

Licensing Committee
12 September 2018

IRVINE, 12 September 2018 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

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

In Attendance

S. Bodys, Trading Standards Officer (Economy and Communities); W. O'Brien, Solicitor, (Licensing), S. Montgomery, Solicitor, A. Toal, Administrative Assistant (Legal Services), D. Robertson, Enforcement Officer and A. Little, Committee Services Officer (Chief Executive's Service).

Also in Attendance

Sergeant Dougan and PC McArthur (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies

Scott Gallacher and Davina McTiernan.

1. Order of Business

In terms of Standing Order 9.5, the Chair agreed that the Committee consider an application in respect of a Public Entertainment Licence as a matter of urgency in order to allow the matter to be progressed without delay.

The Chair further agreed, in terms of Standing Order 9.4, to vary the order of business to allow consideration of:-

Agenda Item 3 (Case 1, William Neil and John Imrie) as the second item of business; (Case 13, Wesley Smith) as the fifth item of business; and Urgent Item (PEL/563 Kelburn Arts Ltd) as the sixth item of business.

2. Declarations of Interest

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

3. Minutes

The Minutes of the meeting of the Committee held on 22 August 2018 were confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

4. Exclusion of the Public

The Committee resolved, under Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public, for Agenda Item 3 (Civic Government (Scotland) Act 1982 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 (Scotland) Act 1973.

The 'Exempt Information' concerned is information of the type described in one or more of Paragraphs 3, 6, 14 and 15 of Part 1 of Schedule 7A to the Act:

3. "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."
6. "Information relating to the financial or business affairs of any particular person (other than the authority)."
14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
15. "The identity of a Protected Informant" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance."

5. 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.

Appendix A: Hearings

5.1 Taxi Driver's Licence: TDL/02105 (New) - Brian Speirs

The Committee at its meeting held on 22 August 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and referred to a letter submitted by Police Scotland setting out an objection in respect of the application.

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

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

Decision

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

5.2 Second Hand Dealer's Licence: SHDL/199 (New) - William Neil & John Imrie

The Committee at its meeting held on 22 August 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 applicants, having been duly cited to attend, were present.

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

The Committee was advised that a request had been received to continue consideration of this application to the next meeting

Decision

The Committee unanimously agreed to continue consideration of the application to the next meeting.

5.3 Taxi Driver's Licence: TDL/02110 (New) - Derek Murdoch

The Committee at its meeting held on 22 August 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and referred to a letter submitted by Police Scotland setting out an objection in respect of the application.

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

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

Decision

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

5.4 Taxi Licence: TL/125 (Renewal) - Claire Docherty & Anton Docherty

The Committee at its meeting held on 22 August 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 holders, having been duly cited to attend, were present. Representatives from Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holders and referred to a letter submitted by Police Scotland setting out an objection in respect of the application.

The licence holders addressed the Committee on issues raised and responded to questions.

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

Decision

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

Councillor Easdale left the meeting at this point.

5.5 Public Entertainment Licence: PEL/566 - Wesley Smith

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant, referred to a letter submitted by Police Scotland setting out an objection in respect of the application and an email from the applicant's Solicitor.

The applicant addressed the Committee on issues raised and responded to questions. The Applicant confirmed his agreement to the conditions proposed by Police Scotland.

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

Decision

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 and with the further conditions proposed by Police Scotland.

5.6 Temporary Public Entertainment: PEL/563 - Kelburn Arts Ltd

The applicant, having been duly cited to attend was not present. 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 and referred to a letter submitted by Police Scotland setting out an objection in respect of the application and to an exchange of email correspondence in which the Applicant commented on the proposals made by Police Scotland. The representatives of the Chief Constable confirmed acceptance of the applicant's alternative proposals.

Decision

The Committee unanimously agreed to grant the application subject to the Council's standard conditions, as amended for the particular Applicant, in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

Representatives from Police Scotland left the meeting at this point.

5.7 Late Hours Catering Licence: LHCL/129 (New) - Parminder Singh

The Committee at its meeting held on 22 August 2018 agreed on the basis of the information presented to continue consideration of the application to the next meeting to allow for further information to be provided by Environmental Health.

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

Councillor Barr, seconded by Councillor McClung moved that the application be refused in terms of Paragraph 5 subsection 3(a) (ii) of Schedule 1 of the Licensing (Scotland) Act 1982. There being no amendment, the motion was declared carried.

5.8 Private Hire Car Licence: PHCL/366 (New) - Paul Forbes & James Tracey

The applicants, having been duly cited to attend, were not present or represented.

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

Decision

The Committee unanimously agreed to refuse the application in terms of Paragraph 5 (3) (d) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that there was a 'good reason' for refusing the application, given that the applicants had not proposed a vehicle for operation under the Licence and that accordingly the Committee could not be satisfied of the matters required by Section 10(2) of the Civic Government (Scotland) Act 1982.

Councillor Easdale rejoined the meeting at this point.

5.9 Taxi Driver's Licence: TDL/02125 (New) - John Murphy

The Committee at its meeting held on 22 August 2018 agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

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

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 issues raised and responded to questions.

Decision

The Committee unanimously agreed to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

5.10 Taxi Driver's Licence: TDL/00397 - John Convery

The Committee at its meeting held on 22 August 2018 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.

The licence holder, 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 licence holder. The Council's Enforcement Officer outlined the incidents where the licence holder had failed to adhere to the licence conditions. Thereafter the licence holder and his representative addressed the Committee on issues raised and responded to questions. The licence holder's Solicitor told the Committee that the licence holder did dispute the Dress Code violations and that he would comply with the Dress Code in future.

Decision

Councillor D L Reid, seconded by Councillor McClung, moved that the licence holder be issued with a Dress Code Final Warning letter. There being no amendment, the motion was declared carried.

5.11 Taxi Driver's Licence: TDL/00695 - Andrew Johnston

The Committee at its meeting held on 22 August 2018 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.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The Council's Enforcement Officer outlined the incidents where the licence holder had failed to adhere to the licence conditions. Thereafter the licence holder addressed the Committee on issues raised and responded to questions. The licence holder admitted the Dress Code violations and the breach of the 'no-smoking' condition.

Decision

Councillor Barr, seconded by Councillor Easdale, moved that the licence holder be issued with a Dress Code Warning letter. There being no amendment, the motion was declared carried.

5.12 Taxi Driver's Licence: TDL/01773 - Colin Bennett

The Committee at its meeting held on 22 August 2018 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.

The licence holder, 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 licence holder. The Council's Enforcement Officer outlined the incidents where the licence holder had failed to adhere to the licence conditions. The licence holder and his representative addressed the Committee on issues raised and responded to questions. The Licence Holder's Solicitor told the Committee that the Licence Holder accepted the first two matters (breach of Dress Code) but not the third allegation.

Thereafter, the licence holder, his representative and the Enforcement Officer withdrew to allow the Committee to deliberate.

On their return, the Chair advised the licence holder and his representative that the Committee was minded to suspend the licence and sought their views on the terms and length of suspension.

The licence holder and his representative withdrew to confer and advised on their return that immediate suspension of the licence for one month would be accepted with no appeal.

The licence holder, his representative and the Enforcement Officer withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Ferguson, seconded by Councillor Barr, moved the Committee:-

- (a) to find that the grounds of revocation or suspension stated in Civic Government (Scotland) Act 1982, Schedule 1, Paragraphs 11(2)(a) and 11(2)(d) were established and that the licence should be suspended;
- (b) to fix the period of suspension as 14 days, in terms of Paragraph 11(11); and
- (c) given the circumstances of the case, the suspension should take immediate effect, in terms of Paragraph 11(10).

There being no amendment, the motion was declared carried.

At 12.25 p.m., in terms of Standing Order 5.7, the Chair adjourned the meeting for a short comfort break. The meeting reconvened at 12.35 p.m. with the same Members and officers present and in attendance.

The Committee agreed to consider Cases 13 and 14 simultaneously.

5.13 Taxi Driver's Licence: TDL/01962 - Stephen Reid and 5.14 Taxi Licence, TL/085 Stephen Reid

The Committee at its meeting held on 22 August 2018 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 in respect of both licences.

The licence holder, having been duly cited to attend, was present

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The Council's Enforcement Officer outlined the incidents where the licence holder had failed to adhere to the licence conditions. Thereafter the licence holder addressed the Committee on issues raised and responded to questions. The Licence Holder told the Committee that the advertising wrapping would be removed from the taxi vehicle within two days.

Decision

Councillor Barr, seconded by Councillor Ferguson, moved that the licence holder be issued with a Dress Code Warning letter, and that if a Council officer confirmed that the advertising wrapping had been removed from the taxi by 2.00 p.m. on Friday 14 September 2018, there would be no need to further consider the question of revocation or suspension.

There being no amendment, the motion was declared carried.

Appendix B: Applications for Licences/Renewal of Licences

5.15 LHCL/115 (variation) - A G Restaurants Ltd

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 LHCL/116 (variation) - Mascot Scotland Ltd

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 PCC - Kilwinning Community Events

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

5.18 PCC - Promoting Kilwinning

The Committee unanimously agreed to grant the application in terms of Section 119(5) of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

5.19 TDL/01557 (Renewal) - William Laughlan

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 TDL/01754 (New) - Derek Boyd

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.

5.21 TDL/01885 (New) - Peter Brown

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.

5.22 TDL/02043 (New) - Colin Jamieson

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.

5.23 TDL/02128 (New) - Alexander Lammie

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.

Appendix C - Preliminary consideration of Revocation or Suspension complaints (Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11)

5.24 J. C.

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

The Committee was advised that there were no Landlord Registration cases to be considered at this time.

Noted.

The meeting ended at 1.15 p.m.