
NORTH AYRSHIRE COUNCIL

18 August 2021

Licensing Committee

Title: Largs Land Train - Application for a Temporary Street Trader Licence under Civic Government (Scotland) Act 1982, Section 39 by 'Largs Viking Festival' (Registered Company SC225852, Registered office: Duff and Co. Solicitors, 30 Main Street, Largs) for a Land Train in Largs to operate from Saturday 28th August 2021 to Sunday 5th September 2021.

Purpose: 1. to inform the Committee of a Licence proposal, and

2. to inform the Committee of issues arising.

Recommendation: 1. That the Committee decide whether or not to suspend Standing Orders in order to consider the Licence Application made;

2. If the Committee decide to suspend Standing Orders:

(a) that the Committee decide whether to grant or to refuse the Application.

(b) If the Committee determine to grant the application, to consider what Licence Conditions and Application procedures should be adopted;

1. Executive Summary

1.1 The Committee grant and renew Licences under the Civic Government (Scotland) Act 1982. These Licences include the "Street Trader's Licence" under Section 39 (here "STL"). Despite the title, this Licence is required for trading in a public place, so it would

be needed for trading on a pavement or car park. The legislation relating to STLs deals with both traders selling goods and traders providing services, although until now the most common use of STLs has been to license vans and stalls selling food. The Council have not been asked before to license Land Trains.

- 1.2. The proposal is for a Temporary Licence for a "Land Train" in Largs. The details of the proposal are set out below ("2. Background")

- 1.3. The Committee must first decide whether or not Standing Orders should be suspended. This is because making a decision on a Licence Application will involve the effective revocation or variation of a Committee decision taken on 14 July 2021 when the Committee determined that a consultation should be undertaken to inform policy on future licence applications for land trains and rickshaws. Only if the Committee decide that Standing Orders should be suspended should the Committee consider and determine the Largs Land Train Licence Application itself.

- 1.4. The relevant Standing Orders are set out in the Appendix to this Report. The Standing Orders apply to the Committee as they apply to the whole Council (S.O. 26 and 31: "Provost" and "Vice-Provost" mean "Convenor" and Vice-Convenor respectively).

- 1.5. Standing Order (S.O.) 23 is to the effect that no decision of the Committee may be reconsidered which is the same or substantially the same as one previously determined by the Committee within the past six months of the date of the making of the previous decision or determination.

- 1.6. There are exceptions to this rule (S.O. 23.1, paragraphs i to iv). In the opinion of the Solicitor to the Council the only exception relevant here is exception (i):

"i. Two thirds of the Members for the time being present and voting agree to suspend Standing Orders in accordance with Standing Order 21 above;"

- 1.7. If the Committee decide not to suspend Standing Orders, the Licence Application would remain undetermined pending conclusion of the consultation period, whereupon the application would be put to the next Committee for determination. It should be noted that the consultation period closes after the period during which the licence is requested and after the conclusion of the Viking Festival itself.

- 1.8. the possibility of a "Land Train" was reported on Sunday 27 June 2021 on the website of the "Largs and Millport Weekly News" ("Largs Viking Festival attraction steams ahead") although the organisers had not raised this with the Council's Licensing Office and the Committee had not been asked to grant a licence for this.

- 1.9. Due to this media report, and another proposal for the use of rickshaws on Largs Promenade, the Convenor arranged a Special Meeting. This was held on 14 July 2021, when the Committee considered a Report titled:

"Policy on Land Trains and Rickshaws - Street Trader Licences under Civic Government (Scotland) Act 1982, Section 39".

- 1.10. The Report raised many policy questions for the Committee.

- 1.11. The Committee decided to continue consideration of the numerous issues pending public consultation, with stakeholders such as the Police and other authorities being invited to comment. The Consultation was then published on the Community Planning Partnership at:

<http://northayrshire.community/public-carriages-consult/42496>

The Closing Date for that consultation is Friday 10 September 2021 at 4.00 p.m., and afterwards the Committee will consider the question of Policy.

- 1.12. However, after the Committee decision to continue for consultation, and in advance of that consultation being concluded, an Application for a "Temporary Licence" was made

relating to the proposed Largs Land Train. Since the Committee had already determined that consultation on the general question of Policy was required, and given the Standing Orders, the Clerk declined to exercise delegated powers and referred the Application to the Committee.

2. Background

2.1 The Licence requested is:

- from Saturday 28th August 2021 to Sunday 5th September 2021 – the length of the ‘Largs Viking Festival’.

- The proposal is 2 journeys per hour 10.00 - 18.00 (except Saturdays and Sundays, when the times are 09.00 - 18.00).

- The proposed route is:

The Land Train starts on the Promenade at the Festival site,
heads north and leaves the Promenade at the RNLI station,
enters the A78 road and drives north along the A78,
crosses over the southbound lane of the A78 & enters the north access road at Vicingar!

leaves by the south access road at Vicingar!

heads south along the A78 to Bath Street,

turns across northbound traffic in High Street into Bath Street,

along Bath Street to Makerston Place,

leaves the road at the playpark and enters Promenade, rejoining road at May Street.

Stops there,

Returns along Promenade to rejoin road at playpark,

then north along Bath Street, and into Fort Street,

past the Ferry Terminal,

on the Promenade and north to the Festival site.

2.2 As well as the prescribed consultation procedure (which, for "Temporary Licences", does not include the public) the Council have taken steps to engage the public and seek their views. The consultation document on the CPP website contains two consultations, to which the public may respond:

(a) per the Committee decision on 14 July 2021, there is public consultation on the wider issue of policy:

- for the whole of North Ayrshire

- for 2022 and later years, and

- for all public carriages – Land Trains, Rickshaws, Pedicabs and Tuk-Tuks.

The public are invited to respond by email by Friday 10 September 2021 at 4.00 p.m..

(b) concerning the Largs Land Train proposal. The public are invited to respond by email by Friday 13 August 2021 at 4.00 pm..

2.3. In addition, the Policy consultation was drawn to the attention of relevant authorities:

- Police Scotland

- The Council's Roads Department

- Amey/Transport Scotland (the "Roads Authority" for the A78 Trunk Road)

When the Largs Land Train application was lodged, the Clerk asked those parties to give earlier responses, so that the Committee on 18 August 2021 could have their views.

2.4. The Committee Members' Background Papers will contain copies of all submissions received.

2.5. It is appropriate for the Committee to consider the safety of vehicles carrying the public on roads and footways, and the possibility of public nuisance caused to pedestrians and road-users.

- under the Land Reform (Scotland) Act 2003 (commonly called "the right to roam")

- under the licensing legislation.

2.6. Under the Land Reform (Scotland) Act 2003:

(a) there are Access Rights, but

(b) Access rights must be exercised 'responsibly' - without causing unreasonable interference with the rights of others;

(c) The Council have a duty to uphold Access Rights, but only so far as consistent with their other functions (Section 13); "other functions" includes "Licensing functions".

3. Proposals

3.1 Under the Civic Government (Scotland) Act 1982, the relevant Licensing legislation, the Committee are directed to have regard to the Grounds for Refusal. These are stated in 1982 Act, Schedule 1, Paragraph 5(3), and the relevant parts are:

"5(3) ... a Licensing Authority shall refuse an Application to Grant or Renew a Licence if, in their opinion— ...

(c) where the Licence applied for relates to an activity consisting of or including the use of Premises or a vehicle or vessel, those Premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—

(i) the location, character or condition of the Premises or the character or condition of the vehicle or vessel;

(ii) the nature and extent of the proposed activity;

(iii) the kind of persons likely to be in the Premises, vehicle or vessel;

(iv) the possibility of undue public nuisance;

(v) public order or public safety;

(d) there is other good reason for refusing the Application;

and otherwise shall Grant the Application."

3.2. The Committee would have to consider the following questions. If the answer to question (a) is "yes", the Application must be refused. If the answer is "no", consider question (b), and continue in the same way, if necessary to question (c). If all questions are answered "no", the Application must be granted.

(a) "are the Premises - the proposed route and turning-points - 'suitable or convenient' having regard to the criteria in (i) to (v) ?"

(b) "is the vehicle - its weight, size, speed and manoeuvrability - 'suitable or convenient' having regard to the criteria in (i) to (v) ?"

(c) "is the route suitable or are there any modifications proposed that would make it suitable?"

4. Implications/Socio-economic Duty

Financial

4.1 None.

Human Resources

4.2 None.

Legal

4.3 If the Licence is refused the unsuccessful Applicants will have no right of appeal. This is a Temporary Licence, and therefore the usual appeal rights are excluded (1982 Act, Schedule 1: the appeal provisions of Paragraph 18 are excluded by Paragraph 7(5)). The Licence will be in the name of all parties named on the Licence Application

(including the Day-to-Day Manager). Each will be a Joint-Holder with all the rights and obligations of the Licence-Holder: 1982 Act, Schedule 1, Paragraph 5(8).

Equality/Socio-economic

4.4 The Clerk has considered the Council's duties under the Equality Act 2010 in preparing this Report and does not consider that the present proposals will have any specific impacts.

Environmental and Sustainability

4.5 None. Opinions will vary on whether the Land Train improves or impedes access.

Key Priorities

4.6 An effective licensing system, for example monitoring the 'fit and proper' status of applicants for licences, and the safety and suitability of vehicles supplying services to the public, helps progress towards one of the Priority Outcomes of the North Ayrshire Council Plan 2019-2024: "People and communities are safe".

Community Benefits

4.7 The Report does not relate to tendering or procurement exercises. There are no Community Wealth Building issues.

5. Consultation

5.1 Consultation has taken place as above.

Aileen Craig
Head of Democratic Services

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

Background Papers

Appendix: Standing Orders 21 - 23, 26 and 31 excerpted from "Standing Orders relating to Proceedings and Meetings of the Council" approved on 16th December 2020.