

Licensing Committee
14 December 2016

IRVINE, 14 December 2016 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Robert Barr, John Bruce, John Easdale, Tom Marshall, Catherine McMillan and Donald Reid.

In Attendance

W. O'Brien, Solicitor (Licensing), K. Sharkey, Solicitor (Contracts and Licensing), D. Robertson, Enforcement Officer and A. Toal, Administrative Assistant; E. Anderson, Team Manager (Private Sector Housing) and B. Ferry, Policy Officer (Private Sector) (Place); and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

Also In Attendance

Inspector B. Skimming, Detective Sergeant E. Bell, Sergeant G. Griffiths and Police Constable A. Kerr (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

Grace McLean, Alan Munro and Robert Steel.

1. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Barr, as a relative of the applicant, declared an interest in Hearing 8 (Kilmurry) under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters), left the meeting for that item of business and took no part in the decision thereon.

2. Order of Business

The Chair, in terms of Standing Order 9.3, agreed to vary the order of business to allow consideration of Hearing 7 prior to Hearing 6, and Hearing 11 prior to Hearing 10, all under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters).

The Chair further agreed that two further cases be considered as urgent items in terms Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) immediately following consideration of Appendix C of that Item, and that Agenda Item 5 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) be considered prior to Agenda Item 4 (Public Charitable Collections - Civic Government (Scotland) Act 1982).

3. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 23 November 2016 was confirmed, and the Minutes were signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

4. Exclusion of 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 the following items of business 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 that described in Section 7A, Paragraph 6 ("Information relating to the financial business affairs of any particular person (other than the authority)") and Paragraph 14 ("Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime").

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

Part A: Hearings

5.1 Street Trader Operator's Licence: STL/O/445 (New) - Alexander Muir

The Committee, at its meeting on 23 November 2016, 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 or represented. Representatives of Police Scotland were in attendance.

The Committee considered the background information provided, including the terms of a letter from Police Scotland setting out an objection in relation to the application.

Decision

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

5.2 Taxi Driver's Licence: TDL/00192 (New) - Thomas Foy

The Committee, at its meeting on 23 November 2016, 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 of Police Scotland were also in attendance.

Members asked questions and received clarification from the applicant and representatives of Police Scotland. The applicant also provided confirmation of his new address.

Decision

Councillor Easdale, seconded by Councillor McMillan, moved that the application be granted 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.

5.3 Taxi Driver's Licence: TDL/01168 (Renewal) - Paul McPherson

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was not present or represented. Representatives of Police Scotland were in attendance.

The Committee was advised of the content of a written submission provided by the applicant in his absence. The representatives of Police Scotland addressed the Committee on the terms of a letter setting out an observation in relation to the application.

Decision

Councillor Easdale, seconded by Councillor McMillan, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

As an amendment, Councillor Marshall, seconded by Councillor Barr, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

On a division, there voted for the amendment 3 and for the motion 2 and the amendment was declared carried.

Accordingly, the Committee agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

5.4 Taxi Driver's Licence: TDL/01885 (New) - Peter Brown

The Committee, at its meeting on 23 November 2016, 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 of 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 of Police Scotland then addressed the Committee on the terms of a letter setting out an objection in relation to the application and made reference to a second letter containing details of 'protected' convictions in terms of the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) (Scotland) Amended Order 2015.

Members asked questions and received clarification from the applicant, representatives of Police Scotland and the Solicitor (Licensing). In response to questions, the applicant circulated written medical evidence in respect of his application, together with information on his current employment and qualifications.

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

Decision

Councillor Easdale, seconded by Councillor Reid, moved that the application be granted in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

As an amendment, Councillor McMillan, seconded by Councillor Barr, moved that the application be refused in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

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

Accordingly, the Committee agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the ground that the applicant was not a fit and proper person (Paragraph 5(3)(a)(ii)).

Councillor Bruce joined the meeting at this point.

5.5 Taxi Driver's Licence: TDL/00190 (New) - Raymond Henry Potts

The Committee, at its meeting on 23 November 2016, 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 and accompanied by his partner. Representatives of Police Scotland were also in attendance.

The representatives of Police Scotland addressed the Committee on the terms of a letter setting out an objection in relation to the application.

Members asked questions and received clarification from the applicant, representatives of Police Scotland and the Solicitor (Licensing).

Decision

Councillor Easdale, seconded by Councillor Marshall, moved that the application be granted 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.

5.6 Taxi Driver's Licence: TDL/01876 (Renewal) - Alessandro Sirio Gavazzeni

The Committee, at its meeting on 23 November 2016, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licence holder, having been duly cited to attend, was not present or represented. Representatives of Police Scotland were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licence holder. The Committee was also advised of the content of a written submission provided by the licence holder, which confirmed the licence holder's new address.

Decision

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

The representatives of Police Scotland withdrew from the meeting at this point.

5.7 Street Trader Employee Licence: STLE/274 (New) - Sharon Serapiglia

The Committee, at its meeting on 23 November 2016, 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 and represented.

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

Members asked questions and received clarification from the applicant, her representative and the Solicitor (Licensing).

The applicant and her representative then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

Councillor Easdale, seconded by Councillor Marshall, moved that the application be granted 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 Barr withdrew from the meeting at this point.

5.8 Taxi Driver's Licence: TDL/01921 (New) - Kenneth Kilmurry

The Committee, at its meeting on 23 November 2016, 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.

Members asked questions and received clarification from the applicant.

Decision

Councillor Bruce, seconded by Councillor Easdale, moved that the application be granted 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.

Councillor Barr rejoined the meeting at this point.

5.9 Taxi Driver's Licence: TDL/02007 (New) - Robert James Dickie

The Committee, at its meeting on 23 November 2016, 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.

Members asked questions and received clarification from the applicant.

Decision

Councillor Barr, seconded by Councillor McMillan, moved that the application be granted 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.

5.10 Public Entertainment and Indoor Sports Licences: PEL/457 and ISEL/017 - KA Leisure Limited

The applicant, having been duly cited to attend, was represented by an officer from KA Leisure Limited.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant and made reference to a proposed condition in respect of publicly accessible toilet provision.

Members asked questions and received clarification from the applicant and the Solicitor (Licensing). Discussion took place on the possibility of the applicant making application for a variation to extend the operation of the licence to 1.00 a.m.

Decision

The Committee unanimously agreed to grant the applications, subject to a condition that "no part of the premises (comprising the Town House and Portal Sports Centre together) shall be open to the public at any time where there is not adequate toilet provision which is easily accessible by all users of that part." There being no amendment, the motion was declared carried.

5.11 Street Trader Operator's Licence: STL/O/414 - Neil McIntyre

The Committee, at its meeting on 23 November 2016, 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.

The licence holder, having been duly cited to attend, was present and represented. Two complainers were also in attendance.

The Solicitor (Licensing) set out the background to the Suspension Hearing as previously intimated in writing to the licence holder. The Enforcement Officer addressed the Committee on the issues raised in a memorandum, statements from the complainers and a statement from the licence holder. The complainers and the licence holder also addressed the Committee on the issues raised.

Members asked questions and received clarification from the officers, licence holder and complainers.

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

Decision

Councillor Easdale, seconded by Councillor Bruce, moved the Committee (a) find that the ground of Suspension stated in Paragraph 11(2)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 (that the holder of the licence is not or is no longer a fit and proper person to hold the licence) was establishment, and that the Licence STL/O/414 should be suspended; (b) fix the period of Suspension as one calendar month, in terms of Paragraph 11(11); and (c) agree that, given the circumstances of the case, the Suspension should take immediate effect, in terms of Paragraph 11(10). There being no amendment, the motion was declared carried.

In terms of Standing Order 5.7, the Chair adjourned the meeting for a short comfort break. The meeting reconvened with the same Members and officers present and in attendance, with the exception of Councillor Easdale and the Enforcement Officer, who left the meeting at this point.

Part B: Applications for the Grant/Renewal of Licences

5.12 Taxi Driver's Licence: TDL/02009 (New) - Alan Frew

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

Part C: Issues in Respect of Existing Licences

5.13 Taxi Driver's Licence: TDL/01780 - John Swindle

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

6. Urgent Items

6.1 Public Charitable Collection: Irvine Meadow Football Club

The Committee was advised that the applicant has applied for a Charitable Collection on Wednesday 28 December 2016, which is outwith the Council policy.

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to grant the application in terms of Section 119 of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions

6.2 Taxi Driver's Licence: TDL/00675 - William Hamilton

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

7. Landlord Registration under the Anti Social Behaviour etc. (Scotland) Act 2004, Part 8

7.1 W.B.

The registered person, having been cited to attend, was not present or represented.

The Team Manager (Private Sector Housing) and B. Ferry, Policy Officer (Private Sector) addressed the Committee on the issues raised.

Members asked questions and received clarification from the officers.

Decision

The Committee unanimously agreed (a) under Section 89 to remove the Registered Persons from the Register; (b) to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the property; and (c) to delegate to the Clerk, the Solicitor (Licensing) or any Solicitor engaged in Landlord Registration to revoke the Rent Penalty Notice should the required repairs be undertaken.

8. Public Charitable Collections - Civic Government (Scotland) Act 1982

Submitted report by the Chief Executive on the law and current policy in terms of Public Charitable Collections.

The Committee was invited to consider reviewing the Police. Section 3.2 of the report provided suggestions as to how the policy might be amended.

The Committee agreed to amend the Policy on Public Charitable Collections to read as follows:-

"(a) House-to-House Collections are only permitted in the period Monday-Friday, in the period from 9.00 a.m. to 7.30 p.m.;

(b) Street Collections are only permitted on Saturday, in the period from 9.00 a.m. to 6.00 p.m.;

(c) neither is permitted on a Sunday;

(d) only one of each is allowed on a particular day in a particular town, but the following Collections are not counted towards the 'one of each' total:-

- collections during December, or
- collections carried out by or for a community group within 14 days before a local event (such as Largs Viking Festival), or
- collections conducted by Exempt Promoters."

The Meeting ended at 1.25 p.m.