

## **EAST AYRSHIRE COUNCIL**

### **LICENSING SUB-COMMITTEE OF THE COMMUNITY SERVICES COMMITTEE**

#### **MINUTES OF SPECIAL MEETING HELD ON TUESDAY 8 AUGUST 2000 AT 1000 HRS IN THE MEETING ROOM, COUNCIL HEADQUARTERS, LONDON ROAD, KILMARNOCK**

**PRESENT:** Councillors Jimmy Carmichael, Katie Hall, Brian Reeves, Julie Faulds, David Macrae, Harry Wilson, Tommy Farrell, William Menzies and Robert Taylor.

**ATTENDING:** William Stafford, Director of Community Services; Bill Walkinshaw, Administration Manager; David Mitchell, Legal Manager; Alison Smith, Principal Officer, Licensing and Community Safety; William McIntyre, Licensing Enforcement Officer; Ron Murray, Environmental Health Officer; Nicholas Duffy, Trainee Solicitor; and Ian Gemmell, Administrative Officer.

**APOLOGIES:** Councillors Ann Hay and John Weir.

**CHAIR:** Councillor Jimmy Carmichael, Chair.

#### **ORDER OF BUSINESS**

1. Following receipt, at the commencement of the meeting, of late submissions by the applicants Agent in respect of application for grant of a Public Entertainment Licence: by Messrs Codona and Stringfellow, the Chair, at his discretion, and in terms of Standing Order 15.1, agreed to alter the order of business and to consider the application after item 3 on the Agenda, Consideration of Suspension of Taxi Driver's Licence No EA/TD68 - Richard McAughtrie.

#### **APPLICATION FOR GRANT OF A TAXI OPERATOR'S LICENCE: JOHN BRUCE, 18 SHANKS COURT, KILMARNOCK**

2. There was submitted report dated 14 July 2000 (circulated) by the Director of Community Services on an application for the grant of a Taxi Operator's Licence.  
It was agreed to grant the application, subject to the standard conditions.

#### **CONSIDERATION OF SUSPENSION OF TAXI DRIVER'S LICENCE NO EA/TD68 - RICHARD McAUGHTRIE, 10 WEST PARK DRIVE, NEW CUMNOCK (Item 3.4, Page 900, 99/02)**

3. There was submitted a report dated 14 July 2000 (circulated) by the Director of Community Services which advised the Sub-Committee of a contravention of the Civic Government (Scotland) Act 1982, and of a breach of conditions attached to Taxi Driver's Licence No EA/TD68.

It was agreed to continue consideration of this matter to a future meeting, which would take the form of a Hearing, at which the applicant and relevant Parties would be invited to appear or to be represented, and to speak to the matters raised.

**HEARING: APPLICATION FOR GRANT OF A PUBLIC ENTERTAINMENT  
LICENCE: CODONA AND STRINGFELLOW, PER IRVIN STRINGFELLOW,  
58 LIGHTBURN ROAD, GLASGOW**

- 4.1** There was submitted a report dated 25 July 2000 (circulated) by the Director of Community Services which invited the Sub-Committee to consider, by way of a Hearing, an application for a grant of a Public Entertainment Licence.

The Applicants' Solicitor, Mr Ronald Gordon, requested the Sub-Committee's consideration of the undernoted documents, which were circulated:- (1) Excerpt from the House of Commons Session 1999 - 2000 the Report on Travelling Fairs (HC 284-1) pages 9 - 7 (IX to XV); (2) Letter from Kilwinning Development Association dated 17 July 2000; (3) Letter from Councillor Robert Reilly of North Ayrshire Council dated 26 July 2000; (4) Letter from the Scottish Maritime Museum re fairground operation in October 1999; (5) Letter from Entertainment Security Personal dated 1 August 2000; (6) Petition containing approximately 250 signatures supporting the application; (7) a set of 11 photographs of various fairground sites.

The Sub-Committee agreed to consider the above documents, in relation to the application and further agreed to a short adjournment for this purpose.

**4.2 ADJOURNMENT/RECONVENTION OF MEETING**

The Sub-Committee adjourned at 1010 hrs and reconvened at 1015 hrs with the same Members, Officers and Parties present.

The Applicants' Agent was given leave to raise the undernoted preliminary matters prior to the commencement of the Hearing:-

- (1) the applicant wished to amend his application as follows:
  - (i) that the period of the fair would now be 6 to 11 September 2000 inclusive; and
  - (ii) that the amended hours of operation would be as follows: Wednesday, Thursday, Friday and Monday - 6pm to 9.30pm; and Saturday and Sunday 1.30pm to 9.30pm;
- (2) the Applicant's Agent invited the Sub-Committee to consider that objections to the application submitted by Alexander Walsh, the Kilmarnock Town Centre Management Initiative, McDonalds, and the Petition objecting to the application should not be considered by reason of their vagueness, irrelevancy and lack of specific detailed grounds of objections, as appropriate;
- (3) he requested permission to lead evidence from Mr Irvin Stringfellow, one of the applicants, and two witnesses.

**4.3 ADJOURNMENT/RECONVENTION OF MEETING**

The Sub-Committee adjourned at 1027 hrs and reconvened at 1044 hrs with the same Members, Officers and Parties present to take legal advice on the preliminary issues raised.

In relation to the preliminary matters raised by the Applicants' Agent, the Sub-Committee advised Agent for the Applicant as follows:

- (i) the amendments to the application in relation to the period of the fair, and its hours of operation were accepted and noted;

- (ii) that in relation to the objections the Sub-Committee were satisfied that each objection provided sufficient notice of the issues to be addressed, were accordingly competent and that the Sub-Committee would give due weight to each objection during its consideration of the application; and
- (iii) to allow the leading of evidence from the Applicant and the two witnesses.

The Administration Manager explained the agreed Hearing procedure.

The Objectors were provided with a copy of the productions submitted by the Applicant's Agent.

#### **4.4 ADJOURNMENT/RECONVENTION OF MEETING**

The Sub-Committee adjourned at 1045 hrs and reconvened at 1053 hrs with the same Members, Officers and Parties present.

The Legal Manager summed up the procedural position at this point, and obtained confirmation from the Applicant's Agent that there were no further preliminary matters.

The Sub-Committee heard objectors Mr Charles Calman, representing Piersland-Bentinck Community Council, Councillor Alexander Walsh, Mr Kenneth Boyd, representing petitioners, and in addition, Superintendent Alistair McKie who spoke to a letter or representation on behalf of the Chief Constable. Mr Ronald Gordon, the Applicants' Agent, questioned each of the objectors in turn, all in accordance with the agreed Hearing procedure.

The Chair obtained confirmation that all objectors wishing to speak had done so.

The Applicants' Agent then led evidence from Applicant, Mr Irvin Stringfellow, and witnesses, Mr William Hammond and Mr Joseph Richard White, both Committee members of the Showmen's Guild.

Objectors Councillor Walsh, Mr Boyd and Mr Calmen then asked questions of the Applicants Agent and witnesses. The Sub-Committee members questioned both parties who concluded by summing up all in accordance with the Hearing Procedure.

Parties then left the meeting to enable the Sub-Committee to take and consider legal advice on the matter.

#### **4.5 ADJOURNMENT/RECONVENTION OF MEETING**

The Sub-Committee adjourned at 1150 hrs and reconvened in private at 1157 hrs with the same Members and Officers present.

Parties were re-admitted along with the Press and public.

It was agreed to refuse the application.

The applicants' agent requested a statement of reasons for refusal and this was noted.

Councillors Hall and Menzies left the meeting at this point.

#### **EXCLUSION OF PRESS AND PUBLIC**

5. The Sub-Committee 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.

**HEARING: CONSIDERATION OF SUSPENSION OF TAXI DRIVER'S  
LICENCE NO EA/TD178 - CHARLES GALLACHER, 24 OLD MILL ROAD,  
KILMARNOCK ( )**

**6.1** There was submitted a report dated 12 July 2000 (circulated) by the Director of Community Services on a complaint received in relation to the conduct of the abovementioned licensed taxi driver, and which invited the Sub-Committee to consider whether or not to suspend the Taxi Driver's Licence No EA/TD178.

There were also resubmitted a report dated 19 June 2000 by the Director of Community Services, a report dated 13 June 2000 being a record of the Enforcement Officer's interview of the Complainer, and a report dated 5 June 2000 being a record of the interview of the Licensee by the Principal Officer, Licensing and Community Safety and the Licensing Enforcement Officer (all circulated).

The Administration Manager advised of the agreed procedure for Hearings,

Mr Lynch, the Applicant's Agent was given leave to raise the following preliminary matters:-

- (i) he requested confirmation that the complaint received on 12 June 2000 was the only matter to be addressed at the present Hearing for the purpose of determining whether or not grounds for suspension were made out; and
- (ii) he invited the Sub-Committee to consider that as the report before them contained no evidence of reprehensible conduct, the Hearing should be abandoned.

**6.2 ADJOURNMENT/RECONVENTION OF MEETING**

The Sub-Committee adjourned at 1312 hrs and reconvened at 1315 hrs with the same Members, Officers and parties present.

With regard to the preliminary matters raised, the Sub-Committee determined as follows:-

- (i) that the complaint received on 12 June 2000 was the only matter to be considered at the present Hearing for the purpose of determining whether or not any of the statutory grounds for suspension were made out; and
- (ii) the various reports before the Sub-Committee disclosed sufficient information as might, following the hearing of Parties' submissions, lead to one or more of the three statutory grounds for suspension of a licence being established and accordingly it was both appropriate and competent to proceed with the proposed Hearing.

**6.3** The Licensee's Agent advised that this was the first intimation he had received that the propriety of his client was to be called into question and requested that the Hearing be adjourned to a future date to allow him sufficient time to fully prepare his client's case.

#### **6.4 ADJOURNMENT/RECONVENTION OF MEETING**

The Sub-Committee adjourned at 1320 hrs to take legal advice and reconvened at 1325 hrs, with the same Members, Officers and Parties present.

**6.5** The Sub-Committee determined that the Licensee having had sufficient notice of the matters to be addressed during the proposed Hearing, it was appropriate to proceed with the Hearing and the Agent's request for a continuation was accordingly refused.

**6.6** The Licensee's Agent then made further representations concerning the sufficiency of the notice afforded to himself and his client of the issues to be addressed at the Hearing. He then renewed his request for a continuation to a later date and further asked in the alternative for the Hearing to be adjourned until 1600 hours that day to enable an application to be made to the Sheriff Court for the purpose of obtaining an Interim Interdict prohibiting the Sub-Committee from proceeding with the proposed Hearing.

The Sub-Committee adhered to its decision not to continue the proposed Hearing to a later date and also refused the alternative request to continue the Hearing until 1600 hours that day.

#### **6.7 HEARING**

The Sub-Committee heard Mrs Rice, the Complainer, and the Licensee and his Agent who spoke to the matters raised. The Complainer was given the opportunity to question the Licensee and his Agent. The Licensee's Agent asked questions of the Complainer. The Sub-Committee members questioned both parties who concluded by summing up all in accordance with the Hearing Procedure.

Parties then left the meeting to enable the Sub-Committee to take and consider legal advice on the matter.

Parties were re-admitted along with the Press and public.

Councillor Wilson, seconded by Councillor Reeves, moved that the licence be not suspended but that the Licensee received an informal warning in respect of his behaviour on the occasion in question.

Councillor Taylor, seconded by Councillor Faulds, moved that the licence be suspended for a period of one month.

On a division by a show of hands the motion was carried by four votes to two.

Councillor Farrell left the meeting during the Hearing relating to the above matter and rejoined the meeting during consideration of the matter. He took no part in the discussion or determination of the matter.

#### **HEARING: APPLICATION FOR GRANT OF A STREET TRADER'S LICENCE: THOMAS NUTT, 51 KERSE TERRACE, RANKINSTON ( )**

**7.1** There was submitted a report dated 14 July 2000 (circulated) by the Director of Community Services which invited the Sub-Committee to consider, by way of a Hearing, an application for the grant of a Street Trader's Licence.

There was also resubmitted a letter of representation dated 13 April 2000 from Strathclyde Police (circulated).

The Sub-Committee heard Superintendent Alistair McKie, representing Strathclyde Police, in explanation of the Police representations, and the Applicant, who spoke to the matters raised, all in accordance with the agreed Hearing procedure.

## **7.2 DECISION**

It was agreed to grant the licence subject to the standard conditions.

Parties then withdrew.

### **CONSIDERATION OF SUSPENSION OF TAXI DRIVER'S LICENCE NO EA/TD376 - IAIN STANDRING, 38 JOHN BAIRD STREET, CUMNOCK**

8. There was submitted a report dated 14 July 2000 (circulated) by the Director of Community Services which advised the Sub-Committee of a criminal conviction against the holder of Taxi Driver's Licence No EA/TD376.

It was agreed to continue consideration of this matter to a future meeting which would take the form of a Hearing, at which the licensee and representatives of Strathclyde Police would be invited to attend or to be represented, and to speak to the matters raised.

### **CONSIDERATION OF SUSPENSION OF TAXI DRIVER'S LICENCE NO EA/TD234 - BRIAN WADDINGTON, 100 ALTONHILL AVENUE, KILMARNOCK**

9. There was submitted a report dated 27 March 2000 (circulated) by the Director of Community Services on a breach of conditions attached to Taxi Driver's Licence No EA/TD234.

It was agreed not to proceed with a Hearing in respect of possible suspension of the licence.

The meeting terminated at 1450 hrs.

**AGENDA**