

Highland Council

Minutes of the **Highland Licensing Committee** held in the Council Chamber, Council Headquarters, Glenurquhart Road, Inverness on Tuesday, 24 October 2023 at 10.00am.

Present:

Mr C Birt, Mr J Bruce, Mr J Grafton, Mrs J Hendry, Mr S Kennedy (Chair), Ms E Knox (remote), Mr W Mackay (remote), Mr D Macpherson (remote), Mr D Millar, Mr P Oldham, Mr K Rosie (remote).

In attendance:

Mr I Meredith, Principal Solicitor, Regulatory Services
Mr G Somers, Solicitor, Regulatory Services
Ms M Duffy, Solicitor, Regulatory Services
Mr M Elsey, Senior Licensing Officer
Ms A Macrae, Senior Committee Officer
Mrs G MacPherson, Committee Officer
Miss Rachel Ross, Committee Officer

Also attending:

Sergeant Paterson, Police Scotland

Item 7.1: Duncan Freshwater (applicant), Simon Purdon (objector)

Item 7.2: Martin Ward (applicant), Alison McLachlan (objector)

Item 7.3: Nas Latif (applicant)

Item 7.4: Alasdair Gray (applicant), Ian Patience, Building Standards Team Leader (objector)

Item 8.1: Mr Wu (applicant), Monica Lee-MacPherson (applicant's translator), Mr Gardiner, Scottish Fire and Rescue Service

Item 9.1: Marek Kosior (applicant)

Item 9.2: Robert MacDonald (applicant)

Item 11.1: Claire Donaldson (licence holder)

Item 11.2: Blair Sinclair (licence holder)

Item 11.3: John Toshack (applicant)

Item 11.4: Barrie McDonald

Item 12.1: Qammar Bashir (applicant)

Item 12.2: Qammar Bashir (applicant)

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

An apology for absence was intimated on behalf of Ms L Johnston.

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

Items 6, 7.1, 7.2, 7.3, 7.4: Mr K Rosie
Item 11.2: Mr S Kennedy

**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 5 September 2023 which was **APPROVED** subject to it being recorded that Mrs J Hendry and Mr P Oldham were not entitled to participate in Item 10.1, and therefore left the meeting for the determination of that item.

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

There had been circulated **Report No HLC/001/22** 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 24 August 2023 to 11 October 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/002/22** 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

6. Short Term Let Licensing Policy

Declaration of Interest: Mr K Rosie declared an interest in this item on the grounds he was a short-term let accommodation provider and he took no part in the discussion and determination of this item.

There had been circulated **Report No HLC/072/23** by the Principal Solicitor which updated the short term let (STL) licensing policy in accordance with changes to legislation and Scottish Government Guidance.

The Chair paid tribute to the Solicitor and Team on their excellent work to date in processing the large volume of short term let applications received.

The Committee **APPROVED** the changes made to the STL licensing policy as contained within appendix 1, subject to an amendment at paragraph 13.1.2 to amend reference to the date of 1 July 2024 to 1 January 2025.

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

Declaration of Interest: Declaration of Interest: Mr K Rosie declared an interest in items 7.1, 7.2, 7.3 and 7.4 on the grounds he was a short-term let accommodation provider and he took no part in the discussion and determination of these items.

7.1 Application for grant of a short term let licence – 4 Caberfeidh, Fassifern Road, Fort William, PH33 6BE

There had been circulated **Report No HLC/073/23** by the Principal Solicitor relating to an application which had been received from Duncan Freshwater on behalf of Aite Socair Limited for the grant of a short term let licence (Ward 21 – Fort William Badenoch and Strathspey).

Simon Purdon, objector, advised that both his and the applicant's property did not benefit from sound proofing and he was aware of noise from the neighbours. He was therefore concerned that the applicant's property which was adjacent to his flat and accommodated seven people would generate noise and disruption. In addition, he was concerned that the applicant's other tenants who lived downstairs did not maintain the garden space in a satisfactory condition. Parking was already an issue in this location and he queried the applicant's proposals in this regard.

Duncan Freshwater, applicant, advised that his tenants occupied the basement flat and would be paid to manage the short term let on his behalf. They would be tasked with acting as a contact for the neighbours if they had concerns about noise and disturbance. He would contact his tenants regarding the cleanliness and condition of the back garden and the expectations around the operation of the short term let. He advised that he proposed to widen the entrance gateway to provide one off street parking space for his short term let. The town's main public car park was located nearby and he intended to investigate the potential to acquire a transferrable parking permit. As part of the booking process, every effort would be made to prevent stag parties and the like from booking the property. The property was located in an area where there were many other properties providing a similar type of visitor accommodation.

Following questions, Members proceeded to debate the application as follows:-

- there was a local manager on site that could address problems immediately and many of the risks raised in objection were theoretical;
- noise could potentially be an issue if it was a long term let over which there was less control;
- there were already bed and breakfast establishments located in close proximity and the property was considered to be suitable for a short term let; and
- the mitigation measures outlined by the applicant adequately addressed the concerns raised by the objectors.

Thereafter, the Committee **AGREED** to **GRANT** the licence subject to the mandatory and additional conditions only.

7.2 Application for grant of a short term let licence – Birch Corner, 8 Patterson Place, Aviemore, PH22 1TZ

There had been circulated **Report No HLC/074/23** by the Principal Solicitor relating to an application which had been received from Martin Ward on behalf of Birch Corner Limited for the grant of a short term let licence (Ward 20 – Badenoch and Strathspey).

Alison McLachlan, objector, summarised her objections as follows:-

- she shared a private driveway/access with the applicant and queried the legality of this this area being used for parking for the short term let;
- there was excessive use of the driveway by guests and service vehicles associated with the applicant's property. She was concerned about damage to this shared area and how repair costs would be divided;
- there was an elevation drop between the properties and therefore her garden was overlooked. The dogs of guests staying at applicant's property had jumped her fence resulting in her having to keep her dog inside. As there was a near constant use of the property this had an adverse and unreasonable impact on her right to use her garden and on her privacy; and
- she did not want to feel unreasonably burdened by having to contact the Police due to disturbance from guests staying at the applicant's short term let.

The Board then heard from Martin Ward, applicant, during which he advised that:-

- he had operated this high quality, four star self-catering accommodation since 2015. There were many other similar types and size of guest accommodation in the local area;
- the property benefited from double driveway and garage and could accommodate four vehicles without issue. The number of service vehicles was not out of keeping with other self-catering properties on the estate. A sign had been erected advising guests that they should not park in the shared turning area;

- additional signage had recently been placed in the property, advising guests with dogs to make sure they did not cause disturbance or were allowed to run off the lead on the estate;
- he employed a highly regarded local professional property manager to manage the property and deal any local issues or concerns raised by guests or neighbours properly. The property manager was readily contactable by neighbours and would respond promptly to issues;
- he would continue to work constructively with neighbours and a new fence had been erected within two weeks of it having been raised as an issue by the objector. Further discussions would be undertaken with the objector to achieve a better solution in terms of her privacy;
- boulders had been put down to ensure any vehicles did not drive on the grass and further directional signage could be put in place to ensure guests did not park in the turning area;
- the property manager spoke to guests beforehand and if considered appropriate reminded them of appropriate standards of behaviour; and
- it was understood all parties had a right to use the shared access and there was no legal issue in this regard.

The Solicitor advised that a legal opinion in regard to the ownership and use of the shared driveway was not a matter for the Licensing Committee. This was a property law matter that would have to be addressed separately to the application.

Following questions, Members proceeded to debate the application during which it was suggested that the applicant had countered all of the specific matters raised in the objection and that the application should be granted.

The Committee **AGREED** to **GRANT** the licence subject to the mandatory and additional conditions only.

7.3 Application for grant of a short term let licence – Pine Tops, Auchterawe, Fort Augustus, PH32 4BT

There had been circulated **Report No HLC/075/23** by the Principal Solicitor relating to an application which had been received from Nas Latif for the grant of a short term let licence (Ward 12 – Aird and Loch Ness).

At this point, Mr D Macpherson left the meeting for this and the remaining items of business.

The objector was not present.

Nas Latif, applicant, referred to the following main points in support of his application:-

- he had reduced the numbers of dogs that would be accepted into the property, and currently only one dog per stay was permitted. He was seriously considering not allowing any dogs to stay at the property in future;

- any issues in respect of the property were discussed with the travel company who managed the bookings and their local manager on an ongoing basis and there was system of blacklisting guests for a variety of reasons including guest and dog behaviour;
- providing detailed responses to the specific incidents raised by the objector in her submission around dogs, dismissive guests, bins and gravel on the driveway and email correspondence with her in this regard;
- guests were advised prior to arrival to keep their pets away from the neighbours. There had been very few incidents involving dogs and they had been blown out of proportion by the objector;
- reference to the issues around the screening and repairs that had been put in place between his and the objector's property. As far he was aware there were currently no gaps in the perimeter fence; and
- he had run a peaceful and friendly business for a period of ten years, but over the last two years he had been faced with abuse and confrontation and complaints about dogs and guests. Any efforts to reach a compromise with the objector had been rejected.

Members proceeded to debate the application during which it was suggested that the applicant had presented a good case and was a responsible host and had countered the points raised in the objections. It was not the role of Committee to resolve a neighbour dispute and the applicant had done everything possible to respond to the issues. It was disappointing that the objector was not in attendance to present her case.

Thereafter, the Committee **AGREED** to **GRANT** the licence subject to the mandatory and additional conditions only.

7.4 Application for grant of a short term let licence – Highfield Lodge, Highfield House, Strathpeffer, IV14 9BA

There had been circulated **Report No HLC/076/23** by the Principal Solicitor relating to an application which had been received from Alasdair Gray on behalf of G & W Limited for the grant of a short term let licence (Ward 05 Wester Ross, Strathpeffer and Lochalsh).

The Solicitor advised that the application had to be determined by 21 November 2023 and failure to determine the application by this date would result in the application being subject of a 'deemed grant'.

Ian Patience, Building Standards Team Leader, advised that the objection to the grant of a licence related to the fact there was no completion certificate for the conversion of the garage to a letting unit. While two of the outstanding points were relatively easy to resolve, the third related to a head height issue with the new stairs installed in the premises. As the property was in a conservation area, there was a time issue in terms of planning consent being received for the changes required to the roof to give the required head height and allow the completion certificate to be signed off prior to 21 November 2023.

Alasdair Gray, applicant, advised that work was ongoing with the Planning Service, Building Standards, architects and tradesmen towards a feasible solution in respect of the stairs. It was not feasible that planning consent would be granted by 21 November 2023 and he queried whether there was the option for the licensing deadline to be extended.

In discussion, the Principal Solicitor advised that if the application was refused by the Committee or under delegated powers, the applicant could not make another application for twelve months. It would be competent to grant the licence with a condition that the property must not be used as a short term let until the completion certificate has been signed off by the Council's Building Standards Service

Thereafter, the Committee **AGREED** to **GRANT** the licence subject to the mandatory and additional conditions and the following additional condition:

- The property must not be used as a short term let until the completion certificate has been signed off by the Council's Building Standards Service.

8. Housing (Scotland) Act 2006 – Part 5 House in Multiple Occupation

8.1 Application for renewal of a licence for a house in multiple occupation – 13 Kenneth Street, Inverness

There had been circulated **Report No HLC/077/23** by the Principal Solicitor relating to an application which had been received from Andy Wu for the renewal of a licence for a house in multiple occupation (Ward 13 – Inverness West).

The Senior Licensing Officer advised that a late objection had been received from Police Scotland and, therefore, could not be automatically considered by the Committee.

Mr Gardiner, Scottish Fire and Rescue Service, advised that the main reason for the late submission was due to a communication issue in terms of the language used in the report and making sure it was clearly understood by the applicant.

Mr Wu, applicant, via his translator Monica Lee-MacPherson, confirmed he had no issues with the late objection being heard.

The Committee **AGREED** to accept the late objection by the Scottish Fire and Rescue Service and copies were circulated to all parties.

The Committee then heard from Mr Gardiner, Scottish Fire and Rescue Service, in relation to the objection and from Mr Wu, applicant, via his translator Monica Lee-MacPherson, in support of his application during which she advised that all the points raised by the Service had been remedied.

Thereafter, the Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the application should the fire safety audit not be completed to the satisfaction of the Scottish Fire and Rescue Service by 9th November 2023.

9. 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

9.1 Application for a private hire car operator's licence – Marek Kosior

There had been circulated **Report No HLC/078/23** by the Principal Solicitor relating to an application which has been received from Marek Kosior for a private hire car operator's licence (Ward 16 – Inverness Millburn).

The Committee heard from the applicant, via his partner and translator, that it was his intention to provide the vehicle for inspection and meter test, as well as providing his insurance certificate prior to 22 November 2023, the date by which the application had to be determined.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the application should the applicant not present his vehicle for inspection and meter test to the satisfaction of the licensing authority, and present a valid certificate of insurance to the licensing authority, by 22 November 2023.

9.2 Application for a private hire car operator's licence – Robert MacDonald

There had been circulated **Report No HLC/079/23** by the Principal Solicitor relating to an application which has been received from Robert MacDonald for a private hire car operator's licence (Ward 15 – Inverness Ness-side).

The Committee heard from Robert Macdonald, applicant, on the reasons why his previous licence had lapsed and confirmed that it was his intention to present the vehicle for inspection.

The Principal Solicitor advised the applicant to contact the Senior Licensing Officer if the vehicle could not be inspected by 9 November 2023, the date by which the application had to be determined on the basis he could withdraw the application and reapply at a future date.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the application should the applicant not present his vehicle for inspection to the satisfaction of the licensing authority, by 9 November 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. **Civic Government (Scotland) Act 1982**
Taxi driver's / operator's licences
Achd Riaghaltais Chatharra (Alba) 1982
Ceadachdan Dhràibhearan / Oibrichean Tagsaidh

At this point, Dr C Birt left the meeting and was not present for the remaining items of business.

11.1 Taxi driver's licence – Claire Donaldson

There had been circulated **to members only Report No HLC/080/23** by the Principal Solicitor relating to Claire Donaldson who was the holder of a taxi driver's licence (Ward 21 – Fort William and Ardnamurchan). The Committee was invited to determine this matter in accordance with the Council's Hearings Procedure.

The Committee heard from Police Scotland and the applicant.

Thereafter, the Committee **AGREED** to **END THE SUSPENSION** of the licence holder's taxi driver's licence on the grounds that she is a fit and proper person.

11.2 Taxi driver's licence – Blair Sinclair

Declaration of Interest: Mr S Kennedy declared an interest in this item on the grounds the applicant was a personal friend and left the Chamber for the determination of this item. Mr K Rosie, Vice-Chair, took the Chair for this item.

There had been circulated **to members only Report No HLC/081/23** by the Principal Solicitor relating to Blair Sinclair who was the holder of a taxi driver's licence (Ward 12 – Aird and Loch Ness). The Committee was invited to determine this matter in accordance with the Council's Hearings Procedure.

The Committee heard from the applicant.

Thereafter, the Committee **AGREED** to take no action in relation to the licence holders taxi driver's licence.

11.3 Application for Taxi driver's licence – John Toshack

There had been circulated **to members only Report No HLC/082/23** by the Principal Solicitor relating an application for the renewal of a taxi driver's licence received from John Toshack (Ward 12 – Aird and Loch Ness). The Committee was invited to determine this application in accordance with the Council's

Hearings Procedure.

The Committee heard from the applicant.

Thereafter, the Committee **AGREED** to **GRANT** the licence subject to the mandatory conditions only.

11.4 Application for Taxi driver's licence – Barrie McDonald

There had been circulated **to members only Report No HLC/083/23** by the Principal Solicitor relating an application for the grant of a taxi driver's licence received from Barrie McDonald (Ward 18 – Nairn & Cawdor). 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.

Thereafter, Ms J Hendry seconded by Ms E Knox **MOVED** to refuse the application under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that the applicant is not a fit and proper person to hold a licence.

As an **AMENDMENT**, Mr W Mackay seconded by Mr S Kennedy moved not to refuse the application under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982 on the grounds that the applicant was a fit and proper person to hold a licence.

On a vote being taken, the **MOTION** received **7** votes, the **AMENDMENT** received **2** votes with no abstentions, the votes having being cast as follows:

Motion (7): Mr J Bruce, Mr J Grafton, Mr J Hendry, Ms E Knox, Mr D Millar, Mr P Oldham, Mr K Rosie

Amendment (2): Mr S Kennedy, Mr W Mackay

Decision

The Committee **AGREED** to **REFUSE** the application on the grounds that the applicant is not a fit and proper person to hold a licence.

12. Civic Government (Scotland) Act 1982

Late hours catering licence

Achd Riaghaltais Chatharra (Alba) 1982

Ceadachdan Solarachaidh Uairean Anmoch –

12.1 Premises – Akz Fastfoodz, 32a Church Street, Inverness (temporary)

There had been circulated **to members only Report No HLC/084/23** by the Principal Solicitor relating to an application for the grant of a temporary late hours catering licence for Akz Fastfoodz, 32a Church Street, Inverness by

Qammar Bashir (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.

Thereafter, the Committee **AGREED** to **GRANT** the licence subject to the mandatory conditions only.

12.2 Premises – Akz Fastfoodz, 32a Church Street, Inverness

There had been circulated **to members only Report No HLC/085/23** by the Principal Solicitor relating to an application for the grant of a late hours catering licence for Akz Fastfoodz, 32a Church Street, Inverness by Qammar Bashir (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.

Thereafter, the Committee **AGREED** to **GRANT** the licence subject to the mandatory conditions only.

The meeting ended at 3.33pm.
