

**THE MORAY COUNCIL**  
**MINUTE OF MEETING OF THE LICENSING COMMITTEE**  
**27 FEBRUARY 2008**  
**COUNCIL OFFICE, ELGIN**

**PRESENT**

Councillors R Shepherd (Chair), G Coull, J Cree, J Divers, J Hamilton, F Murdoch, M McConachie, A McDonald, G McIntyre, A McKay, I Ogilvie, J Russell and D Stewart.

**IN ATTENDANCE**

The Principal Solicitor (Litigation & Licensing), Vladimir Valiente, Trainee, Solicitor (Litigation & Licensing) and Mrs S. Kennedy, Committee Services Officer, Clerk to the meeting.

**APOLOGIES**

Apologies for absence were intimated on behalf of Councillor D Ross.

**1. DECLARATION OF GROUP DECISIONS**

In terms of the Standing Order 20 and the Councillor's Code of Conduct the meeting noted that Councillor G McIntyre declared a non-financial interest in Agenda item 6, 'Public Entertainment Licence Fee – Application for Rebate'.

There were no other declarations from group leaders or spokespersons in regard to any prior decisions taken on how Members will vote on any item on the Agenda nor any declarations of Members Interest in respect of any Item on the Agenda.

**2. EXEMPT INFORMATION**

The Meeting agreed, in terms of Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, that the public and media representatives be excluded from the Meeting during consideration of the items of business appearing at the relevant paragraphs of this Minute as specified below so as to avoid disclosure of exempt information of the class described in the appropriate paragraph of Part I of Schedule 7A of the Act.

Para No. of Minute  
14

Para No. of Schedule 7A  
6

**3. WRITTEN QUESTIONS**

There were no written questions at this meeting.

**4. LICENCES DEALT WITH UNDER DELEGATED POWERS**

There was submitted a report by the Chief Legal Officer informing the Committee of Licences, which have been dealt with under delegated powers in terms of the legislation as detailed in the report.

The Principal Solicitor (Litigation & Licensing) advised the meeting that there was an error in the heading at paragraph 6 and this should read 'Caravan Sites and Control of Development Act 1960'.

Thereafter, the Committee noted the Licences dealt with under delegated powers in terms of the legislation as detailed in the report.

## **5. PUBLIC ENTERTAINMENT LICENCE FEE – APPLICATION FOR A REBATE**

Under reference, to paragraph 2 of the special meeting of the Licensing Committee dated 24 January 2001 there was submitted a report by the Chief Legal Officer inviting the Committee to consider an application by a Charitable body for a rebate of the £100 fee paid in respect of applications for Public Entertainment Licences.

During discussion, Councillor McIntyre advised the meeting that this was a charitable body who run the annual community fireworks display. This event was run on a voluntary basis and members of the Fireworks Committee had attended training for this type of event.

Thereafter the Committee agreed to refund the £100 fee paid in respect of the application for a Public Entertainment Licence.

## **6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO. TD/08/001)**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Taxi Driver Licence submitted in Case No. TD/08/001.

The Committee noted that the Applicant was present.

Constable P Gordon, on behalf of Grampian Police, advised the Committee of the reasons why the representation was submitted outwith the statutory time period.

The Committee agreed that there was sufficient reason why it was not made in time and decided to accept the late letter of representation from the Chief Constable. The Clerk circulated the letter to the Committee.

The Committee noted the procedure to be followed in respect of spent or previous convictions in applications for Taxi Driver Licences and nevertheless agreed that the Principal Solicitor (Litigation & Licensing) review the spent convictions. Having done so, she advised the Committee that due to the applicant's age and time of commission these were not relevant to the case and should not be viewed by the Committee. The Committee decided to accept that advice. No previous or spent convictions were therefore circulated,

In response to a procedural query raised by Councillor Hamilton about the incomplete application form the Principal Solicitor (Litigation & Licensing) advised this had been discussed at the last meeting of the Licensing Committee and that it was her staff's usual practice to, wherever possible, process the application despite incomplete information. She noted that, although it was helpful for applicants to declare convictions, the police would in all cases vet the application as part of the process, irrespective of what information was provided here. She gave an assurance that incomplete forms will be returned to applicants in future.

On the invitation of the Chairman, Constable P Gordon addressed the meeting and advised that she had nothing further to add to Grampian Police's letter of representation.

On the invitation of the Chairman, the Applicant addressed the Committee.

The Committee took the opportunity to question the Applicant.

Councillor Cree, seconded by Councillor Shepherd moved that the application be refused as the applicant was not a fit and proper person to hold a Taxi Driver Licence due to the nature of her offences and the great difficulty he had in coming to the belief that the applicant had changed her ways.

There being no-one otherwise minded the Committee agreed to refuse the application.

Following the decision, the Principal Solicitor (Litigation & Licensing) advised the Committee that the applicant had just handed her two references in support of her application of which she had not been aware. The Committee agreed that their consideration had been incomplete without having been made aware of the content of the references and unanimously agreed to set aside the refusal and continue consideration of the case. With the agreement of the Committee, the Principal Solicitor proceeded to read the references to the Committee.

Councillor Cree, seconded by Councillor Shepherd on hearing the references was of the view that nothing had changed and felt that the Committee required some assurance that the applicant had changed and consequently she was not a fit and proper person to be the holder of a taxi driver licence. He commented that if the applicant were to apply after a year and had demonstrated that she had changed her way he would consider the application and confirmed the terms of his original motion to refuse the application.

As an Amendment, Councillor Divers, seconded by Councillor McConachie moved approval of the application for one year based on the references provided.

On a division there voted:

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| For the Motion(9)    | - | Councillor Cree, Shepherd, Coull, Hamilton, A McDonald, G McIntyre, A McKay, F Murdoch, and I Ogilvie. |
| For the Amendment(4) | - | Councillor Divers, McConachie, Russell and Stewart   |
| Abstentions (0)      | - | -  |

Accordingly, the Motion became the finding of the meeting and it was agreed to refuse the application for a Taxi Driver Licence in case no TD/08/001.

#### **7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR A WINDOW CLEANER LICENCE (CASE NO. WC/08/001)**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Window Cleaner Licence submitted in Case No. WC/08/001.

The Meeting noted that the applicant was not present and that notices had been properly served on the applicant on the 16 February 2008.

Councillor Hamilton, seconded by Councillor Divers moved that the application be determined at this meeting.

As an Amendment, Councillor Shepherd, seconded by Councillor Cree moved that the application be deferred to allow the applicant to make a personal appearance.

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| For the Motion(5)    | - | Councillors Hamilton, Divers, McConachie, A McKay, and Russell.                        |
| For the Amendment(8) | - | Councillors Shepherd, Cree, Coull, A McDonald, McIntyre, Murdoch, Ogilvie and Stewart. |
| Abstentions (0)      | - | -  |

Accordingly, the Amendment became the finding of the meeting and it was agreed to defer consideration of the application for a Window Cleaner Licence in case no WC/08/001, to allow the applicant to make a personal appearance.

**8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR A LICENCE TO ACT AS A STREET TRADER (CASE NO. ST/08/001)**

There was submitted a report by the Environmental Health Manager inviting the Committee to consider an application for a Street Traders Licence in case no ST/08/001.

The Committee noted that the Applicant was present.

The Committee noted the procedure to be followed in respect of spent convictions and agreed that the Principal Solicitor (Litigation & Licensing) review the spent convictions. Having done so, she advised the Committee that due to a lack of analogy with the current convictions the spent convictions were of no relevance and should not be viewed by the Committee. The Committee accepted this advice. No spent convictions were therefore circulated.

On the invitation of the Chairman, the Applicant addressed the Committee.

On the invitation of the Chairman, Inspector A McBey reiterated the terms of Grampian Police's letter of representation.

The Committee took the opportunity to question the Applicant.

The Chair moved that the application be granted for one year.

There being no-one otherwise minded the Committee agreed to grant a Street Traders Licence in case no ST/08/001 for a period of one year.

**9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR A LICENCE TO ACT AS A STREET TRADER (CASE NO. ST/08/002)**

There was submitted a report by the Environmental Health Manager inviting the Committee to consider an application for a Street Traders Licence in case no ST/08/002.

The Committee noted that the Applicant was present.

The Committee noted the procedure to be followed in respect of spent convictions and agreed that the Principal Solicitor (Litigation & Licensing) review the spent convictions. Having done so, she advised the Committee that given their analogy with other convictions of reference to the granting of the licence being considered and their recent commission, justice could not be done without admitting them into their consideration. The Committee accepted the advice and the Clerk circulated copies of the spent convictions to the Committee.

On the invitation of the Chairman, Inspector A McBey reiterated the terms of Grampian Police's letter of representation.

On the invitation of the Chairman, the Applicant addressed the Committee.

The Committee took the opportunity to question the Applicant.

Councillor Cree, seconded by Councillor Shepherd moved that the application be granted for one year.

As an Amendment, Councillor A McKay, seconded by Councillor Coull moved refusal of the application until the applicant had been off medication for a year.

On a division there voted:

For the Motion (7) - Councillors Cree, Shepherd, Divers, Hamilton, McConachie, Russell, and Stewart.

For the Amendment(6) - Councillor A McKay, Coull, A McDonald, McIntyre, Murdoch, and Ogilvie.

Accordingly, the Motion became the finding of the meeting and the Committee agreed to grant a Street Trader Licence in case no ST/08/002 for a period of one year.

#### **10. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR A LICENCE FOR A HOUSE IN MULTIPLE OCCUPATION**

There was submitted a report by the Environmental Health Manager/Chief Legal Officer inviting the Committee to consider an application for a Licence for a House in Multiple Occupation (HMO) at 66b High Street, Forres IV36 1PQ submitted by Mr Shabaro Ali, 8 Pilmuir Road, Forres IV36 1HD with Hussan Ahmed, 8 Pilmuir Road, Forres IV36 1HD, as the responsible person for the management of the business.

The Principal Solicitor asked the Committee to defer consideration of this report as further information had been received from Stirling Council, which was not received in time to notify the applicant.

Thereafter the Committee agreed to defer consideration of the case until a future meeting of this Committee.

#### **11. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – POSSIBLE SUSPENSION OF A TAXI DRIVERS LICENCE (CASE NO. STD/08/001)**

Under reference, to paragraph 10 of the Minute to the Licensing Committee dated 12 December 2007 there was submitted a report by the Chief Legal Officer inviting the Committee to consider the possible suspension of a Taxi Driver Licence in Case No STD/08/001).

The Committee noted that the Applicant was not present and the Principal Solicitor, (Litigation & Licensing) advised that a Recorded Delivery letter had been delivered to the applicant on the 19 December 2007 and that there had been no response received from the applicant. The Committee agreed to consider the case in his absence.

The Principal Solicitor (Litigation & Licensing) referred to page 8 of the report in regard to the chronology of correspondence and communications and advised that she had tried all methods to contact the applicant.

The Chair, moved that the applicant was no longer a fit and proper person to be the holder of a Taxi Driver Licence and that he had shown a total disregard for the licensing authority.

There being no-one otherwise minded the Committee agreed to suspend the applicant's Taxi Driver License in Case No STD/08/001 for the unexpired portion of the duration of the licence.

In response to Members concerns, the Principal Solicitor (Litigation & Licensing) advised that the applicant had an obligation to return his licence to the Local Authority within 7 days. Failure to do so would be a criminal offence and the matter would be referred to Grampian Police.

#### **12. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – POSSIBLE SUSPENSION OF A TAXI DRIVERS LICENCE (CASE NO. STD/08/002)**

Under reference, to paragraph 11 of the Minute of the Licence Committee dated 12 December 2007 there was submitted a report by the Chief Legal Officer inviting the Committee to consider the possible suspension of a Taxi Driver Licence in Case No STD/08/002).

The Committee noted that the Applicant was not present and the Principal Solicitor ( Litigation & Licensing) advised that a Recorded Delivery letter had been delivered to the applicant on the 19 December 2007 and that there had been no response received from the applicant. The Committee agreed to consider the case in his absence.

The Principal Solicitor (Litigation & Licensing) referred to page 8 of the report in regard to the chronology of correspondence and communications and advised that she had tried all methods to contact the applicant.

The Chair moved that the applicant was no longer a fit and proper person to be the holder of a Taxi Driver Licence and that he had shown a total disregard for the licensing authority.

There being no-one otherwise minded, the Committee agreed to suspend the applicant's Taxi Driver License in Case No STD/08/002 for the unexpired portion of the duration of the licence.

### **13. QUESTION TIME**

Councillor Hamilton sought clarification about question 11 of the application form for a licence to act as a Street Trader where it relates to horse drawn vehicles.

The Principal Solicitor (Litigation & Licensing) conceded that very old legislation related to Civic Government Licensing and Street Trading in particular, was still in force and may be the reason for inclusion of this question. She advised that she believed that some exceptions were allowed to Pedlars and Hawkers and that she would investigate the matter and respond to Councillor Hamilton.

### **14. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICANT FOR A TAXI DRIVER LICENCE (CASE NO. TD/08/002)**

There was submitted a report by the Chief Legal Officer advising the Committee that a Taxi Driver Licence application had been submitted in Case No. TD/08/002.

The Committee noted that the Applicant was present.

On the invitation of the Chairman, the Principal Solicitor (Litigation & Licensing) outlined the background to the application. She advised that it was Council policy to look for Group 2, DVLA standards with regard to an application for a taxi or private hire car driver licence from applicants who suffer from any medical condition which may affect their ability to drive a taxi or private hire vehicle. She drew Members attention to the conflicting advice received from DVLA, who require Group 2 Standards and the Department for Transport where C1 Exemption Standards are acceptable for a Taxi Driver Licence. She highlighted that in this case applicant met the C1 Exemption Standards but not the full DVLA group 2 standard.

On the invitation of the Chairman, the Applicant addressed the Committee.

The Committee took the opportunity to question the Applicant.

Councillor Hamilton, seconded by Councillor Coull moved that the application be granted.

There being no-one otherwise minded, the Committee agreed to grant a Taxi Driver Licence in case number TD/08/002.