

THE MORAY COUNCIL
MINUTE OF MEETING OF THE LICENSING COMMITTEE

WEDNESDAY 9 DECEMBER 2009

COUNCIL OFFICE, ELGIN

PRESENT

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

IN ATTENDANCE

Mrs R Gunn, Senior Solicitor (Litigation & Licensing), Mr T Haynes, Solicitor (Litigation & Licensing), Mr K Sturgeon, Principal Building Standards Officer, Mr I Younie, HMO Officer, Sergeant K Middler and Inspector C Mowat, (Grampian Police), Mr P Newlands and Mr A Inkson, (Fire Authority Officers), 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 Councillors G McIntyre 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. WRITTEN QUESTIONS

There were no written questions submitted to Committee.

3. 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.

4. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - LICENSING OF LATE HOURS CATERING (CASE NO LHC/09/004)

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Late Hours Catering Licence by Tesco Stores Limited to permit late hours catering from 11.00pm - 5.00am each Monday to Sunday at Moss Street, Keith.

The Committee noted that the Applicants and their Solicitor, Mr Ross were present.

The Committee noted that there were two letters of objections received, one from Mr Paton, on behalf of the residents in Union Terrace, Keith and one from Mrs P Winchester on behalf of the residents in Westerton Road/Court, Keith.

The Committee noted that Mr Paton was not present. Mrs R Gunn, Senior Solicitor, (Litigation and Licensing) advised the meeting that Mr Paton had been advised of the time and date of the meeting.

The Committee noted that there were no objectors/representatives from Keith Community Council in attendance.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the Committee of a technical issue with two letters of representation, one from the Chief Constable and the other from Keith Community Council, both of which were purported to be late in the Committee report. However, these letters were in fact and law not late; the error had been due to a miscalculation of days in terms of the 1982 Act. The Applicant's Agent was in agreement that the letters were not late and so the Committee agreed to accept the letters.

The Applicant's Solicitor, Mr Ross, addressed the Committee and advised that it was the company's intention to use the extended opening hours over the Christmas and New Year periods. He further advised that it was highly unlikely that the extended hours would be used for any longer, although he could not rule this out.

Mrs P Winchester, objector addressed the Committee on behalf of the local residents in Westerton Road and Balloch Court, Keith. The Committee heard of the objector's concerns with regard to anti social behaviour and for local residents in the area. She further advised that if she had been aware from the start that the opening hours requested by Tesco were only required over the Christmas and New Year period then there would not have been an issue.

Sergeant C Mowat addressed the meeting and re-iterated the terms of the Chief Constable's letter of representation and advised that the Chief Constable had no issue with Tesco; however they had concerns in respect of anti-social behaviour due to limited resources being available after 1:00 am on Saturday and Sunday mornings.

In response to members' questions concerning the period for granting a licence Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised that there was no restriction on issuing a licence other than there was a maximum period for granting of 3 years.

The Applicant's Solicitor made further representation to the objections received and advised the Committee that in respect of the problem with regard to seagulls, Tesco had already engaged Rentokil and were proposing that the area be netted in 2010. He further advised that in respect of litter it was Tesco's policy not to issue bags to school children and staff tidied the car park after the school lunch hours. He also advised that with the planned added security, anti-social behaviour would be less likely to be a problem.

Mrs R Gunn, Senior Solicitor, (Litigation & Licensing) gave clarification to the Committee that if they were satisfied that a restriction in hours/days or a condition imposed on the licence would address any objections and that they were not otherwise satisfied on the grounds of refusal, they were obliged to grant it in terms of the 1982 Act. The Committee noted this was the case.

Thereafter, Councillor A McKay, seconded by Councillor Divers moved refusal of the application on the grounds that the premises were not suitable by reference to the possibility of undue public nuisance and issues with public order and public safety.

As an Amendment, Councillor Ross, seconded by Councillor Cree moved that a Late Hours Catering Licence be granted for the month of December with extended opening hours being granted from 11:00 pm to 5:00 am. Sunday to Thursday and from 11:00 pm to 1:00 am for Friday evening/Saturday morning and Saturday evening/Sunday morning. The grounds for this restriction were as intimated relative to the motion.

As a second Amendment, Councillor McConachie, seconded by Councillor Stewart, moved that a late Hours Catering Licence be granted for a period of 6 months with extended opening hours being granted from 11:00 pm to 5:00 am, 7 days a week.

On a division, between the first amendment and the second amendment there voted:

For the First Amendment (9)	-	Councillors Ross, Cree, Divers, Hamilton, A McDonald, McGillivray, A McKay, M Shand and Sharp.
For the Second Amendment (3)	-	Councillor McConachie, Stewart and Shepherd.
Abstentions (0)	-	-

Accordingly the First Amendment became the Amendment.

For the Motion (3)	-	Councillors A McKay, Divers and Hamilton,
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For the Amendment (9) - Councillors Ross, Cree, McConachie, A McDonald, McGillivray, Shand, Sharp, Shepherd and Stewart.

Abstentions (0) - -

Accordingly the Amendment became the finding of the meeting and it was agreed that a licence for Late Hours Catering be granted for the Month of December from 11:00 pm to 5:00 am, Sunday to Thursday and from 11:00 pm to 1:00 am, Friday evening/Saturday morning and Saturday evening/Sunday morning in Case No LHC/09/04.

Following approval of the application and in discussions with the Applicant's Solicitor, Mrs Gunn, Senior Solicitor (Litigation & Licensing) advised the Committee that a technical issue had arisen in respect of the application, in that a licence could not be issued and so Tesco could not trade as agreed until after the 28 days appeal period had expired. In light of this information she asked the Committee to consider granting an exemption to the Applicant in terms of section 42(5) of the 1982 Act so that their Late Hours Catering Licence could commence with immediate effect, the necessary consultations for such an exemption effectively having been conducted relative to the application previously considered.

The Committee agreed to grant an exemption for Late Hours Catering with immediate effect in Case No LHC/09/04 to allow the applicant to operate on the terms as previously agreed

5. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - LICENSING OF LATE HOURS CATERING (CASE NO LHC/09/003)

There was submitted a report by the Chief Legal Officer inviting the Committee to consider an application for a Late Hours Catering Licence by Tesco Stores Limited to permit late hours catering from 11.00 pm - 5.00 am each Monday to Sunday at Nairn Road, Forres.

Prior to discussion of this item, the Applicants Solicitor, Mr Ross advised the Committee that in liaison with Grampian Police his client wished to amend the closing times from 5:00 am to 2.30 am for Friday evening/Saturday morning and Saturday evening/Sunday morning opening in accordance with Police recommendations.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the Committee that a late letter of representation from Grampian Police had been received; however as stated in the previous application it had transpired that the letter was not late and the error was due to a miscalculation of days in terms of the 1982 Act. This was agreed by the Applicants Solicitor. The Clerk circulated the letter of representation to the Committee. The Police representative confirmed that in light of the amendment of the application, the police representation was withdrawn.

Mrs Gunn further advised that a late letter of objection had been received from a local resident in Forres that morning and the reason given for lateness was that the objector had not seen the advert in the local paper.

The Committee noted that there were no objectors present.

The Applicant's Solicitor submitted that, in addition to the newspaper advertisement placed by Council Officers (for which there was no statutory duty in place); the Applicant had displayed two notices advertising this application, one on a lamppost by the store, and one on the front door of the store.

The Committee agreed that there was insufficient reason to accept the late letter of objection.

Thereafter, Councillor Shepherd seconded by Councillor McConachie, moved approval of a Late Hours Catering Licence from 11:00 pm to 5:00 am Sunday to Thursday and from 11:00 pm to 2.30 am for Friday evening/Saturday morning and Saturday evening/Sunday morning.

There being no-one otherwise minded the Committee agreed to grant a Late Hours Catering Licence from 11:00 pm to 5:00 am Sunday to Thursday and from 11:00 pm to 2.30 am for Friday evening/Saturday morning and Saturday evening/Sunday morning in Case No LHC/09/003.

6. 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 in Case Number WC/09/002.

The Committee noted that the Application had been deferred from the previous meeting to allow the Applicant a further opportunity to make a personal appearance. The Committee noted that the Applicant was not present and Mrs R Gunn, Senior Solicitor, (Litigation & Licensing) advised that a Recorded Delivery letter had been delivered to the Applicant on the 17 October 2009 and that there had been no response from him. The Committee agreed to hear the case in his absence.

Following consideration Councillor Ross, seconded by Councillor McGillivray moved refusal of the application on the grounds that the applicant had a total disregard for the law, had submitted false records and was not a fit and proper person to hold a Window Cleaner Licence. It was further agreed that this matter be referred to the Procurator Fiscal for action.

There being no-one otherwise minded the Committee agreed to refuse the application for a Window Cleaner Licence in Case No WC/09/002.

7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A WINDOW CLEANER LICENCE (CASE NO WC/09/003)

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/09/003.

The Committee noted that the Applicant was not present.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the Committee that Recorded Delivery Letters had been sent to the applicant dated 21 September and 5 November 2009 respectively, requesting that he attend the Council office in order to have a digital photograph taken as proof of identity in order to validate his Window Cleaner Licence at a date and time that was mutually convenient to him. To date there had been no response from the applicant.

The Committee agreed to hear the case in his absence.

Following consideration the Committee agreed to refuse the application for a Window Cleaner Licence on the ground that the applicant's conduct rendered him not a fit and proper person to be the holder of such a licence.

8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/019)

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/09/019.

The Committee noted that the Applicant was present.

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

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

Councillor Shepherd seconded by Councillor Ross, moved refusal of the application on the grounds that the Applicant was not fit and proper person to hold a Taxi Driver Licence by reference to his previous convictions.

Councillor Cree, seconded by Councillor Divers, moved approval of the application.

On a division there voted:-

For the Motion (2)

Councillors Shepherd and Ross

For the Amendment (10)

Councillors Cree, Divers, Hamilton, McConachie, A McDonald, McGillivray, A McKay, Shand, Sharp and Stewart

Abstentions (0) -

Accordingly, the amendment became the finding of the meeting and it was agreed to grant a Taxi Driver Licence in Case No. TD/09/019.

9. 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 Number TD/09/020.

The Committee noted that the Applicant was not present and Mrs R Gunn, Senior Solicitor, (Litigation & Licensing) advised that a Recorded Delivery letter had been delivered to the Applicant on the 27 November 2009 but no response had been received from her.

The Committee agreed to defer consideration of the case to allow the Applicant a further opportunity to make a personal appearance.

10. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR A TAXI DRIVER LICENCE (CASE NO TD/09/021)

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/09/021.

The Committee noted the Applicant was present.

Sergeant K Middler on behalf of Grampian Police advised the Committee of the reason why the Chief Constable's letter of representation was submitted outwith the statutory time period. The Applicant confirmed that he had no objection to the letter being circulated.

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

The Committee noted the procedure normally followed in respect of spent convictions, which would otherwise be deemed to be spent, and agreed that Mrs R Gunn, Senior Solicitor, Litigation and Licensing review the previous convictions. Having done so, she advised the Committee that three of the spent convictions (from 2001, 2002 and 2003) were relevant to the application by reference to their age and nature and justice could not be done without admitting them into consideration. The Committee accepted the advice, the Applicant confirmed he had no objection to the spent convictions being put to the Committee and Mrs Gunn then outlined details of these convictions to the Committee.

Thereafter, the Applicant addressed the meeting and responded to Members' questions.

Following consideration Councillor Shepherd, seconded by Councillor Cree moved refusal of the application due to the serious nature of the applicant's driving offences which meant that he was not a fit and proper person to hold such a licence.

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

The Police representatives left the meeting at the conclusion of this item.

11. 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 joint report by the Environmental Services 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 submitted by Mr Chi Kong Yeung, 54 High Street, Elgin and Irene Chong, 167 Queens Road, Aberdeen, as the responsible persons for the management of the business.

The Committee noted that the Applicant was present.

Mrs R Gunn, Senior Solicitor (Litigation & Licensing) advised the Committee of a late representation from Mr K Sturgeon (Principal Building Standards Officer).

The Principal Building Standards Officer advised Committee that the lateness of his representation was due to having had to carry out research into the history of the building and also make a site visit. The Applicant advised that he had no objection to the letter being circulated.

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 Principal Building Standards Officer. The Clerk circulated the letter of representation to the Committee.

The Principal Building Standards Officer addressed the meeting and explained that due to the lack of fire separation between different parts of the building, he had concerns about the safety of users and occupiers, of the building particularly those sleeping who were at risk due to the lack of fire separation between different parts of the building, between rooms and corridors and the lack of protected lobbies to the fire escape route. On this basis, he did not consider the building suitable for use as sleeping accommodation.

The Fire Service Officers addressed the meeting and informed Committee that having carried out an initial inspection and found the building to already be in use as an unlicensed HMO, they had issued a Prohibition Notice on the grounds that there had been no suitable means of raising a fire alarm. However the Applicant had

subsequently installed fire alarms to a suitable standard and they had then withdrawn the Prohibition Notice. However an Enforcement Order remained outstanding on the property to allow the Applicant the opportunity to rectify other outstanding issues under the Fire (Scotland) Act. Under this Order the remaining outstanding works required completion by 30 June 2010.

The Fire Service Officers added that there was a fundamental difference between the two regulatory regimes as the Building Regulations were rigid whereas the Fire (Scotland) Act took a flexible approach, i.e. what steps were reasonable based on a risk assessment. As the Fire Service would be satisfied once all steps necessary under the Enforcement Notice were complied with, no representations had been made regarding this application.

The Principal Building Standards Officer commented that he based his assessment on whether the use was authorised which then led to a need to comply with the Building Regulations, and not simply on the building as it stood which was what the Fire Service had regard to..

Mr I Younie (HMO Officer) confirmed that anything required under Civic Licensing Legislation had been completed as far as he was concerned.

Councillor McGillivray observed that the Fire Service were saying that they accepted the premises but that the Principal Building Standards Officer was saying that the considered the premises unsuitable. Councillor Shepherd stated he considered it would be beneficial for Members to undertake a site visit. Councillor Cree endorsed this, commenting that the determination of suitability depended upon a lot more than Fire Regulations.

During discussion, Councillor Divers moved that for all future applications for HMO Licences due to be considered by the Committee, the site should be visited in advance of the Committee meeting.

Thereafter, the Committee agreed to defer consideration of the application until the next meeting of this Committee to allow Elected Members the opportunity to site visit the premises and to receive an updated report from the Principal Building Standards Officer. It was further agreed that in respect of all future applications for an HMO licence due for consideration by the Committee, Members would carry out a site visit to the property in advance of the Committee meeting.

12. PUBLIC ENTERTAINMENT LICENCE FEE - APPLICATION FOR A REBATE

Under reference to the Special Meeting of the Licensing Committee dated 24 January 2001 (paragraph 2 of that minute refers) 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 for a Public Entertainment Licence for the community fireworks display at Grant Park on 7 November 2009.

Following consideration the Committee agreed to refund the £100 fee paid in respect of the application for the licence for this event.

13. PUBLIC ENTERTAINMENT LICENCE FEE - APPLICATION FOR A REBATE

Under reference to the Special Meeting of the Licensing Committee dated 24 January 2001 (paragraph 2 of that minute refers) 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 for a Public Entertainment Licence for the Portgordon Fireworks Display on 1 November 2009.

Following consideration the Committee agreed to refund the £100 fee paid in respect of the application for the licence for this event.

14. THE CRIMINAL JUSTICE AND LICENSING (SCOTLAND) BILL 2009

There was submitted a report by the Chief Legal Officer advising the Committee of proposed changes to Civic Government Licensing.

Mr T Haynes, Solicitor, (Litigation & Licensing) advised the Committee that the Bill had completed Stage 1 consultation on 27 November 2009 and that Stage 2 consultation had now commenced. He had telephoned the Scottish Parliament earlier in the week to be advised that the first Stage 2 debate would take place in February 2010. This effectively allowed Members a two-month "window of opportunity" to submit representations to the Scottish Parliament, either as a group or as individuals. The Clerk circulated a copy of a recent letter from the Scottish Parliament concerning the Bill.

Following discussion Councillor Ross, seconded by Councillor Shepherd, moved that the Committee submit a collective written response to the Scottish Government setting out its views on those aspects of the 2009 Bill which will impact upon civic licensing.

Councillor Cree, seconded by Councillor McGillivray moved an amendment, that the Licensing Committee do not submit any comment or concerns on behalf of the Committee.

On a division, there voted:-

For the Motion (5)	Councillors Ross, Shepherd, Hamilton, McConachie and A McKay.
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For the Amendment (7)	Councillors Cree, E McGillivray, Divers, A McDonald, Shand, Sharp and Stewart
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Abstentions (0)	-
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Accordingly the Amendment became the finding of the meeting and it was agreed that no collective representation would be made to the Scottish Parliament on behalf of the Licensing Committee on those aspects of the Criminal Justice and Licensing (Scotland) Bill 2009 which will impact upon civic licensing.

15. REPRESENTATION OF MORAY TAXI TRADE

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.

Following discussion the Committee noted that a number of comments on the proposals had already been received and required consideration and so agreed to defer consideration of the report to the next meeting of this Committee to allow for further consultation with the Taxi Trade.

16. THE LICENSING OF DEMONSTRATIONS OF HYPNOTISM

There was submitted a report by the Chief Legal Officer inviting the Committee to approve a new scheme for the licensing of demonstrations of hypnotism within Moray and to instruct its implementation.

The Committee agreed to withdraw this item from the Agenda.

17. EUROPEAN SERVICES DIRECTIVE - IMPACT ON LICENSING FEES

There was submitted a report by the Chief Legal Officer advising the Committee of the implications of the European Services Directive on fees chargeable for certain licensing applications.

Following consideration the Committee agreed to approve "Revised Fee C" of the proposed revision to Civic Government licensing fees detailed in Appendix I of the report, these revised fees to be chargeable for all applications submitted on or after the 28 December 2009, on condition that a review of licensing fees is undertaken during 2010 and the results then reported to the Licensing Committee for further consideration.

18. QUESTION TIME

There were no questions asked at this meeting.