

Agenda item	7.1
Report no	HLC/059/19

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 5 November 2019

Report title: Application for the grant of a street trader's licence – Can Turkcan (Ward 12 – Aird and Loch Ness)

Report by: The Principal Solicitor – Regulatory Services

1. Purpose/Executive Summary

1.1 This report relates to an application for the grant of a street trader's licence.

This item is subject to a formal hearing procedure

2. Recommendation

2.1 Members are asked to determine the application in accordance with the hearings procedure.

3. **Background**

3.1 The Highland Council has resolved that in terms of the Civic Government (Scotland) Act 1982 (the "Act") a licence will be required for carrying on a business as a street trader. As the licence is issued to an individual each trader requires their own licence.

4. **Application**

4.1 Mr Can Turkan applied for the grant of a street trader's licence on 26 August 2019 in relation to the operation of cycle rickshaws. A photo of the types of rickshaws to be used is attached in **Appendix 1**.

4.2 Mr Turkcan has indicated that he wishes to operate from the following locations:

- Car park beside the public toilets, Ft Augustus.
- Outside the Moorings Restaurant, Canal Side, Fort Augustus.

4.3 Attached in **Appendix 2** is a map showing the proposed route that the rickshaws will take. The majority of the trips will be on the roads alongside the canal, along Station Road or through the Highland Club grounds with small sections of the trip being on the A82 to get from the carpark to canal side or the Highland Club.

4.4 Mr Turkcan will also be making the rickshaws available for pre-bookings, again for trips within the Fort Augustus area.

4.5 The applicant has been advised that if he is proposing to trade from a particular location for more than 28 days in the year, he will require planning consent and has been advised to contact the Planning Service with a view to checking if for permission is required for this activity.

4.6 He has also been advised that he will require to obtain consent from the landowner in the locations where he proposes to operate from.

4.7 Mr Turkcan has applied to operate from 9.30am to 2.00am. The current policy hours for street trading are from 7.00am to 11.00pm. Any hours requested outwith these require to be considered by the Licensing Committee.

5. **Consultation**

5.1 The application was circulated to Police Scotland, Environmental Health and Community Services (Roads).

5.2 There have been no objections received from Police Scotland and the Environmental Health Service.

5.3 A response is awaited from the Council's Community Services (Roads) and a verbal update will be provided at the meeting.

6. Determining issues

6.1 Paragraph 5(3) of Schedule 1 of the Civic Government (Scotland) Act 1982 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.

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

6.2 A copy of this report has been sent to Mr Turkcan. He has been invited to attend and will be provided with an opportunity to be heard by the Committee and has been advised of the procedure which will be followed at the meeting.

7. Additional conditions

7.1 If the Committee is minded to grant the application it is recommended that the additional conditions as detailed in **Appendix 3** be attached to the licence.

8. Inspection

8.1 If the Committee are minded to grant the application it is suggested that, prior to the licence being issued, the applicant be asked to submit written confirmation that all cycle rickshaws to be used have been inspected by a suitably qualified technician and are in a roadworthy condition.

9. Further applications

9.1 Mr Turkcan has advised that if he is successful in his application then he would be looking to submit applications for street trader's licences for a number of employees to enable them to assist him and operate the rickshaws.

9.2 If the Committee are minded to grant Mr Turkcan's application, delegated powers could be granted to the Principal Solicitor to grant the application for any employees who would be and working for Mr Turkcan, assuming that there were no objections to these applications. If there were any objections then the applications would be referred to the Licensing Committee for consideration.

10. Implications

10.1 Not applicable.

Date: 8 October 2019

Author: Michael Elsey

Background Papers: Civic Government (Scotland) Act 1982

Appendix 1 – Photos of the types of cycle rickshaw which would be used.

Appendix 2 – Map of proposed route.

Appendix 3 – Additional conditions.



Appendix 2.





Additional conditions for cycle rickshaws (all conditions relate to both employer and employee Licences except where indicated for employer only)

1. The licence holder shall have in place third party Public Liability insurance (with a minimum indemnity of five million pounds) to cover the operation of all cycle rickshaws for which this licence is issued. **(employer only)**.
2. The licence holder shall maintain an up to date list of the names and addresses of all drivers employed by him and shall produce this list on request to a duly authorised officer of the Licensing Authority or to a Police officer at all reasonable times. **(employer only)**
3. The licence holder shall maintain operation records to ensure that there is a record retained of the identity of the driver of any cycle rickshaw at any given point in time. **(employer only)**
4. The licence holder shall ensure that all cycle rickshaws are subject to a yearly inspection by a suitably qualified technician and kept in a roadworthy condition throughout the validity of the licence. The licence holder shall also retain records of all maintenance work carried out on each cycle rickshaw licensed in his name and provide this to the Local Authority at any reasonable time on request. **(employer only)**
5. The licence holder shall ensure that cycle rickshaws comply with the Pedal, Cycle (Construction and Use) Regulations 1983 and 2015, the Road Vehicle Lighting Regulations 1989 and any other legislation which affects the construction/lighting of cycle rickshaws.
6. The licence holder shall operate the cycle rickshaws only on the approved route(s), namely; []
7. The licence holder shall stop the cycle rickshaw only at the approved stances, namely; []
8. The licence holder shall comply with national and local legislation and the Highway Code relating to the use of cycle rickshaws on the road i.e. traffic signals, no entry signs and one way streets etc.
9. The licence holder shall not cause any obstruction nor shall it compromise the safety of its passengers or other road users and must comply with any Traffic Regulation Orders.
10. The licence holder shall ensure that all passengers are wearing a 3 point seatbelt or lap belt (which must be adequate to retain the passenger in the cycle rickshaw and must bear an EC or BSI mark) before commencing all journeys.

11. The cycle rickshaw must be fitted with a minimum of one front position light and a minimum of two rear position lamps and two rear reflectors.
12. The handlebars when turned to full lock will not affect the stability of the cycle rickshaw when turning.
13. There must be a least one mirror fitted to the offside of the cycle rickshaw in order to monitor road users.
14. The floor covering of the passenger compartment must be of non slip material which can be easily cleaned. Any holds or handles to aid passenger access or egress should be clearly identified with high visibility markings.
15. The materials used to form the passenger seats should be waterproof so that they will not absorb or retain water and should be constructed of a suitable fire resistant material to BS 5852 Part 1, 1979 or equivalent.
16. Tyres must be properly inflated with no exposed cords, a tread pattern clearly visible over the whole tread area and the load ratings of all tyres must be suitable for a cycle rickshaw when fully loaded.
17. Any canopy or roof, when fitted to the cycle rickshaw must remain in a fixed position with a suitable locking mechanism to secure the canopy or roof when raised or lowered, when conveying passengers.
18. The cycle rickshaw must be fitted with adequate guards or other fitting so as to prevent loose garments or other materials being caught in the cycle rickshaw's chain, spokes or other moving parts. No alterations shall be made to the cycle rickshaw without the prior approval of the Local Authority.
19. The cycle rickshaw must be fitted with an audible warning instrument i.e. a bell
20. The licence holder shall only use the audible warning instrument i.e. a bell to let other road users know they are there when necessary and for no other purpose.
21. The licence holder shall not overload the cycle rickshaws and will only take passengers if they can be seated in the cycle rickshaw i.e. a maximum of three passengers.
22. The licence holder shall carry out a basic safety check of the cycle rickshaw on each occasion of use. The safety check will include, but will not be limited to ascertaining the condition of the following:
 - Front and rear brakes
 - Front and rear lights
 - Operation of seat belts
 - Condition of tyres and wheels
 - Reflectors

Any defects established by this inspection should be remedied prior to use.

23. The licence holder at the end of each hiring shall search the cycle rickshaw of which he is in charge for any property that may have been left therein. Any property found by the driver shall, within twenty-four hours, be returned to the

owner of the property, if known or such property shall be handed in by the driver to any police station.

24. All children must occupy a seat and no person under the age of 16 shall ride unaccompanied without an adult.
25. A receipt book must be carried by each licence holder to permit a receipt to be produced on request of any paying passenger.
26. The licence holder shall at all times when trading wear the identity card which is issued with the licence. In addition, the licence must be displayed on the cycle rickshaw in a prominent position, so it may be read by any passenger, police officer or authorised officers of the Local Authority.
27. Any authorised officer of the Local Authority or Police officer shall be permitted to inspect any cycle rickshaw, at any time and all reasonable directions and requirements of such officers must be complied with.