



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, 06 September 2023 at 10:00** to consider the undernoted business.

Meeting Arrangements - Not live streamed

This meeting will be held on a predominantly physical basis but with provision, by prior notification, for remote attendance by Elected Members in accordance with the provisions of the Local Government (Scotland) Act 2003.

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 Meeting of the Licensing Committee held on 9 August 2023 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy 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, 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

Eleanor Collier (Chair)
Nairn McDonald (Vice-Chair)
John Bell
Cameron Inglis
Christina Larsen
Jean McClung
Matthew McLean
Donald L. Reid
Ronnie Stalker
Angela Stephen

Chair:

Apologies:

Attending:

IRVINE, 9 August 2023 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Eleanor Collier, Nairn McDonald, Cameron Inglis, Jean McClung, Matthew McLean and Ronnie Stalker.

In Attendance

W. O'Brien, Solicitor (Licensing), A. Toal, Administration Assistant, S. Dalgoutte, Senior Clerical Assistant (Licensing) and C. Stewart and S. Wilson, Committee Services Officers (Democratic Services) (Chief Executive's Service).

Also in Attendance

Sergeant D, Markin and E. Blackwood (Police Scotland); and Janeine Barrett, Senior Manager (Homelessness and Community Safety), Katie Bell, Team Manager, Gillian Tolmie, Policy Officer and Agnieszka Dopierala, Policy Officer (Housing Strategy & Development (Place)).

Chair

Councillor Collier in the Chair.

Apologies

John Bell, Christina Larsen, Donald L. Reid and Angela Stephen.

1. Declarations of Interest

In respect of the second Urgent Item on the agenda 'Second Hand Car Dealer's Licence SHDL/036: Colin MacDonald', Councillor McLean made a transparency statement advising that he had been involved in a casework enquiry concerning the applicant. Having applied the objective test, he assessed that it was an interest in terms of the Councillors' Code of Conduct which would prevent him from taking part in the decision. Accordingly, Councillor McLean advised that he would leave the meeting during consideration of this item of business.

2. Minutes

The Minutes of the Meeting held on 7 June 2023 were confirmed and 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, 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 and 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."

It was agreed that the Resolution would operate for the entire business of the meeting.

4. 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: Licences and Permits where Hearings have been convened

4.1 Taxi Driver's Licence: TDL/02389 (New): Jack Hendry

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

Police Scotland addressed the Committee on the terms of a letter setting out their representation.

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

Decision

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.

4.2 House in Multiple Occupation Licence: HMO/026 (New): North Ayrshire Council

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

The applicant, represented by Janeine Barrett, Senior Manager (Homelessness and Community Safety) then addressed the Committee on the terms of the application.

Decision

The Committee unanimously agreed to extend the Temporary Exemption Order for a further period of three months.

4.3 Street Trader Operator's Licence: STL/O/534 (New): Daisy McConnachie

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

Two objections had been received in respect of the application, and the two objectors, having been duly cited to attend, were not present.

The applicant read out a written statement in support of her application, a copy of which was circulated to Members of the Committee.

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.

Appendix B - Applications for the grant or renewal of Licences and Permits

4.4 Metal Dealer's Licence: MDL/065 (Renewal): George Payling

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

There was a Police representation in connection with this application.

Decision

The Committee agreed to defer consideration of this application to a future meeting to allow the applicant to attend.

4.5 Second Hand Dealer's Licence: SHDL/205 (Renewal): George Payling

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

There was a Police representation in connection with this application.

Decision

The Committee agreed to defer consideration of this application to a future meeting to allow the applicant to attend.

4.6 Taxi Licence: TL/452 (New): Alasdair Drummond and Russell Drummond

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

Decision

The Committee agreed (a) to treat the proposed vehicle in the circumstances of the case as justifying an exception to Paragraph 12 of the Council's Taxi and Private Hire Car Vehicle Approval Specification under Civic Government (Scotland) Act 1982, Sections 10(2) and 10(5) ("Wheelchair Accessible Vehicles"); and (b) to continue consideration of the Taxi Licence application to allow for the possible use of Delegated Powers to determine the application.

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

Submitted report by the Head of Democratic Services on Landlord Registration matters.

The Solicitor (Licensing) set out the background to the hearing, as previously intimated in writing to the licence holder.

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

Officers from Housing Services were present and provided further background information in relation to the application. They were also heard in response to questions from Members.

Decision

Councillor McDonald, seconded by Councillor McClung, moved that the Landlord Registration should be removed forthwith on the basis that the Registered Person was no longer a fit and proper person to act as a Landlord.

Councillor Collier, seconded by Councillor Inglis, moved an amendment that the case should be continued to the next meeting of the Committee (Wednesday 6 September 2023 at 10.00 a.m.):

- (a) for all necessary works to be carried out to the house which was the main house being discussed so that it met both the "Tolerable Standard" and the "Repairing Standard",
- (b) for the Housing Section to re-inspect the house and to report to the Committee, and
- (c) for the Housing Section to report to the Committee on the condition of the other houses in North Ayrshire which were:
 - (1) covered by the Registration (or the Registration held by the Director of the Limited Company), and
 - (2) occupied by tenants or other occupiers.

On a division and a roll call vote, there voted for the amendment Councillors Collier, Inglis and Stalker (3) and for the motion, Councillors McDonald, McClung and McLean (3), and on the casting vote of the Chair, the amendment was declared carried.

Accordingly, the Committee agreed to continue the case to the next meeting of the Committee.

6. Urgent Items

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

6.1 Taxi Licence TL/174: Alan McTurk

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

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

Decision

The Committee agreed that the proposed vehicle should be treated in the circumstances of the case as justifying an exception to the Council's Taxi and Private Hire Car Vehicle Approval Specification under Civic Government (Scotland) Act 1982, Sections 10(2) and 10(5) (which normally prevents a vehicle from first being licensed as a Taxi or Private Hire Car if it is already over 8 years old, counted from the date of First Registration), and accordingly granted the Vehicle Substitution application under Section 10(5) of the Civic Government (Scotland) Act 1982.

The Committee considered that the facts:

- (a) that the vehicle was over 9 years old and had a mileage of 80,000; and
- (b) would immediately be the subject of a 6-monthly inspection cycle, were relevant factors in allowing an exception.

Councillor McLean, having declared an interest in the following item, left the meeting at this point in the proceedings.

6.2 Second Hand Car Dealer's Licence SHDL/036: Colin MacDonald

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

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

Decision

The Committee unanimously agreed (a) to grant the temporary application subject to the Council's standard conditions in terms of Paragraph 7 of Schedule 1 of the Civic Government (Scotland) Act 1982 and (b) that the grant of the full application would be dealt with under Delegated Powers subject to there being no relevant objections or adverse representations other than that considered by the Committee on 9 August 2023.

The meeting ended at 12 noon.

NORTH AYRSHIRE COUNCIL

6 September 2023

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

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

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 "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 details of the cases in the Appendix, 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

Climate Change and Carbon

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.

Aileen Craig
Head of Democratic Services

For further information please contact **William O'Brien, Solicitor (Licensing)**, on
Licensing@north-ayrshire.gov.uk.

Background Papers

None

Appendix A

Case 1	Metal Dealer's Licence	MDL/065 (Renewal)
Applicant	George Payling	

Case 2	Second Hand Dealer's Licence	SHDL/205 (Renewal)
Applicant	George Payling	

Case 3	Street Trader Operator's Licence	STL/O/540 (New)
Applicant	G K G Catering Ltd	

Case 4	Taxi Driver's Licence	TDL/02394 (New)
Applicant	Robert Hendry	

Case 5	Taxi Driver's Licence	TDL/02399 (New)
Applicant	Alan MacDonald	

Case 6	Taxi Licence	TL/453 (New)
Applicant	Colin Bennett	

Case 7	Private Hire Car Licence	PHCL/382 (New)
Applicant	Steven Mason	

Case 8	Taxi Licence	TL/450 (New)
Applicant	Brahim Sensri	

Case 9	Taxi Licence	TL/451 (New)
Applicant	Stacey Beattie	

Case 10

Short Term Lets Licence

NA00306C (New)

Applicant

Barbara **Buelmann**

NORTH AYRSHIRE COUNCIL

6 September 2023

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.

Climate Change and Carbon

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.

Aileen Craig
Head of Democratic Services

For further information please contact **William O'Brien, Solicitor (Licensing)**, on **licensing@north-ayrshire.gov.uk**.

Background Papers

None

