



Cunninghame House,
Irvine.

15 August 2013

Licensing Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in Committee Room 2, Cunninghame House, Irvine on **WEDNESDAY 21 AUGUST 2013** at **2.00 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

1. Declarations of Interest

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 22 May 2013 and the Special meetings held on 18 June, 3 July and 26 July 2013 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copies enclosed).

3. Civic Government (Scotland) Act 1982: Licensing Matters

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

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

Submit reports by the Chief Executive on matters relating to Landlord Registration under the Antisocial Behaviour etc (Scotland) Act 2004, Part 8:

4.1 Applications for Landlord Registration

4.2 2a Deerpark Avenue, Stevenston

(copies enclosed).

5. Civic Government (Scotland) Act 1982: Taxi Fare Review

Submit report by the Chief Executive on the consultation procedure for the Taxi Fare Review for 2013 (copy enclosed).

6. Civic Government (Scotland) Act 1982 : Taxi Numbers Limitation

Submit report by the Chief Executive on the factual and legal background to a request made by people on the waiting list for Taxi Licences (copy enclosed).

7. Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee

Sederunt: Ronnie McNicol (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
Ian Clarkson
Ruth Maguire
Alex McLean
Alan Munro
Donald Reid
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
22 May 2013

IRVINE, 22 May 2013 - At a Meeting of the Licensing Committee of North Ayrshire Council at 2.30 p.m.

Present

Ronnie McNicol, Tom Marshall, Robert Barr, John Bruce, Ian Clarkson, Alex McLean, Alan Munro, Donald Reid and Robert Steel.

In Attendance

C. Andrew, Senior Manager Legal Services, W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant, D. Wallace, Enforcement Officer and A. Little, Committee Services Officer (Chief Executive's Service)

Also In Attendance

Inspector Skimming and PC McLean (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

Councillor Maguire.

1. Declarations of Interest

In terms of Standing Order 16, Councillor McLean, as an acquaintance of the applicant John Simpson, declared an interest in Agenda Item 4 (Application Ref:TDL/01070) and took no part in the discussion thereon.

2. Minutes

The accuracy of the Minutes of the Meeting of the Licensing Committee held on 20 March 2013 was agreed and the Minutes were signed in accordance with paragraph 7(1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Exclusion of the Public

The Committee resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for Part A - Hearings on the grounds indicated in terms of Paragraph 15 of Part 1 of Schedule 7A of the Act.

4. Civic Government (Scotland) Act 1982: Licensing Matters

Submitted report by the Chief Executive on (a) Hearings to be determined; and (b) 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 PHCL/322 (New 1 Year) - Samuel Balmer

Mr Balmer has applied for a Private Hire Car Operator's Licence for 1 year. The Chief Superintendent of Police Scotland has intimated an objection to the application.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 4 April 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

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

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

4.2 TDL/00779 (New 1 year) - John Lusk

Mr Lusk has applied for Taxi Driver Licence for 1 year and has provided information in relation to a medical condition.

The applicant, having been duly cited to attend, was in attendance.

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.

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

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

4.3 TDL/00951 (New 1 year) - Scott Morley

The Committee, at its meeting on 20 March 2013, considered an application by Scott Morley for a Taxi Driver Licence and 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 in attendance. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of letters dated 8 and 13 February 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

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

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

4.4 TDL/01706 (New 1 year) - Neil Black

The Committee, at its meeting on 20 March 2013, considered an application by Neil Black for a Taxi Driver Licence and 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. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of letters dated 8 February and 4 March 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the application.

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

The Committee unanimously agreed to refuse the application in terms of Paragraph 5 (1) (c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds set out in Paragraph 5(3)(a)(ii) of the Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

4.5 TDL/01829 (New 1 year) - Kevin Steven

Mr Steven has applied for a Taxi Driver Licence for 1 year. The Chief Superintendent of Police Scotland has intimated an objection to the application.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of letters dated 4 March and 5 April 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

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

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

4.6 TDL/01840 (New 1 year) - Derek Griffiths

Mr Griffiths has applied for a Taxi Driver Licence for 1 year and has provided information in relation to prescribed medication. A representation has been received from the Chief Superintendent of Police Scotland. Clinical information has been provided by the NHS University Hospital, Kilmarnock and the applicant's General Practitioner.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Police Scotland then addressed the Committee on the terms of letters dated 17 April 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

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

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

Part B - Applications for Licences and the Renewal of Licences

4.7 LHCL/108 (New) Malthurst Petroleum Limited

Malthurst Petroleum Limited have applied for a Late Hours Catering Licence for Mayfield Service Station, Saltcoats for the hours 11.00 p.m. to 5.00 a.m. No objections or representations have been received.

The Committee was advised that:

- (i) that Section 42 of the Civic Government (Scotland) Act 1982 (Licensing of Late Hours Catering) had been amended so that the original requirement to have a Licence for the use of premises in the period 11.00 p.m. and 5.00 a.m. for the sale to or consumption by the public of “meals or refreshment” had been extended to Premises where “food” was sold or consumed (using the definition of “food” in the Food Safety Act 1990); and
- (ii) that due to that amendment, some premises which had previously not required a Licence now did so.

The Committee considered whether and to what extent its current policy, of limiting Licences under Section 42 to the period 11.00 p.m. to 1.00 a.m., remained appropriate, and agreed (a) in relation to (i) premises which sold petrol, diesel or other vehicle fuel, there should be no time limit (and accordingly such Premises can seek a Licence under Section 42 for the period 11.00 p.m. to 5.00 a.m.); and (ii) other Premises the period should be 11.00 p.m. to 1.00 a.m.; and (b) to grant the Late Hours Catering Licence by Malthurst Properties Ltd for Mayfield Service Station, High Road, Saltcoats for Monday - Sunday, for the period 11.00 p.m. to 5.00 a.m. on all days, subject to the usual conditions.

4.8 Public Charitable Collection - Kilwinning Friends of the Ayrshire Hospice

Kilwinning Friends of the Ayrshire Hospice have applied for a Public Charitable Collection Licence to undertake house to house collections in Kilwinning from 26 - 30 August 2013 and that the terminal hour be amended to 7.30 p.m.

The Committee unanimously agreed to grant permission under Section 119(5) of the Civic Government (Scotland) Act 1982 on the date(s) and at the place(s) and times requested, subject to the Council's usual conditions.

4.9 STL/E/248 (New) Nico Serapiglia

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

4.10 TDL/01070 (New 1 year) John Simpson

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

4.11 TDL/01613 (Renewal 3 years) Peter Strachan

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.

4.12 TDL/01624 (Renewal 1 year) James Rafferty

After discussion, Councillor Reid, seconded by Councillor Clarkson moved that the application proceed to a hearing.

As an amendment, Councillor Barr, seconded by Councillor Marshall, moved that the application be granted and the Solicitor (Licensing) write to the licenceholder advising of the requirement to disclose convictions.

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

The Committee agreed (a) to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) that the Solicitor (Licensing) write to the licenceholder in relation to the licence conditions and the requirement to disclose convictions during the terms of the licence.

4.13 TDL/01834 (New 1 year) Graeme Reid

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.

4.14 TDL/01836 (New 1 year) Gavin Cousar

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.

4.15 TDL/01837 (New 1 year) Mohammed Asli

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.

4.16 TL/085 (Renewal 3 years) Albert Lamberton

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.

5. Civic Government (Scotland) Act 1982 - Advertising on Taxis and Private Hire Cars

Submitted report by the Chief Executive on a possible breach of the Council's policy on advertising on taxis and private hire cars.

On 12 August 2002, the Licensing Sub Committee agreed a system whereby operators of taxis (but not private hire cars) proposing to place adverts on their cars would require the prior approval of the Council, by applying for approval and describing their proposals. The policy included a number of conditions, including advertising on taxis was limited to the door panels of the vehicle.

On 23 March 2010, the Committee agreed that prior approval was no longer required, and that responsibility for observing the conditions for approval rested with individual operators. The restriction were otherwise unchanged, and in particular continued to limit the positioning of adverts to door panel.

Two taxi operators have placed adverts covering large parts of their vehicles, including the windows at both side and rear. The adverts use a one-way material whereby people inside the vehicle can see out, but people outside cannot see in. The Committee was provided with photographs of the two taxi vehicles.

The Committee agreed that (a) the Enforcement Officer (i) make the necessary arrangements for the Chair, Vice-Chair, Councillors Clarkson and Steel to view the vehicles; and (ii) report the findings to the next meeting of the Committee;

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

Submitted report by the Chief Executive on the circumstances relating to a Registered Landlord.

On 13 August 2012, Mr P. Wade, 1/1, 45 Main Road, Glengarnock, Beith was registered as a Landlord in relation to two rental properties. The properties in Dalry and Glengarnock are occupied by tenants and Housing Benefit is paid on both properties to Mr Wade's father.

On 8 April 2013, Mr Wade was convicted at the High Court in Glasgow of various offences relating to kidnap, assault and murder. He was sentenced to life imprisonment with a recommended minimum sentence of 30 years. Police Scotland confirmed that Mr Wade had convictions from 1971 and 2009 in relation to the possession of drugs. Mr Wade's application for registration declared he had no unspent convictions.

The Committee unanimously agreed that (a) Mr Wade is no longer a fit and proper person to be registered as a Landlord and that the registration be removed; and (b) a Rent Penalty Notice should be made on both properties.

The meeting ended at 4.25 p.m.

Licensing Committee
18 June 2013

IRVINE, 18 June 2013 - At a Special Meeting of the Licensing Committee of North Ayrshire Council at 2.00 p.m.

Present

Ronnie McNicol, Tom Marshall, Robert Barr, Ian Clarkson, Alex McLean, Alan Munro and Robert Steel.

In Attendance

W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant, and D. McCaw, Committee Services Officer (Chief Executive's Service).

Also In Attendance

Inspector Jones and PC McLean (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

John Bruce, Ruth Maguire and Donald Reid.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Councillors Code of Conduct.

2. Exclusion of the Public

The Committee resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for items 4.1, 4.2 and 4.3 on the grounds indicated in terms of Paragraphs 13 and 14 of Part 1 of Schedule 7A of the Act.

3. Civic Government (Scotland) Act 1982: Licensing Matters

Submitted report by the Chief Executive on (a) Hearings to be determined; and (b) 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 STL/O/325 Ian Ewing

The Chief Superintendent of Police Scotland has requested an emergency suspension under Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982 pertaining to licence STL/O/325.

The representatives from Police Scotland addressed the Committee setting out the observations of the Chief Superintendent of Police Scotland in relation to the licenceholder. The Solicitor (Licensing) provided additional background information.

The Committee discussed the information presented and considered also the implications for the holder of licence STL/O/261 in connection with the matter.

The Committee unanimously agreed (a) to suspend licence STL/O/325 in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982 in respect of licence STL/O/325; and (c) to proceed to a hearing in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982 in respect of licence STL/O/261.

4.2 TDL/01432 Ian Crews

The Solicitor (Licensing) advised on the background with regard to this matter.

The Committee unanimously agreed (a) to suspend the licence in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; and (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

4.3 TDL/01767 Leonard Guiney

The Chief Superintendent of Police Scotland has requested an emergency suspension under Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982 pertaining to licence TDL/01767.

The representatives from Police Scotland addressed the Committee setting out the observations of the Chief Superintendent of Police Scotland in relation to the licenceholder. The Solicitor (Licensing) provided additional background information.

The Committee unanimously agreed (a) to suspend the licence in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; and (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982.

Part B - Applications for Licences and the Renewal of Licences

5.1 TDL/01613 (Renewal 3 years) Peter Strachan

The Committee unanimously agreed (a) to suspend Standing Orders and rescind the decision of the Committee of 22 May 2013 to continue the case for a Hearing; and (b) to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.2 PEL/168 (Temporary) David Boyle

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

The meeting ended at 2.35 p.m.

Licensing Committee
3 July 2013

IRVINE, 3 July 2013 - At a Special Meeting of the Licensing Committee of North Ayrshire Council at 10.30 a.m

Present

Ronnie McNicol, Tom Marshall, Robert Barr, Ian Clarkson and Alex McLean

In Attendance

W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant, and A. Little, Committee Services Officer (Chief Executive's Service).

Also In Attendance

Inspector Jones and PC McLean (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

John Bruce, Ruth Maguire, Alan Munro, Donald Reid and Robert Steel.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Councillors Code of Conduct.

2. Exclusion of the Public

The Committee resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for item 3.1 on the grounds indicated in terms of Paragraph 14 of Part 1 of Schedule 7A of the Act.

3. Civic Government (Scotland) Act 1982: Licensing Matters

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

Part A - Hearings

3.1 STL/0306 John Cowan

The Chief Superintendent of Police Scotland has requested an emergency suspension under Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982 pertaining to licence STL/O306.

The representatives from Police Scotland addressed the Committee setting out the observations of the Chief Superintendent of Police Scotland in relation to the licenceholder. The Solicitor (Licensing) provided additional background information.

The Committee discussed the information presented and considered also the implications for the holder of licence STL/0306 in connection with the matter.

The Committee unanimously agreed (a) to suspend licence STL/0306 in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982.

Part B - Applications for Licences and the Renewal of Licences

3.2 TD/01790 David Denholm

The Committee was advised that the above application for the renewal of Taxi Driver Licence had been received one day after the licence had expired.

The Committee unanimously agreed that the application be (a) accepted as a renewal of the Taxi Driver Licence; and (b) considered by a future meeting of the Committee.

3.3 Public Charitable Collection

The Committee was advised of a late application for a Public Charitable Collection Licence to undertake a collection in Largs on 5 and 6 July 2013.

The Solicitor advised that a Public Charitable Collection has already been approved for Largs on 6 July 2013 and the Council does not generally approve more than one Public Charitable Collection for the same town on the same day.

The Committee unanimously agreed to refuse the application.

The meeting ended at 10.50 a.m.

Licensing Committee
26 July 2013

IRVINE, 26 July 2013 - At a Special Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Tom Marshall, Robert Barr, Ian Clarkson, Donald Reid and Robert Steel.

In Attendance

N. Shearer, (Team Manager) Contracts and Licensing, W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant, and A. Little, Committee Services Officer (Chief Executive's Service).

Also In Attendance

Inspector Kelly and PC McLean (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

John Bruce, Ruth Maguire, Alex McLean and Alan Munro.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Councillors Code of Conduct.

2. Civic Government (Scotland) Act 1982: Licensing Matters

Submitted report by the Chief Executive on Hearings to be determined all in terms of the Civic Government (Scotland) Act 1982.

Part A: Hearings

2.1 STL/O/325 Ian Ewing

The Committee, at its meeting on 18 June 2013, considered a request from the Chief Superintendent of Police Scotland for an emergency suspension under Paragraph 12 of Schedule 1 of the Civic Government (Scotland) Act 1982. The Committee unanimously agreed (a) to suspend licence STL/O/325 in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; and (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982 in respect of licence STL/O/325.

The licenceholder, having been duly cited to attend, was in attendance. 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 licenceholder. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 4 April 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the licenceholder. Thereafter the licenceholder addressed the Committee on the issues raised and responded to questions.

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

After discussion, Councillor Barr, seconded by Councillor McNicol moved that the licence be suspended with immediate effect and for the remaining duration of the licence.

As an amendment, Councillor Marshall, seconded by Councillor Reid, moved that the licence be suspended with immediate effect for a period of 6 months.

On a division, there voted for the amendment 3 and for the motion 3. On the casting vote of the Chair, the motion was declared carried.

Accordingly, the Committee agreed that (a) the licence be suspended in terms of Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds stated in Paragraph 11(2)(a) that the licenceholder is no longer a fit and proper person to be the holder of a licence and Paragraph 11(2)(c) that the licensed activity has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; (b) in terms of Paragraph 11(11) of the said Schedule, that the period of suspension be the unexpired portion of the duration of the licence; and (c) the suspension should take effect immediately in terms of Paragraph 11(10) of the said Schedule.

2.2 STL/O/261 David Duncan McIntyre

The Committee, at its meeting on 18 June 2013 received certain information and considered that it was appropriate to proceed to a Suspension hearing under Paragraphs 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Committee unanimously agreed in terms of Standing Order 19 to suspend Standing Order 21 and to rescind the decision to proceed to a hearing and to take no further action at this time.

2.3 TDL/01767 Leonard Thomas Guiney

The Committee, at its meeting on 18 June 2013, considered a request from the Chief Superintendent of Police Scotland for an emergency suspension under Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982 pertaining to licence TDL/01767. The Committee unanimously agreed (a) to suspend the licence in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; and (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licenceholder, having been duly cited to attend, was in attendance and was accompanied. Representatives from Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licenceholder. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 12 June 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the licenceholder. Thereafter the licenceholder addressed the Committee on the issues raised and responded to questions.

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

The Committee unanimously agreed that (a) the licence be suspended in terms of Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds stated in Paragraph 11(2)(a) that the licenceholder is no longer a fit and proper person to be the holder of a licence and Paragraph 11(2)(c) that the licensed activity has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; (b) in terms of Paragraph 11(11) of the said Schedule, that the period of suspension be the unexpired portion of the duration of the licence; and (c) the suspension should take effect immediately in terms of Paragraph 11(10) of the said Schedule.

2.4 TDL/01432 Ian David Crews

The Committee, at its meeting on 18 June 2013, considered information in respect of Mr Crews' health. The Committee unanimously agreed (a) to suspend the licence in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; and (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licenceholder, having been duly cited to attend, was in attendance.

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

The Committee unanimously agreed, on the basis of the information before it, to make no order under Paragraph 11, and accordingly the suspension imposed under Paragraph 12 ceased in terms of Paragraph 11 (5)(b).

2.5 STL/O/306 John Cowan

The Committee, at its meeting on 3 July 2013, considered a request from the Chief Superintendent of Police Scotland for an emergency suspension under Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982 pertaining to licence STL/O306. The Committee unanimously agreed (a) to suspend licence STL/O306 in terms of Paragraph 12 of Schedule 1 to the Civic Government (Scotland) Act 1982; (b) on the basis of the information presented, to proceed to a hearing, within 6 weeks, in terms of Paragraph 11(2)(a) and (c) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licenceholder. The representatives from Police Scotland then addressed the Committee on the terms of a letter dated 1 July 2013 setting out the observations of the Chief Superintendent of Police Scotland in relation to the licenceholder. Thereafter the licenceholder addressed the Committee on the issues raised and responded to questions.

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

The Committee unanimously agreed that (a) the licence be suspended in terms of Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982, in terms of Paragraph 11(2)(a), that the licence holder is no longer a fit and proper person to be the holder of a licence and Paragraph 11 (2)(c), that the licensed activity has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; (b) that the period of suspension be one hour, the Committee being aware that it would consider an application for Renewal of the Licence immediately after considering the question of suspension; and (c) that the suspension should take effect immediately in terms of Paragraph 11(10) of the said Schedule.

2.6 STL/O/306 (Renewal) John Cowan

Immediately following the announcement of the suspension decision, the Chair advised the licenceholder that the question of his renewal application would be considered and enquired if he had any comment in addition to those which he had made earlier in relation to the suspension questions. The licenceholder confirmed that he had nothing else to say. The licenceholder and representatives of Police Scotland then withdrew to allow the Committee to deliberate returning to hear the Committee's 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.

2.7 TL/019 (renewal) Fiona Wagstaff

The licenceholder was neither present nor represented. The Committee was satisfied that the licenceholder had been duly cited and proceeded to determine the case in her absence.

The Committee was advised that the licence has been inoperative since 1 March 2013 since no vehicle which satisfied Section 10(2) of the Act (as to safety) had been licensed since then, and that the substitute vehicle proposed by the licenceholder failed its mechanical inspection on 24 July 2013.

The Committee unanimously agreed to refuse the application in terms of Paragraph 5 (3)(a) and 5 (3)(d).

2.8 TL/194 (renewal) Fiona Wagstaff

The licenceholder was neither present nor represented. The Committee was satisfied that the licenceholder had been duly cited and proceeded to determine the case in her absence.

The Committee was advised that the licence has been inoperative since 1 March 2013 since no vehicle which satisfied Section 10(2) of the Act (as to safety) had been licensed since then, and that the substitute vehicle proposed by the licenceholder was first registered on 16 June 2005 and passed its mechanical test on 20 June 2013. It was therefore outside the policy which required hire cars should be no older than 8 years old, from the date of first registration, when first licensed.

The Committee unanimously agreed to refuse the application in terms of Paragraph 5 (3)(a) and 5 (3)(d).

2.9 TL/194 (substitute vehicle) Fiona Wagstaff

The licenceholder was neither present nor represented. The Committee was satisfied that the licenceholder had been duly cited and proceeded to determine the case in her absence.

The Committee was advised that the licence has been inoperative since 1 March 2013 since no vehicle which satisfied Section 10(2) of the Act (as to safety) had been licensed since then, and that the substitute vehicle proposed by the licenceholder was first registered on 16 June 2005 and passed its mechanical test on 20 June 2013. It was therefore outside the policy which required hire cars should be no older than 8 years old, from the date of first registration, when first licensed.

The Committee unanimously agreed to refuse the application in terms of Paragraph 10, on the basis that there was no vehicle proposed which would be consistent with Section 10(2), as applied by Section 10(5).

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

Submitted report by the Chief Executive on circumstances relating to a registered Landlord.

The applicant was neither present nor represented. The Committee was satisfied that the applicant had been duly cited and proceeded to determine the case in his absence.

The Committee was advised that the application for Landlord Registration had been withdrawn.

The Committee unanimously agreed to continue consideration of the question of whether or not to issue a Rent Penalty Notice under Section 94 of the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.

4. Urgent Items

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

4.1 PPC Kirk Dog Training Club

The Committee was advised of an application from Kirk Dog Training Club for a Public Charitable Collection in Eglinton Country Park, Irvine on Sunday 11 August 2013.

The Committee agreed, Councillor Bar dissenting, to grant the application.

The meeting ended at 12.35 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

21 August 2013

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982: Licensing Matters**

Purpose: To advise the Committee of (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits; and (c) issues arising in respect of existing licences, all in terms of the Civic Government (Scotland) Act 1982.

Recommendation: That the Committee considers and determines the matters before it.

1. Introduction

- 1.1 In terms of the Civic Government (Scotland) Act 1982, the Council, as Licensing Authority, requires to determine issues in respect of the grant, renewal or suspension of licences.

2. Current Position

- 2.1 The attached appendices detail the matters before the Committee for determination as follows:-

Appendix A:

Issues in respect of existing licences.

Appendix B:

Applications for the grant or renewal of licences and permits.

Appendix C:

Issues in respect of existing licences.

3. Proposals

- 3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

4. Implications

Financial Implications

- 4.1 There are possible financial implications in relation to the refusal of any application.

Human Resource Implications

- 4.2 None

Legal Implications

- 4.3 There are possible legal implications in relation to the refusal of any application.

Equality Implications

- 4.4 None

Environmental Implications

- 4.5 None

Implications for Key Priorities

- 4.6 None

5. Consultations

- 5.1 Consultations have been undertaken with Police Scotland, Strathclyde Fire and Rescue, and the appropriate Council Services.

6. Conclusion

- 6.1 The Committee is requested to consider and dispose of the matters before it.

A handwritten signature in black ink, reading "Elma Murray". The signature is written in a cursive style with a large initial 'E'.

ELMA MURRAY
Chief Executive

Reference : PAT

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324305

Background Papers

None

APPENDIX A

Hearings

Hearing 1	Public Entertainment Licence PEL/067 (variation)	
Licenceholder and Address	North Ayrshire Council Educational Services Cunninghame House Irvine KA12 8EE	
Premises	Volunteer Rooms High Street Irvine	
Hearing 2	Street Trader Employee Licence	STL/E/248 (New)
Applicant and Address	Nico Bradley Serapiglia 75 Dundonald Crescent Irvine KA11 5AX	
Hearing 3	Taxi Driver's Licence	TDL/01070 (New)
Applicant and Address	John Douglas Simpson 15 Inverclyde View Largs KA30 9DP	
Hearing 4	Taxi Driver's Licence	TDL/01834 (New)
Applicant and Address	Graeme Reid 137 Leven Place Castlepark Irvine KA12 9PB	

APPENDIX A

Hearings

Hearing 5	Taxi Driver's Licence	TDL/01836 (New)
Applicant and Address	Gavin Cousar 9 Campbell Place Dreghorn KA11 4HD	
Hearing 6	Taxi Driver's Licence	TDL/01837 (New)
Applicant and Address	Mohamed Asli 20 Sophia Crescent Irvine KA12 9BL	
Hearing 7	Taxi Operator's Licence	TL/085 (Renewal)
Licenceholder and Address	Albert Lamberton 32 Elm Park Ardrossan KA22 7BZ	

APPENDIX B
Applications of Licences/Renewal of Licences

Type of Licence/Reference Number	Details of Applicant	Comments
1. LHCL/111 (New)	Muhammad Aslam 2/1 126 Dixon Avenue Glasgow G42 8EL	Hours requested outwith Council's Policy
Premises	43 Hamilton Street Saltcoats	
2. STL/O/380 (New)	Candy Cane Lane Ltd c/o Advantage Accounting (Scotland) Ltd 11 Somerset Place Glasgow G3 7JT	Clerk to report
Premises	Beachcombers The Promenade Largs	
3. TDL/00424 (New)	Stewart McCulloch 5 Dippen Place Saltcoats KA21 6AB	Police observation received and non disclosure of conviction
4. TDL/00850 (Renewal)	Albert Lamberton 32 Elm Park Ardrossan KA22 7BZ	Police observation received
5. TDL/01418 (New)	Mary Myra Craig 18 Millburn Terrace Girdle Toll Irvine KA11 2BL	Police observation and non disclosure

6. TDL/01629 (Renewal)	Brian Conway 3 Alexandra Terrace Kilwinning KA13 7HQ	Police observation received and non disclosure of convictions
7. TDL/01698 (Renewal)	Martin Cruickshank 14 Harvey Gardens Ardrossan KA22 8LG	Police observation received
8. TDL/01842 (New)	Marc Campbell-Currie 3 Sheean Drive Brodict Isle of Arran KA27 8DH	Police observation received and non disclosure of conviction
9. TDL/01845 (New)	Stephen Campbell 19 Cleaves Avenue Dalry KA24 4DT	Previous convictions declared
10. TDL/01848 (New)	Charles Stewart 1 Geirston Road Kilbirnie KA25 7LF	Police observation received
11. TDL/01852 (New)	John Derek Samuel 37 Windsor Gardens Largs KA30 9DN	Police observation received
12. TDL/01855 (New)	David Smith 2 Craufurd Crescent Barrmill Beith KA15 1HR	Police objection received
13. TDL/01856 (New)	Thomas Edgar 52 Dirrans Terrace Kilwinning KA13 7PJ	Medical condition declared

14. TDL/01860 (New)	Dominic McCann 98/1RM Glasgow Street Ardrossan KA22 8EH	Police observation received
15. TDL/01862 (New)	Mohamed Othmani 32 McKinlay Crescent Irvine KA12 8DW	Failure to produce qualification in English language.
16. TDL/01864 (New)	Lesley Evans 15 Queen Street Kilwinning KA13 7LH	Previous convictions declared
17. TDL/01865 (New)	Saman Mohammed 11 Lochgoin Gardens Drumchapel Glasgow G15 8HA	Failure to produce qualification in English language.
18. TL/196 (New)	Peter Cassidy 3 Lewis Terrace Broomlands Irvine KA11 1HJ	No vehicle has been presented for inspection

APPENDIX C

Issues in respect of Existing Licences

Case 1 Late Hours Catering Licence LHCL/109

Licenceholder and Address **G B Oils Ltd**
302 Bridgewater Place
Birchwood Park
Warrington
WA3 6XG

Premises Castlebay Filing Station
Irvine Road
Largs

Case 2 Taxi Driver's Licence TDL/00804

Licenceholder and Address Patrick John **Griffin**
1 Southook Row
Girdle Toll
Irvine
KA11 1NT

NORTH Ayrshire Council

Agenda Item 4.1

21 August 2013

Licensing Committee

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

Purpose: To inform the Committee of the circumstances relating to two Applications for Landlord Registration.

Recommendation: That the Committee should consider whether or not:

1. to grant the Application made under Section 84 by Jason Cleary, D.O.B. 5.1.1977, of Aloha Playa, Floor 9 912, Benalmadena Costa, Malaga, 29630 (NAC ref. 211439/310/05370);
2. to grant the Application made under Section 84 by Mary Cleary (otherwise Mary Devlin), D.O.B 12.9.1951, 53 Brachelston Street, Greenock, PA16 9AE (NAC ref. 219500/310/18311);
3. If either Application is granted, to consider whether or not undertakings should be invited, and if so what these should be and what charity should be nominated as the beneficiary of the income and proceeds from the house at 9 Sharlee Wynd, West Kilbride, KA23 9FD;
4. to make an order under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of that house;
5. to delegate authority to the Clerk or the Solicitor (Licensing) to make such an order if one is not then in force but where there is reason to believe that the grounds for making an order exist.

1. Introduction

- 1.1 This report deals with two separate applications and are included in a single report to Committee as the circumstances are related. The Committee considered both applications on 23 August 2011 and then continued them without order as there were pending proceedings under the Proceeds of Crime Act 2002. Those proceedings have now been concluded.
- 1.2 An Application for Registration has been made by Jason Cleary, D.O.B. 5.1.77 (hereafter 'the Applicant'). It was received by the Council on 30 September 2009. The address stated for the Applicant is in Spain. The application was made by the Applicant's mother Mary Cleary (otherwise Mary Devlin), D.O.B 12.9.1951, 53 Brachelston Street, Greenock, PA16 9AE. The Application relates to a house at 9 Sharlee Wynd, West Kilbride.
- 1.3 Separately, the Applicant's mother has applied for Registration under the 2004 Act in her own name. It was received by the Council on 15 December 2009.

2. Current Position

- 2.1 Neither application has been determined. Most such applications are approved under delegated powers, but in this case the Clerk has information indicating that the exercise of delegated powers is not appropriate.
- 2.2 Part of the application procedure involves the Applicant stating any previous criminal convictions. It is an offence to specify information which is materially false, or to fail to specify information (Section 83(4) & (5)).
- 2.3 The Applicant has disclosed a conviction, describing it as 'Drugs, Glasgow, 1 January 2002'. The Applicant did not state what the offence was or what the disposal was. The Clerk has information that the Applicant has several convictions under the Misuse of Drugs Act 1971, for which he has been imprisoned. Neither the Applicant nor his mother have supplied information to the Council concerning these convictions, and have not advised the Council that the information supplied on the Application form is incorrect: the Application form states that the Applicant lives in Spain, whereas he has been in custody in Scotland since December 2009 and is currently serving a sentence of 14 years imposed on 18 June 2010. The Council only learned of the true situation after December 2009.

2.4 The following summary is based on information supplied by Strathclyde Police and drawn from the public websites of the Scottish Crime and Drug Enforcement Agency (SCDEA) and newspapers:

- (a) on 1 July 1999 the Applicant was sentenced at Dingwall Sheriff Court to two years in relation to drug dealing of amphetamine;
- (b) in March 2003 the Applicant was sentenced at Glasgow High Court to four years for an offence under the Misuse of Drugs Act 1971, Section 4(3)(b) (being concerned in the supply of Controlled Drugs) aggravated by being on Bail;
- (c) on 18 June 2010 the Applicant was sentenced at Glasgow High Court to 13 years for another offence under that provision (being concerned in the supply of heroin), and to a further year for failing to appear for Trial. The SCDEA report stated that the Applicant was arrested in Greenock in February 2006. He was granted Bail awaiting Trial, but failed to appear for his Trial in May 2007 and fled the country to Spain. The SCDEA worked with the Spanish police and he was returned to Scotland in December 2009 to face charges. A newspaper report at the time stated that the Judge described the Applicant as 'a career drug dealer'.
- (d) the Court made a Confiscation Order against the Applicant under the Proceeds of Crime Act 2002 for £49,000. The Applicant owns three properties (one in West Kilbride, and two in Inverclyde) and has required to sell one of the Inverclyde properties to meet the Order.
- (e) the West Kilbride house was registered in the Applicant's name in February 2006. He was arrested in the same month in relation to the charge which led to his current long sentence, apparently in possession of £5,000 in cash, after being watched by Police for the past 13 months.

3. Proposals

Applicant

- 3.1 The Act specifies conditions which prospective Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.

3.2 The Applicant's convictions are relevant to the consideration of whether or not he is 'fit and proper' to be Registered. Section 85(2) lists material which is relevant, including material which shows that the Relevant Person has:

“(a) committed any offence involving -

(i) fraud or other dishonesty;

(i(a)) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));”,

(ii) violence; or

(iii) drugs; ...”

(here 'Relevant Person' refer to the Landlord, Agent or other person applying for registration)

3.3 In any case, the Council may take into account any material (even if not expressly listed in the statute) if it considers that the material is relevant to the 'fit and proper' question: Section 85(4).

3.4 Where the Council is not satisfied that the conditions for Registration are met, the Council is obliged to refuse Registration (Section 84(2)(b)).

3.5 The Committee is entitled to conclude that the Applicant's substantial criminal record, along with his failure to supply relevant information to the Council, indicates that he is not 'fit and proper'.

Rent Penalty Notice

3.6 If a Landlord rents a house without being Registered, or if Registration is revoked, then two things can happen:

(a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or RPN), meaning:

(i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment); and

(ii) any Housing Benefit stops being paid.

- (b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

In addition, if Registration is revoked, the Landlord can be prosecuted if he tries to obtain a new Tenant, e.g. by advertising the house for letting, discussing terms with a prospective Tenant: Section 93(2). The penalty is a fine up to £50,000.

- 3.7 The Council's Chief Revenues and Benefits Officer confirms that Housing Benefit was paid in respect of Tenants until April 2010. The Clerk does not know whether or not the house is currently occupied. If information becomes available, the Committee will be advised. One of the pre-conditions for making a RPN is that the house is currently subject to a lease or an occupancy arrangement by virtue of which an unconnected person may use the house as a dwelling.
- 3.8 Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he was unregistered, the Committee may wish to delegate authority to the Clerk to issue a 'Rent Penalty Notice' (RPN) if the Clerk later receives information that that condition is satisfied.
- 3.9 If the Committee decides to grant the Applicant's Registration, the Committee may seek undertakings from him to ensure that no profit from the property, whether rental income or the proceeds of sale, should go to the Applicant.
- 3.10 Possible undertakings are:
- "1. A professional letting agent, who is himself registered, should be engaged and should be solely responsible for all matters relating to any tenancy of the house (including the collection of rent and the execution of repairs);
 2. The only contact tenants should have should be with that agent, and in particular there should be no contact with the Applicant or any member of his family;
 3. If an Administrator is appointed under the Proceeds of Crime Act 2002 in relation to the Applicant Jason Cleary, then for the duration of that appointment, the income arising from the house, and any proceeds of sale, should be paid to the Administrator;

4. Subject to Paragraph 3:

- (a) Where Housing Benefit or any other type of financial assistance is payable, any surplus over the actual costs (e.g. allowing for that agent's remuneration and the cost of repairs) should be paid to a charity nominated by the Committee annually, at intervals commencing one year after the Registration, with that agent producing to the Council on request financial accounts of his intromissions and receipts from the charity;
 - (b) Whenever the house is first conveyed for value (whether by the Applicant or not) then, if the price payable exceeds the price paid by the Applicant in 2006, the excess should be paid within one month of the settlement to the charity;
5. 'the charity' means 'Victim Support Scotland', 15/23 Hardwell Close, Edinburgh EH8 9RX (Registered Charity OSCR SC002138), or whichever one or more bodies the Committee may from time to time decide should receive future monies."

The Applicant's Mother

- 3.11 She does not own the house. Therefore an Application for Registration for that house is incompetent (Section 83(1(b))). She can act as agent for an owner (who himself is registered), but the Solicitor acting for both parties has already accepted undertakings 1 and 2 and a professional letting agent has already confirmed willingness to act.
- 3.12 That Solicitor advises that the Applicant's mother holds a Power of Attorney from him. This does not make her application competent. The requirement that only an owner can apply remains. Section 83(1)(b) is qualified by Section 83(6), which states numerous situations where registration is not required.
- 3.13 There are exceptions where the owner dies, or the house is repossessed by a heritable creditor, or the owner is insolvent, in which case for up to 6 months after the death, repossession or insolvency the Executor, Heritable creditor or Insolvency Practitioner can act as a Landlord without Registration (this is the effect of amendments made by Orders 2005-650 and 2009-33). After that time, the Executor etc. requires to apply for Registration as normal. There is no statutory exemption for a person holding a Power of Attorney. Therefore, since the Applicant's mother does not own the house, she cannot request Registration that refers to it.

- 3.14 Even if her Application was competent, the Committee would be entitled to conclude that her failure to supply relevant information to the Council is “dishonesty”, and is therefore relevant to the “fit and proper” issue. The Committee might also consider that an Application by the Applicant’s mother was a device to secure the benefit of Registration for someone who would not himself be likely to gain Registration.

4. Implications

Financial Implications

- 4.1 If a Rent Penalty Notice is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3 Where the Council makes any decision to refuse or revoke Registration, to make a RPN, or to refuse to recall a RPN, the Applicant or Landlord may appeal to the Sheriff.
- 4.4 `If the Council issues a ‘Rent Penalty Notice’, only the Tenant’s liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected: Section 94(3) & (8).
- 4.5 For example:
- (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the Notice);
 - (b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;
 - (c) the Landlord continues to have repairing obligations.
- 4.6 Any breach by the Landlord or Agent of any statutory Letting Code, the law relating to housing, or Landlord and Tenant law will be relevant to any future consideration of Registration.

Equality Implications

4.7 None.

Environmental Implications

4.8 None.

Implications for Key Priorities


4.9 None.

5. Consultations

5.1 No consultations are appropriate. The issues have been extensively discussed by the Council and the Applicant's Solicitor.

6. Conclusion

6.1 The Committee is invited to consider the actions outlined in the report.



ELMA MURRAY
Chief Executive

Reference : GEN09

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294-324345.

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 4.2

21 August 2013

Licensing Committee

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

Purpose: To provide the Committee with further information in respect of a property at 2a Deerpark Avenue, Stevenston.

Recommendation: That the Committee consider whether to issue a Notice (often called a 'Rent Penalty Notice') in respect of the house at 2a Deerpark Avenue, Stevenston under Section 94.

1. Introduction

- 1.1 This case was previously before the Licensing Committee on 26th July 2013 and was continued to the next meeting of Committee so that further information may be obtained.

The Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice (RPN)'), meaning:

- (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment); and
- (ii) Housing Benefit stops being paid.

2. Current Position

- 2.1 The house is currently occupied although no rent is paid. The current occupier will leave on 13 September 2013. The house will then be unoccupied. One of the pre-conditions for making a RPN is that the house is currently subject to a lease or an occupancy arrangement by virtue of which an unconnected person may use the house as a dwelling - it is not fatal to the RPN that no rent is currently being paid as the RPN looks to the future. The Committee may take the view that it would protect the current occupier from being asked for any payment in the future, and that given that the owner is not registered there would be no prejudice to him if a RPN was made.

- 2.2. If the owner sells the house to a third party, the buyer can ask the Council to recall the RPN (they would either have to apply for registration or be exempt from doing so).

3. Proposals

- 3.1 That the Committee consider whether to issue a Notice (often called a 'Rent Penalty Notice') in respect of the house at 2a Deerpark Avenue, Stevenston under Section 94.

4. Implications

Financial Implications

- 4.1 If a Rent Penalty Notice is issued, the Housing Benefit Office will be informed, so that the Landlord will not receive Housing Benefit.

Human Resource Implications

- 4.2 None

Legal Implications

- 4.3 Where the Council makes any decision to refuse or remove Registration, to make a RPN, or to refuse to recall a RPN, the person affected may appeal to the Sheriff.

If the Committee issues a 'Rent Penalty Notice', only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected, e.g. the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the Notice), and the Landlord continues to have repairing obligations.

Equality Implications

- 4.4 None

Environmental Implications

- 4.5 None

Implications for Key Priorities

- 4.6 None

5. Consultations

5.1 No consultations are appropriate.

6. Conclusion

6.1 The Committee is invited to consider the actions outlined in the report.

A handwritten signature in black ink, reading 'Elma Murray' in a cursive script.

ELMA MURRAY
Chief Executive

Reference : WO'B/PAT

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324305

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 5

21 August 2013

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982: Taxi Fare Review**

Purpose: To consider initial steps in the consultation procedure for the Taxi Fare Review for 2013.

Recommendation: That the Committee agrees

- (a) to approve the proposed timetable for the review process as set out in the appendix to the report; and
- (b) to set a date and time to meet with the taxi operators to consider their proposals as part of the review process.

1. Introduction

- 1.1 In terms of the Civic Government (Scotland) Act 1982, the Council as Licensing Authority is required to review the maximum fare that taxis operating within North Ayrshire may charge. The 1982 Act requires that this should be done at maximum intervals of eighteen months. Before completing any review, the Licensing Authority requires to carry out preliminary consultations with local organisations representing taxi operators and to invite the public (by advertisement) to lodge representations.
- 1.2 Once the fares have been reviewed, taxi operators have a right of appeal to the Traffic Commissioner for the Scottish Traffic Area, if they disagree with the Council's decision.

2. Current Position

- 2.1 The previous review of taxi fares was concluded on 28 May 2012. Given that the eighteen month deadline for concluding the review is approaching, it now falls on the Committee to commence the review process. The attached appendix sets out a proposed timetable for the review. It has been the previous practice of the Committee to undertake a comparison with other adjoining authorities as part of the review process. Information about the fares charged by those authorities showing charging rates are currently being compiled, although each authority has its own set of charges and comparison may not always be possible.

- 2.2 It has been the Committee's view in the past that although Taxi Operators' Associations exist within North Ayrshire, these may not be wholly representative. Accordingly it has always been the practice to notify each individual operator of the review and invite them to attend a meeting with the Committee to discuss any proposals. As in previous years, operators will be provided with tariff information from other local authorities and details of the current rate of inflation.
- 2.3 It should be noted that the fares approved by the Committee are maximum fares which may be charged, and it is open to operators to discount these rates if they so wish.
- 2.4 Once the Committee has met with the taxi operators and, thereafter approved a draft tariff, the proposed draft tariff will be advertised in the local press. The statutory procedure allows for representations from the public, and any representations will be reported and considered by the Committee at a future meeting. Thereafter the Committee will approve the new taxi fare tariff.

3. Proposals

- 3.1 That the Committee agrees to (a) approve the proposed timetable for the review process as set out in the appendix to the report; and (b) set a date and time to meet with the taxi operators to consider their proposals as part of the review process.

4. Implications

Financial Implications

- 4.1 The taxi fare structure has substantial implications for both the trade and the community. In addition, legal costs to the Licensing Authority may arise if the fare review becomes subject to an appeal to the Traffic Commissioner.

Human Resource Implications

- 4.2 None

Legal Implications

- 4.3 Possible appeal to the Traffic Commissioner.

Equality Implications

- 4.4 None

Environmental Implications

4.5 None

Implications for Key Priorities

4.6 None

5. Consultations

5.1 Information is being obtained from neighbouring authorities. Information drawn from the Retail Price Index has also been considered.

6. Conclusion

6.1 The Committee is requested to agree to proceed with the review in the terms detailed in this report, to set a time and date to meet taxi operators, and to otherwise approve the proposed timetable for the review process as set out in the attached appendix.



ELMA MURRAY
Chief Executive

Reference : PAT

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324305

Background Papers

None

North Ayrshire Council

Taxi Fare Review 2013

Licensing Committee meeting to confirm how the review will be carried out	Wednesday 21st August 2013
Meeting with taxi trade representatives/taxi operators to discuss proposals, consider revisions and finalise draft tariff.	To be arranged
Licensing Committee meeting to approve finalised draft tariff and seek authority to advertise proposed tariff in local press.	Wednesday 20th November 2013
Advertise proposals and invite consultation	As soon as possible thereafter
Licensing Committee meeting to consider outcome of consultation and to approve new taxi fare tariff.	To be arranged
Advertise new Tariff	As soon as possible thereafter
Bring new tariff into effect	To be arranged

NORTH AYRSHIRE COUNCIL

Agenda Item 6

21 August 2013

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982 : Taxi Numbers Limitation**

Purpose: To advise the Committee of requests for exceptions to the Taxi Numbers Limitation Policy

Recommendation: That the Committee considers the requests for exceptions to the Taxi Numbers Limitation Policy.

1. Introduction

1.1 Section 10 (3) of the Civic Government (Scotland) Act 1982, provides:

“the grant of a taxi licence may be refused by a licensing authority for the purposes of limiting the number of taxis in respect of which licences are granted by them if, and only if, they are satisfied that there is no significant demand for the services of taxis in their area which is unmet”.

1.2 Accordingly, the Council has previously imposed the following taxi numbers limitations and zoning arrangements within North Ayrshire:-

Zone	Taxi Numbers Limitation
Zone 1 – Irvine New Town	105
Zone 2 – Ardrossan/Saltcoats/Stevenston	85
Zone 3 – Garnock Valley	20
Zone 4 – West Kilbride/Fairlie/Largs/Skelmorlie	20
Zone 5 – Cumbrae	2
Zone 6 – Arran	9

- 1.3 The Council operates a waiting list, whereby the details of people who express an interest in operating Taxis are noted. The system operates so that, when a slot becomes open (e.g. where someone who holds a Taxi Licence surrenders it or does not renew it), the person at the top of the waiting list is informed. That person can then apply for a Taxi Licence. If they do not apply, the second person is advised, and so on.
- 1.4 This Numbers Limitation is only a Policy, so it is a guideline but not a rigid rule. The Council is entitled to refuse an Application for a new Licence, but not obliged to do so. The Council is always entitled to make an exception to the Policy, so that an individual Application might be granted while the general guideline continues to operate everyone else. For example, although the policy figure for Largs etc. is 20, there are in fact 21 Licences. This was the result of a Committee decision which followed consideration of the nature of the proposed operation, the personal circumstances of the Licensee, and his undertakings that the Licence would only last two years, and would be neither transferred nor renewed beyond then.

2. Current Position

- 2.1 The Council has received a letter of inquiry from two people in Irvine who are already on the waiting list, at positions 18 and 19 on the Irvine list (i.e. there are 17 people ahead of them). One of them has previously obtained a Taxi Licence through the waiting list. They wish to ask the Committee to treat their circumstances as an exception to the Policy, and in effect bypass the waiting list.

3. Proposals

- 3.1. The Committee should consider the submissions, and then decide whether or not either person should be treated as an exception.
- 3.2. If the Committee decides to treat them (or either of them) as an exception, the successful person will then require to apply for a Taxi Licence in the usual way, e.g. presenting for inspection a wheelchair accessible vehicle which is no more than 8 years old (counted from its First Registration at DVLA).

- 3.3. If the Committee declines to treat either particular case as an exception, the unsuccessful person has the option of:
- (a) proceeding no further (the Committee's decision would not be appealable); or
 - (b) formally applying under the 1982 Act; if the Committee later decides to refuse that, that decision might be appealable.

4. Implications

Financial Implications

- 4.1 None for the Council

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3 The issue at present is preliminary, and does not (at this stage) involve the grant or refusal of a Licence. Since the Council is not (at this stage) making a decision, there is no possibility of an appeal to the Sheriff.

If the Committee decide to treat a person as an exception, the person will apply for a licence. As with any other application, it will be open to third parties to make objections or representations. That application will be processed like any other, and might be granted under Delegated Powers or referred to the Committee (it would not be referred to the Committee solely due to the Numbers Limitation).

If there is later a decision on a formal Application, the applicant or anyone who has made objections or representations may have a right to appeal to the Sheriff Court.

There are implications for the existing or prospective taxi operators. Any increase in the number of taxi vehicles licensed in their area will have an effect on the business of existing operators.

If the Committee treats a person as an exception, this might disadvantage the other people on the waiting list. They also have the opportunity to seek an exception, but their chances of success will not be enhanced by someone gaining special treatment ahead of them. Although each request for an exception would have to be treated on its merits, if an exception has been allowed to one person for a reason which is similar to that later advanced by another, the later person may have difficulty persuading the Committee to allow a further exception.

Equality Implications

- 4.4 A consideration for the Council in adopting the policy was the desire to maintain a level of taxi provision that gave reasonable service to mobility impaired users. This aim is achieved by the Council's requirement that vehicles to be used as Taxis should be Wheelchair Accessible Vehicles.

There are implications for residents of and visitors to the Irvine area who are reliant on wheelchairs, as the grant of further Licences of this type would increase the level of service available to wheelchair users.

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 See 4.4.

5. Consultations

- 5.1 No consultation is appropriate when the Committee is considering its own Policy. If there is later a formal licence application, the usual consultation with the Police will follow.

6. Conclusion

- 6.1 The Committee should consider the submissions made and make a decision.

A handwritten signature in black ink that reads "Elma Murray". The script is cursive and fluid, with the first name "Elma" and last name "Murray" clearly distinguishable.

ELMA MURRAY
Chief Executive

Reference : GEN37

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294-324345.

Background Papers

None.