



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

**THURSDAY 9 NOVEMBER 2023
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

Councillor C McGinn (Convener)
Councillor C Cassini
Councillor J Findlay
Councillor C McFarlane
Councillor J McMillan

Other Councillors Present:

None

Council Officials Present:

Mr I Forrest, Senior Solicitor
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Ms C Aitken, Licensing Officer

Others Present:

PC L Wilson, Police Scotland

Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor T Trotter

Declarations of Interest:

None

***Post-meeting note:** Item 7: Councillor McGinn clarified at the Licensing Sub-Committee meeting of 21 December that he knew the owners of the tattoo studio but did not know the applicant and had felt able to make a decision on the application.*

1. MINUTES FOR APPROVAL – LICENSING SUB-COMMITTEE, 12 OCTOBER 2023

The Licensing Sub-Committee agreed the minutes were an accurate record of the meeting.

2. APPLICATION FOR THE GRANT OF A LICENCE TO OPERATE A SHORT-TERM LET

a. 32 Douglas Marches, North Berwick

An application had been received from Klaus Frommel for a licence to operate 32 Douglas Marches, North Berwick, as a short-term let (STL). The application would be heard by the Licensing Sub-Committee because of public objections received. The Sub-Committee was required to focus on the suitability of the property to operate as an STL, and on the applicant to hold an STL licence.

Ian Forrest, Senior Solicitor, introduced the application. He highlighted the number and terms of the public objections, which had pointed out issue with display of the site notice, and he drew attention to the detailed response from the applicant. He confirmed that no objections had been received from any of the statutory consultees. He highlighted the impact of a recent court decision in Edinburgh which, in summary, said that in determining a short-term let licence application, the Licensing Sub-Committee should not look at matters already addressed as part of the planning process. The Convener then explained the process for the hearing.

Mr Frommel was present to speak to his application, and was accompanied by his son, Christian Frommel. Mr Frommel drew attention to the letter he had written in response to neighbour objections. He had been sorry to worry his neighbours and had been surprised and disappointed to have received objections to his application. He spoke positively of his relationship with his neighbours and felt they had misunderstood the scale of the letting planned, which was intended only for a few weeks across the summer months. He said he would only accept families or golfers. He said he was a single father with three children and the property was his family home; he sought to supplement his pension by offering short holidays where he would be present at the property throughout. He felt the property was ideally situated in that the house was at the end of a private driveway, with fields on one side, within walking distance of the train station, and people would not be required to drive through North Berwick to reach the location. He apologised for concerns over the notice; he understood this could have been done better, but noted that the objections received meant that the notice had been seen. He summarised that he would let the property only for a few weeks each year, generally to families who would stay for a week or longer. He would not allow guests to access the garden unless the neighbours gave their permission for this. He advised there were clear house rules, and he would personally ensure there was no noise and would restrict to a maximum of two cars on his private driveway. He would deal with all recycling and waste personally. He reassured Members that he had worked in the tourism industry for years and would undertake steps such as collecting a security deposit and asking guests to fill in a questionnaire. He advised that the property had five bedrooms, so he expected that there would be six guests or fewer at any one time, and he would not allow pets.

Mr Frommel responded to questions from Members. He advised that part of his double garage had been converted to a fully fitted room and he would stay in this part of the property when guests were present. This would mean he could let the whole house out but he could personally ensure there was no disturbance to neighbours. He reiterated that he had no plans to let the house in the winter months when he stayed in Spain, but if he was ever away, his son could look after the property. He said he wanted to look after his family home and neighbourhood. Mr Frommel also provided a copy of the house rules to Councillor McMillan for inspection.

Fee Andrews spoke to her objection. She said her concerns were due to having a young family who played at the front of the properties on the private access road. She was worried about unexpected cars causing danger, and the area not being the safe place it had been for the last five years. She felt having unknown guests would take away the security and safe space for children. She reported that parking around the estate was limited, although she acknowledged that this would be helped if Mr Frommel ensured that guests only took two spaces outside the house. She was worried about not knowing when people were likely to arrive or leave, and said that the area was a family estate where people knew one another and children could safely play outside.

Craig Wright spoke to his objection. He said the area was a family estate and he was concerned about an increase in the volume of traffic. He said that Mr Frommel was unlikely to be able to commit to only hosting families and felt there was potential for disruption being caused by holidaymakers consuming alcohol. He questioned whether the application brought any benefit to the local area when there was a lack of housing in the area and there was a caravan site adjacent to the estate for tourists.

Mr Frommel responded to questions on the house rules from Councillor McMillan. Mr Frommel said the house rules currently allowed access to the garden until 9pm, but he could completely restrict this depending on the response from his neighbours. He expected that guests would generally wish to spend time at the beach. He said that the house rules were currently in draft form. Regarding parties, he advised that a maximum of two additional guests were allowed to visit the property, and no one would be allowed to stay the night in addition to those letting the property. Mr Frommel would have a copy of the passport of the lead person, details of everyone staying, and guests would have paid a large deposit. Christian Frommel added that he or his father would be instantly aware of any disruption since they would be staying in the annex; the listing would outline restrictions on gatherings, and he felt they could manage the property very effectively. Mr Frommel said that his own car would be parked in the garage when guests were staying, but also noted that there was occasionally overspill from his neighbours' cars.

Councillor Findlay suggested that the licence could be granted for a period of one year to see how the property ran as a short-term let. Mr Forrest advised that it was within the remit of the Sub-Committee to grant for a lesser period if they had a valid reason to do so, and for a reason specific to the application.

Councillor McMillan suggested that a seasonal restriction could be applied to the licence. Ms Fitzpatrick advised that limiting the number of nights the short-term let could be used was not allowed under the legislation. Mr Frommel noted that there may be limited data to assist the next decision should the licence period be limited, since it would take time to build up business.

Councillor McMillan felt there was demand for this kind of tourism accommodation in the area. He acknowledged the objections about the nature of the site and said that

objectors should be aware of means by which they could raise concerns, including through environmental health. He felt the business should have an opportunity to run, but suggested that the licence be granted only for two years so the situation could be reviewed after this time. He wished to see approval of a clear set of house rules. Sheila Fitzpatrick, Team Manager – Licensing and Landlord Registration, advised that a live licence could be reviewed by the Licensing Sub-Committee at any time following complaints. Responding to a question from the Convener, she advised that police could make representation to the licensing authority to request a review of the licence should they receive complaints; an enforcement authority would have to say the licence was causing a public disturbance.

The Convener asked whether the house rules could be required to be lodged as part of the application, and whether officers could diarise a reminder for review. Ms Fitzpatrick said that officers could diarise a review should complaints be received to the licensing team, and could consider this after the summer 2024 holiday period. Mr Forrest agreed that there should be reason to review a licence; complaints coming in would provide such a reason.

Councillor McMillan felt that as the legislation was new, and there were several concerns from neighbours, he would like the applicant to produce stronger house rules and would prefer to grant a two-year licence. His reasons were due to concerns about the access and suitability of the site, management of the garden, traffic access, and neighbour concerns.

Ms Fitzpatrick clarified that Councillor McMillan had proposed that a licence be granted for two years with the requirement to monitor and assess should there be any issues around traffic access, location of the premises, and management of the garden facilities. Councillor Findlay formally seconded Councillor McMillan's proposal for a two-year licence. The Convener then moved to a roll call vote, and Members unanimously agreed to grant the licence for a period of two years.

DECISION

The Sub-Committee agreed to grant the short-term let licence for a period of two years.

3. PROPOSED AMENDMENT OF RESOLUTION ON PUBLIC ENTERTAINMENT LICENSING REGIME

A report had been submitted by the Head of Corporate Support to advise the Sub-Committee of proposals to amend the list of activities within the resolution to licence public entertainment activities.

Mr Forrest presented the report. He highlighted the history of amendments to the resolution and highlighted the before and after position laid out in the report. He asked Members to approve the amended wording and authorise the advertisement of the proposed wording. He advised that the wording could be changed following objections or representations being received. He highlighted some of the proposed removals, including activities not considered to be appropriate to be public entertainment, or others, such as boot camps, which were considered not to have 'bedded in' and for which a full formal legal definition had never been settled upon. He summarised that the proposals were meant to tidy up the current resolution and make the document's use easier for the future.

Councillor McMillan welcomed the paper. He felt it was positive to keep the resolution on public entertainment licensing in the public eye, and he welcomed the redrafting. He felt the clarification on what was meant by 'small scale' being understood to mean more than 150 persons attending over the course of one day and clarification of definition of non-profit would be helpful to voluntary organisations putting on events. He hoped the consultation would be constructive.

The Convener moved to a roll call vote and Members unanimously voted to approve the report recommendations.

Decision

The Sub-Committee agreed to:

- i. approve the proposed wording of the amended resolution as attached to the report;
- ii. authorise the Service Manager – Governance, and such staff as he may designate, to advertise the proposed wording in the local press and undertake the necessary consultation process; and
- iii. agree to thereafter receive and consider a further report following conclusion of the consultation process (should any responses to the consultation be received).

4. TAXI FARE REVIEW

A report had been submitted by the Head of Corporate Support to allow the Licensing Sub-Committee to consider the review of the scale of the fares or other charges currently in operation in respect of the East Lothian taxi fleet.

Mr Forrest presented the report. He explained that the taxi fare review was required on an 18-monthly basis, with the next being required not later than the end of February 2024. He advised that the last two reviews had resulted in no changes to taxi fares, but on this occasion, two representations had been made by the trade to request an increase. Although the proposed increase of 20% sounded significant, he noted that this would be the first increase in several years. He drew attention to the comparative grid appended to the report which gave information on the neighbouring authority fares and said the proposed fee structure was not wildly out of step with East Lothian's neighbours. He advised Members that they were not obliged to accept the proposal but reiterated that fares had not changed in several years.

The Convener was pleased that feedback had been received from the trade in this case, as responses to consultations had often been lacking. He said the council had tried its best to engage with firms to respond to consultations on this and other matters.

Councillor Findlay commented that although 20% seemed a large increase, the increases could have been staggered had taxi firms made representation in previous years. He said the onus was on taxi firms to make representation when consulted on such matters, however, he was broadly in favour of the proposals.

Regarding a date on which the confirmed tariff would come into effect, Ms Fitzpatrick said that time had to be allowed for advertising, and for representations and appeals to the traffic commissioner. She suggested that the confirmed fares could come into effect on 1st February, and this was formally proposed and seconded by Councillors McMillan and McFarlane respectively.

The Convener then moved to a roll call vote and Members unanimously agreed the report recommendations and that the confirmed tariff would come into effect on 1st February 2025.

Decision

The Sub-Committee agreed:

- i. to complete the review of taxi fares by considering the two responses received from local taxi operators and information on neighbouring local authority tariffs;
- ii. that the confirmed tariff would come into effect on 1st February 2024; and
- iii. to authorise officers to advertise and explain the effect of the proposals and invite representations from the public.

5. TAXI AND PRIVATE HIRE CAR LICENSING

A report had been submitted by the Head of Corporate Support to allow the Licensing Sub-Committee to: note the updated conditions attached to Taxi and Private Hire Car (PHC) Drivers and Operators licences; to note the Driver Application Guidance which had been updated with statutory guidance involving HMRC checks; and to make a decision on amending the age of Taxi and Private Hire Cars which can be licenced.

Mr Forrest presented the follow-up report which had been previously come before the Licensing Sub-Committee at the September meeting, when Members had agreed to defer making a decision to allow for a consultation to be undertaken with the taxi trade. Mr Forrest advised that officers had consulted taxi operators, but no responses had been received. He said that Members were being asked to note the proposed updated conditions and guidance following on from national legislative changes requiring applicants to undertake a tax check and provide the local authority with a tax code; he advised these changes were not being imposed by the local authority but they had prompted the wider update.

Mr Forrest went on to outline changes to the report recommendations and asked Members to agree to an amendment to the wording in the report to refer to “any vehicle presented for substitution, including temporary substitution, or replacement of a vehicle”. This would clarify and confirm the operative position for some years.

Mr Forrest then turned to the proposed maximum age at which a vehicle was deemed to be fit to be licensed, and said the transportation team had proposed changes which were clearly to the benefit of the trade by expanding the maximum age to 12 years for most vehicles, but 14 years for electric vehicles. It was proposed that the amendments, assuming Members agreed to them, would come in immediately, but the changes to the maximum age of a vehicle to be licensed would not come in until April 2025. This would be the same time as a previous report to be dealt with by the Licensing Sub-

Committee to include a list of approved vehicles which would be acceptable to be licensed; the transportation team's idea was to meld the list of vehicles that would be accepted and the maximum age of a vehicle to be licensed.

The Convener was disappointed that the trade had made no comments on the proposals. He said that the Sub-Committee had to assume that the trade was happy with the proposed changes. Ms Fitzpatrick advised that at least one call had been received from someone who had been reading through the proposals, so the consultation had reached the trade.

Councillor McMillan was happy with the paper, and asked how many complaints were received each year about failures to meet the standards set out in the conditions. Ms Fitzpatrick was not aware of any complaints submitted about the condition of vehicles and said there were very few complaints about taxi drivers generally. As the licensing authority did not have enforcement powers, complaints would generally be passed to Police Scotland.

Councillor McMillan wanted to encourage people to use taxis. He felt that if a trade body existed, they would advertise the benefits of travelling by taxi in terms of the appearance of the cars and good customer service; he felt that such a promotion could be taken up by the council over the festive period in the absence of a trade body. His experience of the taxi trade had been very good, and he customers to complain if the service was not excellent. He said it was important to promote to the public what could be expected in terms of good management and conduct of drivers in the regulated industry.

The Convener moved to a roll call vote and Members unanimously agreed to support the amended recommendations, per Mr Forrest's presentation.

Decision

The Licensing Sub-Committee agreed:

- i. Zero emission vehicles presented for grant of a new licence shall be no more than four years old (since date of first registration) on the date when the new licence is granted.
- ii. Internal combustion engine (ICE) vehicles presented for grant of a new licence shall be no more than three years old (since the date of first registration) on the date when the licence is granted.
- iii. Any vehicle presented for substitution, including temporary substitution, or replacement, on an existing licence:
 - Shall be no more than seven years old (since date of first registration) on the date when the substitution on the licence is to take effect; and
 - Shall not be older than to be replaced as the date or proposed date of substitution on the licence.
- iv. Effective 1st April 2025 there will be an age limit applied to taxis and private hire cars (PHC) licensed by East Lothian Council, subject to meeting normal conditions about roadworthiness,
 - A taxi can be submitted for test prior to the 12th anniversary of its registration for renewal of licence and can continue to operate until the expiry of that licence period.

- A PHC can be submitted for test prior to the 10th anniversary of its registration for renewal of licence and can continue to operate until the expiry of that licence period.
- v. Effective 1st April 2025 to allow any electric taxi, which is not a hybrid vehicle, to be an exception to the 12-year age limit and allow an additional 2 years of operation. Subject to meeting normal conditions about roadworthiness and 6-monthly compliance test from the vehicles 12th anniversary this will allow a vehicle to be submitted for test prior to the 14th anniversary of its registration for renewal of licence and can continue to operate until the expiry of that licence period.
- vi. Effective 1st April 2025 to allow any electric PHC, which is not a hybrid vehicle, to be an exception to the 10-year age limit and allow an additional 4 years of operation. Subject to meeting normal conditions about roadworthiness and 6-monthly compliance test from the vehicles 10th anniversary this will allow a vehicle to be submitted for test prior to the 14th anniversary of its registration for renewal of licence and can continue to operate until the expiry of that licence period.

The clerk asked Members to agree to exclude the public from items 6 and 7, and Members agreed to switch off the public broadcast.

Note: Summary of information

The Licensing Sub-Committee agreed to exclude the public from items 6 and 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.

6. APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE

The Sub-Committee agreed to grant the licence.

7. APPLICATION FOR RENEWAL OF A LICENCE FOR A BUSINESS UNDERTAKING TATTOOING OR SKIN AND BODY PIERCING

The Sub-Committee agreed to grant the licence.