

Highland Council

Minute of the **Highland Licensing Committee** held in the Council Chamber, Council Headquarters, Glenurquhart Road, Inverness on Tuesday, 9 May 2023 at 10.00am.

Present:

Mr C Birt, Mr J Bruce, Mr J Grafton, Mrs J Hendry, Ms L Johnston, Mr S Kennedy, Ms E Knox, Mr W Mackay, Mr D Macpherson, Mr D Millar, Mr P Oldham, Mr K Rosie.

In attendance:

Ms C McArthur, Principal Solicitor, Regulatory Services
Mr I Meredith, Solicitor, Regulatory Services
Mr G Somers, Solicitor, Regulatory Services
Mr M Elsey, Senior Licensing Officer
Ms A Macrae, Senior Committee Officer

Also attending:

G Brown, Police Scotland

Item 8.1: Dr Neville (applicant), Ms J Miller (applicant's representative), Mr and Mrs Murray (objectors)

Item 8.2: Ms S Black (applicant), Ms J Miller (applicant's representative), Mr and Mrs Murray (objectors)

Item 9.1: Alan Young (applicant)

Item 12.1: Elaine Coll (applicant) and Graham Macdonald (representative)

Item 13.1: Stephen Donn (applicant)

The Chair confirmed that the meeting would be webcast and gave a short briefing on the Council's webcasting procedure and protocol.

Business

1. Apologies for absence Leisgeulan

There were no apologies for absence.

2. Declarations of interest Foillseachaidhean Com-pàirt

Items 8.1 and 8.2: Mr K Rosie (Transparency Statements)

3. Confirmation of minutes Dearbhadh a' Gheàrr-chunntais

There had been submitted for confirmation as a correct record the minute of meeting of the Committee held on 28 March 2023 which was **APPROVED**, subject to an amendment that Mr P Oldham had left for the remainder of the meeting during item 7.

**4. Licences granted under delegated powers
Ceadachdan a bhuilic.eadh fo ùghdarras air a thiomnadh**

There had been circulated **Report No HLC/001/22** by the Principal Solicitor which detailed all Licences which had been granted under delegated powers under the Civic Government (Scotland) Act 1982 granted in the period from 16 March 2023 to 26 April 2023.

The Committee **NOTED** the report.

**5. Pending applications – 3 monthly considerations
Iarrtasan ri thighinn – beachdachaidhean 3 mìosach**

There had been circulated **Report No HLC/002/22** by the Principal Solicitor relating to applications which were currently pending for the grant or renewal of licences under the Civic Government (Scotland) Act 1982.

The Committee **AGREED** to defer determination of the applications, either to:

(a) to allow them to be approved under delegated powers in the event that no objections/representations are received and all outstanding documentation has been received from the applicants; or

(b) to a future meeting of the Committee when the applications will be determined in terms of the hearing procedure.

**6. Houses in multiple occupation need and supply assessment 2023
Taignean ann an Ioma-sheilbh – measadh feumalachd is solair 2023**

There had been circulated **Report No HLC/030/23** by the Principal Solicitor inviting the Committee to consider an updated assessment of the need for and supply of houses in multiple occupation (“HMO”) in Highland undertaken in 2023 by Community Services.

In response to questions, the Principal Solicitor confirmed that he would provide Mr D Millar with details of the HMO within his ward with a capacity of 51 to 99 persons, after the meeting.

The Committee **AGREED** to **MAINTAIN** its position that no application for an HMO licence will be refused on the ground of overprovision under s.131A of the Housing (Scotland) Act 2006, there being no evidential basis to refuse on this ground.

The Committee also **AGREED** that this would be the subject of a further review in 5 years’ time.

**7. Wheelchair Accessible Vehicles – Equality Act 2010 Update
Carbadan So-ruigsinneach do Chathraichean-cuibhle
– Cunntas às Ùr mu Achd na Co-ionannachd 2010**

There had been circulated **Report No HLC/031/22** by the Principal Solicitor relating to amendments made to the Equality Act 2010 which strengthened the public sector equalities duty, specifically with respect to taxis and private hire vehicles.

Thereafter, it was queried whether taxi/phc drivers were required to undergo specialist training in handling wheelchairs. The Principal Solicitor advised that this was not yet required, however the position would continue to be monitored. In response to further questions, he advised that the report aimed to strike a balance between ensuring the needs of wheelchair users were met, while easing the burden on operators as much as possible.

Further comments referred to the fact the amendments would encourage more operators to invest in WAVs on the basis there was demand from constituents and visitors.

The Committee **APPROVED** the Council's updated vehicle specification and timetable on implementing requirements for licensed wheelchair accessible vehicles (WAV).

**8. Civic Government (Scotland) Act 1982
Short Term Let licensing
Achd Riaghaltais Chatharra (Alba) 1982
Ceadachd Aontaidhean Màil Geàrr-ùine**

Transparency Statement:- Mr K Rosie made a Transparency Statement in respect of this item as the owner of an operational short term let. However, having applied the objective test, reviewed his position in relation to the item and any personal connection, he did not consider that he had an interest to declare.

8.1 Application for grant of a short term let licence – Wildcat Lodge, Invertromie, Kingussie, PH21 1NS

There had been circulated **Report No HLC/032/23** by the Principal Solicitor relating to an application which has been received from Dr Ronald Gilmour Neville for the grant of a short term let licence (Ward 20 – Badenoch & Strathspey). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

In summary, Mr and Mrs Murray raised the following main points in relation to their objection:-

- as detailed in their statement appended to the report, the septic tank had been installed with a capacity for 35 persons based on the number of properties and number of bedrooms indicated at that time;
- they had experienced years of septic tank overflow alarms and having to deal with raw sewage. Approval of the application based on a maximum occupancy of 8 persons would place additional strain on the septic tank;
- the planning application and drawings submitted for the property had been for a 3 bedroom residential unit, and not a 4 bedroom commercial let as currently being operated;
- if approval was given for this and the other short term lets at Invertromie and the other residential properties were at full capacity, then total occupancy would be 40 which exceeded the recommended maximum capacity of the shared septic tank;
- quoting directly from British Water's Standards Flows and Loads, in relation to holiday homes and commercial properties in sizing septic tanks, daily sewage loads and population modifications;
- the operation of three holiday home short term lets had changed the nature of a residential development at Invertromie, to a commercial holiday destination. There had been an adverse impact on effluent, rubbish, parking and the general community feel of the place; and
- approval of the application and the other short term lets would result in there being a stronger possibility of contamination within the water course.

Following questions to the objectors, Ms J Miller the applicant's representative, spoke in support of the application. In summary, she raised the following main points:-

- the Invertromie Resident's Association had agreed a parking plan for the properties, including Wildcat Lodge, details of which she provided and the minutes of its meeting in December 2022 recorded there were no current issues with the operation of the property;
- the need to keep dogs on a lead was included in the signage, and operating and arrival instructions;
- in relation to the capacity of the septic tank a weighting was applied rather than it being based on the number of persons. The contractor had confirmed the capacity to be for 44 persons and she referred to the technical assessment provided in relation to this matter;
- the Committee was not the forum to consider the technical issues raised around the septic tank capacity. The correct course of action would be to raise the matter with Environmental Health, Scottish Water, and SEPA;
- it was clear that group bookings for celebrations were not permitted and there was an explicit ban on stag or hen parties. The majority of guests wished to enjoy nature, peace and quiet and the property had been popular with disabled guests; and
- many of the issues raised in terms of occupancy were matters for Planning and Building Control and there had been no objections to the

applications from these parties or from the Scottish Fire and Rescue Service.

Thereafter, and following questions Mr and Mrs Murray advised that the current contractor had expressed concerns about the capacity of the septic tank. Weighting was only appropriate for residential and not commercial properties. They asked the Committee to restrict the maximum occupancy of the premises to 6 persons

Ms J Miller advised that the application for a maximum occupancy of 8 persons had been considered by the statutory consultees and there had been no objections. The application met the relevant licensing criteria in terms of the fit and proper person test and suitability of the premises and should be granted.

On hearing from the Clerk and during debate, Members commented that:-

- the property had originally been designed for 6 persons and the maximum occupancy should be restricted to that number. This was to address the concerns around the capacity of the septic tank system and the possibility of undue public nuisance;
- on the basis of the evidence submitted in relation to the septic tank, the application should be granted as submitted;
- the crux of the matter related to the dispute over the septic tank capacity. It was disappointing that Environmental Health had not commented on the application and the potential to defer the application to seek independent expert information prior to the Committee making a decision;
- deferral of the application and holding a further hearing would not bring forward any further information that would support the licensing aspects of the application; and
- noting it would be at the discretion of the applicant if he wished to amend the application so the maximum occupancy of the premises was 6 persons.

Note: Mr D Macpherson and Mrs J Hendry left for the remainder of the meeting prior to a vote being taken.

Thereafter, Mr P Oldham seconded by Ms L Johnson **moved** to **grant** the application for a short term let licence subject to the mandatory conditions and the additional conditions together with a further additional condition stating:

- the maximum occupancy of the premises be 6 persons

To address the concerns around the capacity issues of the septic tank system and the possibility of undue public nuisance in relation to this.

Mr W Mackay seconded by Mr D Millar moved as an **amendment** to grant the application subject to the mandatory conditions and the additional conditions.

On a vote being taken, the **motion** received 7 votes, the **amendment** received 3 votes with no abstentions. The **motion** was therefore **carried**, the votes having being cast as follows:-

For the Motion

Mr C Birt, Mr J Bruce, Mr J Grafton, Ms L Johnston, Mr S Kennedy, Ms E Knox, Mr P Oldham.

For the Amendment

Mr W Mackay, Mr D Millar, Mr K Rosie.

Decision

The Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory conditions and the additional conditions together with a further additional condition stating:

- the maximum occupancy of the premises be 6 persons

To address the concerns around the capacity issues of the septic tank system and the possibility of undue public nuisance in relation to this.

8.2 Application for grant of a short term let licence – Osprey Lodge, Invertromie, Kingussie, PH21 1NS

Transparency Statement:- Mr K Rosie made a Transparency Statement in respect of this item as the owner of an operational short term let. However, having applied the objective test, reviewed his position in relation to the item and any personal connection, he did not consider that he had an interest to declare.

There had been circulated **Report No HLC/033/23** by the Principal Solicitor relating to an application which has been received from Sarah A Black for the grant of a short term let licence (Ward 20 – Badenoch & Strathspey). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

In summary, Mr and Mrs D Murray, objectors, advised that the same issues applied as at item 8.1 above. The planning application submitted for the property had been for a 3 bedroom house with a maximum occupancy of 6 persons. In deciding to use the property as a short term let, the applicant had marketed it for eight people, by creating a fourth bedroom. This would place additional strain on the septic tank. They requested that the maximum occupancy of the short term let be capped at 6 persons.

Following questions, Ms J Miller on behalf of the applicant, referred to the contractor's report which advised on the capacity of the septic tank. This information had been presented to a meeting of the Invertromie Residents Association at which the objectors had been present. Environmental Health, Building Control and the Scottish Fire and Rescue Service had no objections to the application. if there was an issue with the septic tank or with occupancy,

these were not relevant licensing matters for the Committee. The application met the relevant licensing criteria in terms of the fit and proper person test and suitability of the premises and should be granted.

Thereafter, Mr P Oldham seconded by Ms L Johnson **moved** to **grant** the application for a short term let licence subject to the mandatory conditions and the additional conditions together with a further additional condition stating:

- the maximum occupancy of the premises be 6 persons

To address the concerns around the capacity issues of the septic tank system and the possibility of undue public nuisance in relation to this.

Mr D Millar seconded by Mr W Mackay moved as an **amendment** to grant the application subject to the mandatory conditions and the additional conditions.

On a vote being taken, the **motion** received 7 votes, the **amendment** received 3 votes with no abstentions. The **motion** was therefore **carried**, the votes having being cast as follows:-

For the Motion

Mr C Birt, Mr J Bruce, Mr J Grafton, Ms L Johnston, Mr S Kennedy, Ms E Knox, Mr P Oldham.

For the Amendment

Mr W Mackay, Mr D Millar, Mr K Rosie.

Decision

The Committee **AGREED** to **GRANT** the application for a short term let licence subject to the mandatory conditions and the additional conditions together with a further additional condition stating:

- the maximum occupancy of the premises be 6 persons

To address the concerns around the capacity issues of the septic tank system and the possibility of undue public nuisance in relation to this.

9. Civic Government (Scotland) Act 1982 Street Traders licence Achd Riaghaltais Chatharra (Alba) 1982

larrtas airson ceadachd neach-malairt sràide

9.1 Application for the grant of a street trader's licence – Alan Young

There had been circulated **Report No HLC/034/23** by the Principal Solicitor relating to an application which has been received from Alan Young for the grant of a street traders licence (Ward 14 – Inverness Central). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Senior Licensing Officer advised that in terms of the street traders licensing policy, if an application was received where the applicant wished to trade within the Inverness City Centre, it was referred to the Highland Licensing Committee for determination.

Thereafter, the Committee heard from the applicant.

The Committee **AGREED** to **GRANT** the application for a street trader's licence subject to the standard conditions and with consent to operate within the Inverness City Centre.

10. The Committee **RESOLVED** that, under Section 50A(4) of the Local Government (Scotland) Act 1973, the public be excluded from the meeting during discussion of the following items on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 7A of the Act.

11. **Civic Government (Scotland) Act 1982**
Taxi driver's / operator's licences
Achd Riaghaltais Chatharra (Alba) 1982
Ceadachdan Dhràibhearain / Oibrichean Tagsaidh

11.1 Taxi driver's licence – Donald Murchison

There had been circulated **to members only Report No HLC/035/23** by the Principal Solicitor relating to Donald Murchison who was the holder of a taxi driver's licence (Ward 12 – Aird and Loch Ness). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee **AGREED** to **SUSPEND** the licence holder's licence for the remaining portion of the duration of the licence with immediate effect, under Paragraph 11(2)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982, as the carrying on of the activity to which the licence relates is causing or is likely to cause a threat to public safety as the licence holder is not medically fit to meet the Group 2 (PSV) standard.

The Committee further **AGREED** to **GRANT DELEGATED POWERS** to the Principal Solicitor – Regulatory Services to recall the suspension, if during the period of the suspension, the licence holder submits confirmation from a doctor that he is medically fit to meet the Group 2 (PSV) standard.

12. **Civic Government (Scotland) Act 1982**
Private hire car driver's / operator's licences
Achd Riaghaltais Chatharra (Alba) 1982
Iarrtasan airson ceadachdan do dhràibhearain / oibrichean chàraichean airson fastadh prìobhaideach

12.1 Application for a private hire car driver's licence – Elaine Coll

There had been circulated **to members only Report No HLC/036/23** by the Principal Solicitor relating to an application which had been received from Elaine Coll for a private hire car driver's licence (Ward 5 – Wester Ross, Strathpeffer and Lochalsh). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from Police Scotland, the applicant and the applicant's representative.

The Committee **AGREED** to **GRANT** the application for a private hire car driver's licence, subject to the applicant undergoing and passing a right to work check.

**13. Civic Government (Scotland) Act 1982
Public Entertainment Licences
Achd Riaghaltais Chatharra (Alba) 1982
Ceadachdan Aoigheachd Phoblaich**

13.1 Premises: Geise Farm, Thurso

There had been circulated **to members only Report No HLC/037/23** by the Principal Solicitor relating to an application for the grant of a public entertainment licence for Geise Farm, Thurso by Geise Farm Activities (Ward 2 – Thurso and North West Caithness). The Committee was invited to determine this application in accordance with the Council's Hearings Procedure.

The Committee heard from Police Scotland and the applicants.

The Committee **AGREED** to **GRANT** the application for a public entertainment licence subject to the standard conditions.

The meeting closed at 2.30pm.