

**THE MORAY COUNCIL**  
**MINUTE OF SPECIAL MEETING OF THE LICENSING COMMITTEE**

**WEDNESDAY 15 JULY 2009**

**COUNCIL OFFICE, ELGIN**

**PRESENT**

Councillors D Ross, (Depute Chair), J Cree, J Hamilton, M McConachie, M Shand, J Sharp and D Stewart.

**IN ATTENDANCE**

Mrs K Wiles, Principal Solicitor (Litigation & Licensing) Mr T Haynes, Solicitor (Litigation and Licensing), Sergeant K Middler and Sergeant S DGLISH, (Grampian Police), Mr S Innes, Principal Environmental Health Officer, Mr I Younie, HMO Officer, Mr K Sturgeon, Principal Building Standards Officer, Mr R Gerring, Senior Engineer and Mrs S Kennedy, Committee Services Officer, who acted as Clerk to the meeting.

**APOLOGIES**

Apologies for absence were intimated on behalf of Councillors R Shepherd (Chair), J Divers, A McDonald, E McGillivray, G McIntyre, A McKay and A Wright (ex-offii).

**1. CHAIRMAN**

In the absence of the chairman, Councillor D Ross took the chair.

**2. DECLARATION OF GROUP DECISIONS**

Councillor Shand declared a personal interest in Agenda Item 10, "Civic Government (Scotland) Act 1982 – Application for a Taxi Driver Licence in Case No TD/09/010".

In terms of Standing Order 20 and the Councillors' Code of Conduct the meeting noted that there were no other declarations from group leaders or spokespersons with 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.

**3. 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 item of business appearing at the relevant paragraph 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  
17

Para No. of Schedule 7A  
14

#### **4. WRITTEN QUESTIONS**

There were no written questions at this meeting.

#### **5. LICENCES DEALT WITH UNDER DELEGATED POWERS**

There was submitted and noted 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.

#### **6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - REVIEW OF TAXI FARE STRUCTURE**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider the responses received from the formal consultation in terms of Section 17(3)(b) of the Civic Government (Scotland) Act 1982, on the review of taxi fares and charges within Moray.

The Committee noted that a late response to the consultation had been received from Mundole Taxis due to an e-mail address error a copy of which was circulated to the Committee. The Committee also noted that 581 letters had been sent out and it had been disappointing to note that only 9 responses had been received to the consultation and it was felt that it was difficult to gauge what the taxi trade wanted.

The Principal Solicitor (Litigation & Licensing) advised the Committee that historically the trade had been keen to keep the lines of communication open and as the Moray Taxi Association had been disbanded she had written to the former president to arrange a meeting with the trade. She intimated that it may be helpful if legal approached the taxi trade with options to ensure that any review was more reflective/representative of the taxi trade and agreed to submit a report with options to the August meeting of this Committee for consideration.

Thereafter, the Committee noted the views expressed by taxi operators as a result of both stages of consultation and agreed the scales for the fares and other charges applicable for the hire of taxis in Moray with effect from 8 August 2009 as undernoted:

- (a) that there would be no change to the flag rate fare;
- (b) that the yardage fare would remain the same;
- (c) that the day rate fare would remain the same;
- (d) to extend the Xmas and New Year premium rates to include 26 December and 2 January 2009 with all taxis required to have their meters chipped at a cost of £36;
- (e) that there is no change to the fare for people carriers;

- (f) that the Chief Legal Officer should implement the new scales; and
- (g) that the Principal Solicitor (Litigation & Licensing) would submit a report to the August meeting of the Licensing Committee to consider whether it wishes to consider a review of the number of Taxi Operator Licences in zone 1, Elgin and to submit a report to a future meeting of this Committee to consider a way forward to ensure sufficient representation of the Taxi Trade.

## **7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/006)**

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/09/006.

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 1<sup>st</sup> June 2009 and that there had been no response received from the applicant. The Committee agreed to consider the case in his absence.

On the invitation of the Chairman, Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation.

Following consideration, Councillor Ross moved that the applicant was not a fit and proper person to be the holder of a Taxi Driver Licence because of the serious nature of his convictions.

There being no one otherwise minded, the Committee agreed to refuse the application on the ground that the applicant was not a fit and proper person to hold a Taxi Driver Licence in Case Number TD/09/006 due to the seriousness of his convictions.

## **8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/007)**

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/09/007.

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 2 June 2009 and that there had been no response received from the applicant. The Committee agreed to consider the case in his absence.

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 the age and the nature of the offences the spent convictions were of relevance to the application and 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, Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation. He further confirmed that an outstanding issue with DVLA with regard to the applicant being the holder of a substantive full driving licence had been resolved.

Following consideration, Councillor Ross, seconded by Councillor Hamilton, moved that the applicant was not a fit and proper person to be the holder of a Taxi Driver Licence due to his disregard for road and public safety.

There being no one otherwise minded, the Committee agreed to refuse the application on the ground that the applicant was not a fit and proper person to hold a Taxi Driver Licence in Case Number TD/09/007 due to his disregard for road and public safety. The Committee also agreed that due to serious false claims on the application form this matter should be reported to the Procurator Fiscal.

#### **9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/009)**

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/09/009.

The Committee noted that the Applicant was present.

Sergeant K Middler advised the Committee of the reasons for the delay in receiving the Chief Constable's letter of representation due to outstanding issues with DVLA, which had now been resolved.

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.

On the invitation of the Chairman, the applicant addressed the meeting and responded to Members' questions.

On the invitation of the Chairman, Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation.

Following consideration Councillor Cree moved approval of the Licence.

Councillor Ross advised that due to the nature of his convictions that he was minded to approve the applicant's licence for 1 year only due to the applicant's past disregard for road traffic law.

There being no one otherwise minded the Committee agreed to grant a Taxi Driver Licence in Case Number TD/09/009 for a period of one year.

## **10. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/010)**

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/09/010.

The Committee noted that the Applicant was present.

The Committee noted the procedure to be followed in respect of spent 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 spent convictions were therefore circulated.

On the invitation of the Chairman, the applicant addressed the meeting and responded to Members' questions.

Following consideration the Committee agreed to grant a Taxi Driver Licence in Case Number TD/09/010.

## **11. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR RENEWAL OF A TAXI DRIVER LICENCE (CASE NO TD/09/011)**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for renewal of a Taxi Driver Licence submitted in Case No. TD/09/011.

The Committee noted that the Applicant was present.

On the invitation of the Chairman, the applicant addressed the meeting and responded to Members' questions.

On the invitation of the Chairman, Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation.

Following consideration Councillor Cree, seconded by Councillor Ross moved renewal of a Taxi Driver Licence for a period of one year due to the applicant's disregard for the law.

There being no one otherwise minded the Committee agreed to the renewal of a Taxi Driver Licence in Case Number TD/09/011 for a period of one year only.

## **12. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - LICENSING OF LATE HOURS CATERING (CASE NO LHC/9/001)**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Late Hours Catering Licence by Zahid Pervaiz to permit late hours catering from 11.00pm - 2.00am each Friday, Saturday and Sunday at 124/126 Mid Street, Keith.

The Committee noted that the Applicant and his Solicitor Mr Maltman were present.

The Committee noted that Mr J Riddell, Mr and Mrs C Murison and Mr & Mrs J Thomson, objectors to the application, were also present.

On the invitation of the Chairman, the Applicant's solicitor advised the Committee that in light of the objections received, his client had submitted a letter to the Principal Solicitor requesting a modification to his application for a Late Hours Catering Licence for Sunday only, from 11:00 pm to 2:00 am.

Despite changes to the application the objectors confirmed that they were still objecting to the potential grant of such a licence.

On the invitation of the Chairman, the Applicant's solicitors made further representations and responded to Members' questions.

Sergeant Daghish also addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation and advised that the Chief Constable had serious concerns about patrons wandering about the town in the early hours of Monday morning.

Following consideration, Councillor Cree, seconded by Councillor Ross, moved refusal of the application for a Late Hours Catering Licence for Sunday from 11:00 pm to 2:00 am.

There being no one otherwise minded the Committee agreed to refuse the application for a Late Hours Catering Licence in Case Number LHC/09/001 for Sunday from 11:00 pm to 2:00 am.

## **13. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A LICENCE TO ACT AS A STREET TRADER - COLIN HALLEY, 14 VICTORIA PLACE, KEITH**

There was submitted a report by the Environmental Health Manager advising the Committee of a letter of observation received from Grampian Police in respect of Colin Halley, 14 Victoria Place, Keith following his application for a street trader's licence.

The Committee noted that the Applicant was present.

On the invitation of the Chairman, the Applicant addressed the meeting and responded to Members' questions.

On the invitation of the Chairman, Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation.

Following consideration the Committee agreed to grant a Licence to act as a Street Trader to Colin Halley, 14 Victoria Place, Keith.

#### **14. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A LICENCE FOR A HOUSE IN MULTIPLE OCCUPATION (HMO) - SPEYVIEW, SPEY STREET, FOCHABERS**

Under reference to the meeting of the Licensing Committee dated 27 May 2009 (paragraph 10 of the minute refers) there was submitted a report by the Environmental Health Manager inviting the Committee to consider an application for a Licence for a House in Multiple Occupation (HMO) licence at Speyview, Spey Street, Fochabers.

The Committee noted that Ms G Anderson and Miss E Murray, objectors to the application, were present.

The Committee noted that the applicant was not present, and nor was any representative acting on his behalf. The Chairman expressed concerns about this. It was noted that solicitors acting for the Applicant had expressed the written view that the application could not be decided today as Mr K Sturgeon, the Principal Building Standards Officer, was due to be away on holiday.

The Committee was advised that this application had been deferred from the last meeting of this Committee to allow for a site visit and further information from building standards and transportation. This further information was circulated to the Committee whereupon it was noted that the Principal Building Standards Officer had raised concerns that there were significant issues in making the building comply with building regulations for its use as self-contained units, in particular with regard to fire separation and sound insulation between the flatted units, and as such was not suitable for use as ordinary flats, let alone for use as an HMO. It was further noted that the Principal Building Standards Officer had advised the applicant that although he was on holiday, he would still be in attendance at the meeting (and that the applicant had indeed acknowledged this in a subsequent e-mail). In light of this information the Committee agreed to proceed to hear the case in the absence of the applicant.

On the invitation of the Chairman, the Principal Building Standards Officer, the HMO Licensing Officer and the Senior Engineer, Transportation updated the Committee on the current position.

On the invitation of the Chairman, Sergeant Daghish addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation.

On the invitation of the Chairman, the objectors reiterated their concerns and advised that they had sent a further letter to the Principal Solicitor (Litigation & Licensing) as they had felt that some points had been left unanswered at the conclusion of the last meeting. The Principal Solicitor (Litigation & Licensing) confirmed that she had indeed received this letter but advised the Committee that as she had considered this letter to relate to the conduct of Members rather than raising fresh objections, this was not a document that had been placed before them today.

Councillor Sharp expressed concerns that the applicant had apparently started a letting business before carrying out a fire risk assessment or obtaining the appropriate insurance and gas certificates. In his view, no fit and proper person would start a business before putting all these things in place.

Following consideration Councillor Sharp, seconded by Councillor McConachie moved refusal of the application on the grounds that the applicant was not a fit and proper person to hold an HMO licence and also that the character and condition of the interior of the building was not suitable or convenient for use as an HMO.

As an Amendment, Councillor Cree moved that the application be deferred to allow the applicant the opportunity to make a personal appearance. Failing to find a seconder his motion fell.

The Principal Solicitor, Litigation & Licensing advised the Committee that the applicant had not been advised that his fitness to hold a licence was being challenged.

In light of this information Councillors Sharp, and McConachie agreed to withdraw their motion.

Thereafter, Councillor Hamilton moved approval of the application. Failing to find a seconder his motion fell.

Following further discussion Councillor Cree, seconded by Councillor McConachie moved deferral of the application to allow the applicant to make a personal appearance.

The Chair advised the meeting that the applicant must be made aware that he has to be in attendance at the August meeting, or be represented. He also thanked the objectors for their attendance advising them that he was satisfied with the responses received and that they would not be required to attend the August meeting (although they would still be welcome to attend as members of the public).

The Principal Solicitor (Litigation & Licensing) advised the Committee that there was no ground to refuse the application on location and that the Committee could only look at character or condition at the August meeting. She further advised that she would write to the applicant and put him on notice that his fitness to hold an HMO licence was to be challenged on the grounds that he was not a fit and proper person to hold one.

There being no one otherwise minded the Committee agreed to defer consideration of the application to allow the applicant to make a personal appearance. It was further agreed that the August meeting would consider solely the issues of the character and condition of the interior of the building, and whether the applicant was a fit and proper person to hold an HMO licence for Speyview, Spey Street, Fochabers.

The Chair on behalf of the Committee thanked the Objectors and the Officers for their input.

### **15. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - POSSIBLE SUSPENSION OF LATE HOURS CATERING LICENCE (CASE NO SLHC/09/001)**

There was submitted a report by the Chief Legal Officer informing the Committee of a letter received on behalf of the Chief Constable in respect of Ms Kalsum Akhtar, Natural Spice, 187C High Street, Elgin holder of a current late-hours catering licence.

The Committee noted that the Applicant and her Solicitor were in attendance.

On the invitation of the Chairman, the applicant addressed the meeting and responded to Members' questions.

On the invitation of the Chairman the Applicant's solicitor addressed the meeting and responded to members' questions.

On the invitation of the Chairman, Sergeant Daghish addressed the meeting and reiterated the terms of the Chief Constable's letter of representation and advised that the proceedings were still ongoing.

During discussions the Principal Solicitor (Litigation & Licensing) explained to the Committee that she had written to the Applicant's Solicitor on both the 23 June and 3 July 2009 enquiring why upon selling the business in October 2007, she had not immediately given up her licence pursuant to Paragraph 13(2)(b) of Schedule 1 of the 1982 Act. She had however had no response to either of these letters.

Thereafter, Councillor Ross moved refusal of the license on the ground that the applicant was not a fit and proper person to be the holder of a licence and had a total disregard for the licensing process.

There being no one otherwise minded the Committee agreed to the suspension, after a period of 28 days, of the Late Hours Catering Licence in Case No. SHLC/09/001 in terms of Paragraph 11 of Schedule 1 of the 1982 Act for the unexpired portion of its duration.

### **16. QUESTION TIME**

There were no questions.

## **17. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - POSSIBLE SUSPENSION OF A TAXI OPERATOR'S LICENCE (CASE NO STO/09/001) (PARA 14)**

Under reference to the meetings of the Licensing Committee dated 16 August 2006 and the 4 June 2009 respectively (paragraphs 13 and 5 of the minutes refer) there was submitted a report by the Chief Legal Officer advising the Committee of a letter of complaint received in respect of Mr William Garden, 2 Croft Place, Craigellachie who is the holder of a current taxi operator's licence.

The Committee noted that the applicant was present.

On the invitation of the Chairman, the applicant addressed the meeting and responded to Members' questions.

On the invitation of the Chairman Sgt K Middler addressed the meeting and advised the Committee that suspension enquiries were now complete. The enquiries had revealed that two separate witnesses had advised that the applicant had entered into a financial agreement to pay him to convey children to and from school and that a report had now been submitted to the Procurator Fiscal.

Thereafter, Councillor Ross moved that the applicant was not a fit and proper person to be the holder of a Taxi Operators Licence and recommended immediate suspension of his licence on the grounds that he had breached Committee trust and had lied to the police.

There being no one otherwise minded the Committee agreed to the immediate suspension of a Taxi Operators Licence in Case No STO/09/001.