

THE MORAY COUNCIL
MINUTE OF MEETING OF THE LICENSING COMMITTEE
WEDNESDAY 16 JUNE 2010
COUNCIL OFFICE, ELGIN

PRESENT

Councillors R Shepherd (Chair), J Cree, J Divers, M McConachie, A McDonald, G McIntyre, A MacKay, J Sharp and D Stewart.

IN ATTENDANCE

Mr T Haynes, Solicitor (Litigation & Licensing), Inspector E Strachan, Sergeants K Middler and J Scott, (Grampian Police) 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, E McGillivray, D Ross, M Shand, and A Wright, (ex-officio).

1. DECLARATION OF GROUP INTERESTS

There were no declarations from group leaders or spokespersons in 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 resolved that in terms of Section 50A(4) and (5) of the Local Government (Scotland) Act 1973, as amended, 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 1 of Schedule 7A of the Act.

Para No of Minute

11

Para No of Schedule 7A

14

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 GRANT OF A TAXI DRIVER LICENCE (CASE NO TD/10/006)

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/10/006.

The Committee noted that the Applicant was not present but had received intimation of the meeting

Mr T Haynes, Solicitor (Litigation and Licensing) reminded the Committee that the application had been deferred at their last meeting to allow the Applicant a further opportunity to sit and pass the taxi driving test but since that last meeting there had been no contact from him and he had not re-sat the test.

Mr Haynes advised the Committee that they would have to make a decision on the application today otherwise it would be deemed granted before the date of their next meeting.

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

Thereafter, the Chair moved refusal of the application on the ground that, having displayed a total disregard for the both the law and the Licensing Authority, the Applicant was not a fit and proper person to hold a Taxi Driver Licence

There being no one otherwise minded the Committee refused the application for a Taxi Driver Licence in Case Number TD/10/006.

6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (CASE NO TD/10/008)

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/10/008.

The Committee noted that the Applicant was not present but had received intimation of the meeting.

Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of objection.

The Committee noted the procedure to be followed in respect of a previous conviction which would otherwise be deemed to be spent, and agreed that Mr Haynes, Solicitor, (Litigation and Licensing) review this conviction. Having done so, Mr Haynes advised the Committee that in his view the conviction was relevant to the application due to the

serious nature of the offences concerned and the fact that these offences were analogous to other matters referred to in the police letter already before members and that it was therefore in the interests of justice for the conviction to be considered by the Committee. The Committee accepted this advice and the clerk circulated copies of the otherwise spent conviction to the Committee.

Thereafter, the Chair 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 serious nature of his offences.

There being no one otherwise minded the Committee refused to grant a Taxi Driver Licence in Case Number TD/10/008.

7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (CASE NO TD/10/009)

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/10/009.

The Committee noted that the Applicant was present.

Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of objection.

The Committee noted the procedure to be followed in respect of two previous convictions which would otherwise be deemed to be spent, and agreed that Mr Haynes, Solicitor (Litigation and Licensing) review these convictions. Having done so, Mr Haynes advised the Committee that in his view the first of these convictions was not relevant to the application due to its age. However the second conviction did have a relevance to the application as it was analogous and did have a potential bearing on whether the Applicant was a fit and proper person to hold a licence and that it was therefore in the interests of justice for the conviction to be considered by the Committee

Mr Haynes then conferred with the Police who confirmed that they were happy for Mr Haynes to omit the first otherwise spent conviction from the Committee's consideration. Mr Haynes then conferred with the Applicant who confirmed that he had no objection to reading out details of the second otherwise spent conviction.

The Committee accepted the advice to hear details of the second otherwise spent conviction and Mr Haynes then read out details of this conviction to the Committee.

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

Thereafter, the Chair 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 amount and serious nature of his offences, and his total disregard for the law.

There being no one otherwise minded the Committee refused to grant a Taxi Driver Licence in Case Number TD/10/009.

8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (CASE NO TD/10/011)

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/10/011.

The Committee noted that the Applicant was not present but had received intimation of the meeting.

Mr Haynes, Solicitor (Litigation & Licensing) advised Members that the Applicant had not yet sat or passed the taxi driving test, despite being sent reminders, and that to date, there had been no contact from him.

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Mr Haynes added that the Committee would have to make a decision on the application today, otherwise it would be deemed granted before the date of the next Licensing Committee meeting.

Thereafter, the Chair moved refusal of the application on the ground that the applicant was not a fit and proper person to hold a Taxi Driver's Licence due to his total disregard for the Licensing Authority.

There being no-one otherwise minded, the Committee refused to grant a Taxi Driver Licence in Case No TD/10/011.

9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF A LATE HOURS CATERING LICENCE (CASE NO LHC/10/002)

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Late Hours Catering Licence submitted in Case No LHC/10/002.

Prior to discussion of the report Mr T Haynes, Solicitor (Litigation & Licensing) advised the Committee of an error in paragraph 4(d) of the report and clarified that the police had made no comments on the application.

The Committee noted that the Applicant was present, as was the Objector and his solicitor Mr Ross.

The Committee heard from the Applicant who stated that he was in charge of the business, rather than the gentleman who was named in the letter of objection, and that the allegations that were made in this letter were made against this other gentleman, not him. He added that this other gentleman was the owner of the premises for which he was seeking the licence but that, apart from this gentleman being his landlord, there was no other business relationship between this gentleman and him.

Mr Haynes advised Members that there was no requirement in the Civic Government (Scotland) Act 1982 for the owner of catering premises to be the holder of a late-hours catering licence. However the 1982 Act did state that a licence should be refused where, in the Committee's opinion, the activity to which it related would be managed by

or carried on for the benefit of a person, other than the applicant, who would be refused the grant or refusal of a licence if he had made the application himself.

Mr Haynes then invited the Committee to make a preliminary ruling on the question of whether the letter of objection before them was relevant to this application at all. If they were of the view that the objection had no relevance then the proper course of action would be to grant the licence as it was, in effect, unopposed. Mr Haynes added that although Mr Ross was present, representing the objector, the Committee were not obliged to hear from him if they did not deem his client's letter to be a relevant objection.

The Committee unanimously agreed that the objection was not relevant to the application and agreed to make a decision without hearing from the objector or his representative Mr Ross.

Thereafter, Councillor Cree, seconded by Councillor McConachie moved that the objection was not relevant to the application and, there being no other opposition to the application, the Late Hours Catering Licence should be granted.

There being no-one otherwise minded the Committee agreed to grant a late hours catering licence in case no LHC/10/002.

10. QUESTION TIME

At the last meeting of this Committee Councillor Divers had raised concern with the police regarding certain taxis driving without proper signage. He had given some details to the police following the last meeting but had discovered that the same taxis were still driving with the wrong signs. He asked for clarification of the position. Sergeant K Middler advised the meeting that he could only assume that this was being dealt with at a local level by his colleagues and that he would follow this up and respond to Councillor Divers.

11. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (CASE NO TD/10/007) (PARA 14)

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/10/007.

The Committee noted that the Applicant was not present but had received intimation of the meeting.

Sergeant K Middler addressed the meeting and re-iterated the terms of the Chief Constable's letter of objection.

Thereafter, the Chair moved that the applicant was not a fit and proper person to hold a Taxi Driver Licence due to his total disregard for the law

There being no one otherwise minded the Committee refused to grant a Taxi Driver Licence in Case Number TD/10/007.