



Licensing Committee

Wednesday, 17 April 2019

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, 17 April 2019 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. 2019-02-20 - Minute

5 - 8

5. Written Questions **

6. TD-19-002 - report

9 - 14

Report by the Corporate Director (Corporate Services)

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. TD-19-003 - report

- 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.

Any person attending the meeting who requires access assistance should contact customer services on 01343 563217 in advance of the meeting.

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 Amy Taylor (Chair)
Councillor Louise Laing (Depute Chair)
Councillor James Allan (Member)
Councillor Theresa Coull (Member)
Councillor Gordon Cowie (Member)
Councillor Paula Coy (Member)
Councillor John Divers (Member)
Councillor Ryan Edwards (Member)
Councillor Donald Gatt (Member)
Councillor Marc Macrae (Member)
Councillor Aaron McLean (Member)
Councillor Maria McLean (Member)
Councillor Ron Shepherd (Member)

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Minute of Meeting of the Licensing Committee

Wednesday, 20 February 2019

Council Chambers, Council Office, High Street, Elgin, IV30 1BX

PRESENT

Councillor James Allan, Councillor Theresa Coull, Councillor Gordon Cowie, Councillor Paula Coy, Councillor John Divers, Councillor Ryan Edwards, Councillor Donald Gatt, Councillor Louise Laing, Councillor Marc Macrae, Councillor Aaron McLean, Councillor Maria McLean, Councillor Amy Patience

APOLOGIES

Councillor Ron Shepherd

IN ATTENDANCE

Also in attendance were Police Constable Ray Walker on behalf of Police Scotland, Sean Hoath, Senior Solicitor and Tracey Sutherland, Committee Services Officer.

1. Chair

The meeting was chaired by Councillor Amy Patience.

2. Declaration of Group Decisions and Members Interests *

In terms of Standing Order 20 and the Councillor's Code of Conduct there were no declarations from group leaders or spokespersons in regards 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 Previous Meeting held on 5 December 2018

The minute of the meeting of the Licensing Committee dated 5 December 2018 was submitted and approved.

4. Written Questions **

The Committee noted that no written questions had been submitted.

5. Change of Agenda Order

The Chair advised the Committee that the applicant for case TD/19/002 had been held up but was on his way so therefore as the applicant for case STD/19/001 was in

attendance, this case would be heard first.

6. Civic Government (Scotland) Act 1982 - Possible Suspension of a Taxi Driver Licence (Case No. STD/19/001)

A report by the Corporate Director (Corporate Services) invited the Committee to consider a request by the Chief Constable to suspend the license of a current taxi driver licence holder.

The Committee noted that the applicant was in attendance. The Chief Constable of Police Scotland was represented by Constable Ray Walker, Police Scotland.

Constable Walker, Police Scotland addressed the Committee and responded to questions raised by the Committee.

The applicant addressed the Committee and responded to questions raised by the Committee.

Following consideration, the Chair asked Constable Walker and the applicant if they were happy with the proceedings and if they felt that had received a fair hearing.

Constable Walker and the applicant advised that they were both happy with proceedings and confirmed that they felt they had had a fair hearing.

Councillor Gatt, seconded by Councillor Edwards moved to refuse Police Scotland's application to suspend the applicant's taxi driver licence.

Councillor Coy proposed an amendment to support Police Scotland's application to suspend the applicant's taxi driver licence.

Councillor Macrae proposed a further amendment, seconded by Councillor M McLean, to support Police Scotland's application to immediately suspend the applicant's taxi driver licence for a 12 month period.

Following consideration, Councillor Divers further added that the applicant had indicated he had not worked for 12 months following the incident and Councillor Divers felt that the applicant had already served his punishment. The applicant had not been brought to the attention of Police Scotland in that time.

In considering Councillor Divers statement Councillor Coy then withdrew her amendment.

On the division there voted:

For the motion (10)	Councillors Gatt, Edwards, Allan, Coull, Cowie, Coy, Divers, Laing, A McLean and Patience
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For the Amendment (2)	Councillor Macrae and M McLean
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Abstentions (0)

Accordingly the motion became the finding of the meeting and Committee agreed to

refuse Police Scotland's application for the suspension of the taxi driver licence.

7. Civic Government (Scotland) Act 1982 - Application for Grant of a Taxi Driver Licence (Case No. TD/19/002)

A report by the Corporate Director (Corporate Services) invited the Committee to consider an application for the grant of a taxi driver licence received on 17 January 2019 subject to an adverse representation received from a consultee.

The Committee noted that the applicant was in attendance. The Chief Constable of Police Scotland was represented by Constable Ray Walker, Police Scotland.

The Senior Solicitor advised the Committee that a further representation had been received from Police Scotland regarding protected spent convictions of the applicant and the Committee must determine, as a preliminary issue, whether the further convictions should be heard on the basis that justice could not be done without hearing the evidence.

The Senior Solicitor then read out the number, general nature and age of protected convictions. The Committee then heard from the parties on the preliminary issue. The Committee was then invited to consider whether justice could only be done by admitting the additional evidence.

In response, Councillor A McLean proposed that the Committee should hear the protected spent convictions of the applicant on the basis that justice could not be done by admitting the evidence.

Councillor Coull further added that the applicant is still coming to the attention of the police.

As there was no one else otherwise minded the Committee agreed to hear the applicant's further convictions and the Senior Solicitor then circulated details of the additional convictions to the Committee.

Constable Walker, Police Scotland addressed the Committee and responded to questions raised by the Committee.

The applicant advised the Committee that he had no further information to add to his application and responded to questions raised by the Committee.

Following consideration, the Chair asked Constable Walker and the applicant if they were happy with proceedings and if they felt they had received a fair hearing.

Constable Walker and the applicant advised that they were both happy with proceedings and confirmed that they felt they had had a fair hearing.

Councillor A McLean moved that having regard to all the evidence the applicant was not a fit and proper person to hold a taxi driver licence and therefore the Committee should refuse the application. The evidence was clear, relevant and consistent.

As there was no one else otherwise minded the Committee agreed to refuse the application for a Taxi Driver licence in respect of Case TD/19/002 as they were satisfied that the applicant is not a fit and proper person to hold the licence due to a

disregard for the law. There being a ground for refusal the Committee were obliged to refuse the application.

8. Question Time ***

There were no further questions.



REPORT TO: LICENSING COMMITTEE ON 17 APRIL 2019

SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (Case No. TD/19/002)

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

1. REASON FOR REPORT

- 1.1 To consider an application for the grant of a taxi driver licence received on 17 January 2019 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 17 October 2019. Powers are delegated to the Head of Legal and Democratic Services 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 24 January 2019 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.

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

