

EAST AYRSHIRE COUNCIL**LOCAL GOVERNMENT LICENSING PANEL****MINUTES OF MEETING HELD ON THURSDAY 12 MARCH 2009 AT 1000 HOURS
IN THE MEETING ROOM, COUNCIL HEADQUARTERS, LONDON ROAD,
KILMARNOCK**

PRESENT: Councillors Hugh Ross, Rose-Ann Cuninghame, John MacKay, Robert Keohone, John Campbell, Gordon Cree, Neil McGhee, Jim Roberts, Barney Menzies and Elaine Dinwoodie.

ATTENDING: David Mitchell, Head of Legal, Procurement and Regulatory Services; Gillian Kuhn, Licensing Board Administrator; and Sharon McHarg, Administrative Officer.

APOLOGY: Councillor Jim Buchanan.

CHAIR: Councillor Hugh Ross, Chair.

EXCLUSION OF PRESS AND PUBLIC

1. The Panel resolved that under Section 50A(4) of the Local Government (Scotland) Act 1973, as amended, the Press and public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 3 of Schedule 7A of the Act.

**APPLICATION FOR GRANT OF A WINDOW CLEANER'S LICENCE -
PATRICK McILVANNEY**

2. There was submitted a report dated 4 March 2009 (circulated) by the Depute Chief Executive/Executive Director of Corporate Support which invited the Panel to consider, by way of a Hearing, an application for the grant of a Window Cleaner's Licence.

It was confirmed that Patrick McIlvanney, the applicant, his sister Isabel and his partner Jan and representatives from Strathclyde Police, were in attendance.

2.1 Preliminary Matters

As a preliminary matter, the Head of Legal, Procurement and Regulatory Services advised the Panel that a letter dated 10 March 2009 had been received from the Chief Constable, Strathclyde Police, advising of two additional pending cases.

In respect of the preliminary matter, Mr McIlvanney, the applicant, confirmed that he objected to the additional letter dated 10 March 2009 being accepted by the Panel on the grounds that it was not appropriate.

The Panel, being satisfied that there was sufficient reason for the submission from the Chief Constable not being made timeously, agreed to accept the late submission from the Chief Constable, Strathclyde Police, which was circulated to Panel Members.

As a second preliminary matter, the Head of Legal, Procurement and Regulatory Services advised the Panel that a further letter dated 2 February 2009 had been

received from the Chief Constable, Strathclyde Police, advising of 'spent' convictions.

In respect of the second preliminary matter, Mr McIlvanney confirmed that he objected to the further Police representation of 2 February 2009 being circulated to the Panel as they were 'spent' convictions and therefore not relevant.

The Police representatives and the applicant, his sister Isabel and his partner Jan, both of whom were representing him, then left the meeting to enable the Panel to take and consider legal advice on the matter.

The parties were then re-admitted.

It was agreed that the letter dated 2 February 2009 from the Chief Constable, Strathclyde Police, be accepted as a relevant submission by virtue of Section 7(3) of the Rehabilitation of Offenders Act 1974 (then circulated) and to determine the application by way of a Hearing.

The Head of Legal, Procurement and Regulatory Services outlined the agreed Hearing Procedure.

2.2 Hearing

The Panel heard Chief Inspector Lawrence, representing Strathclyde Police, in explanation of the Police objections and the applicant and his representatives, who spoke to all matters raised, all in accordance with the agreed Hearing Procedure.

The Head of Legal, Procurement and Regulatory Services then advised that a further letter dated 6 March 2009 (then circulated) had been received from McCluskey Browne, Solicitors, who were acting on behalf of the applicant, which (a) advised that Andrew McIlvanney appeared at Kilmarnock Sheriff Court on 4 June 2008 and not Patrick McIlvanney as indicated by Strathclyde Police; and (b) enclosed a copy of the said complaint of the Procurator Fiscal against Andrew McIlvanney.

The applicant, his representatives and the Police representatives then left the meeting to enable the Panel to take and consider legal advice on the matter.

The parties were then re-admitted.

2.3 Decision

It was agreed that:-

- (i) the applicant be requested to raise the issue of the allegedly erroneous conviction with the Scottish Courts Service and obtain written confirmation of their position in the matter;
- (ii) the application for the grant of a Window Cleaner's Licence be continued to the next meeting of the Panel on 7 May 2009 with the applicant to provide to the Panel by that date any response received from the Scottish Courts Service; and
- (iii) that in the interim, the applicant be granted a temporary licence effective only until 7 May 2009.

The applicant was further advised that it may be appropriate to engage the assistance of his Solicitor, and/or an MSP/MP, in addressing matters with the Scottish Courts Service, if he deemed it appropriate in order to progress the matter timeously.

Councillor Rose-Ann Cuninghame joined the meeting during consideration of the above item.

Councillor Gordon Cree left the meeting during consideration of the above item.

Councillors John Campbell, Jim Roberts and Elaine Dinwoodie left the meeting following consideration of the above item.

APPLICATION FOR GRANT OF A TAXI DRIVER'S LICENCE - DAVID REID

3. There was submitted a report dated 4 March 2009 (circulated) by the Depute Chief Executive/Executive Director of Corporate Support which invited the Panel to consider, by way of a Hearing, an application for the grant of a Taxi Driver's Licence.

It was confirmed that David Reid, the applicant and representatives from Strathclyde Police, were in attendance.

The Head of Legal, Procurement and Regulatory Services outlined the agreed Hearing Procedure.

3.1 Hearing

The Panel heard Chief Inspector Lawrence, representing Strathclyde Police, in explanation of the Police observations and the applicant who spoke to all matters raised, all in accordance with the agreed Hearing Procedure.

3.2 Decision

It was agreed that the application for the grant of a Taxi Driver's Licence be granted, subject to the standard conditions.

ADJOURNMENT/RECONVENTION

4. The Panel then adjourned at 1215 hours and reconvened at 1220 hours with the same Members and Officers present and in attendance.

APPLICATION FOR GRANT OF A STREET TRADER'S LICENCE - JOHN McWHIRTER

5. There was submitted a report dated 4 March 2009 (circulated) by the Depute Chief Executive/Executive Director of Corporate Support which invited the Panel to consider, by way of a Hearing, an application for the grant of a Street Trader's Licence.

It was confirmed that John McWhirter, the applicant and his employee, Sara Hussein and representatives from Strathclyde Police, were in attendance.

The Head of Legal, Procurement and Regulatory Services outlined the agreed Hearing Procedure.

5.1 Hearing

The Panel heard Chief Inspector Lawrence, representing Strathclyde Police, in explanation of the Police observations and the applicant who spoke to all matters raised, all in accordance with the agreed Hearing Procedure.

The applicant, Sara Hussein and the Police representatives then left the meeting to enable the Panel to take and consider legal advice on the matter.

The parties were then re-admitted.

5.2 Decision

It was agreed that the application for the grant of a Street Trader's Licence be granted for the period of one year.

The applicant was advised that in reaching this decision, the Panel had no regard to the pending case and if this should produce a conviction, it would be open to the Police to report that outcome to the Panel and for the Panel to then give due consideration to the possible suspension of the licence.

APPLICATION FOR A MATERIAL CHANGE TO STREET TRADER'S LICENCE - WILLIAM KELLY

6. There was submitted a report dated 4 March 2009 (circulated) by the Depute Chief Executive/Executive Director of Corporate Support which invited the Panel to consider, by way of a Hearing, an application for a material change to a Street Trader's Licence which requested an amendment to his licence for the deletion of two named locations and the substitution of Grange Place, Kilmarnock, to trade between the hours of 1900 hours and 0230 hours, Thursday to Saturday.

It was confirmed that William Kelly, the applicant, was in attendance.

6.1 Hearing

The Panel heard William Kelly, the applicant, who spoke to all matters raised and the Head of Legal, Procurement and Regulatory Services summarised the position.

6.2 Decision

It was agreed that the application for a material change to a Street Trader's Licence which requested an amendment to his licence for the deletion of two named locations and substitution of Grange Place, Kilmarnock, to trade between the hours of 1900 hours and 0200 hours, Thursday to Saturday, be granted, subject to the standard conditions.

The applicant was further advised that if his trading from the new location should give rise in the future to any public order or public safety concerns, then it would be open to Strathclyde Police to bring these to the attention of the Panel.

The meeting terminated at 1250 hours.