

Licensing Committee  
22 September 2009

**IRVINE, 22 September 2009** - At a Meeting of the Licensing Committee of North Ayrshire Council at 2.00 pm.

**Present**

William Gibson, Robert Barr, Ian Clarkson, Ruby Kirkwood, John Moffat, Alan Munro, Ryan Oldfather, Robert Rae and Joan Sturgeon.

**In Attendance**

N. Alexander, Chief Legal Officer, D. Wallace, Enforcement Officer and A. Toal, Administrative Assistant (Licensing and District Court)(Legal and Protective); and M. McKeown, Team Leader Committee Services and A. Little, Committee Services Officer (Chief Executive's Service).

**Chair**

Councillor Gibson in the Chair.

**Apologies for Absence**

Elisabethe Marshall.

**1. Declarations of Interest**

In terms of Standing Order 16, Councillor Barr declared an interest in Agenda Item 6 in relation to the hearing concerning Mr P. Cole, and withdrew from the meeting for that item of business, returning thereafter.

**2. Antisocial Behaviour etc (Scotland) Act 2004: Applications for Registration as Private Landlord**

Submitted reports by the Assistant Chief Executive (Legal and Protective) on applications for Registration as Private Landlords in terms of the Antisocial Behaviour etc (Scotland) Act 2004.

The Council has in place a scheme for registering private landlords. This scheme was approved by the former Licensing Sub Committee on 7 August 2006. In terms of the scheme, the Assistant Chief Executive (Legal & Protective) has authority to grant applications where criminal convictions declared by the applicant do not cause concern. Where concerns arise, the matter is referred to the Licensing Committee.

## **2.1 Lynda Christine Smith, 24 Peterhouse Close, Darlington**

An application for registration as a landlord of one property has been received from Lynda Christine Smith, 24 Peterhouse Close, Darlington.

The applicant previously applied to register as a landlord in North Ayrshire and declared one previous conviction. She failed to reply to correspondence requesting more information about the conviction and in the circumstances her application was refused on 11 November 2008 on the grounds that she was not a fit and proper person on account of her failure to co-operate with the local authority.

Miss Smith has declared the same conviction on her current application. The Chief Legal Officer (Licensing and District Court) provided details in relation to the conviction.

The Committee agreed that the conviction declared by the applicant did not require to proceed to a hearing and accordingly the application was granted.

## **2.2 McMail Properties**

An application for registration as a landlord of three properties has been received from McMail Properties.

Where an application is made other than in the name of the actual person, confirmation is sought that the business entity being used is formed in accordance with the law. Any company must be registered with Companies House and provide details of its registered office. Any partnership must confirm that properties are in fact owned by the partnership.

In terms of the Business Names Act 1985, the name of individuals who use a trading name or alias, should appear on all business letters. Similarly, the Council requires that registered landlords are easily identifiable. The applicant had been contacted on a number of occasions requesting more information to ascertain the status of the name used in the application but to date no clarification has been provided. In the circumstances it was proposed that the Committee agree to proceed to a hearing to allow the matter to be resolved.

The Committee agreed that the applicant be cited to attend a hearing to clarify the position.

## **3. Civic Government (Scotland) Act 1982: Licensing Knife Dealers**

Submitted report by the Assistant Chief Executive (Legal and Protective) on the proposed procedure and fees for licensing knife dealers within North Ayrshire.

On 16 June 2009, the Committee received a report detailing a new mandatory licensing scheme for knife dealers, and agreed to receive a further report on the draft procedures and conditions.

The Custodial Sentences and Weapons (Scotland) Act 2007 amended the Civic Government (Scotland) Act 1982, and established a new mandatory licensing scheme for knife dealers. Detailed information was provided in the report on the category of dealer and variety of knives that will come under the scheme, the timeframe for receipt of applications from existing dealers, and the commencement date for the scheme. Consultation with East and South Ayrshire Councils and Strathclyde Police has taken place and will assist in a common position being taken throughout Ayrshire by both licensing and enforcement agencies. It was proposed that applications be routinely passed to Strathclyde Police for consultation and Environmental Health and Trading Standards for comment.

The Committee was advised that the legislation requires each application for the grant or renewal of a Knife Dealer's Licence to be published in a newspaper circulating in the authority's area. The advert should provide details of the application and state how objections may be made. The expenses incurred in administering the scheme require to be offset by income generated through application fees. As a result of the obligation to publish all applications in a local newspaper, expenses may be higher than for other types of applications under the Civic Government (Scotland) Act 1982. It was therefore considered that a fee for new applications and renewals should be set at £300.

The Committee agreed that (a) a fee for processing an application for grant of a licence and renewal of a licence be fixed at £300; (b) businesses be encouraged to apply for a licence as a precautionary measure; and (c) applications be routinely passed to Strathclyde Police for consultation and Environmental Health and Trading Standards for comment.

#### **4. Civic Government (Scotland) Act 1982: Taxi and Private Hire Booking Offices**

Submitted report by the Assistant Chief Executive (Legal and Protective) on the proposed procedure and fees for licensing taxi & private hire booking offices.

On 16 June 2009, the Committee received a report detailing the requirement to introduce a system for accepting and processing applications for taxi and private hire car booking offices, and agreed to receive a further report on the draft procedures and conditions.

The report provided information on the establishment of a standard procedure across Ayrshire, a common application form and similar, if not identical, mandatory conditions which will apply to any licences granted.

It is anticipated that regular inspection and enforcement of these licences will be required and that additional licence conditions may be appropriate where the public are permitted access to the booking office while awaiting their vehicle to arrive. Where such a facility is provided the application fee will reflect the additional inspection requirements imposed.

The costs of operating such licences requires to be recovered from the application fees and the report set out proposed levels of fees.

The Committee agreed (a) to set the application and renewal fees at £200 where the public are not admitted to the premises, and £300 where the public are admitted to the premises; and (b) that the additional mandatory conditions outlined in the report, be attached to all licences.

Councillor Oldfather withdrew from the meeting at this point.

## **5. Civic Government (Scotland) Act 1982: Disclosure of Convictions for Taxi and Private Hire Drivers and Operators**

Submitted report by the Assistant Chief Executive (Legal and Protective) on a proposal by Strathclyde Police that applicants for taxi and private hire car operator's and driver's licences be required to obtain a certificate from Disclosure Scotland prior to submitting their application.

The Rehabilitation of Offenders Act 1974 does not apply to such licences and all previous convictions and fixed penalties must therefore be declared. In terms of Paragraph 2(1) of Schedule 1 of the Civic Government (Scotland) Act 1982 applications are passed to Strathclyde Police. Strathclyde Police have a duty to carry out such enquiries and investigations as they see fit.

In a letter of 8 June 2009, Strathclyde Police advised that a large number of applicants fail to accurately disclose convictions on their application forms. These omissions require police staff to undertake additional administrative processes to ensure all information is accurate. In order to streamline the administrative process, Strathclyde Police requested that the present consultation arrangements be discontinued and that all applicants be required to obtain a Standard Disclosure Scotland certificate, at their own cost, which should then accompany their application.

The Committee discussed the current process in place and the costs incurred by applicants. It was considered that the proposed change would result in a duplication within the system. The enclosure of a Disclosure Scotland certificate with applications would not remove the statutory obligations of Strathclyde Police in relation to licence applications.

Councillor Gibson, seconded by Councillor Munro, moved that the Members refuse the request from Strathclyde Police. As an amendment, Councillor Barr, seconded by Councillor Sturgeon, moved that Committee agree to the proposal in respect of all future applications for taxi and private hire car operator's and driver's licences.

On a division there voted for the motion 4, and, for the amendment 4 and, on the casting vote of the Chair, the motion was declared carried.

Accordingly, the Committee agreed to (a) refuse the request from Strathclyde Police that applicants for taxi and private hire car operator's and driver's licences obtain a certificate from Disclosure Scotland prior to submitting their licence application; and (b) advise the Chief Constable that any amendment to existing legislation to remove the statutory obligation of Strathclyde Police in relation to background and criminal record checks for licence application should be made in writing to the Scottish Government; and (c) request the Council's representatives, Councillors McNamara and McNicol, raise this item at the next meeting of Strathclyde Joint Police Board.

## **6. Civic Government (Scotland) Act 1982: Licensing Matters**

Submitted report by the Assistant Chief Executive (Legal and Protective) on (a) applications for the grant or renewal of licences and permits; (b) issues arising in respect of an existing licence; and (c) Hearings to be determined, all in terms of the Civic Government (Scotland) Act 1982.

The Committee agreed to dispose of these matters as indicated in the attached Appendix LC1.

## **7. Civic Government (Scotland) Act 1982: Licensing Fees**

Arising from discussion of Agenda Item 6, the Committee requested that the Chief Legal Officer (Licensing and District Court) report to the next meeting on the fees applicable in circumstances where the Committee grants a licence for a restricted period.

The meeting ended at 4.45 p.m.

## **PART A**

### **Taxi Driver Licences**

#### **1. TDL/01274 (Renewal) Cameron Ferguson Shaw Phillips**

The Committee unanimously agreed to (a) 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) remind the applicant in writing of his duty to comply with the licence condition relating to the disclosure of previous convictions.

#### **2. TDL/01582 (New) Glen Curdy**

The Committee unanimously agreed 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.

#### **3. TDL/01584 (New) William Henderson Halliday**

The Committee unanimously agreed 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.

#### **4. TDL/01585 (New) Matteo Pisani**

The Committee unanimously agreed 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.

#### **5. TDL/01590 (New) Alex McKenna**

The Committee unanimously agreed 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.

## **PART B**

### **Issues in respect of Existing Licences**

#### **Street Trader Operators Licence**

##### **1. STL/O/195 Catherine Aird**

The Chief Legal Officer (Licensing and District Court) reported on a notification of a conviction submitted by the licence holder.

The Committee unanimously agreed to take no suspension action.

## **PART C**

### **Hearings**

#### **1. TDL/01579 (New) Peter Cole**

The Committee at its meeting held on 1 September 2009, 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 present. A representative from Strathclyde Police was also in attendance

The Chief Legal Officer (Licensing and District Court) set out the background to the Hearing as previously intimated in writing to the applicant. The representative from Strathclyde Police then addressed the Committee on the terms of letters dated 3 and 14 August 2009 setting out the observations of the Chief Constable of Strathclyde Police on the applicant's previous convictions. 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**

The Committee unanimously agreed that the application be refused in terms of Paragraph 5 (1) (c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds indicated in Paragraph 5 (3) (a) (ii) of the said Schedule that the applicant is not a fit and proper person to be the holder of the licence by virtue of the convictions recorded against him.

#### **2. TDL/00743 James Shaw**

The Committee at its meeting held on 11 August 2009, agreed on the basis of the information presented, to proceed to a suspension hearing in terms of Paragraph 11 (7)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was present. A representative from Strathclyde Police was also in attendance.



The Chief Legal Officer (Licensing and District Court) set out the background to the Hearing as previously intimated in writing to the licence holder. The Representative from Strathclyde Police then addressed the Committee on the terms of a letter dated 7 July 2009 setting out the observations of the Chief Constable of Strathclyde Police on the applicant's previous convictions which were not disclosed to the Licensing Authority. Thereafter the licence holder 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**

The Committee unanimously agreed to (a) take no action to suspend the licence in terms of Paragraph 11 (1) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) remind the applicant in writing of his duty to comply with the licence condition relating to the disclosure of previous convictions and warn him that any future non disclosure will result in suspension action.

The Police representative withdrew from the meeting at this point.

### **3. TDL/00973 Barry Johnston**

The Committee at its meeting held on 11 August 2009, agreed on the basis of the information presented, to proceed to a suspension hearing in terms of Paragraph 11 (7)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was present at the hearing and was represented. The complainer was not in attendance. The Chief Legal Officer (Licensing and District Court) set out the background to the Hearing as previously intimated in writing to the licence holder. He intimated the terms of two letters of complaint received from members of the public regarding the alleged conduct of the licenceholder. The licence holder's representative, Mr Robertson, addressed the Committee on behalf of his client on the issues raised and responded to questions.

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

### **Decision**

The Committee unanimously agreed to take no action to suspend the licence in terms of Paragraph 11 (1) of Schedule 1 of the Civic Government (Scotland) Act 1982.

#### **4. TDL/01220 Colin Doyle**

The Committee at its meeting held on 11 August 2009, agreed on the basis of the information presented, to proceed to a suspension hearing in terms of Paragraph 11 (7)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was present. The complainer was not in attendance.

The Chief Legal Officer (Licensing and District Court) set out the background to the Hearing as previously intimated in writing to the applicant. He intimated the terms of a complaint from a member of the public regarding the alleged conduct of the licenceholder. Thereafter the licence holder addressed the Committee on the issues raised and responded to questions.

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

#### **Decision**

The Committee unanimously agreed to take no action to suspend the licence in terms of Paragraph 11 (1) of Schedule 1 of the Civic Government (Scotland) Act 1982.