

Agenda item	8.1
Report no	HLC/053/18

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 7 August 2018

Report title: Application for the grant of a second hand vehicle dealer's licence – James Mollison for premises at 2 Millbank Park, Munloch, IV8 8NU (Ward 9 – Black Isle)

Report by: The Principal Solicitor – Regulatory Services

1.

Purpose/Executive Summary

1.1 This Report relates to an application for the grant of a second hand vehicle dealer's licence.

2.

Recommendation

2.2 Members are asked to determine the application in accordance with the Hearings Procedure.

3. Background

3.1 On 16 November 2017 an application for the grant of a second hand vehicle dealer's licence was received from James Mollison in respect of premises at 2 Millbank Park, Munloch, IV8 8NU.

3.2 In terms of the Civic Government (Scotland) Act 1982 (the Act) the Licensing Authority have nine months from receipt of the application to determine the same, therefore this application must be determined by 15 August 2018. Failure to determine the application by this time would result in the application being subject of a 'deemed grant' which means that a licence would require to be issued for a period of 1 year. The application is before this Committee as this is the last meeting before the determination date expires.

4. Process

4.1 Following receipt of the application a copy was circulated to the following Agencies/Services for consultation:

- Police Scotland
- Scottish Fire and Rescue Service
- Highland Council Trading Standards Service
- Highland Council Building Standards Service
- Highland Council Planning Service

4.2 Police Scotland, Scottish Fire & Rescue Service, Trading Standards and Building Standards have confirmed that they have no objections to the licence being issued.

4.3 The Planning Service submitted an objection to the grant of the application on the grounds that the applicant would require planning permission for a partial change of use of his residential land to commercial use in order to sell cars. Planning permission had previously been refused for any further development at Millbank Park as the junction with the public road does not meet the Council's standards and further vehicular use of this access, over and above what is already permitted, could cause a road safety issue.

4.4 The Planning Service consulted with colleagues in Transport Planning who confirmed that, as the current access does not meet their guidelines and there are no proposals for traffic calming in the vicinity, they would not support any activity on Millbank Park that would lead to an increase in vehicular activity at this junction and would object to any planning application for a second hand car dealership in this location.

4.5 Therefore the Planning Service advised that they could not give consent to the applicant to sell cars from the premises and would not be in a position to support any planning application submitted for such a change of use. Mr Mollison was accordingly advised that while he was welcome to submit a planning application for change of use it was unlikely that Planning would support it.

4.6 On being advised of Planning's response, Mr Mollison advised that he would nonetheless like to seek planning permission. However, to date, he has not submitted any planning application.

4.7 The correspondence relating to the Planning Service's objection and the applicant's response is attached at **APPENDIX 1**. A site plan showing the location of the proposed premises is attached at **APPENDIX 2**.

5. Determining issues

5.1 Paragraph 5(3) of Schedule 1 of the Act states that a licensing authority may refuse an application to grant or renew a licence where:

(a) the applicant or anyone else detailed on the application is not a fit and proper person;

(b) the activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused;

(c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to

(i) the location, character or condition of premises or the character or condition of the vehicle or vessel,

(ii) the nature and extent of the proposed activity,

(iii) the kind of persons likely to be in the premises, vehicle or vessel,

(iv) the possibility of undue public nuisance, or

(v) public order or public safety; or

(d) there is other good reason for refusing the application.

5.2 In this case, members are invited to consider whether, in light of the objection by the Planning Service on road safety grounds, the ground for refusal in paragraph 5(3)(c) applies.

5.3 If required the Principal Solicitor – Regulatory Services will offer particular advice on the criteria relating to this particular application.

6. Options

6.1 If, despite the terms of the objection by the Planning Service on road safety grounds, members do not consider that the ground of refusal in paragraph 5(3)(c) applies and are consequently minded to grant the licence application, members should be aware that the applicant would nevertheless be unable to operate the licensed activity from the premises, as to do so would be a breach of planning legislation.

6.2 Alternatively should the Committee find that, having regard to the objection from the Planning Service on road safety grounds, the ground of refusal in paragraph 5(3)(c) is established, then the application for the grant of the second hand vehicle dealer's licence may be refused.

7. Policies

7.1 The following policies are relevant to this application:

7.2 Standard second hand vehicle dealer's licence conditions. A copy of these can accessed at https://www.highland.gov.uk/directory_record/738765/second_hand_vehicle_dealers_licence/category/499/shop_and_trader

or a hard copy can be supplied where requested.

8. Implications

8.1 Not applicable.

Date: 23 July 2018

Author: Angela Mair

Ref: SHCD/21/074

Background Papers: Civic Government (Scotland) Act 1982

Appendices:

Appendix 1 : Correspondence relating to the objection by the Planning Service

Appendix 2 : Site plan

Emma Kennedy

From: JIM MOLLISON <yamfaz@btinternet.com>
Sent: 01 December 2017 09:38
To: Emma Kennedy
Subject: Re: Licence Consultation for Second Hand Vehicle Dealer - Planning

Hi Emma

Thanks for that.
I think that I would like to pursue planning permission

Regards

Jim Mollison

Sent from Yahoo Mail on Android

On Thu, 30 Nov 2017 at 16:42, Emma Kennedy
<Emma.Kennedy@highland.gov.uk> wrote:

Dear Mr Mollison

Having consulted with Planning on your application for a Second Hand Vehicle Dealer's Licence and noting their response below, I can advise that we have up to 9 months in which to determine your licence application.

Should you wish to try and obtain planning permission anyway (despite the fact that the Planning Service have already advised that they would not support a planning application) we can allow you time to try and do this.

If the objection from Planning has not been resolved/withdrawn by the end of May 2018, we would require to refer your licence application to the Highland Licensing Committee on 07 August 2018 for determination. The Committee would have to consider whether, in light of the Planning objection and the road safety reasons it is based on, the ground for refusal of the licence application provided by Paragraph 5(c) of Schedule 1 to the Civic Government (Scotland) Act 1982 applies. If they consider it does apply, the Committee will have no option but to refuse the licence application. The Paragraph 5(c) ground for refusal in this case would be that the premises is not suitable for the conduct of the activity for which a licence is sought having regard to its location, to the nature and extent of the proposed activity and to public safety. It is highly likely that the Committee would find that this ground of refusal applied in this case.

Even if the Committee were to ignore the Planning objection, and grant a licence, you would be unable to operate the licensed activity from the premises, as to do so would be a breach of planning legislation.

If, instead of trying to obtain planning permission, you would simply prefer to withdraw your application for a licence, you should do so in writing.

I would ask that you please confirm which course of action you propose to take. If you do not do so, we will refer the application to a Committee meeting earlier in 2018 for a determination – which, again, is likely to be a refusal based on the ground of refusal explained above.

Regards

Emma

Emma Kennedy

Admin Assistant

Licensing & Landlord Registration

Council Offices, High Street

Dingwall, IV15 9QN

Tel: 01349 868509

Email: Emma.Kennedy@highland.gov.uk

From: Laura Stewart - Planning
Sent: 30 November 2017 10:15
To: 'yamfaz@btinternet.com'
Cc: Emma Kennedy
Subject: FW: Licence Consultation for Second Hand Vehicle Dealer - Planning

Dear Jim,

Thank you for getting back to me with further information on your proposals. Based on the information provided you would require planning permission for a partial change of use of your residential land to commercial in order to sell cars.

Unfortunately, we have previously refused planning permission for any further development at Millbank Park as the site access with the public road does not meet with the Council Roads Guidelines and further use of this, over what is already permitted could cause a road safety issue.

With that in mind, I consulted with my Transport Planning colleagues in order to assess whether they would support an application for a car dealers here and they have come back to me with the comments below.

Unfortunately, we would not be in a position to allow additional vehicles to utilise the access, and they would object to any planning application which means we could not give you consent to you, to sell cars from the premises. I am unsure as to what the implications of this would be from a Licensing perspective.

You are of course welcome to submit a planning application, however I would have to advise that, it is with regret that we would not be in a position to support it.

Kind Regards

Laura

From: Cathy McNulty
Sent: 30 November 2017 09:22
To: Laura Stewart - Planning
Subject: RE: Licence Consultation for Second Hand Vehicle Dealer - Planning

Hello Laura,

After looking at the junction we would not support any intensification of use at this junction and after reading the 2005 report I am inclined to agree with the author that TEC services should have objected to the original application for this site. As shown on the attached drawing, the existing visibility splay to the right is only approximately 28 metres which is way below the 90 metres required for a 30mph road or the 60 metres for a 20mph limit.

I have spoken with Road Safety and there are currently no proposals for any traffic calming so it is unlikely that traffic speeds will be reduced via physical measures in the near future.

Therefore, as the current access does not meet our guidelines and there are no proposals for traffic calming in the vicinity we would not support any activity on Millbank Park that would lead to an increase in vehicular activity at this junction and we would object to any planning application for a second hand car dealership in this location.

I hope this helps, but if you need anything else, please let me know.

Kind regards,

Cathy

From: Laura Stewart - Planning
Sent: 27 November 2017 15:57
To: Transport Planning
Subject: FW: Licence Consultation for Second Hand Vehicle Dealer - Planning

Hello,

2 Millbank Park, Munloch, Second Hand Car Dealer

I am looking for some advice.

The Licensing team have consulted Planning on a licence application for a second hand car dealers.

Having obtained further information, planning permission is required to run this business from the property. Having done some further research, it appears that we refused planning permission for a house reference 05/00951/FULRC based on further intensification of the substandard access and insufficient visibility in order to accommodate further development, this was particularly to the bend in the road toward the village. This was agreed on appeal by the Scottish Govt and the appeal was dismissed.

I have to advise that planning permission is required, however, I need to be able to advise whether we are likely to have any issues on road safety grounds – the applicant has no control over the access and will not be in a position to upgrade this, I am advised however that in more recent years traffic calming measures have been installed near the access, would this therefore allow a relaxation of the splays?

Please find attached the original committee report, I refer you to Section 4.0 Consultations which appears to identify that as the traffic calming measures had not yet been undertaken the visibility to road speed was insufficient.

TECs traffic calming committee

report: <https://www.highland.gov.uk/download/meetings/id/13538/item10src0613pdf>

Please can it be advised whether it is likely we could support further intensification of the access for a second hand dealers, 2 -3 cars on site at any time. I do not want to advise permission is required if it's unlikely we can support it due to access/roads issues.

Please give me a call if you wish to discuss this further, look forward to hearing your thoughts.

Laura

Laura Stewart

Planner

Development and Infrastructure

Tel: 01349 868664

Email: laura.stewart2@highland.gov.uk

This advice is given without prejudice to the future consideration of and decision on any application received by The Highland Council

Thathar a' toirt seachad na comhairle seo gun chlaon-bhreith do bheachdachadh air agus codhùnadh a thaobh tagradh sam bith a tha Comhairle na Gàidhealtachd a' faighinn san àm ri teachd

Register at consult.highland.gov.uk to view, comment and be kept updated on any future Development Plan documents in Highland.

From: JIM MOLLISON [<mailto:yamfaz@btinternet.com>]

Sent: 24 November 2017 17:26

To: Laura Stewart - Planning

Subject: Re: Licence Consultation for Second Hand Vehicle Dealer - Planning

Hi Laura

I live in a quiet area of Munloch with another two houses, my houses is detached with a large parking area that can hold approximately 10 cars.

It is my intention to only have 2-3 cars at any one time. I am not going to be working on the cars. I will be dealing with customers outside only and none will be entering my house.

Regards

Jim Mollison

Sent from Yahoo Mail on Android

On Fri, 24 Nov 2017 at 13:57, Laura Stewart - Planning

<Laura.Stewart2@highland.gov.uk> wrote:

Dear James,

I refer to your recent application to the Council for a Second Hand Vehicle Dealer Licence at 2 Millbank Park, Munloch.

The Planning Authority received a consultation from the Licensing department, and we have advised that based on the information which you have provided that planning permission would be required in order to operate such a business from your premises.

If you could provide us with more information then I will be in a position to review the above advice.

Can you please advise me in the first instance, what operations with regard to the business you intend to undertake at the above address. For example, are cars to be worked on and stored at the address, and if so how many at any one time? If cars are to be stored at the address can you advise where it is proposed to keep them? Will members of the public be accessing this address in order to buy cars (i.e will there also be an office at the address).

Following confirmation of the above this will allow me to make a further assessment as to whether permission would still be required, I may request further information once there is more clarity around what you are proposing at the site.

Kind Regards

Laura

Laura Stewart

Planner

Development and Infrastructure

Tel: 01349 868664

Email: laura.stewart2@highland.gov.uk

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APPENDIX 2

JAMES MOLLISON - SHVD

* 2 MILLBANK PARK
MUNLOCHY
IV8 8NU

