

## **LICENSING COMMITTEE**

At a Meeting of the Licensing Committee held in Committee Room 3, Council Offices, Garshake Road, Dumbarton on Wednesday, 6 March 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.

\* Attended later in the meeting.

**Attending:** Peter Hissett, Head of Legal, Democratic and Regulatory Services; Nigel Ettles, Principal Solicitor; David McCulloch, Section Head (Trading Standards & Licensing); Robert Mackie, Senior Officer (Licensing Services), Raymond Walsh, Network Management Service Co-ordinator, (Roads), Mark Walsh, Environmental Health Officer; David Leitch, Team Leader – Fleet and Waste Services and Nuala Borthwick, Committee Officer, Legal, Democratic and Regulatory Services.

**Apology:** An apology for absence was intimated on behalf of Councillor Patrick McGlinchey.

**Councillor Lawrence O'Neill in the Chair**

### **DECLARATIONS OF INTEREST**

It was noted that there were no declarations of interest in any of the items of business on the agenda.

### **MINUTES OF PREVIOUS MEETING**

The Minutes of Meeting of the Licensing Committee held on 9 January 2013 were submitted and approved as a correct record.

### **APPLICATIONS FOR GRANT OF TEMPORARY EMPLOYEE STREET TRADER'S LICENCE**

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Karl Zupp 42 Kelvin Way Kilsyth G65 9UL	12 November 2012

With reference to the Minutes of Meeting of the Licensing Committee held on 9 January 2013, a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Temporary Employee Street Trader's Licence.

It was noted that the applicant was not in attendance at the meeting.

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

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Raymond Jauncey 34 Southdeen Road Drumchapel Glasgow G15 7RZ	25 October 2012

With reference to the Minutes of Meeting of the Licensing Committee held on 9 January 2013, a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Temporary Employee Street Trader's Licence.

It was noted that the applicant was not in attendance at the meeting.

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

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

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Mr Kenneth Gillespie 198/3 Faifley Road Clydebank G81 5EG	15 January 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 by the above named person.

It was noted that the applicant was not in attendance at the meeting and had, prior to the meeting, explained the reason why he would not be in attendance.

**DECIDED:** That consideration of the application be continued to the next meeting.

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Robert White 12 Jean Armour Drive Drumry Clydebank G81 2EP	23 January 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 by the above named person.

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 an objection in relation 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;
- (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) it was noted that the applicant and representatives of the Police authority, Sergeant Stewart and Mrs Queen, were in attendance.

Sergeant Stewart was then heard in relation to the objection and in answer to questions from Members. The applicant was then given the opportunity to address the Committee in support of his application and he explained the background with respect to the incidents referred to in the letter from the Police.

**DECIDED:** That the application be granted.

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

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Graeme Weir 11 Kirkton Old Kilpatrick G60 5JL	11 December 2012

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 by the above named person.

It was noted that the applicant was in attendance at the meeting.

After hearing the Principal Solicitor, it was noted:-

- (a) when Mr Weir applied for renewal of his Taxi/Private Hire Car Driver's Licence in December 2011, a representation had been made by the Chief Superintendent of the Police authority in relation to the application. After a hearing at the meeting of the Committee on 7 February 2012, it was agreed that the application be renewed and that the applicant's next application for renewal of the licence be referred to the Committee for consideration and the applicant be invited to appear before the Committee in this connection;
- (b) that, in accordance with the decision of the Committee, the applicant had been invited to attend this meeting of the Committee; and
- (c) that there was no objection or representation from the Police authority.

**DECIDED:** That the application be granted.

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	David McKernan 127 Strathleven Drive Alexandria G83 9PG	16 January 2013

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 by the above named person.

It was noted that the applicant was not in attendance at the meeting.

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

#### **POSSIBLE SUSPENSION OF TAXI DRIVER'S/PRIVATE HIRE CAR DRIVER'S LICENCE – KEVIN HUXTER**

A report was submitted by the Head of Legal, Democratic and Regulatory Services requesting consideration of a possible suspension of a Taxi Driver's/Private Hire Car Driver's Licence held by Mr Kevin Huxter.

After hearing the Principal Solicitor, it was noted:-

- (a) that on Monday, 30 July 2012, Mark Walsh, Environmental Health Officer (EHO) and James McArthur, Civic Government Licensing Officer observed Mr Huxter smoking outside his taxi and then entering the vehicle while smoking before discarding the cigarette moments later from the offside of his taxi before driving off;
- (b) that smoking in a licensed taxi is a contravention of Section 2 of the Smoking, Health and Social Care (Scotland) Act 2005;
- (c) that Mr Huxter denied smoking in his vehicle;
- (d) that a fixed penalty notice was thereafter issued to Mr Huxter by the EHO who thereafter clearly explained to Mr Huxter the options available to him in relation to the fixed penalty notice;
- (e) that following the issue of a reminder letter to Mr Huxter by WDC Regulatory Services, the fixed penalty notice remained unpaid until 26 February 2013 when it was paid in full;
- (f) that the licensing authority may order the suspension of a licence if in its opinion the holder of the licence is not, or is no longer, a fit and proper person to hold the licence;
- (g) 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;
- (h) that Mr Huxter and Mr Walsh had been invited to attend the meeting in order that a hearing may take place;
- (i) that matters which the Committee 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 Huxter 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 Huxter 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 Huxter an opportunity to be heard on the length of the suspension and the date from which the suspension should commence; and

- (vi) 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 Huxter and Mr Walsh, EHO, were in attendance.

Thereafter, at the request of the Chair, the Committee heard from the EHO in relation to the circumstances of the enforcement initiative and the offence relating to Mr Huxter. The Committee then heard from Mr Huxter.

**DECIDED:**

- (1) that misconduct on the part of Mr Huxter had been established; and
- (2) that, having considered the circumstances of the case, no action would be taken against Mr Huxter in relation to the contravention of Section 2 of the Smoking, Health and Social Care (Scotland) Act 2005 and in relation to the late payment of the fixed penalty notice.

**RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION  
ON TAXI LICENSING**

A report was submitted by the Head of Legal, Democratic and Regulatory Services on a Scottish Government consultation on taxi licensing and seeking approval of a response.

**DECIDED:**

- (1) that the last sentence in the response to question 11 of the consultation be amended to the effect that the 'fit and proper person' test is a vital tool that must not be lost;
- (2) to recommend that the Scottish Government consult local representative bodies for the taxi trade in the creation of the licensing objectives;
- (3) to recommend that the licensing objectives be specific for taxi/private hire licensing and not generic to Civic Government licensing; and
- (4) to approve the response attached as an appendix to the report with the amendments and recommendations as detailed at points 1-3 above.

**PROPOSED AMENDMENTS TO TAXI/PRIVATE HIRE CAR AND TAXI  
DRIVER/PRIVATE HIRE CAR DRIVER CONDITIONS**

A report was submitted by the Head of Legal, Democratic and Regulatory Services seeking approval to amend certain conditions attached to Taxi/Private Hire Car and Taxi Driver/Private Hire Car Driver licences, which have become outdated.

The Committee heard from Mr Alan MacLeod, Member, Clydebank Public Hire Association.

**DECIDED:**

- (1) that the existing condition relating to sounding a horn, alarm or other audible means of announcing to the hirer or proposed hirer the arrival of a taxi be amended in the Taxi Driver's conditions as undernoted:-
  - 24. The driver of a taxi shall not at any time nor at any place sound a horn, alarm or other audible means of announcing to the hirer or proposed hirer the arrival of the taxi. This does not prohibit a text message from being sent to a customer's mobile phone with an audible alarm.
- (2) that where the holder of a Taxi Licence ceases to act as a taxi operator for more than 6 weeks of the unexpired period of his licence or where a Taxi Licence has expired, Officers will, where appropriate, use discretion to extend the period within which the Licence and Licence Plate must be delivered to the Licensing Authority; and
- (3) otherwise to approve the proposed changes to conditions as described in the Appendix to the report.

Note: Councillor McAllister entered the meeting during consideration of the above item.

**PROPOSED AMENDMENTS TO TAXI TESTING REGIME**

A report was submitted by the Head of Legal, Democratic and Regulatory Services seeking amendments to the frequency of inspections required by vehicles operating as taxis or private hire cars within West Dunbartonshire.

The Committee heard from Mr Charles Murray, Chair, Clydebank Public Hire Association in support of having a testing regime for taxi and private hire cars where the frequency of testing is twice per year.

**DECIDED:** To approve the proposed changes to the testing regime for taxi and private hire cars within West Dunbartonshire as described in Appendix 1 of the report.

**TEMPORARY ALTERATION TO THE TAXI RANK IN ALEXANDER STREET, CLYDEBANK**

A report was submitted by the Head of Legal, Democratic and Regulatory Services seeking approval for the temporary relocation of the taxi rank in Alexander Street, Clydebank due to repair works at the railway bridge.

The Committee heard from the Section Head (Trading Standards & Licensing) in further explanation of the report, proposals and consultation with the taxi trade. Thereafter, both he and the Network Management Service Co-ordinator answered questions from Members.

Copies of a covering pro forma letter and a petition signed by 28 people, opposing the removal of the Alexander Street Taxi Rank, temporary or otherwise, were distributed to Members.

The Committee then heard from Mr Allan MacLeod, Clydebank Public Hire Association who addressed the Committee on the current proposals of licensing officers, requesting that the consultation process be recommenced to find a solution that would be acceptable to the taxi trade.

Representatives from Bam Nuttall and Network Rail were in attendance for this item and responded to questions from Members.

**DECIDED:**

- (1) that the taxi stance in Alexander Street would be closed for approximately 15 weeks during Network Rail's renovation of the railway bridge in spring/summer 2013;
- (2) that the head of the stance would be relocated to Hume Street (7 spaces) with a feeder stance in the car park south of the Play Drome (12 spaces) for the duration of the bridge works;
- (3) that the decision will only be implemented when
  - (a) the Council's Road Services have upgraded the street lighting underneath the railway bridge in Hume Street to the same standard as the street lighting in Chalmers Street; and
  - (b) Network Rail have paid for and installed prominent, clear and durable signage at the existing taxi rank to direct the travelling public to the temporary rank at Hume Street, to the satisfaction of the Head of Legal, Democratic and Regulatory Services.

**APPLICATIONS FOR GRANT OF TEMPORARY EMPLOYEE STREET  
TRADER'S LICENCE**

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Karl Zupp 42 Kelvin Way Kilsyth G65 9UL	12 November 2012



With reference to the Minutes of Meeting of the Licensing Committee held on 9 January 2013, a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Temporary Employee Street Trader'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 Zupp 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;
- (c) that a letter had been received from the Police authority detailing convictions against the applicant that were considered "spent" in terms of the Rehabilitation of Offenders Act 1974 and that it was for the Committee to decide whether or not the letter detailing the spent convictions should be disclosed and taken into consideration;
- (d) that the letter from the Chief Superintendent making an objection in relation to the application, had been received on 11 December 2012. In terms of the relevant legislation, an objection with respect to an application should be submitted within 28 days of receipt of the application. As Mr Zupp's application was submitted on 12 November 2012, any objection should have been submitted by 10 December 2012. There was, however, provision in the legislation for the Licensing Authority to entertain a late objection which has been received before a final decision has been made on the application if the Licensing Authority was satisfied that there had been sufficient reason why the objection had not been made in the time required;
- (e) that it would be a matter for the Committee to decide initially whether the late objection from the Police should be taken into consideration; and
- (f) that the terms of the letter from the Police authority would be made known to the Committee as appropriate.

**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.

(b)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	Raymond Jauncey 34 Southdeen Road Drumchapel Glasgow G15 7RZ	25 October 2012

With reference to the Minutes of Meeting of the Licensing Committee held on 9 January 2013, a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Temporary Employee Street Trader'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 Jauncey was not present at the meeting.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter from the Chief Superintendent making a representation in relation to the application, had been received on 6 December 2012. In terms of the relevant legislation, a representation with respect to an application should be submitted within 28 days of receipt of the application. As Mr Jauncey's application was submitted on 25 October 2012, any representation should have been submitted by 22 November 2012. There was, however, provision in the legislation for the Licensing Authority to entertain a late representation which has been received before a final decision has been made on the application if the Licensing Authority was satisfied that there had been sufficient reason why the representation had not been made in the time required;
- (b) that in view of the representation 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;
- (c) that a further letter had been received from the Police authority detailing convictions against the applicant that were considered "spent" in terms of the Rehabilitation of Offenders Act 1974 and that it was for the Committee to decide whether or not the letter detailing the spent convictions should be disclosed and taken into consideration;
- (d) that the spent convictions could not be considered by the Committee unless there was no other way of justice being done;
- (e) that it would be a matter for the Committee to decide initially whether the late representation from the Police should be taken into consideration; and

- (f) that the terms of the letter from the Police authority would be made known to the Committee as appropriate.

**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.

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

<u>Name and Address of Applicant</u>	<u>Date Applied</u>
David McKernan 127 Strathleven Drive Alexandria G83 9PG	16 January 2013

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 by the above named person.

It was noted that the applicant was not in attendance at the meeting.

**DECIDED:** That consideration of the application be continued to the next meeting of the Committee.

The meeting closed at 3.40 p.m.