

Licensing Sub-Committee of the Regulatory Committee

9.30am, Monday, 17 June 2024

Police Request for Suspension of Late Hours Catering Licence – 2 Antigua Street EH1 3NH

Item number	
Report number	B Agenda
Executive/routine	
Wards	Citywide
Council Commitments	N/A

1. Recommendations

- 1.1 After hearing from the Police and the relevant licence holder, the Committee will be required to decide:
 - 1.1.1 Whether to take no action, issue a warning, or suspend the licence;
 - 1.1.2 Where relevant, the period of any suspension; and
 - 1.1.3 Whether any suspension should take effect immediately.

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2. Executive Summary

- 2.1 Police Scotland has made comments and requested that Committee considers suspending a licence. This report suggests the procedures that the Committee should adopt when considering the requests and sets out the various options open to the Committee.

3. Background

- 3.1 The Police and other persons can make comments or complaints as regards the holders of licences and, in certain cases, request that the relevant licence should be suspended. Committee members can consider such comments and requests. The Committee can decide to take no further action, issue a warning to the licence holder, or suspend the licence.

4. Main report

- 4.1 Police Scotland has submitted a letter requesting that the Committee considers suspending a Late Hours Catering licence. Details of the licence are attached in Appendix 1 to this report, and a copy of the Police letter is attached at Appendix 2.
- 4.2 The licence holder has been invited to attend and notified of the Police letter.
- 4.3 Committee members are reminded that the grounds for suspending a licence are set out in Paragraph 11(2) of Schedule 1 to the Civic Government (Scotland) Act 1982. A Licensing Authority may order the suspension of a licence if in their opinion:
- 4.3.1 The holder of the licence, or, where the holder is not a natural person, any Director of it, or Partner in it or any other person responsible for its management, is not or is no longer a fit and proper person to hold the licence;
 - 4.3.2 The activity to which the licence relates is being managed by or on carried on for the benefit of a person, other than the licence holder, who would have been refused the grant or renewal of a licence under Paragraph 5(3) of the said Schedule;

- 4.3.3 The carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or safety;
- 4.3.4 A condition of the licence has been contravened.
- 4.4 In terms of Paragraph 11(3) of the said Schedule, a Licensing Authority may make an order under sub-paragraph 2(d) above in respect of a contravention of a condition of licence notwithstanding that there has been no conviction in that respect.
- 4.5 In terms of Paragraph 11(4) of the said Schedule, in considering whether to suspend a licence, the Council may have regard to:
 - 4.5.1 Any misconduct on the part of the licence holder, whether or not constituting a breach of any provision of Part I or II or the said Schedule of the said Act, which in the opinion of Council has a bearing on the fitness to hold a licence; and
 - 4.5.2 Where the licence relates to an activity consisting of or including the use of premises or a vehicle or vessel, any misconduct on the part of persons frequenting or using the premises, vehicle or vessel occurring there or any misconduct in the immediate vicinity of the premises, vehicle or vessel which is attributable to those persons.
- 4.6 Committee members may make such reasonable enquiries as they think fit (and subject to sub-paragraph 11(5) of the said Schedule) include the results of their inquiries in the matters to which they have regard in such consideration.
- 4.7 At the meeting the Police will be provided with an opportunity to address the Committee. The licence holder and their representative will then be provided with an opportunity to address the Committee. Members of the Committee can then ask questions of the Police and of the licence holder.
- 4.8 If there are matters or allegations raised in the police letter that are not admitted by the licence holder, the Committee can either arrange an evidential hearing on another date or decide to proceed on the basis of the material presented to them.
- 4.9 If the latter option is adopted, the Committee should allow the licence holder and the Police to make full submissions on the alleged incidents. Both parties should answer any points raised by the other and by the Committee. The Committee will have to:
 - 4.9.1 Carefully consider the information they have before them;
 - 4.9.2 Disregard any allegations which they consider to be gossip, speculation or unsubstantiated innuendo;
 - 4.9.3 Identify which matters are admitted or disputed;
 - 4.9.4 Consider whether the source of any statements, their nature and inherent probability gives it greater degree of credibility;

- 4.9.5 Decide whether, on the balance of probability, the licence holder has committed the alleged misconduct; and
- 4.9.6 Be in a position to explain their approach and the basis on which they preferred any version of events.
- 4.10 Having heard from all parties the Committee should decide what, if any, action it wishes to take. It can decide to take no further action, issue a warning to the licence holder as to his future conduct or suspend the licence.
- 4.11 If the Committee decides to suspend a licence, it has to consider the period of suspension. The licence holder should be asked to provide his views as to the length of any period of suspension. The Committee can suspend the licence for any unexpired portion of the period of the licence.
- 4.12 If suspending a licence, the Committee can also decide that the circumstances of the case justify immediate suspension. The licence holder's views should be sought as to any proposal to impose immediate suspension. If immediate suspension is not ordered, any suspension would usually only take effect after 28 days had passed or, if an appeal is made, until it has been abandoned or determined.
- 4.13 Suspension of a licence means that the licence remains in existence but has no effect whilst the suspension is in place. The licence holder has to cease the licensed activity during the period of suspension. Any ID badges or plates should be immediately returned to the Council. It is a criminal offence for the licence holder to continue the licensed activity during any period of suspension.

5. Next Steps

- 5.1 Decisions on individual licences have to be considered on their own merits.
- 5.2 The process outlined takes account of the relevant statutory provisions.
- 5.3 The licence holder has a right of appeal against any decision made. The appeal lies to the Sheriff Court.

6. Financial impact

- 6.1 None, as the costs of these matters are recovered through taxi and private hire car vehicle and driver licence application fees.

7. Stakeholder/Community impact

- 7.1 None.

8. Background reading/external references

8.1 None.

9. Appendices

9.1 Appendix 1 - Licence referred to in this report.

9.2 Appendix 2 - Police report.