

## Highland Council

Minute of the remote meeting of the **Highland Licensing Committee** held via Microsoft Teams on Tuesday 1 December 2020 at 10.00 am.

### **Present:**

Mr J Bruce, Mr A Jarvie (Chair), Ms E Knox, Mrs L MacDonald, Mr W Mackay (excluding items 9.2 - 11), Mr D Macpherson, Mr K Rosie, Mr A Sinclair (from Item 6) and Mr C Smith.

### **In attendance:**

Miss C McArthur, Principal Solicitor (Regulatory Services)  
Mr I Meredith, Solicitor (Regulatory Services)  
Mr G MacCormick, Senior Environmental Health Officer  
Mr M Elsey, Senior Licensing Officer  
Mrs A MacArthur, Administrative Assistant

### **Also attending:**

Sergeant K Duncan, Police Scotland  
Mr M MacDonald, Police Scotland

Item 6.2 – Mr D Fullerton, applicant; Mr M Smith, solicitor for the applicant; Mrs L McIntyre, KSG Acoustics and Mr A Rankin, objector.

Item 9.1 – Mr R Watson

Item 10.1 – Ms L Miller

The Chair confirmed that the meeting would be webcast and gave a short briefing on the Council's webcasting procedure and protocol.

## **Business**

### **1. Apologies for absence Leisgeulan**

Apologies for absence had been received on behalf of Mrs J Barclay.

### **2. Declarations of interest Foillseachaidhean Com-pàirt**

Item 6.1 - Mr A Jarvie (non-financial).

### **3. Confirmation of minutes Dearbhadh a' Gheàrr-chunntais**

There had been submitted for confirmation as a correct record the minute of meeting of the Committee held on 27 October 2020 which was **APPROVED**.

### **4. Licences granted under delegated powers Ceadachdan a bhuilicheadh fo ùghdarras air a thiomnadh**

There had been circulated **Report No HLC/048/20** by the Principal Solicitor which detailed all licences which had been granted under delegated powers under the Civic Government (Scotland) Act 1982 in the period from 15 October 2020 to 18 November 2020.

Following a request from Members, the report would be amended for future reporting to record whether the application was an application or a renewal.

The Committee **NOTED** the report.

**5. Pending applications – 3 monthly considerations  
Iarrtasan ri thighinn – beachdachaidhean 3 mìosach**

There had been circulated **Report No HLC/049/20** by the Principal Solicitor relating to applications which were currently pending for the grant or renewal of licences under the Civic Government (Scotland) Act 1982.

The Committee **AGREED** to defer the determination of the applications, either to:

(a) allow them to be approved under delegated powers in the event that no objections/representations are received and all outstanding documentation has been received from the applicants; or

(b) a future meeting of the Committee when the applications will be determined in terms of the Hearings Procedure.

**6. Civic Government (Scotland) Act 1982  
Public Entertainment Licences  
Achd Riaghaltais Chatharra (Alba) 1982  
Ceadachdan Aoigheachd Phoblaich**

**6.1 Premises: Craig Maclean Leisure Centre, Cromdale Road,  
Grantown on Spey**

**Declaration of Interest – Mr A Jarvie declared a non-financial interest as a Director of High Life Highland and left the meeting for the duration of this item.**

**Mrs L MacDonald, Vice-Chair, chaired this item.**

There had been circulated **Report No HLC/050/20** by the Principal Solicitor relating to an application for a public entertainment licence for the Craig Maclean Leisure Centre, Cromdale Road, Grantown on Spey by Highlife Highland (Badenoch and Strathspey Ward).

Mr M Elsey advised that the Electrical Installation Certification Report (EICR) and the PAT testing certification had been received. Unfortunately, there had been a minor typographical error in the EICR certificate and this would require to be amended and resubmitted.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor – Regulatory Services to refuse the application should the licence holder not submit (1) a satisfactory PAT testing certification and (2) a satisfactory EICR by 22 January 2021, but otherwise grant the application.

If the information was not received by 22 January 2021, the licence would be refused under paragraph 5(3)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982 on the basis that the licensing authority could not be satisfied that the premises were suitable for the conduct of the activity having regard to public safety.

## **6.2 Premises: Landmark Forest Adventure Park, Carrbridge**

There had been circulated **Report No HLC/051/20** by the Principal Solicitor relating to an application for a public entertainment licence for Landmark Forest Adventure Park, Carrbridge by Visitor Centres Ltd (Badenoch and Strathspey Ward). Written submissions had been submitted by both the applicant and the objector and these had been circulated to the Committee in advance of the meeting.

Mr M Elsey advised that an objection to the application had been received from Mr A Rankin and this had been attached to the Report. Complaints in relation to noise levels had previously been received from Mr A Rankin which had been investigated by the Council's Environmental Health Service. A further complaint had been received from Mr A Rankin in relation to a potential breach of conditions 2.3 and 7.1 of the public entertainment licence and a copy of this was also attached to the report. Environmental Health investigated this and had carried out noise monitoring at the objector's premises. Further noise monitoring had been prevented due to the impact of the Covid-19 pandemic. Two video recordings had also been provided by the objector and these had been circulated to Members and were also played during the meeting.

Mr G MacCormick, Senior Environment Health Officer, advised that the nature of the complaint had been in relation to the ratcheting noise and de-dogging noise emanating from the roller coaster. The other element of the complaint related to the shrieking and screaming from the ride users. The complaint related to the loss of amenity in the garden area of Mr A Rankin's property. The property was approximately 160 metres from the site.

The noise aspect was first being investigated as a statutory noise nuisance. There were no prescribed levels for noise and the factors outlined in the Report would be taken into consideration to establish if there was a noise nuisance. Two sessions of noise monitoring had been undertaken to date but due to the coronavirus pandemic and the redeployment of Environmental Health officers, the closure and then restricted number of patrons using the park, they had not yet been able to undertake further representative noise monitoring. It was confirmed that noise could be heard from the objector's garden but there had not been sufficient monitoring to establish whether this would amount to a noise nuisance.

Mitigation work had been undertaken by the applicant in relation to the some of the noise elements associated with the roller coaster and the clunking noise emanating from the roller coaster had been resolved.

Currently a statutory noise nuisance had not been established and further investigations were required and would be ongoing with both the applicant and the objector.

The two videos supplied by the objector were then played for Members.

Mr A Rankin, objector, stated that the video recordings should not be considered as representative evidence of the noise. Mr A Rankin had no questions for the Environmental Health Officer.

The Clerk clarified that there were two issues for the Committee to consider. Firstly, whether there was a noise nuisance and secondly, if so, was the noise nuisance directly attributable to the activities that required a public entertainment licence, namely the roller coaster and the water slides.

On a question from the applicant's solicitor, Mr MacCormick advised that there were other noises heard from the park but the shrieking and screaming from the roller coaster was the most discernible noise.

Responses from Environmental Health to Members questions:

- Environmental Health did not have recordings available in a format that could be shared with Members at the hearing;
- a map of the area was not available;
- the applicant had appointed an Acoustic Consultant, Ms L McIntyre to assess noise levels and investigate whether any mitigation could be undertaken. For the roller coaster to reduce noise from the users, a large barrier would be required and this would need to be close to the noise source and be of a higher level than the roller coaster. This would be the only method of reducing the noise from shrieking and screaming users. This was considered disproportionate and prohibitive by the applicant in terms of the cost compared with possible benefit in noise reduction;
- Environmental Health were keen to undertake a longer term monitoring period when the park returned to normal operating levels following the relaxation of Covid-19 restrictions; and
- a solution had been found for the de-dogging problem which had reduced the noise emanating from the roller coaster.

Mr A Rankin then spoke to his objection. He believed the roller coaster had been positioned in the wrong place within the park. His complaint had been ongoing since 2014 and he had received little response to his complaints from the applicant. His complaint is specifically against three elements, the ratcheting noise, the de-dogging noise and the shrieking and screaming from patrons. He acknowledged the de-dogging noise had been resolved and that was appreciated. The frequency, the level and nature of the noise and the seasonality had led to a cumulative impact to the detriment of the enjoyment of his property. The list of actions undertaken by the applicant and detailed in the Acoustics Consultant's report had not been communicated to him.

To qualify his previous comments in relation to the videos he had submitted, they were not representative in the format played at the hearing where the true sound could not be heard. The sound recordings taken by the Acoustic Consultant had been in late October over a wet period after the main seasonal period and were also not representative of the scale of the noise.

Further, in relation to the conditions of the public entertainment licence, condition 7.1 states that the licence holder must ensure that no noise arising from the use of the premises shall give rise to reasonable cause for annoyance.

If annoyance is the term referred to in the licence then it should be reasonable grounds for a complaint and not investigated as a nuisance.

The roller coaster had changed the character of the area.

Neither the applicant nor the Environmental Health Officer had questions for the objector.

The Clerk re-stated that the public entertainment licence was only required for the water slides and the roller coaster. The reason that the matter was being investigated as a noise nuisance was that the conditions of the licence are were linked to the aims of the 1982 Act which regulates them, namely the preservation of public order and safety and the prevention of crime. Condition 7.1 related to public order and more specifically one of the statutory grounds that can be taken into account for refusal - the possibility of undue public nuisance, which had to be evidenced.

Responses from Mr A Rankin, objector to Members questions:

- the noise was discernible from the property with the windows closed and quite clear with the windows open;
- he can only hear noise from the A9 if there was a particularly loud vehicle on a very quiet evening; and
- the house was an old house built in 1911.

Mr M Smith, Solicitor for the applicant stated that Mr D Fullerton, Landmark's General Manager was present and Mrs L McIntyre, from KSG Acoustics. All of the consulted agencies to the licence except Environmental Health had no objections to the renewal of the licence. Environmental Health had made a representation to the licence due to the ongoing noise complaint. Mr M Smith outlined the development of the park over the years.

The applicant acknowledged that occasionally the roller coaster had been operating after 6.00 pm in the evening to allow the queue to clear. This had been an error and steps had been taken through staff training to ensure the ride was closed at 6.00 pm. The ride also ran before 10.00 am purely for testing purposes, which was acceptable in terms of the licence.

The principal complaint was in relation to condition 7.1. Both the de-dogging and the ratcheting noise had been extensively researched and the de-dogging noise had been mitigated.

Mr M Smith accepted that his clients had not communicated effectively with the objector to keep him informed of the improvements made.

In ten years of operation only one complaint had been received. The roller coaster was essential to sustain the park. Without the roller coaster operating, the park's income reduced by £3,000 - £4,000 per day due to having to discount tickets.

Reasonable steps had been taken by the applicant to address the noise of shrieking and screaming. A report by KSG Acoustics stated that a barrier/screen was not a practical solution. It would need to be very high and would not guarantee that screaming was inaudible. Any screen close to the roller coaster would affect the running of the roller coaster.

Following discussion, the Committee **AGREED** to **GRANT** the application subject to the standard conditions. The licence is granted for an 18 month period. The shorter duration of the licence is in recognition of the fact there is an outstanding noise complaint which requires further monitoring to provide representative noise data.

**7. Civic Government (Scotland) Act 1982  
Applications for private hire car driver's / operator's licences  
Achd Riaghaltais Chatharra (Alba) 1982  
Iarrtasan airson ceadachdan do dhràibhearan / oibrichean chàraichean  
airson fastadh prìobhaideach**

**7.1 Application for private hire car driver's licence – Hristo Georgiev**

There had been circulated **Report No HLC/052/20** by the Principal Solicitor relating to an application which has been received from Hristo Georgiev for a private hire car driver's licence (Culloden and Ardersier Ward).

The Committee **NOTED** the application had been **WITHDRAWN** at the applicant's request.

**7.2 Application for private hire car driver's licence – Jilson Joy**

There had been circulated **Report No HLC/053/20** by the Principal Solicitor relating to an application which has been received from Jilson Joy for a private hire car driver's licence.

The applicant did not attend.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor – Regulatory Services to refuse the application if the applicant has not submitted a satisfactory visa by 19 December 2020.

If a satisfactory visa was not submitted by 19 December 2020, the licence would be refused under section 13(3A) of the Civic Government (Scotland) Act 1982 as the licensing authority could not be satisfied that Mr Joy was not disqualified by reasons of his immigration status from driving a private hire care as he had not provided a satisfactory visa within the 12 month determination period for processing a licence application.

The applicant could still withdraw his application prior to 19 December 2020 if he wished to do so.

**8. The Committee RESOLVED that, under Section 50A(4) of the Local Government (Scotland) Act 1973, the public be excluded from the meeting during discussion of the following items on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Act.**

9. **Civic Government (Scotland) Act 1982**  
**Taxi driver's / operator's licences**  
**Achd Riaghaltais Chatharra (Alba) 1982**  
**Ceadachdan Dhràibhearán / Oibrichean Tagsaidh**

**9.1 Application for grant of taxi driver's licence – Robert Watson**

There had been circulated **to members only Report No HLC/054/20** by the Principal Solicitor relating to an application which has been received from Robert Watson for a taxi driver's licence (Fort William and Ardnamurchan Ward). A written submission had been submitted by the applicant together with three letters of support, all of these had been circulated to the Committee in advance of the meeting.

The Committee heard from Police Scotland in relation to their objection. The applicant had nothing to add to his written submission.

Following discussion, Mr W Mackay, seconded by Mr D Macpherson moved the grant of the application.

Ms E Knox, seconded by Mrs L MacDonald moved as an amendment, that the application be deferred pending the outcome of the applicant's case.

On a vote being taken by roll call, 2 votes were cast in favour of the **motion** and 7 in favour of the **amendment**, as follows:

**Motion (2):**

Mr W MacKay and Mr D Macpherson.

**Amendment (7):**

Mr J Bruce, Mr A Jarvie, Ms E Knox, Mrs L MacDonald, Mr K Rosie, Mr A Sinclair and Mr C Smith.

The Committee **AGREED** to **DEFER** consideration of this application until the outcome of the applicant's pending case is known. This is subject to the proviso that should the application reach its statutory determination time prior to the outcome of his pending case, it would need to be re-considered by the Committee without this information.

**9.2 Application for renewal of a taxi driver's licence – Raymond McDonald**

There had been circulated **to members only Report No HLC/055/20** by the Principal Solicitor relating to an application which has been received from Raymond McDonald for the renewal of his taxi driver's licence (Ward 14 - Inverness Central). A written submission had been submitted by the applicant and this had been circulated to the Committee in advance of the meeting.

The applicant did not attend.

The Committee heard from Police Scotland in relation to the application.

The applicant had emailed the Clerk with questions and as he was not in attendance, the Clerk read the email to Members.

Following discussion, the Committee **AGREED** to **GRANT** the application subject to the standard conditions.

The Committee also requested the following informative was added to his notification letter:

[text removed from web version in compliance with Data Protection Act 1998]

### **9.3 Application for renewal of a taxi driver's licence – Colin Ross**

There had been circulated **to members only Report No HLC/056/20** by the Principal Solicitor relating to an application which has been received from Raymond McDonald for the renewal of his taxi driver's licence (Ward 19 - Inverness South). A written submission had been submitted by the applicant and this had been circulated to the Committee in advance of the meeting.

The applicant did not attend.

The Committee heard from Police Scotland and the applicant in relation to the application.

Following discussion, the Committee **AGREED** to **GRANT** the application subject to the standard conditions.

The Committee also requested the following informative was added to his notification letter:

The Committee requested that the licence holder is reminded that he should familiarise himself with the conditions of his taxi driver's licence, in particular condition 25 [text removed from web version in compliance with Data Protection Act 1998].

## **10. Civic Government (Scotland) Act 1982 Second hand vehicle dealer's licences Achd Riaghaltais Chatharra (Alba) 1982 Iarrtas airson caochladh air ceadachdan luchd-malairt ath-làimhe**

### **10.1 Second hand vehicle dealer's licence – Lauren Miller**

There had been circulated **to members only Report No HLC/057/20** by the Principal Solicitor relating to Lauren Miller the holder of a second hand vehicle dealer's licence in respect of Unit 12c, Beechwood Road, Evanton (Ward 6 - Cromarty Firth). A written submission had been submitted by the applicant and this had been circulated to the Committee in advance of the meeting.

The Committee heard from Police Scotland.

The applicant had no questions for the Police.

[text removed from web version in compliance with Data Protection Act 1998]. She clarified that she had her own business and that it operated from the same premises.

Police Scotland then summed up and stated that the licence holder was not a fit and proper person to hold a licence.

The applicant then summed up.

Ms E Knox, seconded by Mr A Jarvie, moved suspension of the licence.

The Committee **AGREED** to **SUSPEND** the licence in terms of section 11(2)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for the unexpired portion of the duration of the licence. This was on the grounds that the Committee determined that the licence holder was no longer a fit and proper person to hold the licence [text removed from web version in compliance with Data Protection Act 1998].

#### **11. Dates of Meetings in 2021 Cinn-latha Choinneamhan ann an 2021**

The Committee **NOTED** the dates for meetings in 2021.

The meeting closed at 4.55 pm.