

Highland Council

Minute of the **Highland Licensing Committee** held in the Council Chamber, Council Headquarters, Glenurquhart Road, Inverness on Tuesday, 28 March 2023 at 10.00am.

Present:

Mr C Birt, Mr J Bruce, Mrs J Hendry, Ms L Johnston, Mr S Kennedy, Mr W Mackay, Mr D Macpherson, Mr P Oldham and Mr K Rosie.

In attendance:

Ms C McArthur, Principal Solicitor, Regulatory Services
Mr G Somers, Solicitor, Regulatory Services
Mr M Elsey, Senior Licensing Officer
Ms A Macrae, Senior Committee Administrator

Also attending:

Sergeant A Bryce, Police Scotland

Item 8.1 and 8.2: Christopher Harrison, applicant, Barry Middleton, objector, Polly Middleton, objector, Eleanor Hood, Environmental Health, representor, Gregor MacCormick, Environmental Health, representor.

Item 9.1: Angela Cunningham, applicant, Gregor MacCormick, Environmental Health, objector

Item 11.1: Sergeant Bryce, Police Scotland, objector, Mrs Sally Flegg, Tughan and Cochrane, agent

Item 12.1: Sergeant Bryce, Police Scotland, objector, Pawel Czesnowski, applicant, Paulian Pawlak, applicant's partner

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 were intimated on behalf of Mr J Grafton, Ms E Knox and Mr D Millar.

2. Declarations of interest Foillseachaidhean Com-pàirt

There were no declarations of interest.

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 14 February 2023 which was **APPROVED**.

**4. Licences granted under delegated powers
Ceadachdan a bhuilic.eadh fo ùghdarras air a thiomnadh**

There had been circulated **Report No HLC/017/23** by the Principal Solicitor which detailed all Licences which had been granted under delegated powers under the Civic Government (Scotland) Act 1982 granted in the period from 2 February 2023 to 15 March 2023.

The Committee **NOTED** the report.

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

There had been circulated **Report No HLC/018/23** 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 determination of the applications, either to:

(a) to 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) to a future meeting of the Committee when the applications will be determined in terms of the hearing procedure.

**6a. Licences granted under delegated powers
Short Term Let licensing
Ceadachdan a bhuilicheadh fo ùghdarras air a thiomnadh
Ceadachd Aontaidhean Màil Geàrr-ùine**

There had been circulated **Report No HLC/019/23** by the Principal Solicitor which details all Licences which have been granted under delegated powers under the Civic Government (Scotland) Act 1982 granted in the period up to 15 March 2023 for short term let licensing.

The Committee **NOTED** the report.

**6b. Pending applications – 3 monthly considerations
Short Term Let Licensing
Iarrtasan ri thighinn – beachdachaidhean 3 mìosach
Ceadachd Aontaidhean Màil Geàrr-ùine**

There had been circulated **Report No HLC/020/23** by the Principal Solicitor relating to applications which are currently pending for the grant of licences under the Civic Government (Scotland) Act 1982 for short term let licensing.

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

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

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

7.1 Application for grant of a taxi operator's licence - Usof Alinejhad

There had been circulated **Report No HLC/021/23** by the Principal Solicitor relating to an application which has been received from Usof Alinejhad for the grant of a taxi operator's licence (Ward 17 - Culloden & Ardersier). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The applicant was not present.

The Senior Licensing Officer advised that the applicant has still to present his vehicle for inspection and meter test. He also required to submit his insurance, MOT and registration documents for checking.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor – Regulatory Services to refuse the application should the applicant not:

- present his vehicle and have it pass an inspection
- present his vehicle and have it pass a meter test
- submit satisfactory insurance, MOT and registration documents

all by 8 May 2023.

**8. Civic Government (Scotland) Act 1982
Short Term Let licensing
Achd Riaghaltais Chatharra (Alba) 1982
Ceadachd Aontaidhean Màil Geàrr-ùine**

8.1 Application for grant of a short term let licence – Clunnie Mor, 20 Allt Mor, Aviemore

There had been circulated **Report No HLC/022/23** by the Principal Solicitor relating to an application which has been received from Christopher John Harrison for the grant of a short term let licence (Ward 20 – Badenoch & Strathspey). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Senior Licensing Officer advised that a further written representation had been received from Mr W Devlin. In addition, further written submissions received from the applicant in response to the objections. Copies had been circulated to the Committee.

The Committee heard from the Senior Environmental Health Officer in relation to Environmental Health's representation to the application. He explained that at this stage, and as an initial response, it was considered reasonable and proportionate that the applicant took steps to ensure guests did not use the hot tub after 23:00 hours. He outlined the process for investigating and building an evidence base in terms of compliance with this condition in the event there was any subsequent complaints about noise nuisance associated with the use of the hot tub if a licence was granted.

The Committee then heard from Barry Middleton and Polly Middleton, objectors, during which they advised that the noise nuisance and disturbance arising from the use of the hot tub over a considerable number of years had resulted in a significant detrimental impact on their quality of life, sleep and health. This included the action required to report these issues to the Police. The hot tub itself generated noise and this inevitably resulted in conversations being louder than they otherwise would be and this was compounded when guests were consuming alcohol and playing music in what was a quiet neighbourhood. It was hoped that an effective resolution could be achieved, however, the recommended additional condition would not solve the problem. While the applicant had provided signage in relation to the use of the hot tub, this had not worked and in terms of reasonable steps it was uncertain as to whether the fitting of a timer on the hot tub would be an effective measure, noting that guests could continue to sit in the hot tub after 11pm. Therefore, they requested the licence be granted with a condition that the hot tub be removed on the basis this would largely address the noise nuisance issues.

Mr C Harrison, applicant, advised that he had been operating four holiday lets in Allt Mor for approximately 15 years. Each property had a hot tub, the last one being installed in 2009. Over this period he had received no complaints from the neighbours directly either side of the properties, noting that and the objectors' property was located approximately 35 metres away. The objections to the application contained numerous inaccuracies and false claims and he had responded to these in his further written submissions. He had been subject to anonymous mail and mentioned in a social media campaign which he had asked to be removed. He had arranged for timers to be fitted on each hot tub so they switched off between 11pm and 5am. The suggestion all holiday makers created a nuisance was a fallacy and the majority of guests staying at the property were families. The noise generated by the relatively new hot tubs was minimal and would be below the threshold that applied after 11pm. He also outlined the current signage in place at the property and that proposed once the timers were fitted to the hot tubs. He advised that he took seriously and dealt with any issues that were reported directly to him.

In relation to questions on the monitoring of the recommended additional condition, the Senior Environmental Health Officer provided the applicant with

advice in terms of the reasonable level monitoring that he could undertake on the use of the hot tubs. The Clerk advised that there was no expectation that the applicant should directly police the use of the hot tubs, rather the focus was on reasonable and proportionate management procedures being in place.

At this point, the Clerk advised that the recommended additional condition, was considered to be reasonable and proportionate at this stage. There was provision in the legislation for the licence to be reviewed if the relevant grounds were met. Parties initiating any review would have the opportunity to state their case at a formal hearing by the Committee. Potential statutory noise nuisance complaints could also be made directly to Environmental Health and, in terms of the Short Term Let licensing legislation, there was a named day to day manager that the public could contact in respect of any issues.

Following summing up by all parties, Members proceeded to debate the application during which the following main issues were raised:-

- there was empathy for both the applicant and the objectors and a need to achieve a balanced resolution;
- any measures imposed had to be reasonable and proportionate in terms of the use of the hot tub;
- there had been no complaints from direct neighbours regarding any nuisance associated with the hot tubs at this and the applicant's other properties;
- Police Scotland had not objected to the application;
- reference to the distance of the property to the objectors' property;
- it was reasonable for a condition to be imposed that the hot tub was not used by guests after a certain time in the evenings and the fitting of electronic timers on the hot tubs should be considered as a mediation measure for all parties in the first instance.

Thereafter, Mr W Mackay seconded by Mr C Birt **moved** to grant a short term let licence subject to the mandatory conditions, additional conditions and the following condition:

- the licence holder must take reasonable steps to ensure that guests do not use the hot tub after 23:00 hours.

Mr D Macpherson seconded by Mr S Kennedy moved as an **amendment** to grant a short term let licence subject to the mandatory conditions, additional conditions and the following condition:

- the licence holder must take reasonable steps to ensure that guests do not use the hot tub after 22:00 hours.

On a vote being taken, the **motion** received **4** votes and the **amendment** received **4** votes with no abstentions. the votes having being cast as follows:-

For the Motion

Mr C Birt, Mrs J Hendry, Ms L Johnston, Mr W Mackay.

For the Amendment

Mr J Bruce, Mr S Kennedy, Mr D Macpherson, Mr K Rosie.

On there being an equality of votes, the Chair cast his second and determining vote in favour of the **amendment** which became the finding of the meeting.

Decision

The Committee **AGREED** to **GRANT** a short term let licence subject to the mandatory conditions, additional conditions and the following condition:

- The licence holder must take reasonable steps to ensure that guests do not use the hot tub after 22:00 hours.

8.2 Application for grant of a short term let licence – Coire Cas, 23 Allt Mor, Aviemore, PH22 1QQ

There had been circulated **Report No HLC/023/23** by the Principal Solicitor relating to an application which has been received from Christopher John Harrison for the grant of a short term let licence (Ward 20 – Badenoch & Strathspey). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Clerk confirmed that all parties wished to rely on their existing submissions in respect of item 8.1 above.

Additional comments from the applicant included that the objectors house was approximately 25 metres from this property. The direct neighbours were much closer and they had not raised objections. The objectors stated that they had windows facing both 20 and 23 Allt Mor and the noise disturbance could be heard from both properties.

Thereafter, Mr W Mackay seconded by Mr J Bruce **moved** to grant a short term let licence subject to the mandatory conditions, additional conditions and the following condition:

- the licence holder must take reasonable steps to ensure that guests do not use the hot tub after 23:00 hours.

Mr S Kennedy seconded by Mr D Macpherson moved as an **amendment** to grant a short term let licence subject to the mandatory conditions, additional conditions and the following condition:

- the licence holder must take reasonable steps to ensure that guests do not use the hot tub after 22:00 hours.

On a vote being taken, the **motion** received **5** votes, the **amendment** received **3** votes with no abstentions and the **motion** was therefore **carried**, votes having being cast as follows:-

For the Motion

Mr C Birt, Mr J Bruce, Mrs J Hendry, Ms L Johnston, Mr W Mackay.

For the Amendment

Mr S Kennedy, Mr D Macpherson, Mr K Rosie.

Decision

The Committee **AGREED** to **GRANT** a short term let licence subject to the mandatory conditions, additional conditions and the following condition:

- The licence holder must take reasonable steps to ensure that guests do not use the hot tub after 23:00 hours.

9. Civic Government (Scotland) Act 1982

Street Traders licence

Achd Riaghaltais Chatharra (Alba) 1982

Iarrtas airson ceadachd neach-malairt sràide

9.1 Application for the grant of a street trader's licence – Angela Cunningham

There had been circulated **Report No HLC/024/23** by the Principal Solicitor relating to an application which has been received from Angela Cunningham for the grant of a street traders licence (Ward 11 – Caol and Mallaig). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Senior Licensing Officer advised that a late objection dated 6 September 2022 had been received from Environmental Health. Late objections could not automatically be considered and Members were entitled to entertain an objection which had not been timeously made, if they were satisfied there was sufficient reason why it was not so made.

The Senior Environmental Officer explained that the objection had been submitted late due to a resource issue in the Lochaber area and the need to prioritise works. The applicant confirmed she was content for the late objection to be considered by the Committee.

The Committee **AGREED** to accept the late objection and a copy was circulated to Members.

A written response from the applicant to the objection was also circulated to Members.

The Senior Environmental Health Officer reported that the officer dealing with the application was liaising with the applicant in relation to the works required to secure and upgrade the van and equipment and in relation to the food hygiene standards. On this basis, the Service was content to remove their objection on the basis that a Certificate of Compliance from Environmental Health for the catering van was in place prior to the applicant trading. The

Service was content to continue to work with the applicant in terms of the licensing requirements.

The applicant provided an updated on the works to the catering van that had been completed to date and those due to be completed to meet the relevant licensing standards. She would be grateful if the Committee allowed her to 28 April 2023 to obtain the certificate of compliance.

Following discussion, the Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor – Regulatory Services to refuse the application should the applicant not receive a Certificate of Compliance from Environmental Health for the catering van by 28 April 2023.

10. 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.

**11. Antisocial Behaviour etc (Scotland) Act 2004
Private landlord registration
Achd Dol A-mach Mi-shòisealta (Alba) 2004
Clàradh Uachdarain Phrìobhaidich – Brathan Ùnnlagh Màil**

11.1 Application for renewal of registration in the register of private landlords – Robert Tait

There had been circulated to **Members only Report No HLC/025/23** by the Principal Solicitor relating to an application for the renewal of a private landlord registration by Robert Tait (Ward 14 – Inverness Central). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

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

The Committee **AGREED** to **APPROVE** the application for renewal of registration in the register of private landlords.

**12. Civic Government (Scotland) Act 1982
Skin Piercing and Tattooing licence
Achd Riaghaltais Chatharra (Alba) 1982
Ceadachdan Dhràibhearain / Oibrichean Tagsaidh**

12.1 Application for the grant of a skin piercing and tattooing licence – Tattooholic, 2 Baron Taylor Street, Inverness.

There had been circulated to **Members only Report No HLC/026/23** by the Principal Solicitor relating to an application which has been received from Pawel Czesnowski for the grant of a skin piercing and tattooing licence (Ward 14 –

Inverness Central). The Committee was invited to determine the application in accordance with the Council's Hearings Procedure.

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

The Committee **AGREED** to **GRANT** a licence subject to the standard conditions.

13. Civic Government (Scotland) Act 1982
Private hire car driver's / operator's licences
Achd Riaghaltais Chatharra (Alba) 1982
Iarrtasan airson ceadachdan do dhràibhearan / oibrichean chàraichean
airson fastadh priobhaideach

13.1 Application for a private hire car driver's licence – William Craig

There had been circulated **to Members only Report No HLC/027/23** by the Principal Solicitor relating to an application which has been received from William Craig for a private hire car driver's licence (Ward 20 – Badenoch and Strathspey). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The applicant was not present.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor – Regulatory Service to refuse the application should the applicant not pass the relevant checks by 23 April 2023.

The meeting closed at 1.30pm.