



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Licensing Committee

A Meeting of the **Licensing Committee** of North Ayrshire Council will be held in the **Council Chambers, Ground Floor, Cunninghame House, Irvine, KA12 8EE** on **Wednesday, 08 January 2020** at **10:00** to consider the undernoted business.

Please note that, whilst the items on this Agenda are public documents, consideration of some reports at the meeting may necessitate the passing of a resolution to exclude from the meeting the press and public in terms of Section 50A(4) of the Local Government (Scotland) Act 1973.

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 Ordinary Meeting held on 23 October 2019 and the Special Meeting held on 28 October 2019 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 and other Licensing Statutes: Licensing Matters

Submit report by the Head of Democratic Services on hearings to be determined and applications for grant or renewal of licences and permits, 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 report by the Head of Democratic Services on Landlord Registration matters (copy enclosed).

5

Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee Sederunt

Ronnie McNicol (Chair)
Todd Ferguson (Vice Chair)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L. Reid
Angela Stephen
Vacancy

Chair:

Apologies:

Attending:

IRVINE, 23 October 2019 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Todd Ferguson, Robert Barr, John Easdale, Scott Gallacher, Ronnie McNicol, Davina McTiernan (Agenda Item 5.1 to end of meeting), Donald L. Reid and Angela Stephen.

Also in Attendance

Ian Clarkson (Agenda Item 5.6 only).

In Attendance

P. Brennan (Senior Environmental Health Officer) (item 5.6 only), E. Anderson (Private Sector Team Manager), B. Ferry and K. Nolan (Policy Officers) (Place) (Agenda Item 6.1 only); A. Craig, Senior Manager (Agenda Items 5.6 and 5.8 only), D. Robertson, Civic Licensing Standards Officer, W. O'Brien, Solicitor (Licensing) and A. Toal, Administrative Assistant (Licensing) (Legal Services), D. Dunlop, Senior Clerical Assistant and D. McCaw, Committee Services Officer (Chief Executive's Service).

Also in Attendance

Inspector David Cameron, Inspector Raymond Kerr and Sergeant David Dougan (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies

Jean McClung.

1. Chair Remarks

In terms of Standing Order 9.5, the Chair agreed that the Committee consider 4 urgent matters in order to allow these 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 case 9 Taxi Driver's Licence: TDL/02176 (New): Christopher Payne immediately after case 4 BOL/010: TOA Taxis (North Ayrshire) Ltd. followed by the Urgent Item: Public Entertainment Licence: Fairground at Irvine Moor to allow Police Scotland to leave the meeting at that point.

2. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Todd Ferguson declared a personal interest in Agenda Item 5.8: Private Hire Car Licence: PHCL/371 (New): Craig and Stephen Dobbin, and took no part in the discussion thereon.

3. Minutes

The Minutes of the Meeting held on 18 September 2019 were confirmed and 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 Items 5-6 (Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters) 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 Head of Democratic Services 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 Metal Dealer's Licence: MDL/057 (Renewal): Jason McKinney

Councillor McTiernan joined the meeting at this point.

The Committee at its meeting held on 18 September 2019, 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 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. The representatives from Police Scotland then addressed the Committee on the terms of a letter setting out their objection in respect of the application and responded to questions.

Decision

Councillor Barr, seconded by Councillor Gallagher, moved that the Committee refuse the application in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that the applicant is not a fit and proper person to be the holder of a licence. There being no amendment the motion was declared carried.

5.2 Taxi Driver's Licence: TDL/02174 (New): John Brien

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.

Decision

Councillor Barr, seconded by Councillor Easdale, moved that the Committee refuse the application in terms of Paragraph 5(3)(a)(ii) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that the applicant is not a fit and proper person to be the holder of a licence. There being no amendment the motion was declared carried.

5.3 Taxi Driver's Licence: TDL/02193 (New): James Graham

The Committee at its meeting held on 18 September 2019, 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. The representatives from Police Scotland then addressed the Committee on the terms of a letter setting out their representations in respect of the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Both parties then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Gallagher, seconded by Councillor McTiernan, moved that the Committee 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. There being no amendment the motion was declared carried.

Anne Toal left the meeting for Agenda Items 5.4 and 5.9 and took no part in the discussion thereon. Police Scotland also left the meeting at this point.

5.4 Booking Office Licence: BOL/010: TOA Taxis (North Ayrshire) Ltd.

The Committee at its meeting held on 18 September 2019, agreed on the basis of the information presented, to proceed to a hearing.

The licence-holder had been duly cited to attend. Two Directors of TOA Taxis (North Ayrshire) Ltd. were in attendance, namely Amanda Conley and James McKerrell.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence-holder. The Enforcement Officer addressed the Committee on issues raised and provided an update. Thereafter the TOA representatives addressed the Committee on the issues raised and responded to questions.

Decision

Councillor Ferguson, seconded by Councillor Reid, moved that the Committee take no further action at this time. There being no amendment the motion was declared carried.

Councillor Gallacher left the meeting at this point.

5.5 Taxi Driver's Licence: TDL/02176 (New): Christopher Payne

The Committee at its meeting held on 18 September 2019, 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 the issues raised and responded to questions.

Decision

Councillor Reid, seconded by Councillor Stephen, moved that the Committee 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. There being no amendment the motion was declared carried.

Anne Toal joined the meeting at this point.

The Chair adjourned for a 5 minute comfort break and reconvened with the same Members and Officers in attendance including Councillor Gallacher and Police Scotland.

5.6 Urgent Item: Public Entertainment Licence: Fairground at Irvine Moor

The applicant, having been duly cited to attend, was present and accompanied by his father.

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

The Senior Environmental Health Officer provided information to the Committee. Police Scotland then addressed the Committee in respect of the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Provost Clarkson addressed the Committee in relation to his concerns regarding the event.

All parties then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

The Chair then adjourned the meeting in order that legal clarification could be provided to Members. The Meeting reconvened with the same Members and Officers in attendance.

Decision

Councillor Ferguson, seconded by Councillor McTiernan, moved that consideration of the application be continued to a Special Meeting to be held on Monday 28 October 2019 at 1.00 p.m. in the Council Chambers where the applicants should provide a full operational plan and Police Scotland provide a risk assessment in order that the concerns of the Committee in relation to public safety, public order and the suitability of premises might be addressed. There being no amendment the motion was declared carried.

Police Scotland and Aileen Craig left the meeting at this point.

5.7 Public Entertainment Licence PEL/625 (Temp): Juliana Gray

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. Police Scotland had indicated they had received the event management plan and had no objection to the event.

Decision

Councillor McTiernan, seconded by Councillor Easdale, moved that the Committee grant the application subject to the Council's standard conditions in terms of Paragraph 7 of Schedule 1 of the Civic Government (Scotland) Act 1982. There being no amendment the motion was declared carried.

Councillor Ferguson withdrew from the meeting for consideration of the following item of business and took no part in the discussion thereon.

Aileen Craig rejoined the meeting at this point.

5.8 Private Hire Car Licence: PHCL/371 (New): Craig and Stephen Dobbin

The Committee at its meeting held on 18 September 2019, 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 applicants. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

Decision

The Committee agreed to delegate authority to the Solicitor (Licensing) to grant the application, subject to the vehicle being tested, and also in terms of the Council's standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982. There being no amendment the motion was declared carried.

Councillor Ferguson rejoined the meeting at this point and Aileen Craig left the meeting.

5.9 Taxi Driver's Licence: TDL/00695: Andrew Johnston

The Committee at its meeting held on 18 September 2019, 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 Enforcement Officer then addressed the Committee in respect of the application. Thereafter the licence-holder addressed the Committee on the issues raised, admitted the statement made by the Enforcement Officer, and responded to questions.

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

Decision

Councillor Reid, seconded by Councillor Easdale, moved that the Committee issue a final written warning and make clear to the applicant that the Committee will consider revoking or suspending the licence should there be any further breach of any conditions of the licence. There being no amendment, the motion was declared carried.

5.10 Taxi Driver's Licence: TDL/02194 (New): Iain McIntyre

The Committee at its meeting held on 18 September 2019, 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 the 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 the period of one year.

Councillors Barr, Reid and Gallacher left the meeting at this point.

Appendix B: Applications for Licences/Renewal of Licences

5.11 SHDL/119 (Renewal): EM Commercials Ltd.

Councillors Reid and Gallacher rejoined the meeting at this point.

The Committee 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 the period of three years, and instructed the Solicitor (Licensing) to write to the licence-holder in specified terms.

5.12 TL/099 (Renewal): Sarah Connolly

The Committee noted that this item had been withdrawn.

5.13 TDL/00061 (Renewal): Peter McGuinness

The Committee 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.

5.14 TDL/02080 (New): Khalid Mahmood

The Committee 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.

5.15 TDL/02195 (New): Jarred Raybould

The Committee 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.

5.16 TDL/02197 (New): Gareth Wilkinson

The Committee agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5.17 TDL/02204 (New): Hayleigh Evans

The Committee 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 the period of one year.

5.18 Urgent Item: Morrisons Supermarket, Stevenston: Request for Exemption

The Solicitor (Licensing) set out the background to a request from Morrisons Supermarket, Stevenston for a temporary exemption for the petrol station from the requirement to have a Late Hours Catering Licence for the hours detailed below:-

23.00 on Saturday 21 December 2019 until 00.30 on Sunday 22 December 2019
23.00 on Sunday 22 December 2019 until 00.30 on Monday 23 December 2019
23.00 on Monday 23 December 2019 until 00.30 on Tuesday 24 December 2019

Police Scotland had intimated that they had no objection to the exemption.

The Committee unanimously agreed to grant the temporary exemption under Section 42(5) of the Civic Government (Scotland) Act 1982 in connection with the specified times.

5.19 Urgent Item: Taximeters and Personal Digital Assistants

The Solicitor (Licensing) set out the background to an enquiry received from a Taxi Driver in connection with the use of meter software on a Personal Digital Assistant as a substitute for the traditional taximeter.

The Committee agreed to keep the matter under review and take no action at the present time.

5.20 Urgent Item: Public Charitable Collection: Kilwinning Community Events

The Committee 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.

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

6.1 M.R.

The Solicitor Licensing addressed the Committee setting out the background to the case.

The applicant, having been cited to attend, was present and accompanied by a Letting Agent.

The Policy Officer (Private Sector Housing) addressed the Committee on the terms of a report in connection with the condition of tenanted properties owned by the applicant. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

All parties then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Reid, seconded by Councillor Easdale, proposed that the matter be continued to the meeting of the Licensing Committee on 8 January 2020 for further investigation and clarification by the Council Officers. There being no amendment, the motion was declared carried.

The meeting ended at 1.55 p.m.

Licensing Committee
28 October 2019

IRVINE, 28 October 2019 - At a Meeting of the Licensing Committee of North Ayrshire Council at 1.00 p.m.

Present

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

Also Present

Donald Reid

In Attendance

S. McKenzie, Senior Manager, and P. Brennan, Senior Environmental Health Officer (Place); A. Craig, Senior Manager W. O'Brien, Solicitor (Licensing) and A. Toal, Administrative Assistant (Licensing) (Legal Services), M. Sugden, Communications Officer and A. Little, Committee Services Officer (Chief Executive's Service).

Also in Attendance

Inspector David Cameron and Inspector Raymond Kerr (Police Scotland).

Chair

Councillor McNicol in the Chair.

1. Declarations of Interest

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

2. Exclusion of the Public

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

3. Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters: Public Entertainment Licence: Fairground at Irvine Moor on Friday 1 November 2019

The Committee at its meeting held on 23 October 2019, agreed the application be continued to a Special Meeting where the applicant should provide a full operational plan and Police Scotland provide a risk assessment in order that the concerns of the Committee in relation to the suitability of premises might be addressed.

The applicant, having been duly cited to attend, was present and accompanied by his father.

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

The Senior Manager and Senior Environmental Health Officer provided information to the Committee. Police Scotland then addressed the Committee in respect of the application. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

All parties, and Councillor Donald Reid, then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

On resuming, Councillor D L Reid, seconded by Councillor Easdale, moved that the application be refused for the reason stated in the Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 5(3)(c), which obliges a Licensing Authority to refuse an application to grant a licence if, in their opinion, the premises are not suitable or convenient for the conduct of the activity having regard to a number of considerations.

The considerations which applied were

- the nature and extent of the proposed activity;
- the kind of persons likely to be in the Premises;
- the possibility of undue public nuisance;
- public order; and
- public safety.

There being no amendment the motion was declared carried.

The meeting ended at 2.15 p.m.

NORTH AYRSHIRE COUNCIL

8 January 2020

Licensing Committee

Title: Civic Government (Scotland) Act 1982 and other Licensing statutes: Licensing Matters

Purpose: To advise the Committee of:
a) Hearings to be determined;
b) Applications for the grant or renewal of licences and permits under the Civic Government (Scotland) Act 1982 and other statutes within the Committee's remit;

Recommendation: 1) That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which any of the matters in this Report are to be considered;
2) That the Committee consider and determine the matters before them.

1. Executive Summary

1.1 The Licensing Committee's remit is to exercise the Council's licensing functions. These functions arise under many statutes, mainly the Civic Government (Scotland) Act 1982. Depending on the legislation and the circumstances of each individual case, the Committee is entitled to grant, refuse, renew, vary, suspend and revoke Licences.

2. Background

2.1 The Committee's business under the 1982 Act is as follows:

Appendix A - Licences and Permits where Hearings have been convened
Appendix B - Applications for the grant or renewal of Licences and Permits

Exempt Information

2.2. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

Paragraph 15: "The identity of a Protected Informant" - where "ProtecteInformant" 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.

2.3. The details of the cases in the Appendices, with any relevant documents (such as letters from the Police or objectors) are in the background papers given to Committee Members and will be sent to the respective Applicants or Licence-Holders before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment).

Paragraphs 14 or 15 could apply where it was alleged that there was criminal conduct or anti-social behaviour committed by or against a Licence-Holder or Applicant for a Licence, or where the Committee was told that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

3.1 It is proposed that the Committee consider and determine each of the listed cases in accordance with the required procedure.

4. Implications/Socio-economic Duty

Financial

4.1 There are possible financial implications in relation to any Licensing decision.

Human Resources

4.2 None.

Legal

4.3 There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.

Equality/Socio-economic

4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council

"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

Section 149(1) ("Public sector equality duty"): the Council

"must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered

Environmental and Sustainability

4.5 None

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress

towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024:
"North Ayrshire's residents and communities are safe."

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

5.1 Consultations have been undertaken where appropriate with Police Scotland, Scottish Fire and Rescue, and Council Directorates.

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

Hearings (Appendix A)

Case 1	Late Hour's Catering Licence	LHCL/134 (New)
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Applicant	Kala Singh
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Premises	Bollywood Spice 29 Countess Street Saltcoats
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Case 2	Taxi Driver's Licence	TDL/02197 (New)
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Applicant	Gareth Wilkinson
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Case 3	Window Cleaner's Licence	WCL/004 (New)
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Applicant	Eric Paterson
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Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
STL/O/261 (Renewal)	David Duncan McIntyre
TDL/00321(Renewal)	Thomas Smith

Note

STL/O – Street Trader Operator

TDL – Taxi Driver's Licence

NORTH AYRSHIRE COUNCIL

8 January 2020

Licensing Committee

Title: APPENDIX C

Preliminary Consideration of possible Revocation or Suspension

Purpose: To advise the Committee of information received about Licence-Holders, and to outline the Committee's powers under Civic Government (Scotland) Act 1982, Schedule 1, Paragraph 11.

Recommendation: That the Committee should consider the information supplied by the Clerk, and decide if Hearings should take place on a later date.

1. Executive Summary

- 1.1 The Council is the Licensing Authority under the Civic Government (Scotland) Act 1982 and licenses various activities regulated by that Act, such as the operation of and driving of Taxis and Private Hire Cars, Street Trading, and the provision of Public Entertainment. Its functions as Licensing Authority are delegated to the Licensing Committee.

2. Background

- 2.1 The provisions for what is sometimes described as "Ordinary Revocation or Suspension" are in 1982 Act, Schedule 1, Paragraph 11. Paragraphs 11(1) and (2) are:

"11

(1) A Licensing Authority may, whether upon a complaint made to them or not, Suspend or Revoke a Licence in accordance with the provisions of this Paragraph.

(2) A Licensing Authority may order the Suspension or Revocation of a Licence if in their opinion—

(a) the holder of the Licence or, where the holder is not a natural person, any director of it or partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the Licence;

(b) the activity to which the Licence relates is being managed by or carried on for the benefit of a person, other than the Licence holder, who would have

been refused the Grant or Renewal of the Licence under Paragraph 5(3) above;

(c) the carrying on of the activity to which the Licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety;

(d) a condition of the Licence has been contravened.

(3) A Licensing Authority may make an order under Sub-Paragraph (2)(d) above in respect of a contravention of a condition of a Licence notwithstanding that there has been no conviction in that respect."

2.2. When the Clerk receives information, consisting either of

- (a) reports from the Council's Civic Licensing Standards Officer, other Council officers, or the Police, or
- (b) complaints from members of the public

alleging a possible ground of Revocation or Suspension in relation to a Licence-holder, the Clerk informs the Committee of that information by including it in Appendix C to the Report dealing with Hearings and Applications.

2.3. That information is "Exempt Information" to which Local Government (Scotland) Act 1973, Section 50A to 50K and Schedule 7A apply. The "Exempt Information" 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.

2.4. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged that a Licence-Holder had either defaulted in an obligation applied by the Licence, or committed a criminal offence (whether or not there had been concluded Court proceedings).

- 2.5. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of "Exempt Information" (Section 50A(4)). As the Clerk considers that the meeting is likely not to be open to the public while the Schedule is being considered, Section 50B(2) and (5) apply. The particular circumstances of the case are not contained in the publicly-accessible Agenda, but instead are detailed in a confidential Schedule which is marked "Not for Publication".
- 2.6. The information will be circulated to Members. The Minutes will be redacted, and the disclosure of Background Papers will be modified to take account of the "Exempt Information" rules (Sections 50C, 50D).

3. Proposals

- 3.1 The Committee is invited to consider the information in the Schedule and determine what action, if any, is appropriate.
- 3.2 The present Hearing is only a preliminary consideration of the information. Options at the preliminary consideration stage are:
 - (a) continue the case to a later Meeting, to which both the Licence-holder and the informant will be invited. After hearing from all attending the Committee will decide what action, if any, is appropriate (for example, Revocation or Suspension of the Licence, or the issue of a Warning Letter to the licence-holder);
 - (b) take no action.
- 3.3. Since the Committee at this stage is only conducting a preliminary consideration of the complaint:
 - neither the Licence-Holder nor the informant have been invited to attend, and
 - neither has a right to address the Committee.

although if the informant is the Civic Licensing Standards Officer or another Council officer, he or she may be available to give the Committee further information.

If the Committee now decides to continue the case to a hearing, both parties will be advised and invited to attend. The Licence-Holder will be told of the options available to the Committee if the Committee considers that grounds to Revoke or Suspend the Licence exist.

- 3.4. If a Hearing is later held, the Committee's powers depend on whether or not the Committee is satisfied that there are grounds to Revoke or Suspend the Licence.

If the Committee is not so satisfied, the proceedings will end without action.

If the Committee is satisfied, it will have to consider what action should be taken. Options will be:

- (a) Immediate Revocation of the Licence
- (b) Revocation of the Licence (effective 28 days later)
- (c) Immediate Suspension of the Licence
- (d) Suspension of the Licence (effective 28 days later)
- (e) Issue of a warning to the Licence Holder
- (f) No action

If the Committee orders Revocation or Suspension, the default position is that the order is postponed for 28 days, to allow any party to appeal to the Sheriff Court. If the Committee considers that the order should be effective immediately, it may so order.

Any suspension is either for a fixed period, set by the Committee, or for the unexpired duration of the Licence.

4. Implications/Socio-economic Duty

Financial

- 4.1 There are possible financial implications in relation to any Licensing decision.

Human Resources

- 4.2 None.

Legal

- 4.3 There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.

Equality/Socio-economic

- 4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council

"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

Section 149(1) ("Public sector equality duty") the Council

"must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered

Environmental and Sustainability

4.5 None

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of licence-holders, the safety of vehicles, and the suitability of premises, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe."

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

5.1 There is no statutory obligation to consult here.

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

8 January 2020

Licensing Committee

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

Purpose: To inform the Committee of Landlord Registration matters.

Recommendation:

1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report and its Schedules is to be considered;
2. For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and
 - (a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;
 - (b) if appropriate, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house, or to delegate authority to the Clerk to issue such a Notice.

1. Executive Summary

- 1.1 The Licensing Committee has delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.

2. Background

- 2.1 The persons named in the attached Schedules are Landlords who are either applying for Registration or who are registered. The Clerk has information suggesting that there may be a basis for the Committee concluding that the Landlords are not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed (each person has one Schedule). The rented houses concerned are listed in the Schedules. The Schedules are marked "Not for Publication".

2.2 The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

Paragraph 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.

2.3 The Schedules are in the background papers given to Committee Members and will be sent to the respective Landlords before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4 The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

2.5 For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged:

- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
- (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his/her legal obligations, or

- (c) that the Landlord had defaulted in another obligation applying to Landlords, or
- (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

- 3.1 The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.
- 3.2. If the Committee decides to refuse an Application, or to remove a Registration, and if it is satisfied that the house is presently occupied by a Tenant, it should then decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice' or 'RPN') in respect of any house referred to in the Application or Registration.
- 3.3. If it is are not so satisfied, it may delegate authority to the Clerk to issue a RPN if and when the Clerk is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he/she was unregistered, the Committee may wish to delegate authority to the Clerk to issue a RPN if the Clerk later receives information that any house which is currently covered by the Registration is occupied by a Tenant under a Lease or an Occupier under an Occupancy Arrangement.

4. Implications/Socio-economic Duty

Financial

- 4.1 There are possible financial implications in relation to any Licensing decision. If a RPN is made, the Benefit Authorities will be informed, so that the Landlord will no longer receive Housing Benefit or Universal Credit, if any is claimed for the house.

Human Resources

- 4.2 None.

Legal

- 4.3 There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.

If the Council makes a RPN, 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)).

For example:

- (a) the Tenant will continue to have whatever security of tenure he/she already had (and cannot be evicted for non-payment of rent where that non-payment is due to the RPN);
- (b) the Landlord will only be entitled to evict the Tenant if the First-Tier Tribunal grants an Eviction Order;
- (c) the Landlord will continue to have repairing obligations.

If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).

Equality/Socio-economic

- 4.4 Equality Act 2010 imposes duties on the Council:

Section 1(1) ("Public sector duty regarding socio-economic inequalities"): the Council

"must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

Section 149(1) ("Public sector equality duty") the Council

"must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [that Act];
- (b) advance equality of opportunity between persons who share a "Relevant Protected Characteristic" and persons who do not share it;
- (c) foster good relations between persons who share a "Relevant Protected Characteristic" and persons who do not share it."

The "Relevant Protected Characteristics" are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Clerk has considered these Duties in preparing this Report and any specific impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant impacts to be considered.

Environmental and Sustainability

4.5 None

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of landlords and the suitability of premises, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "North Ayrshire's residents and communities are safe."

Community Wealth Building

4.7 There are no Community Wealth Building issues.

5. Consultation

5.1 No consultations are required by the legislation. Depending on the circumstances, the Schedules contain information supplied by the Police, other Council officers, or other agencies.

Andrew Fraser
Head of Democratic Services

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

Background Papers

None

