

**THE MORAY COUNCIL**  
**MINUTE OF MEETING OF THE LICENSING COMMITTEE**  
**WEDNESDAY 14 OCTOBER 2009**  
**COUNCIL OFFICE, ELGIN**

**PRESENT**

Councillors R Shepherd, (Chair), D Ross, (Depute Chair), J Cree, J Divers, M McConachie, E McGillivray, M Shand, J Sharp and D Stewart.

**IN ATTENDANCE**

Mrs R Gunn, Senior Solicitor (Litigation & Licensing), Mr T Haynes, Solicitor (Litigation & Licensing), Inspector E Strachan, Mr D Westmacott, Apprentice Committee Services Officer and Mrs S Kennedy, Committee Services Officer, who acted as Clerk to the meeting.

**APOLOGIES**

Apologies for absence were intimated on behalf of Councillors J Hamilton, A McDonald, G McIntyre, A McKay, and A Wright, (ex-officio).

**1. DECLARATION OF GROUP DECISIONS**

In terms of Standing Order 20 and the Councillors' Code of Conduct the meeting noted that there were no declarations from group leaders or spokespersons with regard to any prior decisions taken on how Members will vote on any item on the Agenda or 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 1 of Schedule 7A of the Act.

Para No. of Minute

13

Para No. of Schedule 7A

9

**3. WRITTEN QUESTIONS**

There were no written questions at this meeting.

#### **4. 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.

#### **5. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/014)**

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 Number TD/09/014.

The Committee noted that the Applicant was not present.

The Committee noted that this application had been deferred from the previous meeting to allow the applicant the opportunity to make a personal appearance.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the meeting that a Recorded Delivery letter had been delivered to the Applicant on 24 August 2009 but there had been no further communication from her. The Committee agreed to consider the case in the Applicant's absence.

Inspector E Strachan re-iterated the terms of the Chief Constable's letter of representation. He further advised that this application had previously been heard in confidence due to a pending prosecution; however this criminal matter had now been resolved by way of a Procurator Fiscal Fine.

During discussion, Councillor Ross expressed concern at the number of cases referred to the Procurator Fiscal which were not then pursued and expressed the view that this was a poor reflection of the Judicial System in Moray.

Thereafter, the Chair, seconded by Councillor Ross, moved refusal of the application on the ground that the applicant was not a fit and proper person to hold a Taxi Driver Licence due to the seriousness of her convictions and her total disregard for the law.

There being no one otherwise minded, the Committee agreed to refuse the application for a Taxi Driver Licence in Case Number TD/09/014.

#### **6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/016)**

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 Number TD/09/016.

The Committee noted that the Applicant was not present.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the meeting that a Recorded Delivery letter had been delivered to the Applicant on 3 October 2009 but there had been no further communication from him.

During discussion, Mrs R Gunn, Senior Solicitor (Litigation & Licensing) clarified the process for notifying applicants of the importance of their attendance at meetings including the terms of the letter sent to the Applicant. She advised that Committee either had the option to defer consideration of the case for a personal appearance by the Applicant or to consider the application solely on the basis of the information presented in the report if the Committee felt that this was sufficient. A failure to appear was not in itself a ground of refusal, but the absence of an explanation for matters alluded to in a representation could be a factor in determining an application. The Committee agreed to consider the case in the Applicant's absence.

Thereafter, the Chair, seconded by Councillor Cree moved refusal of the application on the ground that the applicant was not a fit and proper person to hold a Taxi Driver Licence due to the seriousness and nature of the applicant's convictions.

There being no one otherwise minded, the Committee agreed to refuse the application for a Taxi Driver Licence in Case Number TD/09/016.

#### **7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/017)**

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 Number TD/09/017.

The Committee noted the Applicant was present.

Inspector E Strachan re-iterated the terms of the Chief Constable's letter of representation.

The Applicant addressed the meeting and responded to Members' questions.

Following consideration the Chair, seconded by Councillor McGillivray, moved approval of the application.

There being no one otherwise minded the Committee agreed to grant a Taxi Driver Licence in Case Number TD/09/017. Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the applicant that he would not receive his licence until the period for appeal had passed and that he would not be able to work as a taxi driver until then.

#### **8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/018)**

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 Number TD/09/018.

The Committee noted that the Applicant was not present.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the meeting that a Recorded Delivery letter had been delivered to the Applicant on 3 October 2009 but there had been no further communication from him. The Committee agreed to consider the case in the Applicant's absence.

The Committee noted the procedure to be followed in respect of convictions, which would otherwise be deemed to be spent, and agreed that Mrs Gunn, Senior Solicitor, Litigation and Licensing review the previous convictions. Having done so, Mrs Gunn advised the Committee that one of the offences was relevant to the application and justice could not be done without admitting it into consideration. The Committee accepted the advice and Mrs Gunn outlined the details of the spent conviction to the Committee.

Mrs Gunn further advised the Committee that, in the Applicant's absence, they had two options: either to defer consideration of the case to allow the Applicant a further opportunity to be present, or to consider the application solely on the basis of the information presented in the report if the Committee felt that this was sufficient. The Committee agreed to determine the case in the Applicant's absence.

Thereafter, Councillor Ross, seconded by Councillor Cree moved that the applicant was not a fit and proper person to hold a Taxi Driver Licence due to the seriousness and nature of his convictions.

There being no one otherwise minded the Committee agreed to refuse the application for a Taxi Driver Licence in Case Number TD/09/018.

#### **9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI OPERATOR LICENCE (CASE NO TO/09/003)**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Taxi Operator Licence submitted in Case Number TO/09/003.

The Committee noted that the Applicant was not present.

The Committee noted that there was a typographical error on page 2 of the letter of objection from Grampian Police where it was erroneously stated that the applicant was not a fit and proper person to be a taxi driver. The reference should have been to a taxi operator.

The Committee noted the procedure to be followed in respect of spent convictions, which would otherwise be deemed to be spent, and agreed that Mrs Gunn, Senior Solicitor, Litigation and Licensing review the previous convictions. Having done so, she advised the Committee that one of the offences was relevant to the application and justice could not be done without admitting it into consideration. The Committee accepted the advice and Mrs Gunn outlined the details of the spent conviction to the Committee.

Thereafter, Councillor Shepherd, seconded by Councillor Cree moved that the applicant was not a fit and proper person to hold a Taxi Operator Licence due to the seriousness and nature of his convictions.

There being no one otherwise minded the Committee agreed to refuse a Taxi Operator Licence in Case Number TD/09/003.

## **10. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A WINDOW CLEANER LICENCE (CASE NO WC/09/002)**

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 Number WC/09/002.

The Committee noted that the Applicant was not present.

Inspector E Strachan on behalf of Grampian Police advised the Committee the reason why the Chief Constable's letter of 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 of observation to the Committee.

Inspector E Strachan addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation. He also clarified that the Applicant had been charged as a juvenile with the case taking two years to reach the court, by which time he had passed his eighteenth birthday. In these circumstances the Applicant had mistakenly believed that the relevant conviction was by now spent, and thus had not declared it on his application form.

Mrs R Gunn, Senior Solicitor, (Litigation & Licensing) advised the Committee that she had received representation from the Applicant's would-be employer, City Cleaning Services, indicating that they would not now be offering the applicant any future employment thus creating a new issue of a potential absence of public liability insurance.

In light of this information the Committee unanimously agreed to defer consideration of the case to allow the applicant the opportunity to make a personal appearance.

## **11. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - ZONE 1 TAXI PLATES**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider whether it wishes to commission a survey on whether or not there is significant unmet demand for the services of taxis in Zone 1 (Elgin) with a view to potentially re-imposing a limit on the number of taxi operator licences permissible in Zone 1.

Mr T Haynes, Solicitor (Litigation & Licensing) advised the Committee on the legalities and costs involved in commissioning a survey. He advised that any survey commissioned would require updating at least every two years to avoid the survey potentially being open to successful legal challenge in the courts. If the costs of the overall survey process were passed to the taxi trade then the current taxi operator licence fee would probably have to more than double. He further advised that there was no legal requirement to carry out a survey or to have a licence limit.

Councillor McGillivray indicated that there was no evidence from the public to support the need for a limit and that, standing the costs involved in obtaining and updating any survey of need, it would be irresponsible for the Committee to commission such a survey in the current financial climate.

In light of the information received and the costs involved, Councillor Shepherd, seconded by Councillor McGillivray, moved that the status quo remain.

There being no-one otherwise minded the Committee agreed to maintain the status quo of having no limit on the number of taxi operator licences permissible in Zone 1.

## **12. QUESTION TIME**

There were no questions at this meeting.

## **13. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/015) (PARA 9)**

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 Number TD/09/015.

The Committee noted the Applicant was not present.

Inspector E Strachan re-iterated the terms of the Chief Constable's letter of observation.

In response to members' concerns regarding this application Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised that in view of the decision of members earlier in that meeting to refuse an application for a Taxi Operator Licence to this Applicant's prospective employer, this application could be deferred to allow the applicant the opportunity to seek other secure employment. However members were not obliged to so defer, they could still consider the application. Mrs Gunn added that the absence of a taxi employer was not in itself a basis for refusing the application.

Councillor McConachie advised the Committee that given the nature of the Applicant's convictions, he would not be minded to approve a licence and invited the Committee to determine the application in the absence of the Applicant.

The Committee agreed to deal with the case in the Applicant's absence.

Thereafter, Councillor McConachie, seconded by Councillor Divers moved refusal of the application that the Applicant was not a fit and proper person to be the holder of a Taxi Driver Licence due to his disregard for the law.

There being no one otherwise minded the Committee agreed to refuse the application for a Taxi Driver Licence in Case No TD/09/015.