

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 Sharon Jardine, 7 Princes Avenue, Annan for a Taxi Driver's Licence.

2. Report summary

2.1 On 8 September 2006 Dumfries and Galloway Council as licensing authority under the Act received an application by Sharon Jardine for a Taxi Driver's licence.

2.2 On 11 September 2006 a copy of the application was passed to the Chief Constable.

2.3 On 29 September 2006 the Licensing Authority received a letter, dated that day, from the Chief Constable confirming that he did not consider the applicant a fit and proper person to hold a licence and enquiries were continuing.

2.4 The licensing authority received an objection to the application from the Chief Constable on 26 October 2006.

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

2.6 Representations and objections in terms of the Act should be lodged within 21 days of the receipt of the application. It is competent for a Licensing Authority to entertain a late objection provided that it is satisfied that there is sufficient reason why it was not made in time.

2.7 After hearing submissions from both the Chief Constable's representative and the Applicant, Members will consider whether or not they are satisfied with the reason given for the lateness of the objection and if they wish to entertain it.

2.8 If Members agree to entertain the objection from the Chief Constable based on previous convictions, Members should be aware that all convictions whatever their age are to be taken into account.

2.9 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 Note that a late objection has been made on behalf of the Chief Constable;
- 4.2 Hear from the police representative and the applicant or his agent on the reason for lateness of the objection and decide whether to entertain the objection.
- 4.3 Thereafter determine Mrs Jardine's application for a Taxi Driver's licence.

5. Corporate Plan Links and Contribution

5.1 Dumfries and Galloway Council 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 a relevant objection or one which the Committee has agreed to entertain could be appealed to the civil courts. This would cause undue delay and expense.

7.2 Failure to determine Mrs Jardine'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 confirmed that 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. 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 Chief Constable's letter, which was received on 29 September 2006, confirmed that he did not consider the applicant to be a fit and proper person to hold a licence and enquiries were continuing.

10.8 A letter of objection was subsequently received from the Chief Constable on 26 October 2006, some 48 days after the application was received. In terms of the Civic Government (Scotland) Act 1982 objections must be lodged within 21 days of the application. It is competent for a Licensing Authority to entertain a late objection provided that it is satisfied that there is sufficient reason why it was not made in time.

10.9 Members will be aware of the decision of the Sheriff in relation to an application for an extension of time in which to consider an HMO application for 3 Cumberland Street, Dumfries, in terms of section 3(2) of the Act. In granting the Council's motion the Sheriff stated that if an objector submits a late objection, the letter of objection should include, within its terms, reason for its lateness.

10.10 Although the Chief Constable's initial letter refers to enquiries being continued, the letter of objection of 26 October 2006 does not include, within its terms, reasons for its lateness.

10.11 The Chief Constable's representative has been invited to attend the meeting. The representative will wish to persuade the Committee that the late objection should be entertained.

10.12 The applicant then has the right to address the Committee and argue that the late objection should not be entertained. It is a matter for Members to consider whether or not they are satisfied with the reason given and if they wish to entertain the objection.

10.13 If the late objection is to be entertained Members will invite submissions from the Chief Constable's representative and the applicant or her agent and proceed to determine the application in the light of the objection in the usual way.

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

10.15 The Director of Education and Community Services has confirmed that 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.

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

11. Key Issues

11.1 Sharon Jardine, 7 Princes Avenue, Annan has made application for a Taxi Driver's licence.

11.2 The Chief Constable has objected to this application. His objection was received outwith the 21 days allowed for objections. It is competent for a Licensing

Authority to entertain a late objection provided that it is satisfied that there is sufficient reason why it was not made in time.

11.3 In a recent case relating to an HMO application, the Sheriff stated that if an objector submits a late objection, the letter of objection should include, within its terms, reason for its lateness.

11.4 Although an earlier letter, received on 29 September 2006, from the Chief Constable stated that he did not consider the applicant to be a fit and proper person to hold a licence and enquiries were continuing, his letter of objection, received on 26 October 2006, does not refer to reasons for the lateness of the objection.

11.5 After hearing submissions from both the Chief Constable's representative and the Applicant, Members will consider whether or not they are satisfied with the reason given for the lateness of the objection and if they wish to entertain it.

11.6 If Members are not minded to entertain the late objection the application falls to be granted.

11.7 It is usual to grant for the full 3 year period but a Licensing Authority may agree to grant for a shorter period.

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

11.9 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".

11.10 In the interests of natural justice, if Members decide that the objection is admissible 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.

11.11 If the objection is entertained and the application is granted it will not come into effect for at least 28 days being the period allowed for appeal. If an appeal were lodged with the Sheriff Court the Licence would not come into effect until the appeal is determined in favour of the Committee's decision or the appeal is abandoned.

Fiona Ross Solicitor Court & Licensing	Leslie Jardine Corporate Director of Corporate Services English Street DUMFRIES DG1 2DD
Date of Report: 06 December 2006 File Ref:	

Background papers

Application and letter of objection from the Chief Constable