

Highland Council

Minute of the **Highland Licensing Committee** held in the Council Chamber, Council Headquarters, Glenurquhart Road, Inverness on Tuesday, 9 January 2024 at 10.00am.

Present:

Mr J Bruce, Mr J Grafton, Mrs J Hendry, Ms L Johnston, Mr S Kennedy, Ms E Knox, Mr W Mackay, Mr D Macpherson, Mr D Millar, Mr P Oldham (except items 1 to 6, 7.2 & 12.2), Mr K Rosie.

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

Also attending:

Sergeant Paterson, Police Scotland

Item 7.1: Brenda MacRitchie (applicant) and her husband, Kenneth MacRitchie, Graeme Banks (objector), James H. Aaron (objector)

Item 7.2: Jillian Macleod (applicant's agent), James Anderson (objector)

Item 8.1: Jatinder Singh (applicant), Muhammad Rasheed (applicant's representative)

Item 10.1: James Anderson (applicant and premise's owner), Jonathan Anderson, Phil Anderson, Christine Anderson (premise's owners), Donna Anderson (premise's host/operator)

Item 11.1: Allan MacDonald (applicant)

Item 11.2 & 11.3: David Brown (licence holder)

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 was intimated on behalf of Mr C Birt.

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

Items 7.1, 7.2, 7.3 & 10.1: Mr K Rosie

**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 28 November 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/01/24** 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 18 November 2023 to 13 December 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/02/24** 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.

6. Wheelchair accessible vehicles – Equality Act 2010 implementation update

There had been circulated **Report No HLC/03/24** by the Solicitor – Regulatory Services, relating to amendments made to the Equality Act 2010 by the Taxis and Private Hire Cars (Disabled Persons) Act 2022, which strengthened the public sector equalities duty, specifically with respect to taxis and private hire vehicles.

The Committee **APPROVED** the publishing of the Council's list of licensed wheelchair accessible vehicles (WAV) in accordance with the amended 2010 Act.

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

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

7.1 Application for grant of a short term let licence – Longa House, 13 Big Sand, Gairloch, IV21 2DD

There had been circulated **Report No HLC/04/24** by the Principal Solicitor relating to an application which had been received from Mrs Brenda Kathleen MacRitchie for the grant of a short term let licence (Ward 5 – Wester Ross, Strathpeffer and Lochalsh). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from the Graham Banks, objector, who raised the following main points:

- there is not adequate parking at the premises and the site plan which was submitted with the application is misleading in that there is a garage on the premises which is not shown on this plan – the area for guest parking at the premises is, therefore, dramatically smaller than shown on the site plan. Indeed, recently he had observed guests with up to 10 vehicles, staying at the property. This casts doubt on the applicant's claim that the short term let premises accommodated up to a maximum of 17 guests;
- the access road which leads to the short term let premises is a single track, dirt road, which Mr Banks, the applicant and another individual privately own. He uses this to gain access to his own property. The traffic generated by the level of guests staying at these premises was destroying this private road;
- the applicants blocked the turning area on this private access road on a previous occasion and this prevented a Scottish Fire and Rescue Service appliance from gaining access;
- there was a lack of local management arrangements for the premises in place – the applicant lives in Oxford and does not live locally. She cannot, therefore, adequately address issues and concerns or act as an effective day-to-day manager. A locally based manager was required to respond to any incidents of noise and disturbance, such as to deal with the issues for the parking of vehicles, and speak to guests in person; In addition, the applicants had never made any attempt to contact him as a neighbour; and
- the premises are essentially a hostel/party house and the noise generated by guests meant that they were not suitable in a residential location. Mr Banks had contacted the Police on one occasion due to the noise and disturbance. He would have contacted them more often but was concerned about wasting Police time.

The Solicitor clarified that the private road was not within the licensed extent of the premises applied for. As such, its ownership and maintenance were questions which related to property law and they were not a licensing matter.

In advance of the meeting, Mr James Aaron, objector, submitted an additional written submission which was circulated among the Members prior to the

meeting. Mr Aaron attended part of the meeting. He did not speak to his objection and confirmed that he was happy to rely on his objection email and such additional written submission.

Following questions, the Committee heard from Mr and Mrs MacRitchie, applicants, who raised the following main points:

- the premises had been rented out on the same basis for more than 10 years and was well capable of accommodating 17 guests. Throughout this period, there had been virtually no complaints from the neighbours and very few objections received to the application;
- the premises provided high quality accommodation and was marketed on luxury holiday home sites and maintained to the highest standards;
- there was plenty of space for guests' car parking within the curtilage of the boundaries of the property. There was additional land owned by the applicants which could be used for additional parking, where necessary, and the applicants have created an access road to this additional property for that purpose. Parking was restricted to up to 6 vehicles, to discourage guests bringing too many vehicles, albeit this was not policed;
- in terms of the access track road to the premises; the road has been like this for over twenty years. Whilst guests do use this road, the premises are only operated for a maximum of six months of the year, so others are using this road along with the guests and possibly on a more regular basis. Mr MacRitchie confirmed they are happy to support the maintenance of this road and pay a contribution, including a larger contribution than other properties, if required, towards the maintenance of this road;
- in terms of the pipe which is on the road and mentioned in objection emails; this is the outflow pipe of a septic tank and it is not a sewage pipe. A neighbouring owner (who has not raised an objection in connection with this application) owns this pipe and he lives about fifty yards up the road. The pipe has been wrongly laid and is not deep enough. The neighbouring owner has recently repaired the part of the road, in order to repair the pipe.
- to address points in objection emails regarding concerns for refuse collection; arrangements had been made for off-site refuse collection and guests were advised to take their waste off-site;
- there were no issues with the turning point and whilst they had installed boulders previously at this point, these were removed by the applicants on them being advised of the issue with the Scottish Fire & Rescue Service appliance;
- in terms of alleged noise disturbance at the premises; there is only a small garden and the outside of the premises are not designed for much activity. In any event, the Premise's garden is quite some distance away from Mr Banks's property, being about eighty yards away.
- a couple resident in the area now managed the property locally on their behalf. Mrs MacRitchie was the sole point of contact for the property as they wished to manage all communications related to the property. Mr MacRitchie confirmed they will be happy to give their telephone number

to Mr Banks, for him to contact them if there are any issues to be addressed.

During the debate, it was suggested there were a number of concerns in relation to the application including the day to day management of the property, its suitability in this location and the possibility of undue public nuisance.

Members were advised there was no provision in the legislation which required a day-to-day manager of a short term let property to be based local to that premise nor was there a requirement for specific management plan to be provided by an applicant which covered the management of the premises. The mandatory and additional conditions attached to a licence covered many of the concerns raised in that regard. In addition, the licence should be determined in terms of the legal tests set out in Section 7 of the Report and based on facts and evidence provided, and not speculation. During further debate, it was noted there were no objections from the statutory consultees. It was also noted that, with reference to the legal tests set out in the legislation, there did not appear to be evidence provided which gave grounds for refusing the licence.

The Committee agreed to grant the application for the short-term let licence subject to the standard mandatory conditions and additional conditions. The Committee recognised that the premises had demonstrated the suitability to be operated as a short-term let property and the statutory grounds to refuse a licence were not satisfied. The Committee noted that the conditions which apply to the licence include conditions dealing with noise and anti-social behaviour. As such, if there were any issues or concerns at the premises regarding such points, enforcement action could be taken on the basis of such licence conditions.

The Committee noted that the applicants had sought to address some of the concerns of objectors in their submissions. For example, the applicant indicated that they would be happy to give their telephone number to the objectors, to address any concerns they may have, and they have arranged a business waste service for the removal of rubbish.

Following the evaluation of the material considerations, the Committee were satisfied that the premises was suitable for the licensable activity. The Committee **AGREED** to **GRANT** the licence subject to the mandatory and additional licence conditions.

7.2 Application for grant of a short term let licence – 6 Bellfield Park, Inverness, IV2 4SZ

There had been circulated **Report No HLC/05/24** by the Principal Solicitor relating to an application which had been received from Ms Jillan MacLeod, agent of Ness Holiday Homes Limited, acting on behalf of their client, Mrs Sarah Jane Blake for the grant of a short term let licence (Ward 14 – Inverness Central). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from James Anderson, objector, who raised the following main points:-

- concern at potential disturbance and nuisance arising from the property being used as a short term let and the lack of accountability from transient guests;
- further clarity was required in relation to the booking system used to book the property;
- there needs to be a contact point for neighbours in the event of there being any noise and disturbance and local arrangements should be made for management of the property;
- concern for the safety of his young family due to the constant influx of strangers into the neighbourhood due to this and other holiday rentals in the local area;
- there was already an over saturation of short term lets locally which was out of character with this residential area and this could impact on community cohesion;
- there was plenty of other types of visitor accommodation in the local area, with owner operators who stay on site;
- this type of commercial activity exacerbates the issues around the lack of affordable housing in the area and the potential for the Council to consider a short term let control area in Inverness.

Following questions, Jillian Macleod, agent for applicant, raised the following main points:

- Ness Holiday Homes, operated by Ms Macleod, provides high quality accommodation and a full management service to properties in and around Inverness;
- Ms Macleod was hands on with all the properties that she manages on behalf of hosts and she knew many of the neighbours and considered herself part of the community;
- Ms Macleod outlined the booking arrangements for guests in terms of vetting them and ensuring she had full contact information;
- she actively encourages neighbours to report any problems to her and she will deal with them. Complaints were rare and she was always contactable for neighbours and guests if any issues arose;
- the property accommodated a maximum of 4 guests and it was likely to attract mostly families due to its location. These guests were very unlikely to cause disruption. The properties also had security cameras that were monitored;
- no safety issues had ever been raised by any of the neighbours at any of the properties she manages, including this property;
- the broader context on the number of short term lets and impact on the housing market were far beyond this individual short term let application; and

- all of her properties maintained consistently high occupancy levels indicating sustained demand for quality holiday accommodation in the area.

The Solicitor advised that the points mentioned regarding over provision of short terms lets and the availability of the housing stock were not relevant matters that the Committee could take into consideration in the determination of the licence application, in terms of the legislation.

In discussion, Members commented that they were content the applicant had adequately addressed the issues raised in the objections and for the application to be granted.

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

7.3 Application for grant of a short term let licence – Woodside Cabin, Woodside Cottage, Leachkin Brae, Inverness, IV3 8PN

There had been circulated **Report No HLC/06/24** by the Principal Solicitor relating to an application which had been received from Mr Alexander Finlay Morrison for the grant of a short term let licence (Ward 13 – Inverness West). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee **NOTED** that this item had been withdrawn. The Objection from the Highland Council's Building Standards Service had been withdrawn as the matters had been address. As such, the licence could now be issued by the Solicitor – Regulatory Services, under delegated powers.

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

8.1 Taxi driver's licence – Jatinder Singh

There had been circulated **Report No HLC/07/23** by the Principal Solicitor relating to an application which had been received from Jatinder Singh for the grant 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 the applicant's representative.

Following discussion, Mr D Millar seconded by Mr S Kennedy **moved** to **grant** the application for a taxi driver's licence subject to a condition that the licence holder shall not carry out the licensable activity until he has passed the taxi knowledge test and to grant delegated powers to the Principal Solicitor to revoke the licence should the applicant fail the knowledge test three times.

As an **amendment**, Mr D Macpherson seconded by Mr J Bruce moved to **grant** the application for a taxi driver's licence subject to a condition that the licence holder shall not carry out the licensable activity until he has passed the taxi knowledge test and to grant delegated powers to the Principal Solicitor to revoke the licence should the applicant fail the knowledge test three times within 6 months.

On a vote being taken, the **motion** received **8** votes, the **amendment** received **3** votes, and the **motion** was therefore carried, the votes having being cast as follows:

Motion (8): Mr J Grafton, Mrs J Hendry, Ms L Johnston, Mr S Kennedy, Ms E Knox, Mr D Millar, Mr P Oldham, Mr K Rosie.

Amendment (3): Mr J Bruce, Mr W Mackay, Mr D Macpherson.

Decision

The Committee **AGREED** to **GRANT** the application for a taxi driver's licence licence subject to the following conditions:

- The licence holder shall not carry out the licensable activity until he has passed the taxi knowledge test.

The Committee further **AGREED** to grant delegated powers to the Principal Solicitor to revoke the licence should the applicant fail the knowledge test three times.

9. 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 involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Act.

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

Declaration of Interest: Mr K Rosie declared an interest in item 10.1 on the grounds he was a short-term let accommodation provider and took no part in the discussion and determination of this item.

10.1 Application for grant of a short term let licence – The Milk House, Broomhill, Fortrose, IV10 8SH

There had been circulated to members only **Report No HLC/08/24** by the Principal Solicitor relating to an application which had been received from Mr James Roy Anderson for the grant of a short term let licence (Ward 9 – Black

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

The Committee heard from Police Scotland and the applicants.

Mr P Oldham seconded by Mr D Millar **moved** to **grant** the application subject to the mandatory and additional conditions.

As an **amendment**, Ms E Knox seconded by Mr W Mackay moved to **refuse** the application on the basis that a named person on the application was not a fit and proper person to hold a licence.

On a vote being taken, the **motion** received **7** votes, the **amendment** received **3** votes, and the **motion** was therefore carried, the votes having being cast as follows:

Motion (7): Mr J Bruce, Mr J Grafton, Ms L Johnston, Mr S Kennedy, Mr D Macpherson, Mr D Millar, Mr P Oldham.

Amendment (3): Mrs J Hendry, Ms E Knox, Mr W Mackay.

Decision

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

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

11.1 Taxi driver's licence – Allan MacDonald

There had been circulated **to members only Report No HLC/09/24** by the Principal Solicitor relating to an application which had been received from Allan MacDonald for the grant of a taxi driver's licence (Ward 11 – Caol and Mallaig). 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.

The Committee **AGREED** to **GRANT** the application for a taxi driver's licence subject to standard conditions

11.2 Taxi driver's licence – David Brown

There had been circulated **to members only Report No HLC/10/24** by the Principal Solicitor relating to David Brown who is the holder of a taxi driver's licence (Ward 17 – Culloden & Ardersier). The Committee was invited to determine this matter in accordance with the Council's Hearings Procedure.

The Committee heard from Police Scotland and the licence holder.

Mr P Oldham seconded by Ms E Knox **moved** to **suspend** the licence holder's taxi driver's licence for the unexpired portion of licence under paragraph 11(2)(a) of the Civic Government (Scotland) Act 1982 as the licence holder is not a fit and proper person to hold a licence.

As an **amendment**, Mr D Millar seconded by Mr S Kennedy moved to **refuse** the request to suspend the licence holder's taxi operator's licence on the grounds he was a fit and proper person to hold a licence.

On a vote being taken, the **motion** received **6** votes, the **amendment** received **5** votes, and the **motion** was therefore carried, the votes having being cast as follows:

Motion (6): Mrs J Hendry, Ms L Johnston, Ms E Knox, Mr W Mackay, Mr P Oldham, Mr K Rosie

Amendment (5): Mr J Bruce, Mr J Grafton, Mr S Kennedy, Mr D Macpherson, Mr D Millar

The Committee **AGREED** to **SUSPEND** the licence holder's taxi driver's licence for unexpired portion of licence under paragraph 11(2)(a) of the Civic Government (Scotland Act 1982 as the licence holder is not a fit and proper person to hold a licence.

11.3 Taxi operator's licence – David Brown

There had been circulated **to members only Report No HLC/11/24** by the Principal Solicitor relating to David Brown who is the holder of a taxi operator's licence (Ward 17 – Culloden & Ardersier). The Committee was invited to determine this matter in accordance with the Council's Hearings Procedure.

The Committee heard from Police Scotland and the licence holder.

The Committee **AGREED** to **REFUSE** the request to suspend the licence holder's taxi operator's licence.

12. 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 prìobhaideach

12.1 Application for a private hire car driver's licence – Daniel Regula

There had been circulated **to members only Report No HLC/12/24** by the Principal Solicitor relating to an application which had been received from Daniel Regula for a private hire car driver's licence (Ward 15 – Inverness Ness-side). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee **AGREED** to **DEFER** consideration of the application for a private hire car driver's licence to allow the applicant to attend the next meeting of the Committee on 13 February 2024.

12.2 Application for a private hire car driver's licence – Danut Surdu

There had been circulated **to members only Report No HLC/13/24** by the Principal Solicitor relating to an application which had been received from Danut Surdu for a private hire car driver's licence (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. The applicant was not in attendance.

Mr D Millar seconded by Ms L Johnston **moved to refuse** the application for a private hire car driver's licence under paragraph 5(3)(a) of schedule 1 of the Civic Government (Scotland) Act 1982.

As an **amendment**, Mr S Kennedy seconded by Mr J Grafton moved to grant the application on the grounds the applicant was a fit and proper person to hold a licence subject to a right to work check being completed.

On a vote being taken, the **motion** received **6** votes, the **amendment** received **5** votes and there was **1** abstention, the **motion** was therefore carried, the votes having being cast as follows:

Motion (6): Mr J Bruce, Mrs J Hendry, Ms L Johnston, Mr D Macpherson, Mr D Millar, Mr K Rosie

Amendment (3): Mr J Grafton, Mr S Kennedy, Mr W Mackay

Abstention (1): Ms E Knox

Decision

The Committee **AGREED** to **REFUSE** the application for a private hire car driver's licence under paragraph 5(3)(a) of schedule 1 of the Civic Government (Scotland) Act 1982

The meeting closed at 4.10pm. _____