

WEST DUNBARTONSHIRE COUNCIL

Report by the Head of Legal, Democratic and Regulatory Services

Licensing Committee: 7 February 2012

Subject: Alexandria and Dumbarton TOA Ltd -v- West Dunbartonshire Council

1. Purpose

- 1.1** To advise Members of the decision of Sheriff Simon W H Fraser in the case of Alexandria and Dumbarton TOA Ltd -v- West Dunbartonshire Council.

2. Background

- 2.1** Alexandria and Dumbarton TOA Ltd submitted an application for grant of a Taxi Booking Office Licence to the Council on 20 January 2011.
- 2.2** At a meeting of the Licensing Committee on 3 May 2011, Members unanimously agreed that the application be refused on the grounds:-
- (i) That Mr Michael Rainey (who was named as a Director of, or person responsible for the management of, the business) was, as an individual, not a fit and proper person to be the holder of a Taxi Booking Office Licence and
 - (ii) That Mr Michael Rainey, Mr Martin Rankin and Mr John Berry (all of whom were named as Directors of, or persons responsible for the management of, the business and who were all Directors of, or persons responsible for the management of, Dumbarton and Alexandria Taxi Owners Association) were, collectively, not fit and proper persons to be the holder of a Taxi Booking Office Licence.
- 2.3** As regards the first reason for refusal, the Committee were of the opinion that Mr Michael Rainey ought to have known of the activities being carried out by a person who was residing with Mr Rainey and who had in Mr Rainey's home equipment for use in the supply of drugs and a quantity of cocaine which he (the person) intended to supply to others. As Mr Rainey had failed to realise what was occurring in his own home, and had been unable to unwilling to exercise any control over what was occurring there, the Committee had no confidence that he would be able to exercise proper supervision and control over the activities of a Taxi Booking Office. Accordingly, Mr Michael Rainey (who was named as a Director of, or a person responsible for the management of, Alexandria and Dumbarton TOA Ltd) was not a fit and proper person to be the holder of a Taxi Booking Office Licence.

- 2.4** As regards the second reason for refusal, the Committee were of the opinion that Dumbarton and Alexandria Taxi Owners' Association ought to have investigated the allegations of serious misconduct against the taxi drivers who had been excluded by the Association as a result of those allegations. If the allegations had been substantiated, the Association should have reported the matter to the Council as Licensing Authority. The Licensing Committee would then have arranged Hearings at which the allegations would have been considered. If misconduct was established, the Committee would have considered whether to suspend the taxi drivers' licences. There would therefore have been a process by which the public would have been protected.
- 2.5** Mr Michael Rainey, Mr Martin Rankin and Mr John Berry were all named as Directors of, or persons responsible for the management of, Dumbarton and Alexandria Taxi Owners' Association and they were all named as Directors of, or persons responsible for the management of, Alexandria and Dumbarton TOA Ltd. The actions of Mr Rainey, Mr Rankin and Mr Berry in connection with Dumbarton and Alexandria Taxi Owners' Association were therefore relevant to the Application by Alexandria and Dumbarton TOA Ltd. As Directors of, or persons responsible for the management of, Dumbarton and Alexandria Taxi Owners' Association, Mr Rainey, Mr Rankin and Mr Berry were responsible for the failure to investigate, and if necessary report, the allegations. The Committee were of the opinion that, because of the failure to investigate, and if necessary report, the allegations, Mr Rainey, Mr Rankin and Mr Berry were not fit and proper persons to be the holder of a Taxi Booking Office Licence.
- 2.6** Following the decision taken by the Licensing Committee, Alexandria and Dumbarton TOA Ltd invoked their right to appeal this decision to the Sheriff under the Civic Government (Scotland) Act 1982.

3 Main Issues

- 3.1** The appeal was heard by Sheriff Simon W H Fraser who subsequently issued his decision dated 20 January 2012.
- 3.2** Sheriff Fraser reversed the decision taken by the Licensing Committee and granted the application for a Taxi Booking Office Licence to Alexandria and Dumbarton TOA Ltd.
- 3.3** There were a number of grounds of Appeal, some relating to procedural matters and others relating to the reasons for refusal of the Application. Sheriff Fraser rejected the grounds of Appeal that related to procedural matters but upheld the Appeal insofar as it related to the reasons for refusal.
- 3.4** One of the grounds of Appeal concerned the decision of the Licensing Committee to require that the Application Notice be displayed at the premises for a further period. Sheriff Fraser held that a challenge to such a decision could not form a valid ground of Appeal.

- 3.5** Another ground of Appeal concerned the decision of the Licensing Committee to entertain four objections which had not been made in the time required by the legislation. (The Committee had been satisfied that there was sufficient reason for the objections not being made in time). Sheriff Fraser found that the Committee had been perfectly entitled to reach the decision to entertain the objections and the decision had not been unreasonable or wrong in law. Sheriff Fraser also rejected arguments that, in not giving the Applicant's representative a second opportunity to address them in relation to this matter, the Committee had fallen into a procedural error or erred in law.
- 3.6** Another ground of appeal concerned the time limit imposed on the Applicant's solicitor when he was addressing the Committee. Sheriff Fraser rejected that ground of Appeal, holding that there was no breach of natural justice in the way in which that aspect of the meeting had been conducted.
- 3.7** In his submission to the Sheriff, the Applicant's representative had categorised the Committee's decision as having been driven by political influence and media pressure. In his judgement Sheriff Fraser stated that there was no material placed before him from which he could conclude that such criticisms were justified.
- 3.8** As regard the first reason for refusal of the Application, Sheriff Fraser was of the view that the Committee did not have information before them which could justify a finding that Mr Michael Rainey was not a fit and proper person to be the holder of a Taxi Booking Office Licence. A person residing with Mr Rainey had in Mr Rainey's home equipment for use in the supply of drugs and a quantity of cocaine which he (the person) intended to supply to others. However, a representative of the police had confirmed that there had been no charges libelled against Mr Michael Rainey as there had been no evidence to prove that he had been guilty of an offence. Given the very general information that was available in relation to the offence of which the person had been convicted and given the information from the police, the Committee should have had no regard to the conviction and erred in law by taking it to account.
- 3.9** As regards the second reason for refusal of the Application, Sheriff Fraser noted that at the meeting of the Licensing Committee in March 2011 the Committee had considered complaints that had been made against Dumbarton and Alexandria Taxi Owners' Association. The Committee had agreed to take no further action in relation to the complaints, agreed to urge the Association and the excluded drivers to take steps to resolve their differences and agreed to urge the Association to take on board the comments made in relation to reporting incidents to the Licensing Authority in the future. Sheriff Fraser noted that no further such incidents had occurred. Sheriff Fraser held that, in founding on matters about which it had previously resolved to take no action, the Committee had in effect reversed their decision and acted unreasonably. Sheriff Fraser was of the view that the Committee had been inconsistent as the Application by Alexandria and Dumbarton TOA Ltd was refused because three Directors had been found not to be fit and proper persons whereas no action had been taken against

Dumbarton and Alexandria Taxi Owners' Association even though the three Directors were also Directors of that Association. Sheriff Fraser also held that there was no duty on the Directors to report misconduct of taxi drivers to the Licensing Authority. The Committee had erred in law in seeking to impose such a duty.

- 3.10** A Sheriff's decision on an Appeal may be appealed on a point of law to the Court of Session. There are no points of law in Sheriff Fraser's judgement which could be so appealed. The Licence to be issued to Alexandria and Dumbarton TOA Limited will not come into force until the end of the period within which an Appeal may be lodged. That period expires on 17 February 2012. The Licence will therefore come into force on 18 February 2012 and will be valid for three years.

4 People Implication

- 4.1** There are no personnel issues.

5 Financial Implications

- 5.1** Sheriff Fraser has fixed a Hearing on expenses for 8 February 2012. As expenses follow success in court proceedings, it is inevitable that there will be an award of expenses against the Council.

6 Risk Analysis

- 6.1** This Report does not put forward a proposal. It summarises a judgement and it was not necessary to carry out a risk assessment.

7 Equalities Impact Assessment (EIA)

- 7.1** No impact assessment is required because this report does not involve any change to policies or services or financial decisions.

8 Strategic Assessment

- 8.1** There are no strategic implications.

9 Conclusions and Recommendations

- 9.1** Members are asked to note the content of this report.

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Date: 23 January 2012

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Appendices: None.

Background Papers: Judgement of Sheriff Simon W H Fraser in the case of
Alexandria and Dumbarton TOA Ltd -v-
West Dunbartonshire Council, dated 20 January 2012.

Wards Affected: N/A.