillor Peter Bloomfield, Councillor Neil Cameron, Councillor Tracy Colyer, Councillor Theresa Coull, Councillor John Divers, Councillor Jérémie Fernandes, Councillor Donald Gatt, Councillor Juli Harris, Councillor Paul McBain, Councillor Kathleen Robertson, Councillor Ben Williams

IN ATTENDANCE

Also in attendance at the above meeting were Sean Hoath, Senior Solicitor, Lindsey Robinson, Committee Services Officer, as Clerk to the Committee, both Moray Council, and PC Mitch Dickson, Police Scotland.

1. Chair

Councillor Paul McBain, As Chair of the Licensing Committee, chaired the meeting.

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. Resolution

The Meeting resolved that under Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Item 9 of business on the grounds that it involves the likely disclosure of exempt information of the class described in the relevant Paragraphs of Part 1 of Schedule 7A of the Act.

Paragraph Number of Minute	Paragraph Number of Schedule 7a and Reason
9	14 - Information relating to any action taken in connection with the prevention, investigation or prosecution of crime

4. Minutes

The minutes of the meetings of the Licensing Committee of 7 September 2022 and the Special Licensing Committee of 21 September 2022 were submitted and approved.

5. Written Questions **

The Committee noted that no written questions had been submitted.

6. Madatory Review of Taxi Fares and Charges

A report by the Depute Chief Executive (Education, Communities and Organisational Development) asked the Committee to consider the responses received as part of the formal consultation carried out in relation to the review of the maximum fares and charges applicable to taxis and, in light of those responses, to agree a new fare card. There are no powers delegated to officers in this regard.

During consideration, Councillor Gatt moved that the recommendations be agreed and expressed his disappointment in the lack of responses. This was seconded by Councillor Harris who also expressed her disappointment.

Thereafter, the Committee agreed:

- i. to note the views received from the formal consultation process;
- ii. the maximum fares and charges applicable to taxis in Moray to have effect from 10 December 2022; and
- iii. to instruct the Head of Governance, Strategy and Performance to publish the fare structure and issue a new fare card to all operators.

7. Annual Functions Report

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

During consideration, Councillor Robertson sought clarification as to why some short term let applicants were being charged for advice from planning even though there are no control zones in Moray. She asked for information to be added to the FAQ section of the website.

In response, the senior solicitor advised that the information relating to no control zones would be added to the FAQs. The charge raised against some applicants is a planning charge that they levy for advice and is currently looked at on a case by case basis. The Scottish Government were due to issue a circular to planning teams with a definitive view on short term lets, but this has been delayed as the draft was withdrawn after feedback.

Thereafter, the Committee agreed to note the draft annual functions report at Appendix 1 of the report, and agreed the final report to be published.

8. Question Time ***

Councillor Gatt sought clarification on how staff shortages within the legal department has affected licence processing.

In response, the Senior Solicitor advised that staffing had been an issue for some time. The legal department is split into a number of teams and the licensing team is

one member down. The majority of licence applications are dealt with through delegated powers and processed by the admin team. Moray has a quick turn around for these and this has not been affected by the staff numbers.

9. Application for the grant of a Taxi Driver Licence - Case No TD-22-004 - [Para 14]

A confidential report by the Depute Chief Executive (Economy, Environment and Finance) asked the Committee to consider an application for the grant of a taxi driver licence received on 6 September 2022 subject to an adverse representation received from a consultee.

The Senior Solicitor introduced the report and confirmed to the Committee that it was a representation from Police Scotland, not an objection.

The Committee noted that the applicant was in attendance. The Chief Superintendent was represented by PC Mitch Dickson.

On the invitation of the Chair, PC Dickson addressed the Committee and responded to questions from Members.

On the invitation of the Chair, the applicant addressed the Committee and responded to questions from Members.

Councillor Fernandes moved that licence should be granted. The was seconded unanimously by the other Committee Members.

There being no one otherwise minded, the application was granted.



REPORT TO: LICENSING COMMITTEE ON 8 FEBRUARY 2023

SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR GRANT OF A PUBLIC ENTERTAINMENT LICENCE (Case No. PEL/23/001)

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

1. REASON FOR REPORT

- 1.1 To consider an application for the grant of a public entertainment licence received on 8 November 2022 subject to objections and adverse representations received from consultees.
- 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**
 - (iii) **Refuse to grant the licence.**

3. BACKGROUND

- 3.1 The licensing authority must consider the application within 3 months of it having been made and reach a final decision on it within a further 6 months. The application must therefore be decided by 8 August 2023. The applicant has scheduled the public event to take place on 29 and 30 April 2023. Powers are

delegated to the Head of Governance, Strategy and Performance to grant or where appropriate, renew licences only if there are no objections or adverse representations 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 copy of the application is provided in **Appendix 1**.
- 3.3 The following letters of objection were received and copies are provided in **Appendix 2**:
- (a) Letter dated 14 December 2022 received on behalf of the Chief Constable.
 - (b) Letter dated 15 December 2022 received from Moray Council Environmental Health Service.
- 3.4 The following letters of representation were received and copies are provided in **Appendix 3**:
- (a) Letter dated 13 December 2022 received from Moray Council Open Spaces Service.
 - (b) Letter dated 15 December 2022 received from Moray Council Emergency Planning Service.
 - (c) Letter dated 16 December 2022 received from Moray Council Building Standards Service.
- 3.5 Both objections and all representations were received within the statutory time limit.
- 3.6 The Licensing Standards Officer is not in agreement with the licence being granted unless and until an approved event safety plan is in place and the matters in **Appendices 2 and 3** are addressed.
- 3.7 The applicant and all parties who have lodged objections and representations have been invited to attend the meeting. The applicant has been provided with a copy of both objections and all representation letters.
- 3.8 Whilst objections and representations are in place, the applicant and parties are still in constant dialogue. All parties are working towards the event taking place but taking place safely. There have also been a number of meetings. The applicant is updating event documents and the events group, including external partners, is providing advice and assistance to the applicant. It was hoped that the parties could reach a mutually acceptable agreement such that any objections/representations could be withdrawn prior to the meeting and the licence simply granted. Unfortunately the matter is not at that stage yet but dialogue is still ongoing. In the meantime, the licence application must follow the legal process and if the Committee is required to make a decision then it had to follow the Committee diary. Therefore a further Committee date has been set aside in case it is required.

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 ("1982 Act") 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 licensable activity, for example restricting the activity to certain times. 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/Socio Economic Impact

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.

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 applicant's circumstances.

(h) Climate Change and Biodiversity Impacts

None identified.

(i) Consultations

The Chief Constable, Fire Scotland, the Council's Environmental Health, Open Spaces, Communications, Emergency Planning, Development Management Services and the Licensing Standards Officer have been consulted in terms of the Act. The relevant objections and representations are detailed above. Fire Scotland and the Council's

Development Management Service, have made no representations regarding the application.

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: SAH