

**Licensing Committee
22 August 2018**

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

Present

Ronnie McNicol, Todd Ferguson, Robert Barr, Scott Gallacher, Jean McClung, Davina McTiernan and Donald L. Reid.

In Attendance

E. Anderson, Private Sector Team Manager and G. Tolmie Policy Officer (Private Sector) (Place); W. O'Brien, Solicitor, (Licensing), S. Montgomery, Solicitor, C. Pollock, Licensing Administration Officer, A. Toal, Administrative Assistant (Legal Services), D. Robertson, Enforcement Officer and A. Little, Committee Services Officer (Chief Executive's Service).

Chair

Councillor McNicol in the Chair.

Apologies

John Easdale and Angela Stephen.

1. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Ferguson declared an indirect non-pecuniary interest in Hearing 7 Newton Leisure Ltd, the circumstances being that the applicant was personally known to him, and left the meeting for that item of business.

Councillor McTiernan declared an indirect, non-pecuniary interest in Agenda Item 6, Landlord Registration, the circumstances being that the landlord was personally known to her, and left the meeting for that item of business.

2. Minutes

The Minutes of the meeting of the Committee held on 6 June 2018 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973, subject to the following amendment:-

Item 4 – Exclusion of the Public – the word Section should read Schedule.

3. Licensing of Taxis: List of Designated Taxis

Submitted report by the Chief Executive on the process of adoption of a List of Designated Taxis, which would require any driver of a vehicle on the list to have duties to disabled passengers who use wheelchairs. A Medical Exemption Certificate is required to exempt taxi drivers from carrying out the duties to disabled passengers who use wheelchairs. A draft list of wheelchair accessible taxis was attached as an appendix to the report.

Mr Reid, a driver of a wheelchair accessible taxi was in attendance and made representations in respect of safety issues. Mr. Reid told the Committee that he would usually comply with the 'wheelchair duties' imposed on drivers by Section 165, but in the particular circumstances of a prospective passenger he was unable to do so safely. The Solicitor (Licensing) drew the Committee's attention to the potential defence created by Section 165(9) available to drivers prosecuted for alleged breach of the statutory offence, and advised Mr. Reid of this.

The Committee considered Mr. Reid's representation but did not determine that it was appropriate to exclude the Taxi in question from the List, given that its inclusion was otherwise appropriate since the vehicle met the "Accessibility requirements" referred to in Section 167(5). The Committee was satisfied that the concern raised by Mr. Reid was sufficiently addressed by the possibility that the statutory defence created by Section 165(9) might be available to drivers who faced being prosecuted for alleged commission of the Section 165(7) offence.

The Committee (a) agreed to adopt a List of Designated Taxis for the purposes of Section 165 to 167 of the Equality Act 2010, and (b) directed that the Solicitor (Licensing) (i) publish the List on the Council website, with a summary of the relevant Law; and (ii) provide Mr. Reid with a summary of the statutory defence created by Section 165(9).

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 and other Licensing Statutes: Licensing Matters) and Agenda Item 5 (Landlord Registration under the Antisocial Behaviour, etc (Scotland) Act 2004, Part 8), 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, Paragraphs, 3, 6, 14 and 15.

5. 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, consents and permits, on hearings, and on other matters, under the Civic Government (Scotland) Act 1982 and other Licensing legislation.

PART A: Hearings

5.1 Public Entertainment Licence PEL/067 (Variation) North Ayrshire Council Education Services

The licence holder has applied for a temporary variation of the licence in respect of the Volunteer Rooms, High Street, Irvine to allow an extension by an extra one hour on Marymass Saturday, 25 August 2018 until 2.00 a.m.

The licence holder, having been duly cited to attend, was present at the hearing.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. Thereafter the licence holder addressed the Committee on the issues raised and responded to questions.

Decision

The Committee agreed to (a) grant the application; and (b) authorise the Solicitor (Licensing) to determine under delegated powers any future variation applications relating to the Volunteer Rooms, High Street, Irvine where these were intended to affect a licensed period starting on Marymass Saturday and where the proposal was to extend this to any time up to 2.00 a.m. the next day. The Committee confirmed to the applicant that notwithstanding this delegation an Application for Variation would still have to be lodged in the usual way each year.

5.2 Public Entertainment Licence PEL/548 (Temp): North Ayrshire Council Education Services

An application for a temporary Public Entertainment Licence has been received for Williamsfield, Irvine for 22 – 25 August 2018 (Wednesday and Thursday 6.00 p.m. – 10.00 p.m., Friday 6.00 p.m. – 10.15 p.m. and Saturday noon – 10.15 p.m.).

The applicant, having been duly cited to attend, was present at the hearing and accompanied.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the application subject to the standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.3 Taxi Driver's Licence: TDL/01539 (Renewal) Gordon McKenzie

The Committee at its meeting held on 6 June 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 licence holder, having been duly cited to attend, was present at the hearing and accompanied.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. Thereafter the licence holder addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed (a) 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 (b) that the licence holder advise the Licensing Office if a scheduled medical examination to take place later that week led to an unfavourable report.

5.4 Public Charitable Collection: Hugh O'Brien (Soldiers Off the Street)

The applicant, having been duly cited to attend was present.

The Solicitor (Licensing) set out the background to the application for a Public Charitable Collection permission on 1, 2, 8 and 9 September 2018 in Largs.

Members asked questions and received clarification from the applicant in respect of the area for the collection being the Gallowgate area of Largs.

Decision

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982 subject to (a) the Council's Standard Conditions; and (b) a special condition under Section 119(5)(b) specifying Gallowgate Street in Largs as the area within which the collection was to take place.

5.5 Public Charitable Collection: Patrick Murphy (Royal British Legion)

The applicant, having been duly cited to attend was present.

The Solicitor (Licensing) set out the background to the application for a Public Charitable Collection permission on 1, 2, 8 and 9 September 2018 in Largs.

Members asked questions and received clarification from the applicant in relation to the area for the collection being the market area of the festival in Largs.

Decision

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982 subject to (a) the Council's Standard Conditions; and (b) a special condition under Section 119(5)(b) specifying the market area of the festival in Largs as the area within which the collection was to take place.

5.6 Public Charitable Collection: Sheila Gillan (Asthma U.K. Scotland)

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

The Solicitor (Licensing) set out the background to the application for a Public Charitable Collection on 1 and 8 September 2018 in Largs.

Members asked questions and received clarification in relation to the area for the collection being the Main Street in Largs.

Decision

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982 subject to (a) the Council's Standard Conditions; and (b) a special condition under Section 119(5)(b) specifying the Main Street in Largs as the area within which the collection was to take place.

5.7 Street Trader Operator STL/O/482 (Temp): Newton Leisure Ltd

The applicant, having been duly cited to attend, was present and represented.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. Thereafter the applicant and her representative addressed the Committee on the issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the application in terms of Schedule 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982, subject to the relevant permissions being agreed with Physical Environment Services in respect of the location of the vehicle in Millport.

Councillor D L Reid left the meeting at this point.

5.8 Street Trader Operator STL/O/455: James Taberner

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.

Decision

The Committee unanimously agreed to continue the application to the next meeting to allow the Solicitor (Licensing) to consult with Physical Environment Services in respect of the site on Millport.

5.9 Late Hours Catering Licence LHCL/129: Parminder Singh

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

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

Decision

The Committee unanimously agreed to continue the application to the next meeting to allow for further information to be provided by Environmental Health.

In terms of Standing Order 5.7, the Chair adjourned the meeting for a short recess at 11.15 a.m. The meeting reconvened at 11.25 a.m. with the same Members and officers present and in attendance.

Part B: Applications for Licences/Renewal of Licences

5.10 MDL/063 (New) (Itinerant): Blair Skipper

The Committee unanimously agreed, on the basis of the information presented, to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.11 SPTL/046 (New): Louise Walker

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.

5.12 SHDL/199 (New): William Neill

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.

5.13 TDL/00314 (Renewal): James McCallum

The Committee unanimously agreed to grant the application in terms of Schedule 5 (1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 for a period of three years subject to (a) the Council's Standard Conditions; and (b) the Special Condition: within 14 days after the Licence-Holder's 70th birthday, and within 14 days of each later birthday, then he/she must give the Licensing Office evidence that he/she continues to have a driving entitlement under an 'ordinary' Driving Licence granted by DVLA.

5.14 TDL/00365 (Renewal): Robert Thallon

The Committee unanimously agreed to grant the application in terms of Schedule 5 (1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 for a period of three years subject to (a) the Council's Standard Conditions; and (b) the Special Condition: within 14 days after the Licence-Holder's 70th birthday, and within 14 days of each later birthday, then he/she must give the Licensing Office evidence that he/she continues to have a driving entitlement under an 'ordinary' Driving Licence granted by DVLA.

5.15 TDL/02105 (New) Brian Spiers

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.

5.16 TDL/02110 (New): Derek Murdoch

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.

5.17 TDL/02114 (New): Andrew Dysart

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;

5.18 TDL/02125 (New): John Murphy

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.

5.19 TL/125 (Renewal): Claire and Anton Docherty

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.

5.20 TL/159 (Renewal): John Bruce Snr and John Bruce Jnr

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;

5.21 TL/407 (Renewal): Angela Murray and Julie Whiteman and Catherine Wilkie

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;

5.22 TL/422 (New): Russell Drummond

The Committee, being satisfied that the particular circumstances of the application merited an exception to be made to the Taxi Numbers Limitation Policy adopted under Section 10(3) of the Civic Government (Scotland) Act 1982, (a) determined in principle that the application should be granted; and (b) unanimously agreed to delegate authority to the Solicitor (Licensing) to grant the application subject to the Council's Standard Conditions in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982, provided that the applicant proposed a vehicle which complied with the requirements of Section 10(2) as to suitability, safety and insurance.

5.23 TL/423 (New): Alexander Davidson

The Committee, being satisfied that the particular circumstances of the application merited an exception to be made to the Taxi Numbers Limitation Policy adopted under Section 10(3) of the Civic Government (Scotland) Act 1982, (a) determined in principle that the application should be granted; and (b) unanimously agreed to delegate authority to the Solicitor (Licensing) to grant the application subject to the Council's Standard Conditions in terms of Paragraph 5(1)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982, provided that the applicant proposed a vehicle which complied with the requirements of Section 10(2) as to suitability, safety and insurance.

Part C: Preliminary consideration of matters arising possible revocation or suspension complaint (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11)

5.24 J.C.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code condition of the Taxi Driver's Licence.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.25 A.J.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code and Smoking conditions of the Taxi Driver's Licence.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.26 C.B.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code condition of the Taxi Driver's Licence and failure to allow an authorized inspection of the vehicle.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.27 S.R.

The Committee heard from the Enforcement Officer regarding a breach of the Dress Code condition of the Taxi Driver's Licence.

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.28 S.R.

The Committee heard from the Enforcement Officer regarding a breach of vehicle specification (full wrap on all windows except the front driver and passenger window).

The Committee unanimously agreed to proceed to a hearing in terms of Paragraph 11(7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

Councillor D L Reid rejoined the meeting.

5.29 G.L.

The Solicitor (Licensing) advised the Committee of a complaint made relating to taxi driver G.L. and that the circumstances have been reported to Police Scotland.

The Committee unanimously agreed to continue to a future meeting to allow Police Scotland to conclude their enquiries.

6. Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8

Submitted report by the Chief Executive on Landlord Registration matters.

6.1 Mr and Mrs S

The Registered Landlord, having been cited to attend, was present and accompanied by his property manager.

The Solicitor (Licensing) advised on information received in respect of the registered landlord which raised the question of whether or not his registration should be removed.

The Team Manager (Private Sector Housing) and Policy Officer (Private Sector) then addressed the Committee on the terms of a report on the condition of a tenanted property owned by the landlord. Thereafter the landlord 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 Barr, seconded by Councillor Reid moved to continue consideration of this matter to the meeting on 24 October 2018 to allow the landlord a further opportunity to provide to the Private Sector Housing Team evidence confirming all necessary work had been completed to the satisfaction of all legal standards. There being no amendment, the motion was declared carried.

6.2 A. M.

The applicant, having been cited to attend, was present.

The applicant had previously been registered but his registration was removed in 2018 due to failures in the legal duties applying to Landlords, and at the time the Committee had issued Notices under Section 94 (commonly known as 'Rent Penalty Notices') on several of the Landlord's houses. He was now seeking a grant of Landlord Registration, his application related to 7 houses, and the removal of the Rent Penalty Notices over those houses.

The Solicitor (Licensing) advised on information received in respect of the applicant, which raised the question of whether or not the applicant was a 'fit and proper' person to be entered on the Register.

The Team Manager (Private Sector Housing) and Policy Officers (Private Sector) then addressed the Committee on the terms of a report on the condition of a number of tenanted properties owned by the applicant. 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 Barr seconded by Councillor Gallagher, moved the Committee (a) to grant the Application for Landlord Registration; (b) to revoke the Rent Penalty Notices for six of the seven houses; and (c) to continue consideration of the Application to recall the seventh Rent Penalty Notice to allow the Anti-Social Behaviour Team to further investigate the allegations relating to the tenant of this property and report their findings to a future meeting of the Committee. There being no amendment, the motion was declared carried.

The meeting ended at 1.15 p.m.