

CIVIC GOVERNMENT (SCOTLAND) ACT 1982 APPLICATION FOR THE GRANT OF A TAXI DRIVER'S LICENCE

1. Reason for Report

Members are required to determine the application by Margaret Nixon, 2 Craignair Court, Annan for a Taxi Driver's Licence.

2. Report summary

2.1 On 4 October 2006 Dumfries and Galloway Council as licensing authority under the Act received an application by Margaret Nixon for a Taxi Driver's licence

2.2 The licensing authority received an objection to the application from the Chief Constable on 23 October 2006.

2.3 In determining an application the licensing authority must take account of all relevant objections and representations.

2.4 Representations and objections in terms of the Act should be lodged within 21 days of the receipt of the application.

2.5 In considering an objection from the Chief Constable in relation to an application for a Taxi Driver's or Private Hire Driver's licence based on previous convictions, Members should be aware that all convictions whatever their age are to be taken into account.

2.6 An application for a Taxi Driver's licence must be determined within 6 months of its receipt.

3. Glossary of Terms

The Act - The Civic Government (Scotland) Act 1982

4. Recommendations

Members are asked to:

4.1 Consider the objection made on behalf of the Chief Constable;

4.2 Having heard from the police representative on the objection and the applicant or her agent, determine Mrs Nixon's application for a Taxi Driver's licence.

5. Corporate Plan Links and Contribution

5.1 The local authority is committed to working with partners to promote safe and healthy communities within Dumfries and Galloway.

5.2 The licensing authority by agreeing to harmonise licensing of the Taxi and

Private Hire trade in their area recognise the public safety benefits of the regulatory system under the Act.

5.3 In terms of the Act the licensing authority is bound to refuse an application for a Taxi Driver's licence if it is of the opinion, on the material before it, that the applicant is not a fit and proper person to hold a licence.

6. Resources/Value for Money Assessments

The overall expenses of the Taxi and Private Hire Licensing are to be covered by the fees charged for operator's and driver's licences.

7. Risk Assessment

7.1 Failure to take into account the Chief Constable's objection, if competent, could be appealed to the civil courts. This would cause undue delay and expense.

7.2 Failure to determine Mrs Nixon's application within 6 months would mean that a deemed one year licence without conditions would immediately come into effect.

7.3 Both a decision to grant or to refuse the application would be open to appeal. If the Sheriff found that the authority in arriving at its decision:-

- erred in law
- based their decision on any incorrect material fact
- acted contrary to natural justice or
- exercised their discretion in an unreasonable manner,

the decision could be overturned or the matter remitted back to Committee for reconsideration. Expenses would normally follow success.

7.4 Mention must also be made of the real practical risks of granting a licence to a person who is not a fit and proper person to hold a Taxi Driver's licence. As will be appreciated a taxi driver has access to members of the public often late in the evening/early morning frequently when they are alone and/or in a vulnerable condition.

8. Authorities and Legal Implications

Determination of this application in compliance with the Act, natural justice and fair hearing procedure will ensure that the Council, as licensing authority, comply with their duties under the Act.

9. Consultation

9.1 In terms of paragraph 2 of Schedule 1 to the Act, the Chief Constable was consulted on the application.

9.2 The Director of Education and Community Services has been consulted as to whether the applicant is employed under the Council's contract with local taxi and private hire operators to transport school children to and from school.

10. Background

10.1 A Taxi Driver's licence is required before a person is permitted to drive taxis and/or private hire vehicles.

10.2 An application for the grant or renewal of a Taxi Driver's licence may only be refused on the following grounds:-

- 1) that the applicant is not a fit and proper person;
- 2) any other good reason – it is considered that such a reason should be for crime prevention purposes or in the interests of public order or safety.

10.3 A Taxi Driver's licence may be granted for a period of up to 3 years. It is usual to grant for the full 3 year period. However, the Act empowers the authority to grant a licence for a shorter period in appropriate cases. This would be considered the grant of a licence and not the part refusal of a licence.

10.4 The Rehabilitation of Offenders Act 1974 provides that certain convictions are spent after a period of time. However in terms of the Rehabilitation of Offenders Act 1974 (Exclusions & Exceptions) (Scotland) Order 2003 applicants for Taxi Driver's licences are excluded from the provisions of the Act and must disclose all convictions.

10.5 The licensing authority must entertain an objection or representation but only if:-

- a) It is in writing
- b) Specifies the ground of objection/nature of the representation
- c) Specifies the name and address of the person making it
- d) Is signed by him or on his behalf
- e) Was made within the 21 day objection period.

10.6 The Chief Constable has intimated an objection to the application on the grounds that he does not consider the applicant to be a fit and proper person due to her previous convictions.

10.7 The applicant has received a copy of the Chief Constable's objection and, as a matter of courtesy, a copy of this report.

10.8 The Director of Education & Community Services has confirmed that, to his knowledge, the applicant is not employed under the Council's contract with local taxi and private hire operators to transport school children to and from school.

10.9 The Chief Constable has been requested to be represented at the meeting.

10.10 The applicant has been invited to attend. It has been recommended to her that she obtains legal advice and if possible that he should be legally represented at the meeting.

11. Key Issues

11.1 Margaret Nixon, 2 Craignair Court, Annan has made application for a Taxi Driver's licence.

11.2 The Chief Constable has objected to this application.

11.3 The grounds for objection are that the Chief Constable considers that the

applicant is not a fit and proper person to hold a Taxi Driver's licence due to previous convictions.

11.4 The previous conviction referred to by the Chief Constable is that on 11 December 2002 the applicant was convicted at Dumfries Sheriff Court on 2 charges of Breach of the Peace, a contravention of the Police (Scotland) Act 1967, Section 41(1) (a) and also a charge of assault. This conviction related to an incident which occurred in High Street, Annan near the junction with Downie's Wynd during the early hours of 27 July 2002. In relation to these charges sentence was deferred until 8 January 2003 when she was subsequently admonished.

11.4.1 Further the Chief Constable advised that on 12 September 2004 the applicant received a fixed penalty fine and had 3 penalty points endorsed on her driving licence for a speeding offence.

11.4.2 In addition the Chief Constable highlighted that the Applicant failed to disclose the conviction for 2002 although she indicated to the Enquiry Office that she was unaware they were convictions on the basis that she had subsequently been admonished.

11.5 The application form contains the following instruction. "In terms of the Rehabilitation of Offenders Act 1974 and Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 the Applicant for the grant of a taxi or private hire driver's licence and the applicant for the renewal of a taxi or private hire drivers licence must disclose the particulars of all convictions against them. This means that no convictions relating to an applicant can be spent under the 1974 Act".

11.6 All convictions, however old, are relevant to the consideration of an application for a Taxi Driver's licence.

11.7 In terms of paragraph 5(3) of Schedule 1 to the Act the Committee "shall refuse an application if, in their opinion the applicant is not a fit and proper person to be the holder of a licence".

11.8 In the interests of natural justice the Chief Constable's representative must be given the opportunity to address the Committee on the objection, and the applicant or her agent the opportunity to address the Committee in rebuttal of the objection and in support of the application, all before the final determination of the application.

11.9 If the application by Mrs Nixon is granted it will not come into effect for a period of at least 28 days, being the period during which the Chief Constable may appeal against any decision. If an appeal is lodged the licence will not come into effect until the appeal is abandoned or determined in favour of the Committee's decision.

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Background papers

Application and letter of objection from the Chief Constable