

BANFF & BUCHAN AREA COMMITTEE

TUESDAY 21 JUNE, 2022

Present: Councillors Mair (Chair), J Adams, S Adams, A Bell, R Cassie, J Cox, M Findlater, R Menard, and G Reynolds.

Apologies: Councillor S Logan.

Officers: A Keith, (Area Manager); F Stewart, (Senior Solicitor); L Will, (Senior Environmental Health Officer); C Young, (Trainee Solicitor); and J McRobbie (Area Committee Officer).

1. DECLARATION OF MEMBERS' INTERESTS

The Chair asked Members if they had any interests to declare in terms of the Councillors' Code of Conduct. No interests were declared.

2. RESOLUTION: PUBLIC SECTOR EQUALITY DUTY

The Committee **agreed**, in terms of Section 149 of the Equality Act, 2010:-

1. to have regard to the need to:-
 - (i) eliminate discrimination, harassment, and victimisation;
 - (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
 - (iii) foster good relations between those who share a protected characteristic and persons who do not share it; and
2. where an Integration Impact Assessment was provided to consider its contents and take these into account when reaching a decision.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF STREET TRADER'S LICENCE – CAR PARK, THE LINKS, BANFF (REQUESTS TO SPEAK)

There had been circulated a report dated 1 June 2022 by the Director of Business Services requesting Members' determination of an application for the renewal of a Street Trader's Licence which had attracted objections from members of the public.

The Committee heard from the Senior Solicitor of the process which was to be followed.

As a preliminary matter, Members **agreed** to hear from objector whose comments were not submitted on time.

Having heard from Mrs Watt that comments had been sought at a time when she was on holiday in a location which had no internet connectivity, the Committee **agreed** to entertain the late objection in considering the application, deeming that there had been mitigating circumstances and that to hear Mrs Watt would be fair and due process.

The late submission having been shared with the Members, the Senior Solicitor read it out for the benefit of the parties.

Thereafter the Committee heard from the applicant, Mrs Ross, and two objectors, Mrs Strimer-Aiken and Mrs Watt.

Questions for clarification were asked of the applicant, objectors, and Environmental Health Officer on the noise and odour complaints and the timeline of Environmental Health investigation, unannounced site-visits, and subsequent dismissal, of formal complaints; the process for statutory consultees response, where there was no obligation for the Services to respond if they had no view on the matter; the operating decibel level of the replacement, quieter generator; the techniques used to assess noise against background levels; whether generator operational decibels could be stipulated in any licence application approved; the menu and hours of operation to date, in the context of the hours previously granted; the accuracy of the map circulated showing the hot food van location; and the remit of the Committee to consider renewing the licence in terms of length of licence period and reducing hours of operation but not location.

Members **agreed** that they had sufficient evidence to proceed to determine the application.

The applicant was asked if the operating hours, as requested in the licence application, could be amended to encompass a later start, of 10.00 a.m., on Sunday mornings. Mrs Ross agreed that this would be acceptable to her.

Following discussion on the issues of noise and odour concern, and location, as identified in the letters of objection and oral submissions by the objectors, Councillor Reynolds **moved, seconded by** Councillor Menard, that the licence, for the full three years, be granted to Mrs Wendy Ross, to operate a food trailer business from the Banff Links Car Park, supplying hot and cold foods and drink in a trailer that is removed from site at the end of each day, Monday to Saturday 7.00 hrs to 21.00 hrs; and Sunday 9.00hrs to 21.00 hrs.

Councillor Cox moved as an **amendment** that the application be granted for a single year, with amended operating hours of 9.00hrs – 17.00hrs Monday to Friday, and 10.00hrs to 17.00hrs Saturday and Sunday, on the basis of ensuring a good quality of life to nearby residents and that no technical information had been provided to counter complaints made on noise. There being no seconder, the amendment fell.

Members confirmed by a majority the decision to award the licence for the full three years, to Mrs Wendy Ross, to operate a food trailer business from the Banff Links Car Park, supplying hot and cold foods and drink in a trailer that is removed from site

at the end of each day, Monday to Saturday 7.00 hrs to 21.00 hrs; and Sunday 9.00hrs to 21.00 hrs.

Councillor Cox, as the mover of an un-seconded amendment, requested that his dissent be recorded.

The Senior Solicitor confirmed to the applicant and objectors the decision and the process and timescale for formal decision letters and the right of appeal to the Sherriff Court.

DRAFT