

LICENSING COMMITTEE

At a Meeting of the Licensing Committee held in the Education Centre, St. Margaret of Scotland Hospice, East Barns Street, Clydebank on Tuesday, 6 December 2011 at 12 noon.

Present: Councillors Jim Brown, Geoff Calvert, Jim Finn, Douglas McAllister, Jonathan McColl and Lawrence O'Neill.

Attending: Nigel Ettles, Principal Solicitor; Robert Mackie, Senior Officer (Licensing Services) and Nuala Borthwick, Committee Officer, Legal, Democratic and Regulatory Services.

Apologies: Apologies for absence were submitted on behalf of Councillors Ronnie McColl and Willie McLaughlin.

Councillor Jim Finn in the Chair

DECLARATION OF INTEREST

Councillor Jim Brown declared a non-financial interest in the item 'Application for Grant of Window Cleaner's Licence' in the name of Scott Matheson, given that Mr Matheson was a neighbour of Councillor Brown.

MINUTES OF PREVIOUS MEETING

The Minutes of Meeting of the Licensing Committee held on 4 October 2011 were submitted and approved as a correct record.

The Principal Solicitor provided an update in respect of the item 'Application for Grant of a Second Hand Dealer's Licence' (Page 3919 refers) in the name of Sekhon Traders Ltd which had been continued to this meeting of the Committee, and in doing so, advised that the application had since been withdrawn by the applicant.

APPLICATION FOR GRANT OF MARKET OPERATOR'S LICENCE

Name and Address of Applicant

Date Applied

Heather Young
15 Shawlands Street
Catrine
KA5 6NY

31 August 2011

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Market Operator's Licence submitted by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect 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 the applicant and her representative, Ms Alison Mackay, PRG Partnership LLP, and representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart were in attendance; and
- (d) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting.

The Committee heard Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions.

At the invitation of the Chair, Councillor Finn, the Committee then heard from Ms Mackay on behalf of the applicant. Ms Mackay addressed the Committee on the issues raised in the letter of representation submitted in relation to the application and thereafter she and the applicant answered questions from Members concerning the circumstances relating to the offence in Inverclyde.

The Senior Officer (Licensing Services) and the Principal Solicitor were then heard in answer to Members' questions concerning the proposed market at Queen's Square, Clydebank.

Following discussion, the Committee agreed that the application be granted for a period of three years.

APPLICATION FOR GRANT OF EMPLOYEE STREET TRADER'S LICENCE

Name and Address of Applicant

Date Applied

Connor MacLeod
175 Killoch Drive
Knightswood
Glasgow
G13

21 October 2011

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of an Employee's Street Trader's Licence submitted by the above applicant.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect 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.

The Committee heard Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions.

The applicant was then given the opportunity to address the Committee in support of his application and was heard in answer to questions from Members.

Following discussion, the Committee agreed that the application be granted for a period of one year.

APPLICATIONS FOR GRANT OF WINDOW CLEANER'S LICENCE

(a)	<u>Name and Address of Applicant</u>	<u>Date Applied</u>
	David Grant 132 Craigielea Road Duntocher Clydebank G81 6LA	1 August 2011

With reference to the Minutes of Meeting of the Licensing Committee held on 4 October 2011 (Page 3913 refers), a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Window Cleaner's Licence submitted by the above applicant.

Having heard the Principal Solicitor, it was noted that the application had been withdrawn.

DECLARATION OF INTEREST

Councillor Jim Brown declared a non-financial interest in the undernoted item and left the room during consideration of the application.

(b) <u>Name and Address of Applicant</u>	<u>Date Applied</u>
Scott Matheson 50 Holly Street North Kilbowie Clydebank G81	27 October 2011

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Window Cleaner's Licence by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect 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; and
- (c) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting.

The Committee heard Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions.

The applicant was then given the opportunity to address the Committee in support of his application and was heard in answer to questions from Members.

Following discussion, the Committee agreed that the application be granted for a period of one year.

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

<u>Name and Address of Applicant</u>	<u>Date Applied</u>
David Cassels 7 Northfield Drive Bonhill G83 9BQ	9 September 2011

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 Superintendent of the Police authority making a representation with respect to the application;
- (b) that the letter of 12 October 2011 from the Chief Superintendent, making a representation in relation to the application, had been received on 17 October 2011. In terms of the relevant legislation, a representation with respect to an application should have been submitted within 28 days of receipt of the application. As Mr Cassels' application had been submitted on 9 September 2011, any representation should have been submitted by 7 October 2011. There is, 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 an application if the Licensing Authority was satisfied that there had been sufficient reason why the representation had not been made in the time required;
- (c) 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;
- (d) 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
- (e) that the terms of the letter from the Police authority would be made known to the Committee as appropriate.

It was noted that the applicant and representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were in attendance.

The Committee heard Sergeant Stewart who explained why the Police representation had been submitted outwith the statutory period.

The Committee agreed that the Police representation would be taken into consideration.

The Committee heard Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions.

The applicant was then given the opportunity to address the Committee in support of his application and was heard in answer to questions from Members.

Thereafter, in further support of the application, copies of documentation in support of Mr Cassels' application were circulated (tabled).

After discussion and having heard Sergeant Stewart in answer to Members' questions, Councillor J. McColl, seconded by Councillor Calvert, moved:-

That the application be granted for a period of one year.

As an amendment, Councillor O'Neill, seconded by Councillor McAllister, moved:-

That the application be refused on the ground that the applicant was not a fit and proper person to be the holder of a Taxi/Private Hire Car Driver's Licence.

On a vote being taken, 3 Members voted for the amendment and 3 for the motion. There being an equality of votes, Councillor Finn, Chair used his casting vote in favour of the motion which was accordingly declared carried.

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

(a) <u>Name and Address of Applicant</u>	<u>Date Applied</u>
Neil Brown 57 Lansbury Street Alexandria G83 0SA	19 September 2011

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for renewal of a Taxi/Private Car Hire Driver's Licence by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect to the application;
- (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; and
- (c) that copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting.

It was noted that the applicant and representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were in attendance.

With the permission of the Committee, copies of a letter submitted to the Procurator Fiscal's office from the alleged victim in the pending case against Mr Brown were distributed to Members. It was noted that the letter requested that the charges against Mr Brown be dropped.

The Committee heard from Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions.

After discussion, the Committee agreed:-

- (1) that the application be granted for a period of one year; and
- (2) that the applicant's next Application for Renewal of his Licence should be referred to a meeting of the Committee for consideration and the applicant be invited to attend the meeting.

(b) Name and Address of Applicant Date Applied

John McCormick
22 Gilmour Avenue
Hardgate
Clydebank
G81

26 October 2011

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for renewal of a Taxi/Private Car Hire Driver's Licence by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect to the application;
- (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 copies of the letter from the Police authority had been issued to Members of the Committee in advance of the meeting; and
- (d) that a letter had been received from the applicant's agent, Blair and Bryden Solicitors, providing information in respect of the outcome of the criminal case against Mr McCormick.

It was noted that the applicant and representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were in attendance.

The Principal Solicitor provided details from the letter from Blair and Bryden Solicitors.

The Committee heard from Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions.

Thereafter, Mr McCormick and his representative, Mr Gourlay, were invited to come forward and Mr Gourlay addressed the Committee in support of Mr McCormick's application and explained the background to the offence in respect of which Mr McCormick had been admonished on 11 October 2011, as referred to in the letter from the Police authority. Both Mr Gourlay and Mr McCormick were heard in answer to Members' questions.

After discussion, the Committee agreed that the application be granted for a period of one year.

(c) <u>Name and Address of Applicant</u>	<u>Date Applied</u>
Stephen Smith 67 Redburn Estate Bonhill Alexandria G83 9BS	19 July 2011

With reference to the Minutes of Meeting of the Licensing Committee held on 4 October 2011 (Page 3917 refers), a report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for renewal of a Taxi/Private Car Hire Driver's Licence by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that at the October meeting of the Committee it had been agreed that consideration of the application be continued to the next meeting in order that the applicant be given a further opportunity to appear before the Committee;
- (b) that the applicant and a representative of the Police authority had been invited to attend the meeting; and
- (c) that the applicant was not in attendance.

It was noted that representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were in attendance.

In the circumstances, the Committee agreed that the application be determined in the absence of the applicant.

After deliberation the Committee agreed that the application be refused on the grounds that the applicant was not a fit and proper person to hold a Taxi/Private Hire Car Driver's Licence.

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

<u>Name and Address of Applicant</u>	<u>Date Applied</u>
Henry West 39 Auckland Place Dalmuir Clydebank G81 4JY	31 October 2011

A report was submitted by the Head of Legal, Democratic and Regulatory Services concerning an application for grant of a Temporary Taxi/Private Hire Car Driver's Licence by the above named person.

Having heard the Principal Solicitor, it was noted:-

- (a) that a letter had been received from the Chief Superintendent of the Police authority making a representation with respect to the application;
- (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; 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.

It was noted that the applicant and representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were in attendance.

The Committee heard from Sergeant Stewart in relation to the representation which had been submitted and in answer to Members' questions. It was noted that an intermediate diet had been fixed for 6 January 2012 and a trial date for 23 January 2012 in relation to a pending case.

Thereafter the applicant was then given the opportunity to address the Committee in support of his application and the position was noted in relation thereto.

After deliberation, the Committee agreed:-

- (1) that the application for a Temporary Licence be granted for the maximum period of six weeks; and
- (2) that should the applicant apply for a Taxi/Private Hire Car Driver's Licence then his application for grant of the licence be referred to the Committee for consideration.

HEARING REGARDING POSSIBLE SUSPENSION OF TAXI DRIVER'S/ PRIVATE HIRE CAR DRIVER'S LICENCES

With reference to the Minutes of Meeting of the Licensing Committee held on 4 October 2011 (Pages 3917/18 refer), a report was submitted by the Head of Legal, Democratic and Regulatory Services requesting consideration of the possible suspension of Taxi Driver/Private Hire Car Driver Licences held by Mr. Brian Rainey and Mr. John Neeson.

Following discussion and having heard the Principal Solicitor, it was noted:-

- (a) that on 17 June 2011 a complaint had been received by telephone from Mr Brian Rainey who alleged that he had been physically assaulted by Mr John Neeson at the taxi rank situated on Main Street, Alexandria;
- (b) that having consulted with Mr Andrew Fraser, Head of Legal, Democratic and Regulatory Services, it was decided that due to the nature of the complaint, a hearing should take place to consider the possible suspension of both Mr Rainey and Mr Neeson's taxi drivers' licences;
- (c) that a summary of the complaint had been attached as the Appendix to the report;
- (d) 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;
- (e) that Mr Rainey, Mr Neeson and a representative of the Police authority had been invited to attend the meeting in order that a hearing may take place;
- (f) that 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, either Mr Rainey or Mr Neeson were no longer fit and proper persons to hold a taxi driver's licence;
 - (iii) if the Committee was of the opinion that either Mr Rainey or Mr Neeson were no longer fit and proper persons, then the Committee must consider whether their respective licences should be suspended;
 - (iv) if the Committee was satisfied that either licence should be suspended, the Committee must give Mr Rainey and/or Mr Neeson 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.
- (g) that copies of the letters and photographs that had been submitted on behalf of the TOA in relation to Mr Neeson's alleged misconduct had been issued to Members of the Committee and Mr Neeson in advance of the meeting; and
- (h) that copies of testimonial letters had been received on behalf of Mr Neeson and that it was for the Committee to decide whether the letters should be taken into consideration at the meeting.

It was noted that both Mr Rainey and Mr Neeson and representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were in attendance.

Following discussion, it was agreed that two separate Hearings would be held to consider the possible suspension of Taxi Driver/Private Hire Car Driver Licences held by Mr. Brian Rainey and Mr John Neeson. Thereafter, the Committee agreed to hold a Hearing to consider the possible suspension of the Taxi Driver/Private Hire Car Driver Licence held by Mr Rainey and thereafter, to hold a separate Hearing to consider the possible suspension of the Taxi Driver/Private Hire Car Driver Licence held by Mr Neeson.

Thereafter, at the request of the Chair and having heard from Sergeant Stewart in response, it was noted that that the Police authority had no representations to make in relation to the Hearing as they had had very little involvement in the matter.

Thereafter, the Senior Officer (Licensing) was heard in relation to the report and advised that a summary of the complaint had been provided to Members of the Committee.

The Board then heard from Mr John Watters, Trade Representative, Dumbarton and Alexandria Taxi Trade Association in support of Mr Rainey. In his submission, Mr Watters provided details on the incident which occurred between Mr Rainey and Mr Neeson and in doing so, advised that the incident had been minor in nature and had been reported to the Licensing authority only because of advice from Members at a previous meeting of the Licensing Committee.

Thereafter, both Mr Watters and Mr Rainey were heard in answer to questions from Members.

Following discussion, it was agreed that misconduct on the part of Mr Rainey had been established.

Councillor J. McColl, seconded by Councillor Brown, then moved:-

That a warning letter be issued to Mr Rainey in respect of the incident involving both himself and Mr Neeson.

As an amendment, Councillor Calvert, seconded by Councillor McAllister, moved:-

That a warning letter be issued to Mr Rainey from the Chair of the Licensing Committee concerning his behaviour in respect of the incident involving both himself and Mr Neeson.

That a separate warning letter be issued to Dumbarton and Alexandria TOA advising that the Committee did not believe that TOA had recognised the serious nature of the incident which occurred on Friday, 17 June 2011 and urging it to come to an agreement with other taxi operators to ensure that there is no repetition or escalation of such behaviour.

Furthermore, given Mr Rainey's position as a current shareholder of Dumbarton & Alexandria TOA, the letter to Mr Rainey would state that any further group action in response to such disputes would not be tolerated.

At this point, Councillor J. McColl, with the consent of the Committee, agreed to withdraw his motion, and thereafter the Committee unanimously agreed the amendment.

The Committee then considered the possible suspension of the Taxi Driver/Private Hire Car Driver Licence held by Mr Neeson.

It was agreed that copies of the testimonial letters received in support of Mr Neeson be distributed to Members of the Committee and the copy letters were accordingly distributed.

Thereafter the Senior Officer (Licensing) was heard in relation to the report and advised that the summary of the complaint had been provided to Members of the Committee.

The Board then heard from Mr John Neeson who addressed the Committee on the circumstances relating to the complaint. Mr Neeson was then heard in answer to Members' questions.

Following discussion, the Committee agreed:-

- (1) that a warning letter would be issued to Mr Neeson from the Chair of the Licensing Committee concerning his behaviour in respect of the incident involving both himself and Mr Rainey; and
- (2) that a separate warning letter would be issued to Wright Taxis Limited expressing the concerns of the Committee in respect of the incident that occurred on Friday, 17 June 2011 and urging them to come to an agreement with other taxi operators to prevent the re-occurrence of such an incident.

HEARING REGARDING POSSIBLE SUSPENSION OF PUBLIC ENTERTAINMENT LICENCE

A report was submitted by the Head of Legal, Democratic and Regulatory Services requesting consideration of the possible suspension of the Public Entertainment Licence held by Mr John Smart.

Following discussion and having heard the Principal Solicitor, it was noted:-

- (a) that on 17 October 2011 a letter was received from the Chief Constable of Strathclyde Police requesting the suspension of the Public Entertainment Licence held by Mr John Smart under Section 11(2)(a) of Schedule 1 to the Civic Government (Scotland) Act 1982 on the grounds that the licence holder was no longer a fit and proper person to be the holder of a Public Entertainment Licence;

- (b) that a licensing authority must, before deciding to suspend such a licence, give the holder of the licence, the complainer, the Chief Constable and the Fire authority an opportunity to be heard;
- (c) that Mr Smart and representatives of both the Police authority and the Fire authority had been invited to attend the meeting in order that a hearing may take place;
- (d) that 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 Smart was no longer a fit and proper person to hold a Public Entertainment Licence;
 - (iii) if the Committee was of the opinion that Mr Smart was no longer a fit and proper person, then the Committee must consider whether the licence should be suspended;
 - (iv) if the Committee was satisfied that the licence should be suspended, the Committee must give Mr Smart 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 Smart was in attendance and was accompanied by the Premises Manager, Ms Cameron, and that representatives of the Police authority, Chief Superintendent Millar and Sergeant Stewart, were also in attendance.

Having heard Sergeant Stewart, it was noted that Adele Petrie, the sole Director for the company, 'Hotter Tanning Limited' was the only person to benefit from this offence and had therefore been charged with a Contravention of the Electricity Act 1989, Section 31 and Paragraph 11(1) of Schedule 7. The Committee noted that no further proceedings had been taken by the Procurator Fiscal in the case due to insufficient evidence.

Thereafter, Watch Commander Tom Scott, Fire Safety Enforcement Officer, Strathclyde Fire and Rescue addressed the Committee. He advised that Strathclyde Fire and Rescue carried out a Fire Safety Audit at the premises following receipt of the letter from Strathclyde Police and thereafter a letter of deficiencies in terms of the Fire Safety (Scotland) Act 2005 was sent to Ms Petrie and the owner of the property. Watch Commander Scott was then heard in answer to Members' questions.

Mr Smart was then given the opportunity to address the Committee and thereafter, both Mr Smart and Ms Cameron were heard in answer to Members' questions. It was noted that a Fire Risk Assessment was now in place at the premises.

After discussion, the Committee agreed that no action be taken in relation to the possible suspension of Mr Smart's Public Entertainment Licence.

The meeting closed at 2.24 p.m.