



**MINUTES OF THE MEETING OF THE  
LICENSING SUB-COMMITTEE**

**THURSDAY 9 JUNE 2022  
ONLINE DIGITAL MEETING FACILITY**

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**Committee Members Present:**

Councillor C Cassini  
Councillor C McFarlane  
Councillor C McGinn  
Councillor J McMillan  
Councillor T Trotter

**Council Officials Present:**

Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration  
Mr I Forrest, Senior Solicitor  
Ms F Haque, Solicitor  
Ms C Aiken, Licensing Officer  
Mr C Grilli, Service Manager – Governance  
Ms K Harling, Licensing Standards Officer

**Others Present:**

PC Graeme Bairden, Police Scotland

**Clerk:**

Ms B Crichton, Committees Officer

**Apologies:**

Councillor J Findlay

**Declarations of Interest:**

Item 6: Councillor McFarlane declared an interest on the basis of knowing the manager of the business well.

## 1. REGULATION OF SHORT TERM LETS

A report was submitted by the Head of Corporate Support to determine an appropriate licensing regime to regulate short term lets in East Lothian.

Sheila Fitzpatrick, Team Manager – Licensing and Landlord Registration, presented the report, highlighting the salient points. The regulation of short term lets was being introduced through the Civic Government (Scotland) Act 1982, with local authorities required to have a regime running by 1 October 2022, whereby applications would be open to new and existing hosts.

Officers responded to questions from Members. Ms Fitzpatrick advised that Cabinet would have to set short term let fees at the September 2022 meeting to ensure fees were in place when the regime went live on 1 October. Carlo Grilli, Service Manager – Governance, added that there would be an opportunity to continue to review fees in place for good landlords; it would be possible to ask the landlords whose cases became more time-consuming to come back more often for licence renewals. However, before this information became available, an initial proposal was made to offer licences to all applicants for one year; if no negative feedback was received within that period, the licensing authority would use discretion to extend licences for one, two, or three years going forward, which would benefit landlords who were operating well.

Councillor McMillan sought reassurance that fees would be realistic and would not lead to the loss of a significant proportion of the 300+ existing short term let landlords that the council was aware of in the county. Councillor McGinn agreed with this sentiment and asked if fees could be discussed again, prior to them being set at the September Cabinet meeting. Mr Grilli said that Members could be briefed once a fee structure had been formulated; this would essentially become a working group to ensure Members were content with proposals.

Responding to further questions, Ms Fitzpatrick compared the granting of short term let licences to licenses for houses in multiple occupation (HMO); time taken to grant an HMO licence varied wildly depending on the time taken for the landlord to submit all of the required paperwork. She would remain in touch with colleagues on the national forum on this topic, and could report back to Members at a later date. She advised that under the Civic Government (Scotland) Act 1982, the licensing authority could increase fees annually, taken from RPI. However, a full review of all licensing fees would be underway in the near future, which would take in the costs associated with running new licensing software. Mr Grilli added that fees were set so that licensing was self-funding and would continue to support licensing objectives.

Councillor McMillan had been concerned that the legislation could lead to a serious burden on resources; he acknowledged the need to cover costs, but noted that some landlords of short-term lets may have tourism certificates and be able to evidence the good running of their establishments. He welcomed Ms Fitzpatrick's offer to make use of the licensing network for benchmarking purposes, but sought reassurance that any increase in resources would be covered.

Councillor McGinn commented that there appeared to be broad agreement in terms of the report recommendations, but suggested an amendment may be sought in terms of the fees structure. Ms Fitzpatrick agreed that it would be useful to discuss resources and fees with other local authorities. Mr Grilli suggested that the Sub-Committee agree to delegate the fee structure to be put in place by the Service Manager – Governance, in consultation with the Convener/Sub-Committee; this would ensure that Licensing

Sub-Committee Members were content the with proposed fee structure to be brought forward to Cabinet. Councillor McGinn agreed and formally proposed this amendment to the recommendations, and Councillor McMillan seconded the proposal.

The Convener then moved to a vote on the report recommendations as amended, which was taken by roll call. The amended recommendations received unanimous support.

### **Decision**

The Licensing Sub-Committee unanimously agreed that:

- i. Temporary exemptions would not be granted for any type of licence;
- ii. East Lothian Council would not adopt a temporary licence policy for any type of licence;
- iii. Licences would be granted and renewed for periods of three years, unless otherwise determined by the Licensing Authority;
- iv. The additional conditions (set out in Appendix 1) would be applied to all licences;
- v. Self-certified applications would generally be accepted, with property inspections being carried out when required; and
- vi. Further consideration would be given to the fee structure proposed, and this would be delegated to be put in place by the Service Manager – Governance, in consultation with the Convener, prior to the Cabinet meeting on 13 September 2022 where fees would be determined.

## **2. TAXI FARE REVIEW**

A report was submitted by the Head of Corporate Support to consider the review of the fares or other charges currently in operation in respect of the East Lothian taxi fleet.

Ian Forrest, Senior Solicitor, presented the report, highlighting the salient points. There was a statutory requirement on the council to review taxi fares on an 18-month cycle, to be completed by August 2022. There had been no responses to the consultation with the trade and the public, and legislation allowed for the review to be completed with no changes; the report therefore recommended that fares be kept at the current rates, and a public notice be made in the local press.

Officers responded to questions from Members. Ms Fitzpatrick advised that the consultation had been sent to taxi licence holders who were also operators, approximately 70-75 persons, which also covered single-cab owner/operators.

Councillor Trotter supported the recommendation that no change be made to taxi fares. However, other Members expressed concern about the lack of responses to the consultation and about communication with the trade. Councillor McMillan was concerned that increases in running costs, particularly fuel costs, would not be adequately covered should there be no increase in fares. He suggested that further communication be made with the trade for further discussion at the September meeting of the Licensing Sub-Committee, however, Mr Forrest advised that the review required to be concluded by August.

Councillor Trotter felt that the trade had had the opportunity to make their views known, but agreed that further engagement could be considered. He noted that the current

cost of living crisis was causing difficulty for everyone and asked whether any decision could be revisited. Mr Grilli responded that a decision made by Council or a Committee could be reversed within six months, requiring a two-thirds majority, which in this case would also have to tie into the taxi fare review mechanism in place. He noted that another review would begin this time the following year.

Councillor McMillan suggested that an increase in fares which was in line with inflation may go some way to help cover taxi drivers' costs, but was also mindful that the cost of living was an issue for passengers. Mr Grilli suggested that a general policy of indexation against inflation could become the benchmark, with final approval coming from the Licensing Sub-Committee. Mr Forrest noted that the structure for licensing fees automatically increased according to RPI and did not require Cabinet or Committee approval; a similar procedure may make sense with taxi fares, subject to trade consultation.

Councillor Trotter felt that without the input from the trade, the current proposal not to increase fees should be approved by Members. In addition to the public notice that would ordinarily be posted in the local press, Members asked officers to contact taxi operators with news of the decision not to increase fees. Ms Fitzpatrick suggested that officers could communicate the decision made at today's meeting with all taxi operators.

The Convener proposed that officers contact taxi operators to inform them of the decision, and that he would agree the wording at a later date with officers in respect of engagement between the trade and the council. Councillor Trotter seconded this proposal.

The Convener then moved to a vote on the report recommendations, as amended, which was taken by roll call. There was unanimous support from the Sub-Committee.

## **Decision**

The Licensing Sub-Committee unanimously agreed:

- i. to complete the review of taxi fares by resolving to keep fares at their current levels, given the lack of any proposals for an increase from the trade;
- ii. that the confirmed tariff would come into effect on 1 August 2022. **\*Post-meeting note:** due to a delay in advertising the public notice, the new fares would instead come into effect on 27 August 2022.\*;
- iii. to authorise officers to advertise and explain the effect of the proposals and invite representations from the public; and
- iv. that officers would contact taxi operators to inform them of the decision, and the Convener would agree wording of this communication with officers to try to encourage engagement from the trade.

## **3. LICENSING OF SEXUAL ENTERTAINMENT VENUES (SEVs)**

The Head of Corporate Support had submitted a report to inform Members of the draft Licensing of Sexual Entertainment Venue (SEV) Policy Statement, prior to public consultation on the same.

Ian Forrest, Senior Solicitor, presented the report. He advised that the report was being made following the Licensing Sub-Committee's approval of the licensing regime for SEVs on 13 January 2022, and their request on the same date to be sighted on the proposed policy statement prior to public consultation.

Officers responded to questions from Members. Ms Fitzpatrick advised that the consultation would be announced through the corporate communications team, and the consultation on Citizen Space would last for six weeks.

Councillor McMillan felt that it was a tribute to the meticulous work of officers that there were no comments on the draft policy statement, which took in complex legislation. He hoped that the public would engage if they had any ideas or concerns. Councillor Trotter echoed Councillor McMillan's remarks.

The Convener commented that the policies were important in the context of preventing violence against women and girls. He highlighted that a number of responses had been received to the previous consultation prior to approval of the licensing regime, and hoped that the public would respond to the consultation on the proposed policy statement.

The Convener then moved to a vote on the report recommendations, which was taken by roll call. The Sub-Committee supported recommendations unanimously.

### **Decision**

The Licensing Sub-Committee unanimously agreed:

- i. the draft policy (Appendix 1) and conditions (Appendix 2); and
- ii. that officers would now undertake the consultation and report back.

### **SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION**

The Sub-Committee will exclude the public from item 4 in terms of paragraph 14 (action taken in connection with the prevention, investigation, or prosecution of crime) and from items 5-7 in terms of paragraph 6 (information relating to the business affairs of particular persons) of Schedule 7A to the Local Government (Scotland) Act 1973.

#### **4. CONSIDERATION OF THE FITNESS AND PROPRIETY OF AN EXISTING LANDLORD**

The Licensing Sub-Committee agreed that the landlord would be removed from the register.

#### **6. STREET TRADER LICENCE APPLICATION**

The Licensing Sub-Committee granted the street trader licence.

**5B. TAXI DRIVER LICENCE APPLICATION**

The Licensing Sub-Committee refused the application.

**5A. TAXI DRIVER LICENCE APPLCIATION**

The Licensing Sub-Committee refused the application.

**5C. TAXI DRIVER LICENCE APPLCIATION**

The Licensing Sub-Committee refused the application.

**7. WINDOW CLEANER APPLICATION**

The Licensing Sub-Committee refused the application.

**PRIVATE**

**4. CONSIDERATION OF THE FITNESS AND PROPRIETY OF AN EXISTING LANDLORD**

A report was submitted by the Head of Corporate Support which sought a decision by the Licensing Sub-Committee as to the fitness and propriety of Paul Chalmers to continue acting as a registered landlord.

Ms Fitzpatrick presented the report, and advised that the council had been made aware of Mr Chalmers' convictions by a neighbouring local authority where he also acted as a landlord; this type of information sharing was standard practice. East Lothian Council made its own enquiries with Police Scotland, the return from which was presented at Appendix 1. She advised that the neighbouring local authority would use their own procedures to consider whether Mr Chalmers was a fit and proper person to remain on the landlord register.

PC Graeme Bairden said that the gravity of Mr Chalmers' convictions spoke for themselves.

Officers and PC Bairden answered questions from Members. Ms Fitzpatrick advised that landlords self-certified their fitness to act as a landlord, and checks were only made when there was cause to do so. There were no statutory consultees for landlord registration, and resources would not permit Police Scotland to make checks on every landlord. It was suggested that it may not have been possible to make contact with Mr Chalmers as he may currently be serving 20 months imprisonment. Ms Fitzpatrick noted that Mr Chalmers' other convictions would not have been spent when he made his application, and therefore they should have been declared as part of the application process.

Members expressed concern that Mr Chalmers was able to register as a landlord in East Lothian when he had serious convictions on his record. Ms Fitzpatrick confirmed that the national portal on which landlords made their application did ask about convictions, and prospective landlords had to declare that all the information they had provided was accurate. Mr Grilli advised that changes could not be made to the registration process at local authority level, and would instead have to be taken through parliament.

Councillor Trotter suggested that the issue be highlighted by the Sub-Committee by writing to the Scottish Government. The Convener agreed that there was an unacceptable gap in the process. Mr Grilli suggested that a letter be drafted representing the views of the Sub-Committee and taken to the Chief Executive for sign-off.

Councillors McMillan and McGinn expressed that they did not think that Mr Chalmers was a fit and proper person to remain on the register.

Responding to further questions from the Committee, Ms Fitzpatrick advised that Mr Chalmers' property housed one male tenant who had lived there for a number of years. Should Mr Chalmers be removed from the landlord register, he would not be allowed to rent out the property and he would have to serve the tenant notice to quit the property; there was therefore a risk the tenant could present to the council as homeless. If the landlord did not issue the correct notices or the tenant did not move out, then a rent penalty notice would be served and the homelessness prevention team would make contact with the tenant.

Mr Grilli and Mr Forrest suggested that the letter to Scottish ministers regarding information gathering in respect of previous convictions of landlords be managed outwith the Committee structure; this would be drafted and presented to the Chief Executive for sign-off.

Councillor Trotter proposed that Mr Chalmers was not a fit and proper person to remain on the landlord register, and this was seconded by Councillor Cassini.

The Convener then moved to a vote on Councillor Trotter's proposal. The Sub-Committee supported this proposal unanimously.

### **Decision**

The Licensing Sub-Committee unanimously agreed that the landlord was not a fit and proper person to remain on the register of private landlords for East Lothian, and he therefore would be removed from the register.

*Sederunt: Councillor McFarlane left the meeting*

## **6. STREET TRADER LICENCE APPLICATION**

An application had been received from James McFadyen for a street trader licence, and had been brought before the Sub-Committee on the basis of an objection from Police Scotland.

Mr Forrest confirmed Mr McFadyen's address and explained the procedure for the hearing.

PC Bairden advised that Mr McFadyen had a pending case regarding a domestic incident and had been cited to appear at Edinburgh Sheriff Court. He confirmed that Mr McFadyen had correctly ticked that he had no convictions as the street trader licence application form did not refer to pending cases.

Mr McFadyen spoke to his application. He said that the court cases ought to have been heard by now, but the date had been postponed on several occasions due to his ex-partner not attending court. He advised that the case was due to a dispute with his ex-partner over access to his daughter. He stated there had been no assault involved in the domestic incident.

PC Bairden advised that someone failing to appear at court as a witness would have been dealt with as a separate matter. He advised that the case was now due to be heard on 2 August 2022.

Responding to questions from Members, Mr McFadyen advised that he had a clean record. He was currently an employee of a bin cleaning company, but was unable to undertake bin cleaning without obtaining a street trader licence. He described his current duties, but said his role was unsustainable because he had been employed as a bin cleaner. Mr Forrest confirmed that Mr McFadyen did require a street trader licence to undertake this line of work, even though he worked for an employer who already held a licence.

The Convener then moved to a vote, which was taken by roll call.



Grant licence: 3 (Councillors Cassini, Trotter, and McGinn)  
Refuse licence: 0  
Continue application: 1 (Councillor McMillan)

The Convener informed Mr McFadyen that his licence had been granted, but reminded him that he was duty-bound to inform the local authority of any convictions following his trial.

### **Decision**

The Licensing Sub-Committee agreed to grant the street trader licence.

*Sederunt: Councillor McFarlane re-joined the meeting*

### **5B. TAXI DRIVER LICENCE APPLICATION**

An application had been received from Mark Gifford for a taxi driver licence, and had been brought before the Sub-Committee on the basis of an objection from Police Scotland.

Mr Forrest confirmed Mr Gifford's address and explained the procedure for the hearing.

PC Bairden advised that Police Scotland had submitted an objection on the basis that Mr Gifford had a conviction for public indecency on his record. He provided detail of the incident, which had occurred in February 2016 at Longniddry Bents, and asked the Sub-Committee to consider whether Mr Gifford was a fit and proper person to hold a taxi driver licence. He also confirmed that the speeding offence declared on Mr Gifford's application form was classed as spent.

Mr Gifford was present to speak to his application. He noted some inaccuracies in the reporting of the incident, which he confirmed had taken place in front of two uniformed officers in a marked vehicle. He said there had been no criminal intent to the incident; he had followed the criminal process and reassured Members that he was not a danger to the public. He advised that he held two roles which required high-level vetting, one of which related to Scotland's census and another relating to universities in London. He described himself as a trustworthy member of society who had made a bad decision.

Responding to questions from Members, Mr Gifford said that AC's Taxis were aware of the incident and were happy to employ him. He provided further detail regarding the incident, which had taken place when he had been intoxicated and used a local public bathroom. He had been unaware that police had been present. Mr Gifford said he had been advised by police not to give evidence at the time, and had therefore never spoken in an official forum about the incident until now.

PC Bairden advised that officers had been present because the Longniddry Bents car park was well known at the time for drug use and inappropriate sexual activity. He said that officers had seen Mr Gifford 10ft away from the public bathroom, and therefore took issue with Mr Gifford's account.

The Convener called an adjournment to allow Members to discuss the application in private.

Upon the Sub-Committee's return, the Convener moved to a vote, which was taken by roll call.

Grant licence:	2	(Councillors McGinn and Trotter)
Refuse licence:	3	(Councillors Cassini, McFarlane, and McMillan)
Abstentions:	0	

### **Decision**

The Licensing Sub-Committee refused to grant the taxi driver licence.

### **5A. TAXI DRIVER LICENCE APPLICATION**

An application had been received from Gary Reid for a taxi driver licence, and had been brought before the Sub-Committee on the basis of an objection from Police Scotland.

Mr Forrest confirmed Mr Reid's address and explained the procedure for the hearing.

PC Bairden advised that Police Scotland had submitted an objection on the basis of several convictions on Mr Reid's record. He provided detail of these incidents as per the police letter, which had occurred between 2008 and 2019. He summarised that Mr Reid had shown himself to be a violent individual who had assaulted police officers and had no respect for public safety; he was therefore not considered to be a fit and proper person to hold a taxi driver licence.

Mr Reid was present to speak to his application. He stated that he had not assaulted police officers, and said that the officers had pulled him over and attacked him. He said he had been young and naïve when he had been caught drink driving. He said that he was just trying to provide for his family in applying for a taxi driver licence.

Responding to questions from Members, Mr Reid said that he had not declared his convictions because he had been unsure of what was meant by 'spent' and 'unspent' convictions. He said that his most recent conviction had come about after he fell asleep on a bus after a Christmas night out, and found himself in a police van; he denied that there had been any issue in his dealings with the police. He also reassured Members that he had not caused trouble in his workplace, and his work had involved working with the public and driving for the last four years.

Responding to further questions from Members, Mr Reid said he was looking to work with AC's Taxis, but his father was also a taxi operator and he might work for him in the longer term. He confirmed that AC's Taxis did not know about his criminal convictions, but he would speak with them if his licence was granted and this was required. He said that he intended to work as a taxi driver at the weekends to help with the rising costs of living.

The Convener called an adjournment to allow Members to discuss the application in private.

Upon the Sub-Committee's return, the Convener advised that Members had unanimously voted to refuse to grant a taxi driver licence to Mr Reid.

### **Decision**

The Licensing Sub-Committee refused to grant the taxi driver licence.

## **5C. TAXI DRIVER LICENCE APPLCIATION**

An application had been received from Lewis Lach for a taxi driver licence, and had been brought before the Sub-Committee on the basis of an objection from Police Scotland.

Mr Lach had advised licensing officers and the committee clerk verbally that he wished to withdraw his application, but had not submitted notice formally in writing. He was not therefore in attendance at the hearing. Given no formal notice of withdrawal had been received, Members agreed to hear the application in Mr Lach's absence.

Responding to questions from the Convener, PC Bairden advised that officers who had dealt with Mr Lach previously had indicated that consideration should be given to there being an appropriate adult present with Mr Lach to help him understand procedures; it would have been Mr Lach's decision as to whether he wished to have an appropriate adult present. The Convener and PC Bairden both expressed concern as to whether Mr Lach would therefore be able to cope with the responsibilities of a taxi driver.

PC Bairden provided information, as per the police letter, regarding Mr Lach's convictions, including producing a large combat knife during a road rage incident, and being in possession of a smaller lock knife. Officers had noted concern for Mr Lach's mental wellbeing; after finding him in possession of a knife after a search under the misuse of drugs act, Mr Lach had told officers the knife was in his possession because he wished to hurt himself. PC Bairden concluded that Mr Lach was not a suitable person to be in possession of a taxi driver licence.

The Convener moved to a vote, and the Sub-Committee unanimously refused to grant the taxi driver licence.

### **Decision**

The Licensing Sub-Committee refused to grant the taxi driver licence.

## **7. WINDOW CLEANER APPLICATION**

An application had been received from Sean Blair for a window cleaner licence, and had been brought before the Sub-Committee on the basis of an objection from Police Scotland.

Mr Blair had been made aware of the hearing, but had failed to make contact with officers or appear at the hearing. The Committee agreed to hear the application in Mr Blair's absence.

PC Bairden provided information regarding the incidents which led to Mr Blair's convictions, as per the police letter. These included: entering a neighbour's property and slashing another male to the arm, and shouting and swearing at police officers and threatening to set a dog on them; the supply of cannabis; and producing a knife when his credit card was refused in a store. He also had pending convictions including: being accused of breach of bail conditions; being accused of assaulting two victims to severe injury; and being accused of driving a vehicle without insurance. PC Bairden

concluded that Mr Blair was not a fit and proper person to hold a window cleaner licence.

The Convener moved to a vote, and the Sub-Committee unanimously refused to grant the window cleaner licence.

**Decision**

The Licensing Sub-Committee refused to grant the window cleaner licence.

Signed

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Councillor C McGinn  
Convener of the Licensing Sub-Committee