

MINUTE of MEETING of the LICENSING COMMITTEE (PRIVATE) of WEST Lothian Council held within COUNCIL CHAMBERS, WEST Lothian Civic Centre, on 24 JANUARY 2018.

Present – Councillors Peter Heggie (Chair), Chris Horne, Dom McGuire, David Dodds, (substituting for George Paul)

Apologies – Councillor George Paul, Harry Cartmill

1. DECLARATIONS OF INTEREST

Councillor Peter Heggie declared a non-financial interest in Agenda Item 8, in that he was a West Lothian Council appointed member of Disability West Lothian Access Committee.

2. MINUTES

- a) The committee confirmed the Minute of its meeting held on 12 December 2017 as a correct record. The Minute was thereafter signed by the Chair.
- b) The committee confirmed the Minute of its meeting held on 20 December 2017 as a correct record. The Minute was thereafter signed by the Chair.

3. PRIVATE SESSION

The committee resolved under Section 50(A)(4) of the Local Government (Scotland) Act 1973, that the public be excluded from the meeting during consideration of the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraphs 3, 12 and 14 of Part 1 of Schedule 7A of the Act.

4. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - PRIVATE HIRE CAR DRIVER'S LICENCE - ITEM 6

The applicant was in attendance and was represented by his solicitor Mr Sandeman. An interpreter was also in attendance to assist the applicant.

The interpreter advised the committee of her qualifications. She was advised to interpret everything that was said to allow the applicant to follow the entire proceedings.

Police Scotland was represented by Inspector Keith Mailer and accompanied by Inspector Euan Smith.

Introductions were made by all parties.

Mr Sandeman advised he did not require the procedure to be explained.

Inspector Mailer confirmed that he was aware of the procedure.

Mr Sandeman explained that he had left his case files in the office but was content to proceed without them as he had knowledge of the matter. The Clerk provided Mr Sandeman with a copy of the documentation that was before the committee.

Prior to the hearing Mr Sandeman had submitted a letter to the Clerk in respect of his client's medical history. Mr Sandeman advised that his client agreed that this letter could be circulated to the committee members.

The Clerk explained that the matter had called before the committee on 4 October 2017 and that due to disputed matters it had been adjourned at that time to allow all parties to prepare for an evidential hearing.

### Evidential Hearing

Inspector Mailer called his witness and questioned him.

Mr Sandeman was given an opportunity to question the witness.

The committee was given an opportunity to question the witness.

Mr Sandeman then called his client as a witness and questioned him through the interpreter.

Inspector Mailer was given an opportunity to question the applicant through the interpreter.

The committee had an opportunity to question the applicant through the interpreter.

Finally, both parties were given an opportunity to sum up before leaving the room to allow the committee to deliberate in private.

After deliberations both parties returned. The Clerk advised parties of the advice she had given during the private session.

Police Scotland had no comment to make with regard to the legal advice that had been provided.

Mr Sandeman advised that it was not appropriate to make comment at this stage.

### Decision

The committee found that not all the disputed facts had been proved. The Clerk read out the facts that had been proved.

### Determination of Application

The committee heard Inspector Mailer speak in relation to the objection to the application.

Mr Sandeman was given an opportunity to question Inspector Mailer.

The committee had an opportunity to question Inspector Mailer.

The committee heard Mr Sandeman speak in support of the application.

Inspector Mailer was given an opportunity to question Mr Sandeman.

The committee had an opportunity to question Mr Sandeman.

Finally, both parties were given an opportunity to sum up before leaving the room to allow the committee to deliberate in private.

After deliberations both parties returned. The Clerk advised parties of the advice she had given during the private session.

Inspector Mailer had no comment to make to the legal advice that had been given by the Clerk.

Mr Sandeman commented on the legal advice that the objection was in relation to the fit and proper person test and not public safety.

The Clerk confirmed her advice.

The committee then made its decision.

#### Decision

1. To delegate authority to the Chief Solicitor to grant the application subject to the applicant being certified by the council's Medical Examiners as being fit to drive in terms of the standards set out in the DVLA publication entitled "Assessing Fitness to Drive – A Guide for Medical Professionals" by 11 April 2018
2. To delegate authority to the Chief Solicitor to refuse the application in the event a valid medical certificate has not been granted by 11 April 2018.

Councillor Dodds left after that item of business and Councillor McGuire was then able to take part in the remaining business.

#### 5. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - PRIVATE HIRE CAR DRIVER'S LICENCE - ITEM 7.

The licence holder was in attendance and was represented by his Solicitor Mr Sandeman.

Police Scotland was represented by Inspector Keith Mailer and

accompanied by Inspector Euan Smith.

Mr Sandeman and his client advised that they were content to proceed without Mr Sandeman's case files. The Clerk provided Mr Sandeman with a copy of the documentation that was before the committee.

Introductions were made by all parties.

#### Preliminary Matter

In relation to his letter of objection Inspector Mailer requested that the committee allow the information that was contained in Appendix B to be circulated and considered by the committee as he was of the opinion it was analogous and that justice could not be done unless this information was considered by the committee

Mr Sandeman objected to Appendix B being circulated as he was of the opinion that it was not analogous in any way and that Inspector Mailer had not said anything to justify its circulation to the committee.

The Clerk advised that this was a legal issue that would be required to be resolved before a decision could be taken on whether to allow the document to be circulated.

Mr Sandeman then advised that there were a number of disputed facts contained in Appendix A and C.

The Clerk suggested that Police Scotland provide the Licensing Team with written submissions in respect of reasons why the Licensing Committee should consider Appendix B, and this should be done by 24 March 2018.

Police Scotland's submission was to be sent to Mr Sandeman for his response, which would be required to be submitted to the Licensing Team by 24 April 2018.

An evidential hearing would be fixed thereafter for the disputed facts in Appendices A and C once pending cases were resolved.

#### Decision

1. To agree that Police Scotland provide written submissions to the Licensing Team by 24 March 2018, which were then to be sent to Mr Sandeman.
2. To agree that Mr Sandeman provide the Licensing Team with his response to Police Scotland's submissions by 24 April 2018.
3. To agree that an evidential hearing be set thereafter once the pending cases were resolved.

6. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - TAXI LICENCE - REPORT BY CHIEF SOLICITOR - ITEM 8.

The licence holder was in attendance and represented by his solicitor Mr Sandeman.

Police Scotland was represented by Inspector Keith Mailer and accompanied by Inspector Ewan Smith.

Mr Sandeman having previously advised he had left his case files in the office was content to proceed without them. The Clerk provided Mr Sandeman with a copy of the documentation that was before the committee.

The Clerk advised that a report had been prepared in relation to this application for the meeting in October but before the additional information was provided by the applicant. This information changed the application which then required further enquiries and a mobility assessment.

Following the mobility assessment a medical report had been received and was circulated to all parties.

Mr Sandeman wished time to consider the contents of the mobility assessment and advised that he was agreeable that the matter be adjourned to a preliminary hearing.

The Clerk advised that the application was required to be determined by 28 February 2018, and given that further investigations were required in relation to the various types of accessible vehicles, it was therefore suggested that an application be made to the Sheriff Clerk to allow an extension of six months to determine the application.

Mr Sandeman had no objection to the application for an extension of six months to determine the application.

Decision

1. To adjourn to a preliminary hearing on 21 March 2018, to allow an opportunity to make a request to the Sheriff Clerk for an extension of time to consider the application.
2. Noted Mr Sandeman had no objection to a six month extension of time to consider the application.
3. To agree that investigations by Mr Sandeman and the Licensing Team be undertaken in relation to the various types of accessible vehicles.
4. To agree that relevant information be exchanged between Mr Sandeman and the Licensing Team 2 weeks prior to 21 March 2018.

7. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - PRIVATE HIRE CAR DRIVER'S LICENCE -ITEM 9.

The licence holder was in attendance and was represented by his solicitor Mr Sandeman.

Police Scotland was represented by Inspector Keith Mailer and accompanied by Inspector Euan Smith

Introductions were made by all parties.

Mr Sandeman having previously advised he had left his case files in the office was content to proceed without them. The Clerk provided Mr Sandeman with a copy of the documentation that was before the committee.

Mr Sandeman confirmed there was nothing in dispute.

The committee heard Inspector Mailer speak in relation to the suspension request.

Mr Sandeman was given an opportunity to question Inspector Mailer.

The committee had an opportunity to question Inspector Mailer.

The committee heard Mr Sandeman speak in relation to the report and suspension request by Police Scotland.

Inspector Mailer had an opportunity to question Mr Sandeman.

The committee was given an opportunity to question Mr Sandeman.

Finally, both parties had an opportunity to sum up before leaving the room to allow the committee to deliberate in private.

After deliberations both parties returned. The Clerk advised parties of the advice she had given to the committee during private deliberations. Neither party had any comment to make to the legal advice.

Decision

To issue a warning that would be taken into consideration if the licence holder was brought back to the Licensing Committee again.

8. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - TAXI DRIVER'S LICENCE - ITEM 10.

Due to time constraints it was agreed to adjourn this case.

Decision

To adjourn to 21 February 2018.

9. CIVIC GOVERNMENT (SCOTLAND) ACT 1982 - PRIVATE HIRE CAR DRIVERS LICENCE - ITEM 11.

Due to time constraints it was agreed to adjourn this case.

Decision

To adjourn to 21 February 2018.

10. ACTION TAKEN IN TERMS OF STANDING ORDER 31

To note the action taken on 17 January 2018, to suspend a private hire car driver's licence.