

## **CIVIC GOVERNMENT (SCOTLAND) ACT 1982 APPLICATION FOR THE GRANT OF A WINDOW CLEANER'S LICENCE**

### **1. Reason for Report**

Members are required to determine the application by Gareth McCulloch, 26 Rose Street, Annan Court, Annan for a Window Cleaner's Licence.

### **2. Report summary**

2.1 On 27 October 2006 Dumfries and Galloway Council as licensing authority under the Act received an application by Gareth McCulloch for a Window Cleaner's licence.

2.2 The licensing authority received an objection to the application from the Chief Constable on 13 November 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 An application for a Window Cleaner'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 his agent, determine Mr McCulloch's application for a Window Cleaner'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 Window Cleaner trade in their area recognise the crime prevention 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 Window Cleaner'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 Window Cleaning Licensing are to be covered by the fees charged for 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 Mr McCulloch'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 Window Cleaner's licence. Window Cleaners are in a unique position of trust because by nature of the work which often requires access to the inside and back of domestic properties.

## **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.

## **10. Background**

10.1 A Window Cleaner's licence is required before a person is permitted to carry on the trade of, or be employed as a window cleaner.

10.2 An application for the grant or renewal of a Window Cleaner'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 Window Cleaner'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 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.

10.5 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 his previous convictions.

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

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

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

## **11. Key Issues**

11.1 Gareth McCulloch, 26 Rose Street, Annan has made application for a Window Cleaner'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 Window Cleaner's licence due to previous convictions.

11.4 In his objection the Chief Constable advised that Mr McCulloch provides details of one conviction dated 24/8/2000, in his application, however, he has 12 further convictions and while they are all older than the most recent conviction, none can be considered "spent" in terms of the Rehabilitation of Offenders Act 1974 in that the qualifying period has not been reached between convictions.

11.4.1 These convictions have not been disclosed by the applicant, however the Chief Constable indicates it would be entirely understandable as to why this was the case, given the fairly complex nature of the legislation.

11.4.2 The convictions referred to by the Chief Constable are:

21/4/98	Ayr Sheriff Court	(1) Misuse of Drugs Act 1971, Section 5(2)	Charge (1) – Sentence deferred then fined £50 Charge (2) – Sentence deferred then fined £200 Disqualified 1 year – licence endorsed
22/12/98	Stranraer Sheriff Summary	Charge – Breach of the Peace	Fined £250
8/3/99	Ayr Sheriff Court	Charge (1) Assault Charge (2) Criminal Law (Consolidation) (Scotland) Act 1995, Section 52(1)	Sentence Charge (1) – Community Service Order – 240 hours Compensation Order £400 Charge (2) – Compensation Order £50
16/6/99	Ayr Sheriff Court	Charge – Criminal Law (Consolidation) (Scotland) Act 1995, Section 29(1) (a)	Fined £100
5/10/99	Kilmarnock Sheriff Court	Assault	Fined £250
24/8/2000	Glasgow High Court	Attempted Murder	Sentence deferred to 14/9/2000 then transferred to High Court at Edinburgh. Sentence deferred to 19/10/2000 then imprisonment 4 years to date from 24/8/2000.

11.4.3 The Chief Constable further commented that while it is appreciated that the majority of these convictions are historic, there is evidence of disorder, violence, and dishonesty, which is of concern and in these circumstances it is considered that Gareth McCulloch is not a fit and proper person to hold such a licence.

11.5 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”.

11.6 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 his 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.

11.7 If the application by Mr McCulloch 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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Date of Report: 06 December 2006	
File Ref:	

**Background papers**

Application and letter of objection from the Chief Constable