

BUSINESS SERVICES COMMITTEE

LICENSING SUB-COMMITTEE

MICROSOFT TEAMS MEETING, 2 SEPTEMBER, 2022

Present: Councillors A Stirling (Chair), M Ewenson (Vice-Chair), G Crowson, J Gifford, J Nicol, L McWhinnie and R Menard.

Apology: Councillor T Mason.

Officers: Senior Solicitor (Fiona Stewart), Solicitor (Lynsey Kimmitt) and Committee Officer (Kasia Balina), all Legal and People.

Also in attendance: Sebastian Cook, Licensing Enquiry Constable, Police Scotland.

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.

2A. PUBLIC SECTOR EQUALITY DUTY

In taking decisions on the undernoted items of business, the Sub-Committee **agreed**, in terms of Section 149 of the Equality Act 2010:-

- (1) to have due regard to the need to:-
 - (a) eliminate discrimination, harassment and victimisation;
 - (b) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
 - (c) foster relations between those who share a protected characteristic and persons who do not share it, and
- (2) to consider, where an equality impact assessment has been provided, its contents and to take those into consideration when reaching a decision.

2B. CONFIDENTIAL INFORMATION

The Sub-Committee **agreed**, in terms of Section 50A (2) of the Local Government (Scotland) Act 1973, to exclude the public from the meeting during consideration of Items 7, 8, 9, 10 and 11 below, on account of the likely disclosure of confidential information, in breach of the obligation of confidence.

3. MINUTE OF MEETING OF THE SUB-COMMITTEE OF 1 JULY, 2022

On consideration of the circulated Minute of the Meeting of the Sub-Committee of 1 July, 2022, Members **approved** it as a correct record.

4. LICENSING SUB-COMMITTEE DATES FOR 2023

With reference to the Minute of Meeting of the Sub-Committee of 2 October, 2021 (Item 5), and on consideration of a circulated report dated 4 August, 2022, by the Director of Business Services, it was **agreed** that meetings of the Sub-Committee would take place at 10.15 a.m. on each of the following dates:-

Friday, 10 February 2023
Friday, 21 April 2023
Friday, 9 June 2023
Friday, 1 September 2023
Friday, 13 October 2023
Friday, 8 December 2023

5. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - IMPLEMENTATION OF LICENSING SCHEME TO LICENCE TRI-WHEELED VEHICLES FOR USE AS A TAXI OR PRIVATE HIRE CAR

There was circulated a report dated 23 August, 2022, by the Director of Business Services, which asked Members to decide whether they were, in principle, willing to implement a licensing scheme to allow tri-wheeled vehicles to be licensed to operate in Aberdeenshire as a taxi or private hire car (PHC), following an inquiry from a member of the public queried the possibility of making an application for a taxi or private hire car licence in respect of a motorised Tuk Tuk.

Having heard Members' comments regarding the nature of Aberdeenshire's rural roads and related road safety issues, the Sub-Committee **agreed**:-

- (1) to note the request received for Aberdeenshire Council to consider implementing a licensing scheme to licence tri-wheeled vehicles for use as a taxi or private hire car;
- (2) to acknowledge the current requirements relating to private hire vehicles; and
- (3) not to instruct officers to conduct further investigations into the use of tri-wheeled vehicles as private hire vehicles and the potential terms by which they could be licensed on the grounds of public safety and the rural character of Aberdeenshire road network.

6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 – SECTION 44 AND SCHEDULE 1 CIVIC GOVERNMENT (SCOTLAND) ACT 1982 LICENSING OF SHORT-TERM LETS ORDER 2022 SHORT -TERM LETS - IMPLEMENTATION OF NEW STATUTORY LICENSING SCHEME

There was circulated a report, dated 23 August, 2022, by the Director of Business Services, which provided Members with information on the new statutory powers which had been given to Local Authorities, as licensing authorities, to regulate short-term lets in the form of a licensing scheme.

Members were informed that the Scottish Government had undertaken extensive consultation to inform the guidance and design principles for licensing schemes. However, licensing authorities were required to implement their own licensing scheme under the legislation. There was a requirement for the Council, as licensing authority, to develop a short-term let policy that was consistent with the Scottish Government's objectives.

Members made comments regarding the consultation process, communication with the public, the consultation timeline, implications for current suppliers of short-term lets, enforcement, planning control areas, and the capacity of the Licensing Team.

Thereafter, the Sub-Committee **agreed**:-

(1) to note:-

- (i) the commencement of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 and the statutory guidance approved by the Scottish Government for applicants and licensing authorities;
- (ii) that the required date of 1 October, 2022 was not attainable and the Scottish Government had been advised of that; and that there was no penalty for failing to meet this deadline and that the Aberdeenshire Scheme would be implemented as soon as possible;
- (iii) the purpose and scope of the Licensing Scheme, as detailed in Sections 3.8 and 3.11 of the report;
- (iv) that there would be no control areas established by the Planning Authority;
- (v) the challenges faced by the Council in implementing the Licensing Scheme;

(2) to agree: -

- (i) that no temporary exemptions be granted for any type of licence;
- (ii) that no policy for temporary licences be adopted;
- (iii) that the duration of licences be three years;
- (iv) that the local conditions be used as a pool of conditions to be attached to licences as appropriate and relevant to the type of property that was being licensed;
- (v) the statutory consultees for the purpose of the licensing scheme of the report;
- (vi) that the procedures for Civic Government Licence Hearings and the approved guidance booklets for Applicants/Objectors and Licence Holders/Complainers would apply to that Scheme;

- (vii) the draft fee structure based as calculated by officers as detailed in section 3.30 of the report;
- (viii) the terms of the draft Policy, Guidance and draft local conditions for the Licensing Scheme, as set out in Appendix 2 to the report; and
- (ix) the timeline for the introduction of the Policy, as set out at Appendix 3 to the report; and

(3) to instruct:-

- (i) the Head of Legal and People to ensure the necessary amendments to the Scheme of Governance be included in the annual review of the Scheme by Full Council; and
- (ii) the Head of Legal and People, in conjunction with the Head of Planning and Economy to carry out the required consultation on the approved Scheme in compliance with the approved timeline.

7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 PARAGRAPH 11 OF SCHEDULE 1:

(7a). CONSIDERATION OF SUSPENSION / REVOCATION OF TAXI DRIVER'S LICENCE (CASE NO. 1048)

With reference to the Minute of Meeting of the Sub-Committee of 1 April, 2022 (Item 4), when it had been agreed unanimously that the application be suspended for a period of 6 months or until the first meeting of the Sub-Committee following the court date scheduled to be in August 2022, there had been circulated a report dated 3 August, 2022, by the Director of Business Services, which (1) requested that consideration be given to whether to impose a suspension/revocation order on a taxi driver's licence, following a previous period of suspension considered and imposed (2) detailed information relevant to the request.

Having heard from the representative of the Chief Constable and the licence holder, Councillor Ewenson, seconded by Councillor Gifford, moved that the carrying on of the activity to which the licence related was not likely to cause a public nuisance or a threat to public order or safety.

As an amendment, Councillor Menard, seconded by Councillor Nicol, moved that the carrying on of the activity to which the licence related was likely to cause a public nuisance or a threat to public order or safety.

Members of the Sub-Committee voted:

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| for the motion | (5) | Councillors Crowson, Ewenson, Gifford, Stirling and McWhinnie. |
| for the amendment | (2) | Councillors Menard and Nicol. |

The motion was carried.

Thereafter, Councillor Ewenson, seconded by Councillor Gifford, moved that the licence holder remained a fit and proper person to be the holder of a taxi driver's licence.

As an amendment, Councillor Nicol, seconded by Councillor Menard, moved that the licence holder did not remain a fit and proper person to be the holder of a taxi driver's licence.

Members of the Sub-Committee voted:

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| for the motion | (5) | Councillors Crowson, Ewenson, Gifford, Stirling and McWhinnie. |
| for the amendment | (2) | Councillors Menard and Gifford. |

The motion was carried and the Committee **agreed**:-

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related was not likely to cause a public nuisance or a threat to public order or safety;
- (3) that the licence holder remained a fit and proper person to be the holder of a taxi driver's licence;
- (4) that a condition of the licence had not been contravened; and
- (5) that the taxi driver's licence was not to be suspended or revoked.

(7b). CONSIDERATION OF SUSPENSION / REVOCATION OF TAXI DRIVER'S LICENCE (CASE NO. 1053)

With reference to the Minute of Meeting of the Sub-Committee of 1 July, 2022 (Item 5d), when it had been agreed to defer consideration of the matter to the meeting of the Sub-Committee on 2 September, 2022, in order that further evidence regarding the character reference and allegations be made available by the licence holder, there had been circulated a report, dated 12 August, 2022, by the Director of Business Services, which (1) requested that consideration be given to a complaint requesting the suspension/revocation of a taxi driver's licence, and (1) detailed information relevant to the request.

Having noted that additional documents had been received from the licence holder and having heard from the representative of the Chief Constable and the licence holder the Sub-Committee **agreed** unanimously:-

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had not caused, was not causing, or was not likely to cause public nuisance or a threat to public order or safety;

- (3) that the licence holder remained a fit and proper person to be the holder of a taxi driver's licence;
- (4) that a condition of the licence had not been contravened; and
- (5) that the taxi driver's licence was not to be suspended or revoked.

(7c). CONSIDERATION OF SUSPENSION / REVOCATION OF TAXI / PRIVATE HIRE CAR VEHICLE LICENCES, TAXI BOOKING OFFICE LICENCE AND TAXI DRIVER'S LICENCE (CASE NO. 1065)

There was circulated a report dated 16 August, 2022, by the Director of Business Services, which (1) requested that consideration be given to the terms of a report by Aberdeenshire Council's Fleet Services, (2) asked Members to determine whether the licences, held by the licence holder should have been suspended or revoked as a result of the conduct of the licence holder, and (3) detailed information relevant to the request.

Having noted that additional documents had been received from the licence holder and having heard from the representatives of the Aberdeenshire Council's Fleet Services, Chief Constable and the licence holder, the Sub-Committee **agreed** unanimously:-

In respect of Vehicle Licences:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licences related had not caused, was not causing, or was not likely to cause public nuisance or a threat to public order or safety;
- (3) that the licence holder remained a fit and proper person to be the holder of the vehicle licences;
- (4) that condition number 24 of the vehicle licence had been contravened; and
- (5) that the vehicle licences were not to be suspended or revoked.

In respect of the Taxi Booking Office Licence:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had not caused, was not causing, or was not likely to cause public nuisance or a threat to public order or safety;
- (3) that the licence holder remained a fit and proper person to be the holder of the taxi booking office licence;

- (4) that condition number 17 of the taxi booking office licence had been contravened; and
- (5) that the taxi booking office licence was not to be suspended or revoked.

In respect of the Taxi Driver's Licence:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had not caused, was not causing, or was not likely to cause public nuisance or a threat to public order or safety;
- (3) that the licence holder remained a fit and proper person to be the holder of the taxi driver's licence;
- (4) that a condition of the licence had not been contravened; and
- (5) that the taxi driver's licence was not to be suspended or revoked.

**(7d). CONSIDERATION OF SUSPENSION / REVOCATION OF TAXI
VEHICLE LICENCE AND TAXI DRIVER'S LICENCE
(CASE NO. 1066)**

There was circulated a report dated 19 August, 2022, by the Director of Business Services, which (1) requested that consideration be given to the terms of a report by Aberdeenshire Council's Fleet Services, following receipt of a complaint by a member of the public about the condition of a licensed taxi operating in the Peterhead area, (2) asked to determine whether the licences held by the licence holder should be suspended or revoked as a result of the conduct of the licence holder, and (3) detailed information relevant to the request.

Having noted that the licence holder had chosen not to attend the meeting, and having heard from the Chief Constable's representative, Councillor Ewenson, seconded by Councillor Crowson, moved to suspend the vehicle licence for a period of 6 months.

As an amendment, Councillor McWhinnie, seconded by Councillor Menard, moved to revoke the licence.

Members of the Sub-Committee voted:

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| for the motion | (4) | Councillors Crowson, Ewenson,
Gifford and Stirling |
| for the amendment | (3) | Councillors McWhinnie, Menard and
Nicol |

The motion was carried and the Sub-Committee **agreed** unanimously:-

In respect of the Vehicle Licence:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had caused, was causing and was likely to cause public nuisance or a threat to public order or safety, based on the photographic evidence presented and evidence heard from representatives of Aberdeenshire Council's Fleet Services and Police Scotland;
- (3) that the licence holder did not remain a fit and proper person to be the holder of the vehicle licence;
- (4) that conditions number 2 and 4 of the licence had been contravened; and
- (5) that the vehicle licence be suspended for a period of 6 months with an additional condition that the vehicle be retested after suspension before the licence was reinstated;

In respect of the Taxi Driver's Licence:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had caused, was causing and was likely to cause public nuisance or a threat to public order or safety based on the photographic evidence presented and evidence heard from representatives of Aberdeenshire Council's Fleet Services and Police Scotland;
- (3) that the licence holder did not remain a fit and proper person to be the holder of the taxi driver's licence;
- (4) that conditions number 6 and 23 of the licence had been contravened; and
- (5) that the taxi driver's licence be suspended for a period of 6 months with immediate effect.

8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATIONS FOR DETERMINATION:-

(8a). APPLICATION FOR GRANT OF TAXI DRIVER'S LICENCE (CASE NO 1057)

With reference to the Minute of Meeting of Sub-Committee of 1 July, 2022 (Item 6b), when it had been agreed to defer consideration of the matter to the meeting of the Sub-Committee on 2 September, 2022, to enable further evidence in relation to non declaration of conviction to be obtained, there had been circulated a report dated 2 August, 2022, by the Director of Business Services, which (1) requested that consideration be given to the application for the grant of a taxi driver's licence

(identified as Case No. 1057), in respect of which the Chief Constable had lodged a representation and (2) detailed information relevant to the application.

Having heard from the applicant and the Chief Constable's representative, the Sub-Committee **agreed** unanimously:-

- (1) that there was sufficient evidence before them to allow a determination to be made; and
- (2) to grant the application for a period of 3 years on the grounds that the applicant was a fit and proper person to hold a taxi driver's licence.

(8b). APPLICATION FOR GRANT OF TAXI DRIVER'S LICENCE (CASE NO. 1064)

There was circulated a report dated 8 August, 2022, by the Director of Business Services, which (1) requested that consideration be given to the application for the grant of a taxi driver's licence (identified as Case No. 1064), in respect of which the Chief Constable had lodged a representation and (2) detailed information relevant to the application.

Having noted that the applicant had chosen not to attend the meeting, and having heard from the Chief Constable's representative, the Sub-Committee **agreed** unanimously to defer consideration of the application to the next meeting of the Sub Committee to obtain further information.

9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 PARAGRAPH 11 OF SCHEDULE 1 – CONSIDERATION OF SUSPENSION / REVOCATION OF TAXI VEHICLE LICENCES, TAXI BOOKING OFFICE LICENCE AND TAXI DRIVER'S LICENCE (CASE NO. 1061)

There was circulated a report dated 29 July, 2022, by the Director of Business Services, which (1) requested that consideration be given to the terms of a report by Aberdeenshire Council's Fleet Services, (2) asked Members to determine whether the licences, held by the licence holder should have been suspended or revoked as a result of the conduct of the licence holder, and (3) detailed information relevant to the request.

Having heard from the representatives of the Aberdeenshire Council's Fleet Services, the Chief Constable and the licence holder and his representative, the Sub-Committee **agreed** unanimously:-

In respect of the Taxi Vehicle Licences:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licences related had not caused, was not causing and was not likely to cause public nuisance or a threat to public order or safety based on the evidence presented and evidence heard from representatives of Aberdeenshire Council's Fleet Services and Police Scotland;

- (3) that the licence holder remained a fit and proper person to be the holder of the taxi vehicle licences;
- (4) that no condition of the licences had been contravened; and
- (5) that the taxi vehicle licences were not to be suspended or revoked;

In respect of Taxi Booking Office Licence:

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had not caused, was not causing and was not likely to cause public nuisance or a threat to public order or safety based on the evidence presented and evidence heard from representatives of Aberdeenshire Council's Fleet Services and Police Scotland;
- (3) that the licence holder remained a fit and proper person to be the holder of the taxi booking office licence;
- (4) that condition number 24 of the licence had been contravened; and
- (5) that the taxi booking office licence was not to be suspended or revoked.

10. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - APPLICATION FOR GRANT OF TAXI VEHICLE LICENCE (CASE NO. 1062)

There was circulated a report dated 28 July, 2022, by the Director of Business Services, which (1) requested that consideration be given to the application for the grant of a taxi driver's licence (identified as Case No. 1062) and (2) detailed information relevant to the application.

Members were informed that in light of a report lodged by Fleet Services in relation to the applicant, who already held various taxi licences, the Head of Legal and People had declined to exercise her delegated powers to grant the application and had referred the application to the Sub-Committee for determination.

Having heard from the representative of the Chief Constable, the licence holder and his representative, the Sub-Committee **agreed** unanimously:-

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) to grant the application for a period of 1 year on the grounds that the applicant was a fit and proper person to hold a taxi vehicle licence.

11. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 PARAGRAPH 11 OF SCHEDULE 1 – CONSIDERATION OF SUSPENSION / REVOCATION OF TAXI DRIVER’S LICENCE (CASE NO. 1063)

With reference to the Minute of Meeting of the Sub-Committee of 1 July, 2022 (Item 7), when it had been agreed to bring the suspension report to the Sub-Committee in respect of the conduct of the licensed taxi driver who had presented a vehicle licence for testing/retesting, there had been circulated a report dated 29 July, 2022, by the Director of Business Services, which (1) asked Members to consider, in light of the conduct outlined in the complaint, whether to suspend/revoke the relevant taxi driver’s licence and (2) detailed information relevant to the request.

Having heard from the representatives of the Aberdeenshire Council’s Fleet Services, Chief Constable and the licence holder and his representative, the Sub-Committee **agreed** unanimously:-

- (1) that there was sufficient evidence before them to allow a determination to be made;
- (2) that the carrying on of the activity to which the licence related had caused, was causing and is likely to cause public nuisance or a threat to public order or safety based on the evidence presented heard from representatives of Aberdeenshire Council’s Fleet Services;
- (3) that the licence holder didn’t remain a fit and proper person to be the holder of the taxi driver’s licence;
- (4) that condition number 21 of the licence had been contravened; and
- (5) that the taxi driver’s licence be suspended for a period of 3 months with immediate effect.