

LICENSING COMMITTEE

At a Meeting of the Licensing Committee held in Committee Room 3, Council Offices, Garshake Road, Dumbarton on Wednesday, 1 May 2013 at 2.00 p.m.

Present: Provost Douglas McAllister and Councillors Jim Brown, Jim Finn, Jonathan McColl, Patrick McGlinchey, John Mooney, Lawrence O'Neill and Tommy Rainey.

Attending: Peter Hissett, Head of Legal, Democratic and Regulatory Services; Nigel Ettles, Principal Solicitor; Robert Mackie, Senior Officer (Licensing Services); James McArthur, Licensing Officer; Peter Clyde, Licensing Standards Officer and Nuala Borthwick, Committee Officer, Legal, Democratic and Regulatory Services.

Councillor Lawrence O'Neill in the Chair

CHAIR'S REMARKS

The Chair, Councillor O'Neill, advised that he would provide a verbal statement at the end of the agenda on the current issue of the proposed taxi ranking arrangements at the Clyde Shopping Centre, Clydebank.

DECLARATION OF INTEREST

Councillor Rainey declared a non-financial interest in the item entitled, 'Hearing regarding possible suspension of a Taxi Driver's Licence' concerning Mr Barry Austin and advised that he would take no part in the Committee's decision in relation to this item.

MINUTES OF PREVIOUS MEETING

The Minutes of Meeting of the Licensing Committee held on 6 March 2013 were submitted and approved as a correct record.

**APPLICATION FOR GRANT OF TAXI/PRIVATE HIRE CAR
DRIVER'S LICENCE**

Name and Address of Applicant

Date Applied

Mr Kenneth Gillespie
198/3 Faifley Road
Clydebank
G81 5EG

15 January 2013

With reference to the Minutes of Meeting of the Licensing Committee held on 6 March 2013 (page xxx refers), a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Taxi/Private Hire Car Driver's Licence.

It was noted that the applicant was not in attendance.

DECIDED: That consideration of the application be continued to the end of the business of the meeting.

**APPLICATION FOR RENEWAL OF TAXI/PRIVATE HIRE CAR
DRIVER'S LICENCE**

Name and Address of Applicant

Date Applied

David McKernan
127 Strathleven Drive
Alexandria
G83 9PG

16 January 2013

With reference to the Minutes of Meeting of the Licensing Committee held on 6 March 2013 (page xxx refers), a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for renewal of a Taxi/Private Hire Car Driver's Licence.

Having heard the Principal Solicitor in further explanation of the report, it was noted:-

- (a) that a letter had been received from the Chief Constable of the Police authority making a representation in relation to the application;
- (b) that in view of the representation which had been received from the Police authority, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (c) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting; and
- (d) that the applicant and representatives of Police Scotland, Inspector Blair, Sergeant Hendry and Constable Miller, were in attendance at the meeting.

Sergeant Hendry was then heard in relation to the representation and in answer to questions from Members. It was noted that in relation to a pending case a trial diet had been fixed for 31 May 2013. The applicant was then given the opportunity to address the Committee in support of his application.

DECIDED: That the application be granted.

DECLARATION OF INTEREST

Having declared a non-financial interest in the following item of business, Councillor Rainey left the meeting at this point.

HEARING REGARDING POSSIBLE SUSPENSION OF A TAXI DRIVER'S LICENCE – BARRY AUSTIN

A report was submitted by the Head of Legal, Democratic and Regulatory Services requesting consideration of a possible suspension of a Taxi Driver's Licence held by Mr Barry Austin.

Having heard the Principal Solicitor, it was noted:-

- (a) that on 20 February 2013, a complaint had been received by telephone from a member of the public in relation to an incident involving Mr Austin on 19 February 2013;
- (b) that the complainer had submitted written details of the incident to the Licensing authority by email on 28 February 2013;
- (c) that Mr Austin had subsequently been interviewed on 18 March 2013 by Mr James McArthur, Licensing Officer and Mrs Carol Ann Anderson, Licensing Assistant;
- (d) that due to the nature of the complaint, it had been decided that a hearing should take place to consider the possible suspension of Mr Austin's taxi driver's licence;
- (e) that a licensing authority must, before deciding to suspend a licence, give the holder of the licence, any complainer and the Chief Constable an opportunity to be heard;
- (f) that Mr Austin and Ms McLeod, the complainer, had been invited to attend the meeting in order that a hearing may take place; and
- (g) that the matters which the Committee was required to consider were as follows:-
 - (i) whether the alleged misconduct had been established;

- (ii) if the Committee was satisfied that the alleged misconduct had been established, whether, having regard to the misconduct, Mr Austin was no longer a fit and proper person to hold a taxi driver's licence;
- (iii) if the Committee was of the opinion that Mr Austin was no longer a fit and proper person, then the Committee must consider whether his licence should be suspended;
- (iv) if the Committee was satisfied that the licence should be suspended, the Committee must give Mr Austin an opportunity to be heard on the length of the suspension and the date from which the suspension should commence; and
- (v) the Committee must then consider what length of suspension would be appropriate and whether the circumstances of the case would justify immediate suspension.

It was noted that Mr Austin, his representative, Mr Thomson, Solicitor Advocate, McArthur Stanton Solicitors and Ms McLeod, the complainer, were in attendance at the meeting.

Thereafter, at the request of the Chair, the Committee heard from the Licensing Officer in relation to the circumstances of the incident concerning Mr Austin. It was noted that Ms McLeod did not wish to address the Committee at this point in the proceedings.

The Committee then heard from Mr Thomson on behalf of Mr Austin. It was noted that Mr Austin accepted that it had been an error of judgement on his part to give a false name to Ms McLeod, and that should the Committee be of the view that this was a breach of Condition 23 of the standard conditions issued to all taxi drivers, the matter, in his view, should be dealt with by way of a warning letter.

- DECIDED:**
- (1) that providing false information to the complainer amounted to misconduct and was a breach of Condition 23;
 - (2) that the misconduct and breach of Condition 23 did not form grounds for suspending Mr Austin's Taxi Driver's Licence;
 - (3) that a warning letter be issued to Mr Austin from the Chair of the Licensing Committee concerning his behaviour; and
 - (4) that Mr Austin should write a letter of apology to Ms McLeod and that the letter should be submitted to the Licensing Team.

Note: Councillor Rainey re-entered the meeting at this point.

PROPOSAL FOR THE COUNCIL TO IMPLEMENT A SCHEME OF LICENSING UNDER THE THEATRES ACT 1968

A report was submitted by the Head of Legal, Democratic and Regulatory Services:-

- (a) seeking approval of a licensing regime for theatres or any other premises that may be used as a theatre at any time; and
- (b) seeking approval of conditions which holders of a theatre licence would have to comply with.

- DECIDED:**
- (1) to approve the licensing regime and the conditions specified in Appendix 1 of the report;
 - (2) that the annual fee for a theatre licence would initially be set at £250; and
 - (3) that steps be taken to ensure the use of internal accounting procedures for Council-owned licensable theatres to avoid the process of internal re-charging.

STATEMENT BY COUNCILLOR O'NEILL, CHAIR OF THE LICENSING COMMITTEE, ON THE PROPOSED TAXI RANKING ARRANGEMENTS AT THE CLYDE SHOPPING CENTRE, CLYDEBANK

Councillor O'Neill, Chair, made the following statement:-

It is important to stress that this contractual arrangement was in no way instigated by or on behalf of West Dunbartonshire Council or that WDC officers were in any way involved in discussions regarding the contract between Clyde Shopping Centre and Clydebank Taxis.

The first time that WDC was made aware of this was on the afternoon of Tuesday, 16 April 2013.

Since being advised of the proposed contract between the Clyde Shopping Centre and Clydebank Taxis on Thursday, 18th April 2013 I, as the Convenor of this Licensing Committee have instigated the following:

- I immediately contacted WDC's Chief Executive and her other senior colleagues to find out what arrangements were in place and who was aware of this contractual arrangement and the potential impacts that such a contract would imply?
- I met with a large number of taxi drivers last Tuesday to hear at first hand from them on the impact of such an arrangement.

- All other Elected Members have been advised of the ongoing issue faced by the licensed taxi trade regarding the potential restriction being placed upon them by this contract hence the reason for this update.
- I have sought and been given an agreement via Helical Bar (operators of the Clyde Shopping Centre) to delay in the implementation of the contract by a week to Wednesday, 8th May 2013 to allow further discussions between Elected Members, WDC officers and the licensed taxi trade as well as contact directly with HB
- WDC officers at a senior level have been discussing the details of the contractual arrangements with a Director of Helical Bar.
- The Chief Executive has today instructed an Executive Director to make contact with the Director of HB in London to discuss this contractual arrangement and further work will continue around this.

It is my clear desire that we as the Licensing Authority look at all aspects of the licensed taxi trade arrangements particularly within the Clydebank Taxi zone at present and potential for such arrangements across West Dunbartonshire.

It is also my desire to ensure that current and future arrangements do not restrict the ability for all drivers to ply their trade without restriction.

At present, whilst discussions are being arranged with HB, it would be inappropriate to call any special or emergency Licensing Committee to discuss however that option does remain open to me as the chair of the Licensing Committee

Every effort is being made and will continue to be made at the most senior level within West Dunbartonshire Council and beyond to address this particular issue and to negate any negative impact on the taxi trade, the Clyde Shopping Centre and the businesses contained within and the wider social impact that may arise from this.

I will continue to offer any assistance to any or all parties concerned that I can.

APPLICATION FOR GRANT OF TAXI/PRIVATE HIRE CAR DRIVER'S LICENCE

Name and Address of Applicant

Date Applied

Mr Kenneth Gillespie
198/3 Faifley Road
Clydebank
G81 5EG

15 January 2013

With reference to the Minutes of Meeting of the Licensing Committee held on 6 March 2013, a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Taxi/Private Hire Car Driver's Licence.

It was noted that the applicant and a representative of the police authority had been invited to the meeting. It was further noted that Mr Gillespie was not present at the meeting.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making an objection with respect to the application;
- (b) that in view of the objection which had been received from the Police, the applicant and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place; and
- (c) that a copy of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting.

DECIDED: That it was not necessary to hear from the representative of the Police authority and that the application be refused on the grounds that the applicant had failed to attend meetings of the Committee for hearings on two occasions.

The meeting closed at 2.47 p.m.