

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

**WEDNESDAY 24 FEBRUARY 2010**

**COUNCIL OFFICE, ELGIN**

**PRESENT**

Councillors R Shepherd (Chair), D Ross, J Cree, J Divers, J Hamilton, A McDonald, E McGillivray, G McIntyre, A McKay, M Shand, J Sharp and D Stewart.

**IN ATTENDANCE**

Mrs R Gunn, Acting Principal Solicitor (Litigation & Licensing) Mr T Haynes, Solicitor (Litigation and Licensing), Mr K Sturgeon, Principal Building Standards Officer, Mr W Clark, Building Standards Officer, Mr I Younie, HMO Officer, Sergeant C Whelan (Grampian Police), Mr D Westmacott, Committee Services Apprentice and Mrs S Kennedy, Committee Services Officer, who acted as Clerk to the meeting.

**APOLOGIES**

Apologies for absence were intimated on behalf of Councillor M McConachie 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 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  
13

Para No. of Schedule 7A  
14

**3. WRITTEN QUESTIONS**

The meeting noted that there were no written questions.

#### **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/09/020)**

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/09/020.

The Committee noted that the Applicant was present.

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

Sergeant C Whelan addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation.

Thereafter, Councillor Shepherd seconded by Councillor Cree, moved approval of the application.

There being no-one otherwise minded the Committee agreed to grant a Taxi Driver Licence in Case No TD/09/020.

#### **6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/10/002)**

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/10/002.

The Committee noted that the Applicant was not present.

Mr T Haynes, Solicitor, (Litigation & Licensing) advised the Committee that the applicant had submitted a letter advising that due to pressures of work he could not be in attendance at this meeting.

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

During discussions members sought a reason as to why the Chief Constable's letter of representation had been received outwith the statutory time limit and thereafter agreed to defer consideration of this item to later in the meeting to allow Sergeant C Whelan the opportunity to contact his office to find out the reason why their letter of representation was late.

## **7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/10/003)**

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/10/003.

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 11 February 2010 but there had been no further communication from him. The Committee agreed to proceed in the absence of the Applicant.

Sergeant C Whelan, on behalf of Grampian Police advised the Committee that their original representation had been submitted within the statutory time period but that it had, erroneously, contained a reference to a spent conviction. A revised version of this letter had subsequently been sent omitting reference to this spent conviction, but this had been received outwith the statutory time period.

The Committee agreed there was sufficient reason why the late representation had not been made in time, and decided to accept the late letter from the Chief Constable.

The Committee noted the procedure to be followed in respect of convictions which would otherwise be deemed to be spent and agreed that the Principal Solicitor, (Litigation & Licensing) review the previous convictions. Having done so, she advised the Committee that due to the nature of the offences the previous convictions were of relevance to the application and justice could not be done without admitting them into their consideration. She pointed out that she would not initially have been minded to recommend consideration of the eldest conviction, but as the Applicant made reference to this in the application form itself, that conviction was also submitted for consideration.

The Committee accepted the advice and the Clerk circulated copies of the previous convictions to the Committee along with Grampian Police's late of letter of representation.

Thereafter, Councillor Ross, seconded by Councillor McGillivray moved refusal of the application for a Taxi Driver Licence on the ground that the applicant was not a fit and proper person to hold such a licence.

There being no-one otherwise minded the Committee agreed to refuse an application for a Taxi Driver Licence in Case No TD/10/003.

## **8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A LICENCE FOR A HOUSE IN MULTIPLE OCCUPATION (HMO) – 54 HIGH STREET, ELGIN, IV30 1BU**

There was submitted a report by the Environmental Health Manager and the Chief Legal Officer inviting the Committee to consider an application for a Licence for a House in Multiple Occupation (HMO) licence at 54 High Street, Elgin, IV30 1BU.

The Committee noted that the Applicant was present.

The applicant addressed the meeting and advised that he was aware that the building had previously been used as an HMO; however he was not aware of the law and legal requirements and was happy to comply with the Planning Department, advising that he had already secured the services of an Architect and Builder.

Mr I Younie, the HMO Officer advised the meeting that all work to bring the premises up to the benchmark standards set out under the HMO Legislation and guidance had been carried out satisfactorily and he had no further issues with the application.

Mr K Sturgeon, the Principal Building Standards Officer addressed the meeting and explained that nothing had changed since Committee on 9 December 2009, he reconfirmed that this was an unauthorised conversion and that the building fell well below the building standards required for sleeping accommodation. He further advised that the Committee had previously expressed difficulties understanding the differing legislation used by the Fire Authority and Building Standards and stated that although the Fire Authority were the statutory consultees, Building Standards still had an important role. The risk assessment by the Fire Authority was based on the building as it currently was and took no cognisance of the unauthorised conversion or of the fact that a much more onerous set of regulations applied to Building Standards. The Fire Authority's assessment was based mainly on the means of escape from the building, management and evacuation strategy, and the means of raising the alarm. However this was only an absolute minimum requirement for fire safety. From a Building Standards perspective there was no other protection for sleeping occupants against fire, for example there was no fire separation between different occupancies, between the bedrooms, or between bedrooms and the corridor. Neither were there any protected lobbies, nor any smoke extraction or control of fire spread. The fire resistance of the fire doors was also questionable. Mr Sturgeon further advised that a formal Building Warrant Enforcement Notice had been served on the premises which would expire on 8 April 2010 and the Applicant had until that date to obtain acceptance of a completion certificate for the property.

Mrs R Gunn, Acting Principal Solicitor (Litigation and Licensing) then gave detailed advice on the legal and factual distinctions between the roles of Building Control and the Fire Authority. She described the Statutory Guidelines on HMOs and the benchmark standards in terms of those guidelines. She advised that it was clear that the Fire Service were the statutory consultees on matters of fire safety. She advised that the statutory guidance cautioned against using one regulatory regime to enforce another. In this instance Building Control had their own enforcement mechanisms which they were using. Notwithstanding this, she advised that members of the

Committee might still view the issues raised by Mr Sturgeon as sufficiently significant to meet the grounds of refusal relative to the condition of the premises despite what the Fire Service had said.

Thereafter, Councillor Hamilton, seconded by Councillor Shepherd moved refusal of the application on the ground that the property was not safe for sleeping purposes.

There being no-one otherwise minded the Committee agreed to refuse a Licence for a House in Multiple Occupation (HMO) at 54 High Street, Elgin on the basis that the issues pertaining to Fire Safety referred to by the Principal Building Standards Officer had such a significant bearing on the safety of the occupants, particularly in relation to the property now being used for sleeping purposes that they could not be overcome, notwithstanding the conflicting advice from Grampian Fire and Rescue; the grounds for this refusal being that the premises were not suitable or convenient for use as an HMO having regard to paragraph 4(1)(c)(i) of the report.

It was further agreed that the Acting Principal Solicitor (Litigation & Licensing) continue to seek a resolution of the issues of concern expressed by elected members pertaining to the conflict between the different regimes involved in the consideration of HMO applications.

#### **9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – LICENSING OF LATE HOURS CATERING (CASE NO LHC/10/001)**

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Late Hours Catering Licence for premises at 143 High Street, Forres to permit late hours catering from 11.00pm – 1.00am each Sunday and Thursday and from 11.00pm – 2.30am each Friday and Saturday at those premises.

The Committee noted that the Applicant and his representative, Mr B Tulloch, were in attendance.

Mrs R Gunn, Acting Principal Solicitor (Litigation & Licensing) advised the Committee that there had been one letter of objection received within the statutory time period and a further letter of objection received outwith this period. The Committee noted that there were no Objectors in attendance although they had received the usual notification of the date of the Committee. Mrs Gunn advised that the person submitting the late letter of objection had stated she had handed in her letter at the Forres Access Point on time. Mrs Gunn added that the Xmas break may have caused a delay in the letter reaching Elgin and it being date-stamped.

The Committee agreed to accept the late letter of objection and thereafter the Clerk circulated a copy of the letter to the Committee.

Following discussion the Committee deemed the late letter of objection to be irrelevant to this application as it related to wider public order issues in the area that were not specific to the premises that were the subject of this application.

The Applicant's representative, Mr Tulloch, advised the Committee that the other letter of objection had been written by a business competitor; the applicant had been a reputable businessman in Forres for the past 9 years and had never served food from the rear door of his premises as was being alleged. He added that there was no evidence to support the objections being put forward and the police had made no representation. On this basis he urged the Committee to accept the application before them.

During discussions Councillor Hamilton, seconded by Councillor Shand moved that the case be deferred to allow the police to attend and comment upon the allegations being put forward by the relevant objector.

As an Amendment Councillor Ross, seconded by Councillor Stewart, moved against deferral of the case on the basis that the Chief Constable had already been consulted and had submitted a letter confirming that they had no objection to the application and that in his opinion if the police had had further comments to make then they would have sent a police representative to the meeting to make such comments.

On a division there voted:

For the Motion (5)	-	Councillor Hamilton, Shand, Divers, McIntyre and Shepherd
For the Amendment (7)	-	Councillor Ross, Stewart, Cree, A McDonald, McGillivray, A McKay and Sharp
Abstention (0)	-	-

The Amendment became the finding of the meeting and the Committee agreed to proceed to hear the case.

Following further discussion, Councillor Hamilton, seconded by Councillor McGillivray moved approval of the application for a Late Hours Catering Licence; however he intimated that he would have preferred to have had the police in attendance.

There being no-one otherwise minded the Committee agreed to grant a Late Hours Catering Licence in Case No LHC/10/001.

## **10. PUBLIC ENTERTAINMENT LICENCE FEE – APPLICATION FOR 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 an application for a Public Entertainment Licence.

Following consideration the Committee agreed to a refund the £100 fee.

## 11. REPRESENTATION OF MORAY TAXI TRADE

Under reference to paragraph 15 of the Licensing Committee minutes dated 9 December 2009 there was submitted a report by the Chief Legal Officer inviting the Committee to review arrangements for the representation of the taxi trade in Moray by holding an election for the appointment of representatives to sit on a body to be known as Moray Taxi Trade Association (MTTA), that body to meet certain minimum formalities including approving a constitution and maintaining a register of members.

Mrs R Gunn, the Acting Principal Solicitor (Litigation & Licensing) advised the Committee more than one trade member had been critical of the proposal that names be drawn from a sealed container in the event of a contested nomination for a particularly position and had asked that there be a ballot instead. She had been concerned that the carrying out of a full postal vote in such circumstances would be prohibitively time-consuming and expensive given the likely level of responses. Having said this, following further discussion with one particular member of the trade a middle ground had been arrived at, and this was the reason for presenting a revised recommendation to that at paragraph 2.13 of the report.

Thereafter the Clerk circulated a copy of the revised recommendation 2.13 to the Committee. Mrs Gunn explained that it was now proposed that instead of drawing a name at random from a sealed container in the event of a contested seat, both a list of any contested nominees and a stock of voting forms would be made available at each Council Access Point within 5 working days of the closing date for nominations; members of the trade could then cast a vote which would be returned to Council Headquarters; and the votes would then be counted under the supervision of the Principal Committee Services Officer. In the unlikely event of a tie, names would still be drawn at random from a sealed container. Full information would be circulated to the trade in the next Taxi Newsletter.

Councillor Ross queried what would prevent a driver gaining more than one ballot paper and casting more than one vote if such a process was adopted. Mrs Gunn replied that to ensure that all votes cast were valid, at the foot of each voting form a driver or operator would be obliged to provide their signature, full name and driver or operator licence number. After discussion about the secrecy of the ballot process it was agreed that this aspect of the recommendations was proportionate.

Councillor Cree, seconded by Councillor McGillivray moved approval of the recommendation as printed in the report subject to the replacement of recommendation 2.13 as Mrs Gunn had set out.

There being no-one otherwise minded the Committee agreed to:-

- i) invite nominations over a period of one calendar month for a total of 4 representatives of the Moray Taxi Trade to sit on a body to be known as "Moray Taxi Trade Association (MTTA)", nominations to be seconded by five members of the designated group, and to be for the following positions:

- (a) One representative for both taxi and private hire drivers in each of Zone 1 and Zone 2 – a total of 2 representatives;
  - (b) One representative for both taxi and private hire operators in each of Zone 1 and Zone 2 – a total of 2 representatives.
- ii) in the event that nominations are received for at least two of the designated groups, and no group being contested (para iii below describes the procedure for contested positions), thereafter to confirm appointment of these contested nominees as representatives for their designated groups on MTTA for a period of 2 years from the date of their appointment, the other positions remaining vacant;
- (iii) That in the event of their being more than one nominee for a position the following procedure apply:
- (a) that subject to the recommendation at para (iv) below, nominees for uncontested positions be confirmed by the Chair of the Licensing Committee as elected forthwith;
  - (b) that (1) a list of persons elected as detailed in para (a) above; (2) a list of persons put forward as nominees for contested positions and (3) a voting form for use to vote for a nominee for a contested position all be made available for uplift at each Council Access Point within 5 working days of the closing date for nominations;
  - (c) that votes for contested positions from eligible members of the trade (e.g. operators in Zone 1 if that is the contested position) which are returned by post or by hand to Council Headquarters be accepted for a period of 21 days from publication of the list of nominees in terms of para (b) above;
  - (d) that officers within Legal Services then count all votes validly cast, the successful candidate being the person with the most votes, the Chair of the Licensing Committee then confirming that nominee/those nominees as duly elected to the relevant position(s), all under the Supervision of the Principal Committee Services Officer;
  - (e) That in the event of a tie following the counting of votes at (d) above, those names with an equal number of votes shall be placed in a sealed container and one such name shall be drawn by the Chair of the Licensing Committee who shall then declare that person duly elected to the relevant position, all under the Supervision of the Principal Committee Services Officer; and
  - (f) that a list of all duly elected representatives then be made available at each Council Access point within 2 working days of close of the voting process; and

- (iv) in the event of there being less than 2 nominees in total, to confirm that the existing informal representation arrangements will continue for the time being.

## **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/10/003)**

Under reference to paragraph 6 of this minute the Committee resumed discussion of Agenda Item 7 and following clarification from Grampian Police as to the reason for late submission of the letter of representation from the police, agreed to accept it although late on the view that sufficient reason had been demonstrated. Having had sight of the content of the letter, the Committee agreed to defer consideration of the case to allow the Applicant the opportunity to make a personal appearance.

### **14. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/10/001)**

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/10/001.

The Committee noted that the Applicant was not present. Mr T Haynes, Solicitor, (Litigation & Licensing) advised that a Recorded Delivery letter had been delivered to the applicant on the 13 February 2009 and that there had been no response received.

Councillor Shepherd, seconded by Councillor Cree moved refusal of the application on the ground that due to the Applicant's list of offences he was not a fit and proper person to hold a taxi driver licence.

There being no-one otherwise minded the Committee agreed to refuse an application for a Taxi Driver Licence in Case No TD/10/001.