

Licensing Committee  
7 June 2017

**IRVINE , 7 June 2017** - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m

**Present**

Ronnie McNicol, Robert Barr, Todd Ferguson, John Easdale, Scott Gallacher, Davina McTiernan, Jimmy Miller and Donald L. Reid.

**Also Present**

Jean McClung.

**In Attendance**

W. O'Brien, Solicitor (Licensing), K. Sharkey, Solicitor (Contracts and Licensing), C. Pollock, Licensing Administration Officer and A. Toal, Administrative Assistant; and H. Clancy and E. Gray, Committee Services Support Officers and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

**Also In Attendance**

Inspector J. McMillan and Sergeant G. Griffiths (Police Scotland).

**Chair**

Councillor McNicol in the Chair.

**Apologies for Absence**

John Glover.

**1. 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.

**2. 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 the following items of business, 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 1983. The 'Exempt Information' concerned is that described in Section 7A, Paragraph 6 ("Information relating to the financial business affairs of any particular person (other than the authority)") and Paragraph 14 ("Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime").

**3. Order of Business**

The Chair agreed, in terms of Standing Order 9.3, to vary the order of business to allow consideration of an Urgent Matter immediately following Agenda Item 2 (Civic Government (Scotland) Act: Licensing Matters).

**4. Civic Government (Scotland) Act 1982: 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**

### **4.1 Taxi Driver's Licence: TDL/01780 - John Swindle**

The licence holder, having been duly cited to attend, was present and accompanied by his partner. Representatives of Police Scotland were also in attendance.

The representatives of Police Scotland addressed the Committee on the terms of a letter which advised of potential grounds for suspension of the licence. Thereafter, the licence holder addressed the Committee on the issues raised and responded to questions.

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

## **Decision**

Councillor Easdale, seconded by Councillor Miller, moved that the Committee agree not to take any action in respect of an 'Ordinary Suspension' of the licence under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

As an amendment, Councillor Barr, seconded by Councillor Reid, moved to continue consideration of this matter pending the decision of the Procurator Fiscal as to whether or not proceedings should be taken against the licence holder and, if there are such proceedings, until those are concluded.

On a division, there voted for the amendment 5 and for the motion 3, and the amendment was declared carried.

Accordingly, the Committee agreed to continue consideration of this matter pending the outcome of a report to the Procurator Fiscal.

### **4.2 Second Hand Motor Vehicle Dealer : SHDL/190 (New) - Kristofer William Gibbs**

The applicant, having been duly cited to attend, was not present but was represented by Mrs I. Gibbs, who produced a signed letter of authority to represent the applicant. Two objectors to the application were also in attendance.

The applicant's representative addressed the Committee on the terms of two letters of objection received in connection with the application. One of the objectors present then addressed the Committee on the objections and the applicant's representative responded to the issues raised. Thereafter, both parties responded to questions.

The applicant's representative and the objectors then withdrew, together with representatives of Police Scotland, to allow the Committee to deliberate, returning to hear the Committee's decision.

## **Decision**

Councillor Barr, seconded by Councillor Miller, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the grounds that the premises were not suitable or convenient for the conduct of the activity having regard to the location of the premises, the nature and extent of the proposed activity, and the possibility of undue public nuisance. There being no amendment, the motion was declared carried.

### **4.3 Taxi Driver's Licence : TDL/02016 (New) - Joanne Carol Harper**

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

Inspector McMillan, the representative of the Chief Constable, addressed the Committee on a letter setting out an objection from the Chief Constable to the application. The letter indicated that, in addition to the material reported in that letter, the Chief Constable had other information relating to the applicant's "Spent or Protected Convictions".

The representative of the Chief Constable, under reference to Section 7(3) of the Rehabilitation of Offenders Act 1974, submitted that the Committee's proceedings were "Proceedings Before A Judicial Authority" and that the Committee was entitled to be satisfied, in the light of any considerations which appeared to it to be relevant (including any evidence which had been or may thereafter be put before it), that justice could not be done in the case except by admitting or requiring evidence relating to the applicant's "Spent or Protected Convictions" or to circumstances ancillary thereto.

The representative of the Chief Constable gave the Committee a summary of the age and general nature of those convictions, and submitted that those convictions would, if admitted, have a bearing on the Committee's decision. He invited the Committee to admit and require such evidence, and to take that evidence into account in determining the case before it.

The Chair invited the applicant to comment on the Police Scotland submissions. The Solicitor (Licensing) summarised Section 7(3) for the applicant and explained that she had copies of two letters, not one, from Police Scotland; that the first letter, which the representative of the Chief Constable had read out, had already been seen by the Committee Members, but the second letter had not been seen by them; and that the preliminary question for the Committee was whether or not the "justice cannot be done" test was satisfied.

Apart from pointing out that the second letter referred to the wrong surname, the applicant had no objection to the Committee looking at the second police letter. The applicant confirmed that, notwithstanding the wrong surname, the second Police Scotland letter did relate to her and was accurate.

The Committee unanimously agreed that justice could not be done in the case

except by having regard to the applicant's "Spent or Protected Convictions".

Thereafter, the Solicitor (Licensing) distributed to the Committee copies of the second police letter, and the representative of the Chief Constable read it out.

The applicant then addressed the Committee on the issues raised and responded to questions.

The applicant and the representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

## **Decision**

Councillor Miller, seconded by Councillor Reid, moved that the application be refused in terms of Paragraph 5(3)(a)(ii) of Schedule 1 to 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. There being no amendment, the motion was declared carried.

Councillor Easdale left the meeting at this point.

### **4.4 Taxi Driver's Licence: TDL/O1469 - Charlene McIver**

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 that the application be refused (i) in terms of Paragraph 5(3)(a)(ii) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person, having failed to respond to reasonable inquiries from the Licensing Authority intended to establish whether or not the application was capable of being granted, given that any applicant for a Taxi Driver's Licence or Private Hire Car Driver's Licence must produce evidence to the Licensing Authority that he/she is not "disqualified by reason of the person's immigration status from driving a taxi or private hire car" (Civic Government (Scotland) Act 1982, Section 13(3A) (as added by the Immigration Act 2016, Section 37, and the Immigration Act 2016 (Commencement No. 2 and Transitional Provisions) Regulations 2016, No. 1037)); (ii) in terms of Paragraph 5(3)(d) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the ground that there was another good reason for refusing the application, in that (a) the applicant had failed to respond to reasonable inquiries from the Licensing Authority intended to establish whether or not she held a valid Driving Licence and (b) the application had been made on 31 January 2017, meaning that the six-month period which the Civic Government (Scotland) Act 1982, Section 3 allows for the determination of a licence application would have expired before the next scheduled meeting of the Committee.

### **4.5 Taxi Operator's Licence: TL/062 (Substitute Vehicle) - Samuel Burns**

## **Stephens**

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder, advising that the substitute vehicle proposed did not meet the Specification set by Committee for a wheelchair accessible vehicle, in that it was not fitted with the listing mechanism referred to in Condition 2 of the Specification. Thereafter, the licence holder's representative addressed the Committee on the issues raised and responded to questions .

In terms of Standing Order 5.7, the Chair then adjourned the meeting to allow Members to inspect the vehicle. The meeting reconvened with the same Members, officers and licence holder's representative present and in attendance. Representatives of Police Scotland left the meeting at this point.

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

## **Decision**

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Vehicle Approval Specification; (b) to grant the application in terms of Section 10(5) of the Civic Government (Scotland) Act 1982 for a substitute vehicle under Taxi Licence number 062; and (c) that the Vehicle Approval Specification be the subject of future consideration by the Committee.

## **Part B: Applications for Grant/Renewal of Licences**

### **4.6 Taxi Driver Licence: TDL/01611 - Charles Caven**

The Committee unanimously agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of three years.

### **4.7 Taxi Driver's Licence: TDL/02021 - Colin Joseph Campbell Thomson**

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.

### **4.8 Taxi Driver's Licence & Private Hire Car Licence : TDL/02025 & PHCL/0349 - Russell Drummond**

The Committee unanimously agreed to grant both applications in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

### **4.9 Second Hand Motor Vehicle Dealer : SHDL/192 - Dennis Lawrence**

## **Greenberg**

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. Urgent Item**

The Chair agreed that the following item of business be considered as a matter of urgency to allow the matter to be actioned without delay.

#### **5.1 Taxi Driver's Licence TDL/64 and Taxi Licence TL/14 - Samuel Dean**

The Committee was advised of a complaint from a member of the public.

The Solicitor (Licensing) set out the background to the complaint and the potential grounds for suspension of the licence.

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 11 (7) of Schedule 1 of the Civic Government (Scotland) Act 1982.

### **6. Booking Office Licences**

Submit report by Chief Executive on the current licensing system and which proposed a new condition and Variation procedure.

The Committee unanimously agreed that a report on the proposed new condition and related Variation procedure in respect of Booking Office Licences be submitted to its next meeting, such report to include any relevant information on related Planning Service considerations.

The Meeting ended at 12.35 p.m.