

Highland Council

Minutes of the **Highland Licensing Committee** held in the Council Chamber, Council Headquarters, Glenurquhart Road, Inverness on Tuesday, 13 February 2024 at Noon.

Present:

Mr C Birt (items 1 to 5, 6.4)
Mr J Grafton
Mrs J Hendry
Mr S Kennedy (Chair)
Ms E Knox (items 1 to 5, 6.4,14.1,14.2) (remote)
Ms L Johnston (except items 6.2, 6.3, 6.5 & 9.1)
Mr W Mackay (remote)
Mr D MacPherson (items 1 to 5, 6.1, 6.4,14.1,14.2)
Mr D Millar (remote)
Mr P Oldham (items 1 to 5, 6.4,14.1,14.2,6.5,9.1)

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 6.1: Stella Wolfram (applicant); Karen Gatherum (agent for applicant); Karen Smith (Brodies, agent for Mr & Mrs Gettie)
- Item 6.2: Jillian MacLeod (applicant's agent)
- Item 6.3: John James Albiston (applicant)
- Item 6.4: Andrew Hunter (Agent) of Harper MacLeod; D Smilie (Applicant); Mark McMaster (property manager), Mrs C Cuthbertson (objector), Nigel Patterson (objector)
- Item 6.5: Syed Russel (applicant)
- Item 7.1: Nahid Miah (applicant), Mr A Fraser (solicitor)
- Item 9.1: Jaimie McCluskey (applicant)
- Item 10.1: Neil MacLennan (applicant)
- Item 11.1: Mohammed Ibrahim (applicant)
- Item 14.1: Rzgar Ali Mahmud (applicant)
- Item 14.2: Waseem Abbas (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

Apologies for absence were intimated on behalf of Mr J Bruce and Mr K Rosie.

**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 9 January 2024 which was **APPROVED**.

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

There had been circulated Report No HLC/014/24 by the Principal Solicitor which detailed all Licences granted under delegated powers under the Civic Government (Scotland) Act 1982 in the period from 13 December 2023 to 31 January 2024.

The Committee **NOTED** the report.

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

There had been circulated Report No HLC/015/24 by the Principal Solicitor which detailed all Short Term Let Licences granted under delegated powers under the Civic Government (Scotland) Act 1982 in the period from 13 December 2023 to 31 January 2024.

The Committee **NOTED** the report.

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

There had been circulated Report No HLC/016/24 by the Principal Solicitor relating to applications which are 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:

(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.

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

There had been circulated Report No HLC/017/24 by the Principal Solicitor outlining the Short Term Let applications which are 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:

(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.

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

**6.1 Application for grant of a short term let licence – Ard Neamh,
Ardaneaskan, Lochcarron, IV54 8YL**

Mr D Macpherson was not entitled to participate in the determination of this item as he was not present throughout all of the proceedings.

There had been circulated Report No HLC/018/24 by the Principal Solicitor relating to an application from Ms Stella Jane Wolfram 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 Karen Smith on behalf of the Mr and Mrs Gettie, objectors, in summary as follows:

- apart from the small immediate footprint of each property, the garden and amenity ground and access road benefiting her clients and the applicant's properties was in joint ownership;
- in terms of the relevant legislation, her clients did not consent to the application and the use of the commonly owned garden ground and access road for the purposes of a short term let;
- recent case law had established that refusal of a licence on the grounds of the impact on amenity was lawful if there was material to justify this;

- her clients letters of objection outlined in detail the range of behaviours they encountered on an ongoing basis and which was having a detrimental impact on their amenity and wellbeing;
- due to title restrictions her clients could not fence off their property to protect their privacy and amenity;
- the private access road was narrow, had a steep drop off and no passing places and concerns about the safety of guests and the significant increase in traffic generated by the short term let;
- guests of the holiday let had to park on jointly owned property which was not permitted in the title and in respect of which her clients did not give consent;
- the impact on her clients safety and security as a result of the operation of the holiday let in this secluded rural location;
- her clients were anxious about undertaking garden maintenance and other activities as a result of guests staying at the property; and
- issues of liability should any guests be injured in the garden or on the access road. Her clients could not get adequate third party insurance to cover customers of the holiday let using commonly owned ground.

The Committee heard from Karen Gatherum, agent for the applicant in summary as follows:

- the premises had been operating as a short term let for two years and there were no objections to the application from the statutory consultees;
- title matters raised in the objections were not licensing matters and could be pursued through other legal routes;
- a nearby property with the same private road access had been granted a short term let licence with no objections being received from the neighbours;
- the objectors would be provided with the applicant's and her local caretaker's contact details in the event of any issues arising and guests given advance notice of any maintenance being carried out;
- the property could be occupied by a large family under ownership or a tenancy;
- there was no requirement for the objectors to hold insurance in respect of the short term let guests;
- the objectors concerns had been addressed by her client in the extensive welcome pack for guests and they would be advised not to go near to the objectors property. Her client would also restrict parking at the property to 3 vehicles;
- there had been no reported criminality despite two of the three properties located in this rural location being used as short term lets;
- recent case law had established that nuisance experienced by a single complainant was not sufficient to meet the tests of what constituted 'public' as it did not affect an identifiable class of the public. Therefore, this application could not be considered to cause undue public nuisance, safety or order.

In response to questions, the Clerk advised that if the application was granted the licenced premises would extend to the land coloured pink and outlined in red in Appendix 1 to the report which was in the applicant's sole ownership. Condition 3(a) set out in the additional conditions attached to all licences put the responsibility on the licence holder to take reasonable steps to control the behaviour of guests outwith the licensed area.

During debate, a majority of Members suggested that all the objections, issues and concerns in relation to the application had been countered by the applicant and agent, and there was no grounds on which to refuse the application. If there were any issues arising from the grant of a licence and compliance with licence conditions then the licence would be brought back to the Committee for review.

The Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory and additional licence conditions.

6.2 Application for grant of a short term let licence – 62 Holm Farm Road, Inverness, IV2 6BE

There had been circulated Report No HLC/019/24 by the Principal Solicitor relating to an application from Mrs Sarah Smith for the grant of a short term let licence (Ward 19 – Inverness South). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The objectors to the application were not present.

The Committee heard from Ms Jillian MacLeod, agent for the applicant, in support of the application.

The Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory and additional licence conditions.

6.3 Application for grant of a short term let licence – Craigmore Lodge, 2 Dalfaber Park, Aviemore, PH22 1QF

There had been circulated Report No HLC/020/24 by the Principal Solicitor relating to an application from Mr John James Albiston for the grant of a short term let licence (Ward 18 – Badenoch and Strathspey). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The objector was not present.

The Committee heard from John James Albiston, applicant, in support of his application.

The Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory and additional licence conditions.

6.4 Application for grant of a short term let licence – Station Cottage, Corpach, Fort William, PH33 7JH

There had been circulated Report No HLC/021/24 by the Principal Solicitor relating to an application from Ben Nevis Property Services Limited, agents acting on behalf of Mr Stuart Smillie, 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.

Mrs C Cuthbertson, objector stated her concerns in relation to the application as follows:

- concern at the location and suitability of the premises as a short term let due to the lack of vehicular access to the property;
- there was no overnight parking nearby and clarification was required from the applicants as to where guests would park;
- how the applicants would direct clients to the property on arrival, on the basis she was concerned about signage on her land and having to deal with enquiries about its location;
- she was not objecting to the application due to the impact on her own commercial operation but as a result of concerns in relation to parking and general disruption.

Nigel Patterson, objector stated his concerns in relation to the application as follows:

- there was no right of vehicular access to the premises and the access shown in the application was not contained in the title deeds for the property;
- the only recognised access was a right of servitude over his and his wife's property which was a pedestrian access along the rear of their property;
- the increased frequency of use and footfall on the access over their property associated with this commercial short term let venture would be detrimental to their security and privacy; and
- concern that guests staying at Station Cottage would park on their property. Only recent a vehicle associated with Mrs Cuthbertson's business had parked on his land, blocking the access and concern this would become an increasing issue if the application was granted.

The Committee then heard from Andrew Hunter, solicitor for the applicant in summary as follows:

- this was a small scale venture, the property being a one bedroom cottage and would be marketed essentially for couples. The intention was that it would only be available for let from April to October;
- it was accepted there was pedestrian access only to and no parking at the property. This would be made clear in the marketing material and by

email to guests prior to a let commencing and on arrival and advice provided on where guests could park;

- the applicant and agent were aware that if the objectors were concerned a right of access was not being used properly then this carried risk of suspension of licence or court proceedings;
- no signage would be placed on the Mrs Cuthbertson's land nor was it considered she would have to cope with enquiries about the location of the property. The fact she operated a commercial venture next door and may have influenced what was a trade objection;
- there was no limitation on the use of the servitude right of access that existed and which the occupiers of the property were entitled to use;
- Mr Patterson would be provided the agent's contact details so he could report any concerns on a day to day basis and would be provided in advance with details of any bookings;
- the grounds of objection did not meet the tests for refusal of the application either in relation to public nuisance or any other matters; and
- an assurance that his clients had noted the objectors concerns and that it was not in their interest to be bad neighbours.

In response to questions, Members were advised that any reasons for refusal of the application had to be linked to the grounds set out in the legislation and detailed section at 7 of the report based on the information presented.

Following debate, Mr W Mackay seconded by Mr S Kennedy **moved** to grant the application for a short term let licence subject to the mandatory and additional licence conditions.

As an **amendment**, Mr J Grafton seconded by Mr D Millar moved to refuse the application on the grounds that the premises was not suitable as a short term let having regard to the location and character of the premises, particularly the lack of vehicular access to the premises.

On a vote being taken, the **motion** received **8** votes, the **amendment** received **2** votes, and there were no abstentions, and the **motion** was therefore carried, the votes having being cast as follows:

Motion (8): Mr C Birt, Mrs J Hendry, Ms L Johnston, Mr S Kennedy, Ms E Knox, Mr D MacPherson, Mr P Oldham, Mr W Mackay.

Amendment (2): Mr J Grafton, Mr D Millar.

Decision

The Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory and additional licence conditions.

6.5 Application for grant of a short term let licence – 18 Shaw Place, Fort William, PH33 6HZ

There had been circulated Report No HLC/022/24 by the Principal Solicitor relating to an application from Mr Syed Russell on behalf of SRC Property Management Limited for the grant of a short term let licence (Ward 22 – Fort William and Ardnamurchan). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Solicitor advised that an objection to the application was received on 27 November 2023 from Mr Alan McPhail, however this was received after the 28 day period for objections had elapsed, namely on 25 November 2023, and therefore could not automatically be considered by the Committee.

Members noted that Mr McPhail was not present to address the Committee as to the reason why the objection was submitted after the required timescale.

The Committee **AGREED** not to accept the late objection.

The Committee then heard from Syed Russel, applicant, in support of his application during which he confirmed that he would provide evidence that the necessary buildings insurance was in place.

Following discussion, the Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory and additional licence conditions.

7. Housing (Scotland) Act 2006 – Part 5 Licensing of Houses in multiple occupation

7.1 Application for a licence for a house in multiple occupation – 47 Queensgate, Inverness

There had been circulated Report No HLC/023/24 by the Principal Solicitor relating to an application from Nahid Miah for a licence for a house in multiple occupation (Ward 14 – Inverness Central). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from the applicant's solicitor.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the licence if the applicant has not produced a public liability insurance certificate and a copy of the tenancy agreement to the satisfaction of the licensing authority by **7 March 2024**.

8. Civic Government (Scotland) Act 1982 Street Traders licence Achd Riaghaltais Chatharra (Alba) 1982 Iarrtas airson ceadachd neach-malairt sràide

8.1 Application for the grant of a street trader's licence – Anne Rodgers

There had been circulated Report No HLC/024/24 by the Principal Solicitor relating to an application from Anne Rodgers for the grant of a street traders 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 **NOTED** this item had been withdrawn.

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

9.1 Application for the grant of a skin piercing and tattooing licence – 118-122 Academy Street Inverness.

There had been circulated Report No HLC/025/24 by the Principal Solicitor relating to an application from Ms Jaimie McCluskey for the grant of a skin piercing and tattooing licence in respect of premises at 118-122 Academy Street Inverness (Ward 14 – Inverness Central). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from the applicant.

The Committee **AGREED** to **GRANT** the application for a skin piercing and tattooing licence subject to the following condition:

- that the premises is not used for the licensable activity until Environmental Health is satisfied that all required documents have been supplied and satisfactory premises inspection carried out.

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

10.1 Application for a taxi driver's licence – Neil MacLennan

There had been circulated Report No HLC/026/24 by the Principal Solicitor relating to an application from Neil MacLennan for the grant of a taxi driver's licence (Ward 17 – Culloden & Ardersier) The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from the applicant.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the application for a taxi driver's if applicant has not passed knowledge test and successfully undergone a right to work check by **20 March 2024**.

**11. 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**

11.1 Application for a private hire car driver's licence – Mohammed Ibrahim

There had been circulated Report No HLC/027/24 by the Principal Solicitor relating to an application from Mohammed Ibrahim for a private hire car driver's licence. The Committee was invited to determine the application in accordance with the Council's Hearings Procedure.

The Committee heard from the applicant.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the application for a private hire car driver's licence if applicant fails to provide foreign conviction check and successfully undergo right to work check prior to **10 March 2024**.

11.2 Application for a private hire car operator's licence – Muhammad Imam

There had been circulated Report No HLC/028/24 by the Principal Solicitor relating to an application from Muhammad Imam for a private hire car driver's licence (Ward 13 – Inverness West). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The applicant was not in attendance. The Senior Licensing Officer advised the applicant had indicated verbally that he wished to withdraw his application but to date confirmation in writing had not been received.

The Committee **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor to **REFUSE** the application for a private hire car operator's licence if the applicant has not presented a vehicle for inspection, and submitted the relevant certificates, to the satisfaction of the Council prior to **16 February 2024**.

12. 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.

**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 prìobhaideach**

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

There had been circulated to members only Report No HLC/029/24 by the Principal Solicitor relating to an application 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 **NOTED** this item had been withdrawn.

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

14.1 Application for a taxi driver's licence – Rzgar Ali Mahmud

There had been circulated to members only Report No HLC/030/24 by the Principal Solicitor in relation to an application for a taxi driver's licence from Rzgar Ali Mahmud (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 via his translator.

The Committee **AGREED** to **DEFER** consideration of the application for a taxi driver's licence until next meeting of the Committee on 26 March 2024 to allow the applicant's translator to stay for the full hearing.

14.2 Application for a taxi driver's licence – Waseem Abbas

There had been circulated to members only Report No HLC/031/24 by the Principal Solicitor in relation to an application for a taxi driver's licence from Waseem Abbas (Ward 16 – Inverness Millburn). 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.

Following discussion, Mr P Oldham seconded by Ms L Johnston **moved** to refuse the application on the grounds the applicant was not a fit and proper person to hold a taxi driver's licence for the reasons outlined in Police Scotland's letter of objection.

As an **amendment**, Mr D Millar seconded by Mr W Mackay moved to grant the application for a taxi driver's licence subject to completion of right to work check and the applicant passing the knowledge test.

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

Motion (4): Mrs J Hendry, Ms L Johnston, Ms E Knox, Mr P Oldham.

Amendment (4): Mr J Grafton, Mr S Kennedy, Mr W Mackay, Mr D Millar.

On there being an equality of votes cast, 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** the application for a taxi driver's licence subject to completion of right to work check and the applicant passing the knowledge test.

The meeting ended at 5.00pm.
