

Licensing Committee  
22 March 2011

**Irvine, 22 March 2011** - At a Meeting of the Licensing Committee of North Ayrshire Council at 2.00 p.m.

**Present**

William Gibson, Robert Barr, Ian Clarkson, Ruby Kirkwood, Elisabeth Marshall, John Moffat, Alan Munro and Joan Sturgeon.

**In Attendance**

W. O'Brien, Senior Solicitor (Licensing), P. Atiken, Solicitor, D. Wallace, Enforcement Officer, B. Kelly, Environmental Protection Technician and A. Toal, Administrative Assistant (Corporate Services); and A. Little, Committee Services Officer (Chief Executive's Service).

**Also In Attendance**

Inspector Skimming and Sergeant Menzies, Strathclyde Police.

**Chair**

Councillor Gibson in the Chair.

**1. Declarations of Interest**

Councillor Munro declared an interest in Agenda Item 5 Civic Government (Scotland) Act 1982: Licensing Matters ISEL/016 (Renewal) and took no part in the discussion thereon. Councillor Barr declared an interest in Agenda Item 5 Civic Government (Scotland) Act 1982: Licensing Matter TDL/01244 and left the meeting for that item of business.

**2. Minutes**

The Minutes of the previous meeting of the Committee held on 8 February 2011 were signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

**3. Licensing Scheme of Delegation**

Submitted report by the Solicitor to the Council on proposed revisions to the existing Scheme of Delegation.

Under the existing Scheme of Delegation, cases require to be referred to Committee where there are fairly minor convictions. Convictions which the Committee has already considered may have to be referred again.

The report outlined the proposed amendments to enable applications to be granted under delegated powers where the applicant:-

- (a) has no more than two convictions or other disposals where the penalty was no higher than a fine of £200;
- (b) has accumulated no more than 6 Penalty Points on his driving licence (12 Points usually leads to a 'totting-up' disqualification);
- (c) any drugs convictions relate only to 'simple possession' offences.

Cases that have accumulated three or more minor convictions would be submitted to the Committee for consideration.

The Committee will continue to consider cases with convictions such as fines over £200, imprisonment, probation, Community Service, assault and other offences of violence, all other drugs offences and most road traffic cases (including offences of dangerous and careless driving, drink-drive offences, no driving licence, no insurance, no MOT).

The Committee agreed to approve the revised Scheme of Delegation for all licensing statutes (other than the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) as detailed in the appendix to the report.

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

##### **4.1 Licensing Scheme of Delegation**

Submitted report by the Solicitor to the Council on the proposed extension to the existing Licensing Scheme of Delegation to cover other actions under the Act, including the issue of Rent Penalty Notices to unregistered landlords.

The Antisocial Behaviour etc (Scotland) Act 2004, Part 8 (Sections 82-101) creates a system of landlord registration. With exceptions, it is necessary for a landlord who rents a house to someone who is not a member of his family to be registered. Registration is valid for 3 years, and can be renewed. The fee for registration is £55, although there are additional fees where more than one house is involved.

The Council is required to be satisfied that anyone wishing registration as a landlord or an agent should be 'fit and proper'. Landlords who remain unregistered may receive a Notice under Section 94 (often called a 'Rent Penalty Notice') from the Council and the landlord can be prosecuted for a criminal offence under Section 93 of the Act and fined up to £5,000.

Licensing and Housing Benefit undertook a data-matching exercise that identified around 3,000 unregistered rented properties. Letters will be sent to the landlords identified by the data-matching exercise, inviting them to register or to supply an explanation for not being registered. They will be advised that if neither happens within 14 days then both a Rent Penalty Notice may be issued and the case may be referred for prosecution.

The Committee agreed to (a) the issue of Rent Penalty Notices in the situations described in the report; (b) the referral of the landlord who owns a house where Rent Penalty Notices are issued to the Procurator Fiscal or Police for prosecution; and (c) the Scheme of Delegation for the Landlord Registration Scheme to cover other actions under the Act.

## **4.2 Application for Landlord Registration**

Submitted report by the Solicitor to the Council on an application for landlord registration.

The Landlord Registration Scheme operates under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 (Sections 82-101). Under this scheme, landlords may register in their own names, or may engage Agents to do so.

In January 2011, R & J Properties Scotland Ltd. ('R & J') applied for registration of 6 Stronsay Way, Broomlands, Irvine (Application 165346/310/13230). R & J stated in the application process that they were both the owners of the house and acting as Agents. They stated that they had no previous convictions. The Council contacted R & J on 25 January 2011, who stated the house was owned by a Mr. Tannahill. R & J Properties were invited to withdraw the application and did so.

R & J submitted a second application (253533/310/27441), that stated that the applicant was Allan Kenneth Tannahill and that his home address was 6 Stronsay Way, Broomlands, Irvine. Mr. Tannahill is in prison having been sentenced to life imprisonment for murder on 15 February 2009.

The Act specifies conditions which prospective landlords must meet. One of these conditions is that the landlord is a 'fit and proper person' (Section 84(3)(c)). The Council is therefore entitled to have regard to the murder conviction in determining whether or not Mr. Tannahill is fit and proper to be a landlord. Where the Council is not satisfied that the conditions for registration are met, the Council is obliged to refuse registration (Section 84(2)(b)).

Where a landlord rents a house without being registered then the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice'). This means that the tenant ceases to be liable for rent (but otherwise the lease continues, so the tenant remains in occupation and cannot be evicted for non-payment) and any Housing Benefit stops being paid. The landlord can also be prosecuted for a criminal offence under Section 93 of the Act and fined up to £5,000.

Confirmation has been received that there are currently tenants in the house at 6

Stronsay Way, Broomlands, Irvine and Housing Benefit is paid to the applicant via his agent R & J Properties.

R & J are agents for about 105 properties, and act on behalf of many landlords. Where the Council considers that an agent is no longer a fit and proper person, it is obliged to remove the agent from the Register (Section 89).

The Committee agreed (a) to refuse the application made by Allan Kenneth Tannahill, 6 Stronsay Way, Broomlands, Irvine, c/o Unit 6D, Rivergate Centre, Irvine (Ref. 253533/310/27441) under Section 84(2)(b); (b) to issue a Notice under Section 94 in respect of the house at 6 Stronsay Way, Broomlands, Irvine; and (c) that R & J Properties be invited to a future meeting to provide further information in relation to the submission of the applications for landlord registration.

## **5. Civic Government (Scotland) Act 1982: Licensing Matters**

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

The Committee agreed to dispose of these matters as indicated in the attached Appendix LC1.

## **6. Urgent Items**

The Chair agreed that the undernoted items be considered as a matter of urgency to allow consideration to be given to late applications.

### **6.1 Public Charitable Collections Licences**

#### **C & M Partnerships**

The Committee unanimously agreed (a) to grant the application subject to the Council's standard conditions in terms of Paragraph 5 of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) that further information be requested from C & M Partnerships in relation to the financial costs of undertaking the public charitable collection within Irvine and the resulting income for the charity.

#### **Irvine Victoria Junior Football Club**

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

The meeting ended at 3.50 p.m.

## **PART A**

### **Applications for Licences/Renewal of Licences**

#### **Indoor Sports Entertainment Licence**

##### **1. ISEL/016 (Renewal) North Ayrshire Leisure Ltd**

The Committee was advised of further renewal applications from North Ayrshire Leisure Ltd for a number of facilities in North Ayrshire.

The Committee unanimously agreed (a) to grant the application subject to the Council's standard conditions in terms of Paragraph 5 (1) (b) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) that the Senior Solicitor (Licensing) should be authorised to determine further renewal applications from North Ayrshire Leisure Ltd under delegated powers.

#### **Public Charitable Collections Licence**

##### **1. PCC (New) British Heart Foundation**

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

#### **Street Trader Licence**

##### **1. STL/E/217 (New) Michael Wallace**

The Committee unanimously agreed (a) to grant the application subject to conditions in terms of Paragraph 5 (1) (b) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) in terms of Paragraph 8 (2) (b) of the said Schedule, to restrict the period of the licence to 1 year.

#### **Taxi Licences**

##### **1. TL/048 (Renewal) Fiona Wagstaff**

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

**2. TL/193 (New) Fiona Wagstaff**

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

## **Part B**

### **Street Trader Operator's Licences**

#### **1. STL/O/075 Sharon Serapiglia**

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

#### **2. STL/O/257 Natalie Serapiglia**

The Committee agreed, on the basis of the information presented, that no further action be taken.

### **Taxi Driver's Licence**

#### **1. TDL/01469 Charlene Smith**

The Committee agreed, on the basis of the information presented, that no further action be taken.

#### **2. TDL/01562 Malcolm Douglas Dempster**

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

## **Part C**

### **1. PEL/070 (Renewal) Michael Stirling**

The Committee was advised that the licence holder was unable to attend and had requested that the Hearing be adjourned to allow him to attend at a future date.

#### **Decision**

The Committee on the basis of the information presented, agreed to adjourn the Hearing to the next meeting of the Committee to allow the licence holder to attend.

### **2. STL/O/193 Elaine McIntyre**

The Committee, at its meeting on 8 February 2011, agreed on the basis of the information presented, unanimously to proceed to a suspension 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. Representatives from the Council's Enforcement and Environmental Health Sections were in attendance.

The Senior Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representative from Environmental Health then addressed the Committee setting out the observations of the Environmental Health Section in relation to further complaints received regarding the sounding of chimes outwith permitted hours. The Enforcement Officer (Licensing and District Court) provided details of information provided, on behalf of the licence holder, in relation to the complaints. Thereafter the licence holder and her representative 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.

The Committee unanimously agreed to suspend the licence for the unexpired portion of the duration of the licence in terms of Paragraph 11 (11) of the said Schedule 1.

### **3. TDL/00820 Thomas Hope**

On 17 February 2011, a formal representation was received from Strathclyde Police which outlined the circumstances surrounding an incident that occurred on 14 February 2011. On the basis of the representation, the Taxi Driver Licence TDL/00820 was suspended with immediate effect under the emergency powers available, in terms of Para 12 of Schedule 1 of the Civic Government (Scotland) Act 1982.



The licence holder, having been duly cited to attend, was not present. Representatives from Strathclyde Police were in attendance.

The Senior Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The representatives from Strathclyde Police then addressed the Committee on the terms of letter dated 17 February 2011 setting out the observations of the Chief Constable of Strathclyde Police.

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

The Committee unanimously agreed to suspend the licence for the unexpired portion of the duration of the licence in terms of Paragraph 11 (11) of Schedule 1.

#### **4. TDL/01244 Elizabeth Kilday Conway**

The Committee, at its meeting on 8 February 2011, 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 Strathclyde Police were also in attendance.

The Senior Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of letters dated 14 October and 10 November 2010 setting out the observations of the Chief Constable of Strathclyde Police on 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.

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

## **5. TDL/01666 Barry Thomas Nelson**

The Committee, at its meeting on 14 December 2010, 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 Strathclyde Police were in attendance.

The Senior Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of letters dated 14 October and 10 November 2010 setting out the observations of the Chief Constable of Strathclyde Police on the application.

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

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