

MINUTES of MEETING of the MIDLOTHIAN COUNCIL GENERAL PURPOSES COMMITTEE held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 9 April 2013 at 2.00pm.

Present:- Councillors Rosie (Chair), Baxter, Bennett, Boyes, Bryant, Constable, Coventry, Imrie, Johnstone, Milligan, Montgomery, Muirhead, Russell, Thompson and Wallace.

Apologies for Absence:- Councillors Beattie, Pottinger and de Vink.

1 Introductory Remarks

With reference to the Minutes of Council of 18 December 2012, the Chair confirmed that the Meeting would be audio recorded save, owing to the ongoing consideration of data protection issues, the Hearings relating to applications for licences.

2 Order of Business

There was no change in the order of business. Supplementary correspondence was submitted in respect of Items 5(b) and 7(b) below.

3 Declarations of Interest

Councillors Johnstone and Muirhead declared interests, as they knew the applicants in respect of Items 5(c) and 6(b), below.

4 Minutes

On a motion by Councillor Milligan, seconded by Councillor Baxter, the Minutes of Meeting of 19 February 2013 were approved as a correct record.

5 Civic Government (Scotland) Act 1982

(a)(i) Procedure for Disposing of Applications

There was submitted report, dated 25 March 2013, by the Director, Corporate Resources, concerning the procedure for disposing of applications for licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

(ii) Procedure for considering requests for suspensions

There was submitted report, dated 25 March 2013, by the Director, Corporate Resources, concerning the procedure for considering requests for suspension of licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

(b) Street Trader's Licence - Application – Newtonloan Toll

There was submitted report, dated 25 March 2013, by the Director, Corporate Resources, concerning an application for a Street Trader's Licence by Mr J Tod, 4 Eighth Street, Newtongrange, in respect of a site in the yard of "The Tile Man" premises at Newtonloan Toll, selling Fast Food.

In his report, the Director confirmed the procedure for considering late representations where there was good reason; the conditions of licensing, with particular reference to the distance between street traders and shops selling the same articles; the procedure for the disposal of applications for licences; and the relative resource and other implications.

Appended to the report were letter, dated 6 March 2013, from the Chief Constable; Memorandum, dated 19 March 2013, from the Senior Consultant, Roads Services, which included a site plan and photographs of road conditions at the locus; and the standard conditions of licensing.

There were also submitted letters, dated:-

- (i) 5 April 2013, from Mr J Byrn, 2 Newtonloan Toll stating, *inter alia*, that (1) permission had been given for the use of the site for the activity, subject to customers using the parking facilities within the curtilage of "The Tile Man" property; and (2) planning permission had been granted for a cafe at the location (which had not been proceeded with) and no parking or road safety issues had arisen; and (2) street trading activity had been conducted at the site for a period of two years in the past;
- (ii) 7 April 2013 from the Applicant concerning traffic movements in the vicinity of the site which he considered had not generated traffic problems; and
- (iii) 8 April 2013 to the Applicant acknowledging receipt of these letters and relaying advice that had been received, in respect of the reference to planning permission and; there being no record of previous street trading activity at this location.

At the outset, the representative of the Chief Constable confirmed that the representation had been submitted late and explained that this was because consultation with Roads Officers had been necessary. The Committee agreed that this was sufficient reason why it had not been made in the time required; and, accordingly, agreed that the representation be considered in terms of Paragraph 3(2) of Schedule I to the Act.

The Applicant was heard in relation to the acknowledgement letter of 8 April 2013, described at (iii) above. He advised that two applications for planning permission had been made, one of which had been refused for reasons not related to road safety and the other which included provision for a Cafe / Hot Food outlet which had been granted. He asserted that, as the kiosk was on wheels and therefore would be moved on and off site there was no change of use; and street trading activity had taken place at the site in the past. Following discussion, the Committee agreed that that the terms of the letter be disregarded; and the application be considered on its merits.

The Committee heard further from a representative of the Chief Constable during which he confirmed the nature of the objection, which was based on potential traffic problems in the vicinity of the site i.e. in close to traffic lights and a petrol filling station; and the prospect of obstructions being caused by indiscriminate parking of Heavy Goods Vehicles (HGVs) on the roadside rather than in the Car Park adjacent to the site.

Arising therefrom, the Applicant asked various questions, *inter alia*, aluding to:-

- (a) perceived inaccuracies in the report as regards the (understated) distance between the road junction and the site;
- (b) the misleading impression that HGV Drivers would park on the road side rather than in the Car Park which he considered was capable of easy access.

During questions from Members, the availability of HGV Parking along the A7 from Dalhousie Road to the site and at Butlerfield was discussed; and it was confirmed that no accident statistics were available.

The Committee also heard the Roads Services Manager in amplification of the concerns that had been expressed in relation to danger to road safety and the impact on the road network, potential damage to road verges, the effect of possible over-run by vehicles negotiating the the traffic lights, etc.

Following clarification by the Principal Solicitor that, rather than simply being an observation that the application could not be supported, the Memorandum constituted an objection, which the Committee agreed should be considered in accordance with Paragraph 3(2) of Schedule I to the Act.

The Applicant asked various questions alluding *inter alia*, to the following:-

- (i) currently, many of the the bollards on the roadway near the site had been damaged and did not present any impediment in respect of the prevention of parking of vehicles there;
- (ii) there was adequate on-site car parking;
- (iii) he reiterated that the Memorandum from the Roads Services Consultatnt was an objection which was submitted late, rather than an observation; and
- (iv) the site was not affected by the condition of licensing which restricted the distance from that street trading activities could take place as its primary business was not that of providing Fast Food; and
- (v) currently, parking problems were not evident at the site.

During questions from Members, the reference to HGV Parking was discussed in relation to their comparative length and bulk and the parking facility available, there having had been no accidents at the locus in the past three years; and an observation was made that traffic movements on the A7 may have diminished following the opening of the A68 bypass.

Decision

- (i) To note the report and relative correspondence; and
- (ii) Having noted assurances that customers' parking arrangements would be contained on-site and the kiosk would be movable and not static as had been suggested, to grant the licence on the standard conditions.

(Action – Head of Customer Services)

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Councillors Milligan and Muirhead, respectively, left and rejoined the meeting at this stage (3.15pm).

(c) Taxi and Private Hire Car Licensing – 2012 Revised Best Practice Guidance, Draft Conditions of Licensing and Proposals for Change

With reference to paragraph 6(d) of the Minutes of 13 November 2012, there was submitted report, dated 25 March 2013, by the Director, Corporate Resources, confirming that:-

- (i) on 11 March 2013, a Meeting had taken place concerning the implications of the 2012 Revised Best Practice Guidance on the Draft Conditions of Taxi and Private Hire Car Licensing; and the response to the Scottish Government's "Proposals for Change for Taxis and Private Hire Cars", as described in the **Appendix** hereto;
- (ii) Midlothian Taxi Owners' Association had declined the opportunity to participate; and their Secretary had written to all Members of the Committee directly concerning, in particular, the dress code and fixed steps on taxis; the Association had written direct to Members in similar terms before and had been afforded through their Office bearers, further opportunities to be heard on 4 October and 6 December 2011, but had been unable to provide a persuasive argument and, as a result, at that stage, the proposal to implement the draft dress code stood and fixed steps on taxis were prohibited; and the Secretary of the Association had also raised the question of fees and charges which was receiving ongoing consideration;
- (iii) with reference to paragraph 6(c) of the Minutes of 8 January 2013, the Association had reported that a new version vehicle with Fixed Steps had been approved in London but London Transport had advised informally that (1) they had not yet finalised their deliberations in this respect and awaited submission of revised specifications ie they did not consider that as designed, the fixed step on the new vehicle was safe and had asked that it be contoured so that it did not present a danger to pedestrians; and (2) meantime, would continue to insist on retractable steps; and, as in Midlothian, Licence holders can of course carry steps in the boot of the Taxi for use as necessary;
- (iv) consultation with the manufacturers/suppliers may resolve the maintenance issue;
- (v) in relation to speed cushion collision damage, the Council's Roads Services Manager had advised that the cushions were within the national specification and built well under the minimum underside clearance of factory built cars and did not consider that these traffic calming measures should be altered as that would minimise their effectiveness; and
- (vi) the relative resource implications.

Decision

- (a) To continue consideration of the revised conditions of licensing until August 2013;

- (b) To remit to the Director, in consultation with the Chair to arrange a Meeting in early August with representatives of both Hire Car Associations in Midlothian and the Police and two other Members to review the various matters; and further meetings take place on an ad hoc basis; and to agree that thereafter reports be submitted to Committee as appropriate;
- (c) To note that a further report would be submitted on Fixed Steps in Taxis when there was further change;
- (d) To note that a submission had been made to the Scottish Government in respect of their consultation on Proposals for change;
- (e) To await the outcome of the SG's deliberations in respect of the proposals for change, about which it was possible that further information might be available in August 2013;
- (f) To note an observation that it may prove beneficial to delay proceeding for a month after the Minister's statement; and
- (g) To await further reports on any outstanding issues.

(Action – Head of Customer Services)

6 Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the Meeting during discussion of the undernoted items, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraphs 3, 12 and 14 of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973:-

Decision

(a) Private Hire Car Driver's Licence

- (i) Consideration of Request for Suspension – Agreed not to accede;
- (ii) Consideration of Application – Approved subject to a warning; and
- (iii) Consideration of Application for Renewal – Refused as the Applicant was no longer a fit and proper person to be the holder of a licence;

(b) Street Traders' Licences – Consideration of Applications for Renewal (2) - Granted on standard conditions; and

(c) Window Cleaner's Licence – Consideration of Application – Granted subject to a warning about future conduct.

The Meeting terminated at 5.08pm.

APPENDIX

(relative to paragraph 5(c))

Note of Meeting held at Midlothian House , Buccleuch Street, Dalkeith on Monday 15 March 2013.

Present:-

Representing Midlothian Council – Councillor Rosie (Chair), General Purposes Committee and Mr Atack.

Representing Midlothian Private Hire Car Association - Mr Carson and Mrs Menzies.

Representing Taxi Examination Centre - Inspector Smith and Mr Grieve.

(It was explained that **Midlothian Taxi Owners' Association** (MTOA) had been invited to attend but were not represented as the Office Bearers had declined as they considered that the Council had failed to provide information relating to Fees and Charges.)

1 Introduction

The Chair confirmed that the purpose of the Meeting was to discuss (a) the Revised Best Practice Guidance in the context of the impact on the draft conditions of licensing which had been agreed just before the Revised Guidance had been received, including the question of fixed steps on Taxis; and (b) the "Proposals for Change for Taxis and Hire Cars" issued by the Scottish Government (SG).

There had been circulated in advance (i) report by the Director, Corporate Resources to the Committee on 13 November 2012, outlining the approach to the Revised Best Practice Guidance; (ii) the draft conditions of licensing; and (iii) the Proposals for Change.

During the preamble to the Meeting a number of matters were raised, as follows.

2 Fixed Steps in Taxis.

It was noted that (a) the General Purposes Committee had asked that the decision to refuse to permit Fixed Steps on Taxis be reviewed; (b) on 8 March 2013 concerns had been expressed on behalf of Midlothian Taxi Owners' Association that the effect of that decision would deny licence holders in Midlothian of the opportunity to license a new version in the Peugeot or Nissan range that had been licensed in London, as it had Fixed Steps; and (c) that further information in this respect was awaited.

Inspector Smith reported that there had been no regular complaints about defects in retractable steps; and reiterated that fixed steps were considered to be inherently dangerous.

Mr Carson, himself also a Taxi Licence holder, described the retractable steps as being problematic and gave examples of his own experience of having had to replace them on four occasions in five years owing to weather related failure; and said that other licence holders had reported that their retractable steps had been damaged on Speed Cushions when fully laden.

It was noted that (a) a trawl of local authority views on this issue had been carried out previously and there had been little in the way of feedback ie the problem was not apparent to any great extent elsewhere; and (b) both the City of Edinburgh and West Lothian Councils did not permit fixed steps.

3 Frequency of Meetings of Liaison Group

With reference to a suggestion that there be regular liaison between the Council and the trade, it was agreed that there was merit in this but rather than meeting on a quarterly basis, a six monthly or ad hoc basis according to need was best; and the matters for review at the first meeting could include the wearing and displaying of ID Badges, Drivers' Medicals, matters requiring consideration after this meeting, etc.

4 2012 Best Practice Guidance and Draft Conditions of Licensing

The 2012 Revised Best Practice Guidance was examined in respect of any potential impact on the Draft Conditions of Licensing which had been approved earlier. There was tabled, draft preamble to the conditions of licensing. During discussion, various comments were made about the Revised Best Practice Guidance; and it was agreed that these be considered and a report back made as appropriate.

In respect of the Dress Code, it was suggested that the description be amended to to provide advisory guidance eg shoes and boots to suit weather conditions; full length trousers; dark coloured jeans, etc.

In conclusion, it was agreed that:-

- (a) the implications of the various best practice topics had no direct impact on the draft licensing conditions;
- (b) refinements were required and minor alterations to the draft conditions appeared appropriate; and
- (c) accordingly, it be suggested that the Draft Conditions incorporating the preamble and the alterations described at (b) above be included in the final version of the conditions.

5 Proposals for Change

The Meeting examined the Proposals for Change of the Scottish Government which included reference to:-

- (a) tackling the anomalies of a two tier system of hire cars and drivers;
- (b) closing the "loophole" created by the exemption of 24 hour contract work;
- (c) the impact of the exemption of the voluntary sector;

- (d) a perceived lack of consistency of application nationally and possible need for national standard licensing conditions;
- (e) the removal of doubt as regards the licensing of Hire Car Booking Offices;
- (f) an emphasis on the need for Police involvement;
- (g) the introduction of statutory licensing objectives;
- (h) specific guidance to local authorities as regards the administration of the application process;
- (j) shift of responsibility to the applicant to prove fitness and properness;
- (k) building on established good practice;
- (l) disability and equality awareness;
- (m) enforcement; and
- (n) difficulties created by Special Events Vehicles.

Agreement was reached on the various responses; and during discussion, various comments were made about the Proposals for Change, which, if not reliant on the result of the Scottish Government's deliberations, would be considered and a report back made, as appropriate.

The Meeting terminated at 1.30pm.