

**Licensing Committee
18 April 2018**

At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Todd Ferguson, Robert Barr, John Easdale, Scott Gallagher, Jean McClung, Davina McTiernan, Donald L. Reid and Angela Stephen.

In Attendance

E. McLaren, Team Manager (Litigation), W. O'Brien, Solicitor, (Licensing) and A. Toal, Administrative Assistant (Licensing); S. McKenzie, Senior Manager (Protective Services) and C. Boyd, Team Manager (Food/Health and Safety) (Economy and Communities) and A. Little, Committee Services Officer (Chief Executive's).

Also in Attendance

Inspector Convery and D. Hastings (Police Scotland).

Chair

Councillor McNicol in the Chair.

1. Order of Business

The Chair, in terms of Standing Order 9.4, agreed to vary the order of business to allow consideration of Agenda Item 5 (Taxi and Private Hire Car Specification and Inspection Standards) as the first item of business and Agenda Item 3 (Hearing 4 – Samuel Dean) immediately following Hearing 2 – Elaine Connor). The Team Manager (Litigation) advised the Committee during Hearing 2. Elaine Connor, and the Solicitor (Licensing) left the Chambers before this Hearing started and did not return until after it concluded. The Solicitor (Licensing) advised the Committee during the remainder of the meeting.

2. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

3. Minutes

The Minutes of the meeting of the Committee held on 19 February and the special meeting held on 7 March 2018 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

4. Exclusion of the Public

"The Committee resolved, under Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting, the press and the public, for Agenda Item 3 (Civic Government (Scotland) Act 1982: Licensing Matters) on the grounds that they involved the likely disclosure of exempt information as defined in Section 50J of, and Schedule 7A to, the Local Government Act 1973. The 'Exempt Information' concerned is that described in Section 7A, Paragraph 6 (Information relating to the financial or business affairs of any particular person (other than the authority)), Paragraph 14 (Any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime) and Paragraph 15 (The identity of a Protected Informant - where Protected Informant is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance).

5. Taxi and Private Car Vehicle Specification and Inspection Standards

Submitted report by the Chief Executive on the Taxi and Private Hire Car Specification and Inspection Standards under the Civic Government (Scotland) Act 1982, Section 10(2) and 10(5), as outlined and appended to the report.

The Committee agreed to continue consideration of these matters to a future meeting of the Committee.

6. Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters

Submitted report by the Chief Executive on hearings to be determined and applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982.

Part A: Hearings

6.1 Permanent Public Entertainment Licence PEL/531 - Kenneth Stirling

The applicant, having been duly cited, was present and accompanied by a relative. A representative from North Ayrshire Council's Protective Services was also in attendance.

The Solicitor (Licensing) set out the background to the application, in respect of the application for a public entertainment licence for a three year period. The representative from Protective Services then addressed the Committee in terms of their request that an additional condition be added to the licence, if granted for three years, in relation to the layout of the event, the substitution of rides, inflatables and stalls and the certification of new rides. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and the representative from Protective Services then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed to grant the application, subject to the Council's standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 and to restrict the licence to the days in 2018 that the applicant had applied for, 9 – 13 May 2018, under Paragraph 8(2)(b).

6.2 Booking Office Licence BOL/018 - Elaine Connor

The Committee, at its meeting held on 7 March 2018, agreed to proceed to a Hearing under Paragraph 11(7) and 10(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Team Manager (Litigation) set out the background to the Hearing as previously intimated in writing to the licence holder. She also referred to a letter of complaint received from a neighbour relating to the operation of the Booking Office Licence from the licence holder's address.

The licence holder, having been duly cited to attend, was present and represented. The complainant, having been duly cited to attend was not present.

The licence holder and her representative addressed the Committee on the issues raised and responded to questions.

The licence holder and her representative then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee, being satisfied with the assurances provided by the licence holder, agreed (a) to take no further action in respect of the issues raised by the complaint in respect of the operation of the Booking Office Licence; and (b) instructed the Clerk to write to the Licence Holder and the complainer confirming: (1) that the Committee was satisfied that it would have been entitled to order vary the Licence, but decided on that occasion to take no action; and (2) that the circumstances of the present case would be taken into account if the Committee later consider either a further case of possible Revocation, Suspension or Variation, or an Application to (i) renew the Licence; or (ii) to vary the Licence under Paragraph 10, or (iii) to obtain the Committee's Consent under Paragraph 9(2) for the making of a material change to the Licence.

6.3 Taxi Driver's Licence - TDL/00064 - Samuel Dean

The Committee, at its meeting held on 7 March 2018, agreed to continue consideration of the matter to a future meeting, pending the outcome of legal proceedings against the licence holder.

The applicant, having been duly cited to attend was present. Representatives from Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The Committee noted that the objection or representation was made late, after the period for making objections or representations had expired. This period was 28 days starting from the date that the application was lodged with the Council (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 3(1)(e)(iii), as amended by Criminal Justice and Licensing (Scotland) Act 2010, Section 178(2)(e)). The Committee had a discretion to entertain a late objection or representation, in accordance with Paragraph 3(2). The Committee heard from both the Chief Constable's representative and from the licence holder. The licence holder agreed that the Committee could take the late objection or representation into account. The Committee held that was here a "sufficient reason" why the objection or representation was not made within the period of 28 days, and determined to entertain that objection or representation, and to take it into account when determining the application.

The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 6 April 2018 setting out the observations of the Chief Constable of Police Scotland on the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Both parties then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor L. Reid, seconded by Councillor Easdale, moved that the application be granted for a period of 6 months and that a final warning letter be issued to the applicant.

As an amendment, Councillor McNicol, seconded by Councillor Ferguson, moved that the application be refused on the grounds that the applicant was not a fit and proper person to be the holder of the licence.

On a division, there voted for the amendment 5 and for the motion 4, and the amendment was declared carried.

Accordingly, the Committee agreed to refuse the application in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person to be the holder of the licence.

6.4 Skin Piercing Licence - SPTL/042 (New) - Reid & Reid (Hairdressing) Ltd

The Committee, at its meeting held on 7 March 2018, agreed (a) to continue consideration of the application to the next meeting; and (b) note that, in the event of the outstanding issues in respect of the application being resolved in the meantime, the application would be determined by officers under delegated powers.

The applicant, having been duly cited to attend, was not present, but had submitted a request that the application be continued to a future meeting. A representative from the Council's Food/Health and Safety Team was in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representative from the Council's Food/Health and Safety Team addressed the Committee on the issues raised and responded to questions. The Committee noted that the Solicitor (Licensing) had raised with the applicant the issue of the premises being adequately managed but the applicant had not responded and had not nominated an alternative day-to-day Manager.

The Committee considered that the applicant had been given time to resolve the outstanding issues in respect of the application and it had sufficient information to determine the application.

Decision

The Committee unanimously agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 to the Licensing (Scotland) Act 1982 in that the Committee considered that reasons to refuse existed: (a) that the applicant was not a fit and proper person to be the holder of the Licence (Paragraph 5(3)(a)(ii)); (b) that the premises are not suitable to hold a Skin Piercing and Tattooing Licence (Paragraph 5(3)(c)(i) and (ii)); (c) that the Committee was not satisfied that the Licence Conditions applying both before and after the grant of a Skin Piercing and Tattooing Licence would be observed, and that this was a good reason for refusing the application (Paragraph 5(3)(d)).

6.5 Taxi Driver's Licence (Renewal) TDL/00190 - Raymond Potts

The Committee, at its meeting held on 7 March 2018, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was not in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

Decision

The Committee unanimously agreed to refuse the application in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person to be the holder of the licence.

6.6 Taxi Driver's Licence - TDL/02086 (New) - Fazal Hussain

The Committee, at its meeting held on 7 March 2018, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was not present.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. He advised that Police Scotland are only able to undertake background checks within the UK. Information on individuals, prior to their arrival in the UK, is therefore not available to them.

The Chair read out a statement from the applicant.

Decision

The Committee unanimously agreed (a) to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (b) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) that the Solicitor (Licensing) investigate and report to a future meeting on a process that could be put in place, such as a certificate of good character from the relevant Embassy, that would assure the Committee that the applicant is a fit and proper person to hold a licence,

Part B: Applications for Licences/Renewal of Licences

6.7 TDL/02020 (Renewal) - Michael Rawley

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

6.8 TDL/02083 (New) - Brian Stephens

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

7. Licensing of Window Cleaners – Civic Government (Scotland) Act 1982, Section 43

Submitted report by the Chief Executive on the current position in respect of the licensing of window cleaners.

The report provided information on Optional Provisions, where a licence for activities is required if and when the local Council so resolves. Window cleaning had not been adopted as part of the Optional Provisions by Cunninghame District Council. Police Scotland have requested that consideration be given to the licensing of window cleaners and the proposal was advertised in the local press. The consultation period has now expired and no comments were received from the public.

The Committee agreed to make a resolution under Section 9 of the Civic Government (Scotland) Act 1982, that from and after Monday 21 January 2019, Section 43 of that Act shall apply, so that a Window Cleaner's Licence shall be required for carrying on the trade of, or being employed as, a window cleaner.

The meeting ended at 12.50 p.m.