

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

Case Ref: B415/14

JUDGMENT OF
SHERIFF ISABELLA GARDEN MCOLL,
ADVOCATE,
SHERIFF OF LoTHIAN AND BORDERS AT EDINBURGH

in the cause

(First) CENTRAL RADIO TAXIS (TOLCROSS) LIMITED

A company incorporated under the Companies Acts
and having its registered office at
8 St Peters Building, Gilmore Place, Edinburgh;

and

(Second) THE SCOTTISH TAXI FEDERATION,
an unincorporated association together with its
executive committee members, whomsoever they may be from time to time,
having a place of business at
20 Abbotsford Avenue, Rutherglen, Glasgow G73 3NX

Pursuers:

against

(First) THE CITY OF EDINBURGH COUNCIL,
Licensing Authority,

having offices at Waverley Court, East Market Street, Edinburgh EH8 8BG;

and

(Second) EDINBURGH CITY PRIVATE HIRE LIMITED,
a company incorporated under the Companies Acts and having a place of business at
7 Bankhead Avenue, Edinburgh EH11 4BT

Defenders:

EDINBURGH, 20th March 2015

The Sheriff, having resumed consideration of the cause, sustains the first defenders' second plea-in-law and the second defenders' second plea-in-law; repels the plea-in-law for the

pursuers and dismisses the summary application; certifies the summary application as suitable for the employment of senior counsel and appoints parties to heard on the expenses of the cause at a diet on 9th April 2015 at 9.30am.

J. J. M. ZM

[1] In this summary application the pursuers appeal under schedule 1 paragraph 18 of the Civic Government (Scotland) Act 1982 ("the Act") against a decision of the first defenders' licensing subcommittee ("the sub-committee") on 19 February 2014 in which they granted an application which had been made by the second defenders on 3 October 2103 in terms of Parts I and II of the Act and the Civic Government (Scotland) Act 1982 (Licensing and Booking Offices) Order 2009 ("the 2009 Order") for a license to have a booking office at Edinburgh airport ("the application").

[2] The pursuers were objectors to the application. There was one other individual objector whose grounds of objection were not relied upon by any of the parties in this appeal. The first pursuers are a company of taxi proprietors operating in and holding a relevant booking office license in the Edinburgh area. The second pursuers are an organisation which represents taxi drivers and proprietors of firms operating taxis throughout Scotland. The first defenders are the relevant licensing authority in the Edinburgh area. The second defenders are a private hire car company operating in the Edinburgh area. The basis of the pursuers' appeal, stated broadly, is that the granting of the application would lead to blurring of the distinctions between taxis and private hire cars as set out in and required by the Act and the 2009 Order.

[3] At the hearing on the summary application the pursuers were represented by Mr Hajducki, QC who advised that the interests of the two pursuers were identical in this matter and that there was no conflict of interests between them. The first defenders were represented by Mr Armstrong QC. The second defenders were represented by Mr Cahill, solicitor, who advised at the outset of the hearing that a preliminary plea which had been

raised by the second defenders in relation to the second pursuers was no longer being insisted upon. The factual background of the issues arising in this application was said by all parties to be undisputed. None of the parties proposed to lead any evidence at the hearing. They had helpfully prepared a joint list of authorities.

[4] The provisions of the Act which were predominantly referred by the parties in the course of the hearing were as follows :-

“
PART II
LICENSING AND REGULATION – PARTICULAR ACTIVITIES

Licensing and regulation of taxis and private hire cars

“s.10. - Taxi and private hire car licences.

(1) A licence, to be known as a “taxi licence” or, as the case may be, a “private hire car licence”, shall be required for the operation of a vehicle as –

(a) a taxi; or

(b) a private hire car.

“s.13. - Taxi and private hire car driving licences

(1) A licence, to be known as a “taxi driver’s licence” or, as the case may be, a “private hire car driver’s licence”, shall, subject to subsection (2) below, be required for driving or otherwise having charge of a taxi or private hire car.

(2) A private hire car driver’s licence shall not be required by the holder of a taxi driver’s licence for driving or otherwise having charge of a private hire car whilst in operation as such.

(5) A licensing authority may require an applicant for a taxi driver’s licence to take a test of his knowledge of the area to which the licence is to relate, of the layout of roads in that area and such other matters relating to the operation of a taxi as the authority consider desirable, and the authority may refuse to grant a license to a person who does not satisfy them that he has adequate knowledge of any of these matters.

“s.23 – Interpretation of sections 10 to 22.

(1) In sections 10 to 22 of this Act-

“taxi” means a hire car which is engaged, by arrangements made in a public place between the person to be conveyed in it (or a person acting on his behalf) and its driver for a journey beginning there and then: and

“private hire car” means a hire car other than a taxi within the meaning of this subsection.

(2) In subsection (1) above, “hire car” means a motor vehicle with a driverwhich is, with a view to profit, available for hire by the public for personal conveyance.

“s.133 – Interpretation.

In this Act, except where the context otherwise requires –

“public place” means any place (whether a thoroughfare or not) to which the public have access.....

“

SCHEDULE 1

LICENSING – FURTHER PROVISIONS AS TO THE GENERAL SYSTEM

“ *Disposal of applications for the grant and renewal of licences*

“para. 4 -

(1) In considering an application for the grant or renewal of a licence, a licensing authority may make such reasonable inquiries as they think fit and include the results of these inquiries in matters they take into account, but where they intend so to include any of these results they shall notify the applicant of that intention.

(2) A licensing authority may, before reaching a final decision upon such an application, give the applicant and any person who has made a relevant objection or representation (within the meaning of paragraph 19 below) in relation to the application an opportunity to

be heard by the authority and, where they propose to do so, shall, within such reasonable period (not being less than 7 days) of the date of the hearing, notify the applicant and each such person of that date.

(3) A licensing authority shall not reach a final decision upon such an application—

(a) in relation to which a relevant objection or representation (within the meaning of paragraph 19 below) has been made to them or in relation to which they intend to take into account any result of their inquiries under sub-paragraph (1) above; and

(b) in respect of which they have not, under this paragraph, given the applicant and any person who has made any such objection or representation an opportunity to be heard,

unless they have given the applicant an opportunity to notify them in writing of his views on such objection or representation or, as the case may be, result within such reasonable period (not being less than 7 days) as they may specify.

(4) The period referred to in sub-paragraphs (2) and (3) above shall begin with the date when the notification given by the licensing authority for the purpose of sub-paragraph (2) or, as the case may be, (3) is delivered to the person concerned and, when it is sent by post, it shall be treated as being delivered at the time when it might be expected to be delivered in the normal course of post.

“para.5 -

(1) Where an application for the grant or renewal of a licence has been made to a licensing authority they shall, in accordance with this paragraph—

- (a) grant or renew the licence unconditionally;
- (b) grant or renew the licence subject to conditions; or
- (c) refuse to grant or renew the licence.

(1A) In granting or renewing a licence under sub-paragraph (1)(a), a licensing authority may (either or both) –

- (a) disapply or vary any standard conditions so far as applicable to the licence,
 - (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.
- (3) A licensing authority shall refuse an application to grant or renew a licence if, in their opinion—
- (c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—
 - (ii) the nature and extent of the proposed activity; or
 - (d) there is other good reason for refusing the application;
- and otherwise shall grant the application.

Appeals

“para.18 -

(1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a licensing authority to give him reasons for their decision may appeal to the sheriff against that decision.

(2) A person shall be entitled to appeal under this paragraph only if he has followed all such procedures under this Schedule for stating his case to the licensing authority as have been made available to him.

(3) A licensing authority may be a party to an appeal under this paragraph.

(4) An appeal under this paragraph shall be made by way of summary application and shall be lodged with the sheriff clerk within 28 days from the date of the decision appealed against.

(7) The sheriff may uphold an appeal under this paragraph only if he considers that the licensing authority, in arriving at their decision—

- (a) erred in law;
- (b) based their decision on any incorrect material fact;

- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(9) On upholding an appeal under this paragraph, the sheriff may —
(a) remit the case with the reasons for his decision to the licensing authority for reconsideration of their decision; or

(b) reverse or modify the decision of the authority,

and on remitting a case under sub-paragraph (a) above, the sheriff may —

- (i) specify a date by which the reconsideration by the authority must take place;
- (ii) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including this Act).

(11) The sheriff may include in his decision on an appeal under this paragraph such order as to the expenses of the appeal as he thinks proper.

(12) Any party to an appeal to the sheriff under this paragraph may appeal on a point of law from the sheriff's decision to the Court of Session within 28 days from the date of that decision."

[5] The provisions of the 2009 Order which were referred to by the parties in the course of the hearing were as follows :-

" art.1 -Citation, commencement and interpretation

(2)In this Order –

"the Act means the Civic Government (Scotland) Act 1982;

" relevant premises" means the premises in relation to which a licence has been granted by virtue of article 2; and

"relevant vehicle" means a vehicle in relation to which a taxi licence or private hire car licence has been granted in terms of section 10 of the Act and that licence is in effect .

" art.2 - Licensing of booking offices

(1)The activity specified in paragraph (2) is designated as an activity for which a licence under Part 1 of the Act shall be required.....

(2) The activity referred to in paragraph (1) is the use of premises for the carrying on of a business which consists to any extent of the taking of bookings, by any means of communication, from members of the public for the hire of a relevant vehicle.

“art.3- Application of Part 1 of the Act

Part 1 of the Act shall have effect, subject to the modifications specified in the Schedule, for the purposes of the activity designated by article 2.

SCHEDULE

APPLICATION OF PART I OF THE ACT

“para. 3

In paragraph 5 (disposal of application for the grant and renewal of licences) of Schedule 1’ –

- (a) in sub-paragraph (1)(a), for “unconditionally” substitute “subject to the mandatory conditions specified in sub-paragraph (1A) below”;
- (b) in sub-paragraph (1)(b), for “conditions” substitute “those mandatory conditions and such conditions as are specified in sub-paragraph (2) below”; and
- (c) after sub-paragraph (1), insert –

“(1A) The mandatory conditions referred to in sub-paragraph (1)(a) above are –

- (a) that a record be kept of every booking for the hire of a relevant vehicle taken at the relevant premises;
- (b) that a record be kept of –
 - (i) the registration number of the vehicle which was hired as the result of a booking taken at the relevant premises; and
 - (ii) the name of its driver at the time of that hire; and
- (c) that the holder of the license shall take all reasonable steps to ensure that any booking taken at the relevant premises from a member of the public for the hire of a relevant vehicle results in the hire of a vehicle which is –
 - (i) a relevant vehicle; and

- (ii) being driven by a person who holds a licence granted under section 13 of the Act and that licence is in effect”.

“para.4.

After paragraph 19 (interpretation) of Schedule 1 insert -

“20.

In this Schedule, “relevant premises” and “relevant vehicle” have the same meaning as in the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009.””

[6] Parties also referred to

- (a) The City of Edinburgh Council’s Licensing Conditions for Taxis, Private Hire Cars, Taxi Drivers and Private Hire Car Drivers, 20th June 2006 (last amended 9th December 2009) :-

“No Plying for Hire

172 The driver of a private hire car, shall not canvass or importune in any public place or street for employment, or otherwise ply for hire.”;

(b) Taxi and Private Hire Car Licensing: Best Practice Guidance for Licensing Authorities, Scottish Government, Second Edition, April 2012;

(c) Circular No 25/1986, Licensing of Taxis and Private Hire Cars and Annex A;

(d) Regulatory Impact Assessment for the 2009 Order.

[7] The following cases were referred to:-

1. *Spring Radio Cars v Glasgow City Council* 2013 SLT 491
2. *Spring Radio Cars v City of Glasgow Council* 2014 SLT 393
3. *Ranachan v Renfrew District Council* 1991 SLT 625
4. *R (on the application of Trashorfield Limited) v Bristol City Council* EWHC 757 (Admin)

Submissions for the Pursuers

[8] Mr Hajducki submitted that there is confusion in the public mind between taxis and private hire cars which has been created by the first defenders’ grant of the application.

Article 5 of the record was said to contain the meat of the case for the pursuers. The sub-committee had erred in law and acted unreasonably in failing to take into proper account the definition of "taxi" in the Act and they had failed to properly observe the distinctions between taxi and private hire cars. The site of the booking office is in a public place within the meaning of section 133 of the Act despite being on airport property. The granting of the license facilitates arrangements that are in effect being made in a public place between persons wishing to start a journey there and then via the second defenders' marshal or office staff and their drivers who are waiting in their cars in a line adjacent to and visible from the booking office. The failure of any booking being made in a location separate to where the private hire cars are kept waiting was said to involve an almost instantaneous hire of a private hire car being made in the same manner as a taxi is engaged for hire. The arrangements made by the private hire car drivers through the second defenders amounted to plying for hire and are in breach of paragraph 172 of the first defenders' own standard conditions for taxi and private hire car licenses.

[9] The pursuers' argument is that the booking office licence granted in this case ought not to have been granted because of paragraph 5(3)(c)(ii) of schedule 1 of the Act directs the licensing authority to refuse an application to grant or renew a licence where the licence applied for relates to an activity consisting of or including the use of premises which are not suitable or convenient for the conduct of the activity having regard to the nature and extent of the proposed activity or, in terms of paragraph 5(3)(d), there is other good reason for refusing the application. The reasons which the sub-committee had provided for their decision to grant the application in terms of paragraph 18(7)(a) and (d) of schedule 1 of the Act were said to have given rise to this appeal on the basis that the sub-committee had, in arriving at their decision, erred in law and had exercised their discretion in an unreasonable manner. They had failed to observe or take into account the distinction between taxis and private hire cars in relation to the location of the booking office at the airport.

[10] Mr Hajducki referred to what he described as a somewhat complex factual history to the present appeal. In summary, two applications had been made by the second defenders for two booking offices at the Edinburgh Airport terminal at two different locations there.

These applications were related to two areas which were outside the main terminal area. There were objections to those applications with a hearing on those objections and a site inspection by the committee. The decision of 24 May 2013 was subject to an appeal by the pursuers. The objections in those earlier applications were similar to those raised in the present case. The objections were not in response to the location of the premises which was proposed in those earlier applications but in relation to the instantaneous booking which these premises created. It was submitted that that was the same point as was being argued in the present case. The appeal which was lodged against the earlier decision of 24 May 2013 was sisted in December 2013 in this court as it had become obvious that the two areas for which booking office licences had been granted in May 2013 were no longer available or suitable. An attempt had been made by the first defenders to treat the application being made by the second defenders for licence to site the booking office in its present location within the main terminal building as a variation of the licence granted in May 2013, notwithstanding that the current location was a separate location altogether from those referred to in that earlier licence. The pursuers had sought judicial review of that attempted variation on the basis that the previous grants of licence had been site specific. The application for a judicial review was sisted and the application for variation of the previous licences had now been withdrawn. The location of the booking office in this current third appeal is the same as one of the proposed locations in the earlier application for a proposed variation.

[11] I was referred to the two cases involving *Spring Radio Cars Ltd v Glasgow City Council* referred to above. The first of these was a decision in the Outer House by Lord Brodie dated 25 January 2013 and the second was a decision of an Extra Division of the Inner House dated 11 February 2014 in the appeal against Lord Brodie's judgment. The *Spring Radio* cases related to the type of car permitted by Glasgow City Council to be used by private hire car drivers. At paragraph 25 of his judgement, Lord Brodie had stated that the public must be able to readily distinguish among taxis, private hire cars and vehicles which are not licenced. Lord Menzies, in delivering the opinion of the Extra Division, had said at paragraph [50] that it was abundantly clear from the sections of the Act which are concerned with the licensing and regulation of taxis and private hire cars that it was the intention of Parliament

to make a clear distinction between the operation of a vehicle as a taxi and the operation of a vehicle as a private hire car. The statutory scheme for the licensing and regulation of taxis is quite different from that for the licensing of private hire cars. At paragraph [51] he said that it was also clear that Parliament sought to avoid, so far as possible, confusion in the public mind between the two categories of vehicle.

[12] The position of the pursuers in this case is that confusion in the public mind between taxis and private hire cars has been created by the first defenders' grant of the application. I was advised that there had been no previous litigation in Scotland relating to the differences between a taxi and a private hire car in the context of the confusion that may be caused by the granting of a license for a booking office. No private hire car licence booking office had been granted anywhere else in Scotland at another airport. No booking office licence had been granted where in effect the private hire cars were lined up outside that office waiting for hire. The Law Commission in England and Wales have issued a report since the booking office licence in this case was granted by the first defenders which introduced a provision in a bill which directed that a driver of a private hire car must not accept a request from a customer to begin a journey "there and then". The Law Commission recommended that it should be unlawful for anyone other than a taxi driver to accept bookings beginning there and then. The issue of what time lapse in pre-booking of private hire cars should occur between the taking of a booking and the journey beginning or whether the booking has to be carried out in a different area had not been resolved.

[13] The second defenders' booking office in the license granted by the first defenders is located within the multi-storey car park adjacent to the main terminal of the airport. The grant of the licence were said to have resulted in arrangements to hire a private hire car effectively being made in a public place between persons wishing to start a journey beginning there and then via the second defenders' marshals, office staff and their drivers who are waiting in their cars in a line adjacent to and visible from the booking office, thus breaching the first defenders' own licensing condition 172. When a passenger made a booking at the booking office, which acted as agent for the private hire driver, the reality was that the passenger could go into that office and make an immediate or almost

immediate booking. Irrespective of what the passenger may be asked by the representative of the second defenders in the office, such as what their name was or where they wanted to go to, that information was relayed by telephone or by tablet to the private hire car driver waiting outside and the journey begins almost immediately. In practical terms it resulted in the almost instantaneous hire of a private car being made in the same manner as a taxi is engaged for hire.

[14] It was submitted that the first defenders had erred in law by failing to take proper account of the nature of the signage from the main terminal building at the airport leading into the multi-storey car park. The first defenders had produced photographs of the signs lettered A to M (6/1/4 of process). The sign shown on photograph A simply says "taxis" so that passengers would believe that in following those signs they were being directed to a taxi rank whereas in fact it was said to direct the potential taxi customers towards the second defenders' booking office. The presence within the multi-storey car park of the line of private hire cars next to the booking office and in front of the area where the taxis were waiting and the use by the second defenders of marshals who wore a bib with the word "taxi" on it had all tended to blur the distinction between taxis and private cars for potential customers who had followed the signs. The pursuers took no issue with the signage in photograph F where a distinction was drawn in relation to private hire car to the requirement to pre-book or to be booked at the booking office. It was submitted that it was up to the licensing authority to regulate what the signage should be.

[15] The airport website was said to have caused further confusion in its reference to taxis and private hire cars. A printout had been taken from it on 9 September 2013 (item 3 of the pursuer's inventory of productions) and was before the sub-committee when they were considering the application. The page has a heading of "Taxis" and a picture of black cabs below followed by text relating to private hire cars and the ways in which to pre book them including an online website with an address that only referred to "taxi" with no mention of private hire car. The sub-committee ought to have taken that factor into account in reaching their decision.

[16] Whilst private hire cars have a sign on their doors which states that they are available for pre-booked hire only and the first defenders insist on that sign being there in their licensing conditions for private hire cars the pursuers' position was that the prearranged bookings taken at the booking office in the multi-storey car park are a fiction. It was submitted that "pre booking" means that the person wanting to make the journey should contact the people they want to make the booking with and that the essentials are that the passenger has to tell the person taking the booking what their name is, what their current location is, where they proposed to go and any conditions that they required. That is what most people would understand as pre-booking. There was no point in using the words "pre-booking" when the journey booked began immediately. It would just be "booking" where the line of private hire vehicles is already waiting outside in a line at the booking office

[17] The pursuers had commissioned an organisation called Mystery Shoppers Scotland to carry out independent customer research on the operation of the second defenders' booking office on a temporary licence within the multi-storey car park at Edinburgh airport in October 2013. The pursuers were said to have instructed the mystery shoppers test be carried out in order to prove a point to the committee. The terms of the findings of the mystery shoppers are set out in a document forming appendix 2B to a report by the Head of Service Community Safety for the Licensing Sub Committee of the Regulatory Committee dated 19 February 2014 (item 1 of the first defenders' inventory of productions). Whilst Mystery Shoppers Scotland was said to have been accepted as a well-known organisation it was submitted that the sub-committee had failed to be convinced by the pursuers' arguments relating to the Mystery Shoppers Scotland evidence. The first defenders had had this evidence made available to them by the pursuers for five months before the hearing and had taken no steps to make further investigations or to indicate that they were not taking it into account. It was a matter they could have raised with the pursuers at any point. The second defenders never challenged that evidence either. The only challenge was made by their counsel at the hearing on the application in April 2014. It was submitted that it was fairly obvious from that evidence and the photographs produced that people follow the signs for "taxis" when leaving the airport terminal and that the flow leads directly to the

booking office of the second defenders and then directly outside of it to the queue of waiting private hire cars. The pursuers had taken issue with reference to the word "taxi marshal" on the uniforms of those said to be marshals for the second defenders within the multi-storey car park. Those people were not marshalling people towards taxis.

[18] The pursuers submitted that the application should not have been granted to site the booking office where it is because of 1) the signage leading to it; 2) the location of the office; 3) the ranks of private hire cars right beside the office; and 4), to a lesser extent, because employees of the second defenders had asked passengers if they wanted a taxi and diverted them to the booking office. All these factors were said to constitute "other reasons for refusal" in terms of paragraph 5(3)(d). While the first and second defenders have said that they cannot tell the airport what to do it was submitted by Mr Hajducki that the first defenders could have said that the signage put in place by the airport is creating a misleading impression as to the nature of the booking office and that it was a grounds under paragraph 5(3)(c)(ii) to refuse that licence. The pursuers had produced evidence which showed that the mystery shoppers were being misled as to the nature of the booking office being for private hire cars and it was submitted that the first sub-committee could not ignore that evidence by simply saying that they were not convinced by it. They would require to state why they were not convinced by it. The mystery shopper evidence showed confusion was created. If travellers arriving in the airport did not know and were not made aware that the booking office was for private hire cars they were not in a position to make a choice between engaging a private hire car or a taxi. Because of the combination of circumstances of that with the signage and the vehicles next to the booking office it was submitted that it was not surprising that people were confused and were liable to be confused in the circumstances. It was not reasonable for the licensing authority to conduct its licensing requirements in a way in which people are likely to be confused. It was submitted that when looking at the evidence that was before the sub-committee it was fairly clear that instantaneous bookings are being made at the booking office and it was fairly clear that they were allowing private hire cars to take immediate journeys.

[19] In summary, the pursuers asked the court in terms of schedule 1 paragraph 18 of the 1 Act, which deals with appeals, to uphold this appeal under subparagraph 7; to consider that whilst evidence may be heard in terms of subparagraph 8 to accept that no evidence has been led in this appeal by agreement and that what was heard at the sub-committee may be determinative of the matter; that given the nature of the background as set out in the agreed circumstances surrounding the sub-committee's decision it was submitted there would be no point, if the appeal were granted, in remitting the matter back to the licensing authority for reconsideration of their decision in terms of subparagraph (9)(a). I was therefore invited to reverse the decision of the licensing authority to grant the application in terms of subparagraph 9(b) and to refuse the application. Mr Hajducki submitted that he could not in all the circumstances suggest any modification of the decision of the licensing authority. This case was an all or nothing situation.

Submissions for the Defenders

[20] For the first defenders Mr Armstrong referred to the report prepared by Susan Mooney, Head of Service, Community Safety for the sub-committee. This report was said to have been prepared for the assistance of the sub-committee to enable it to consider the issues before it in relation to the application. At page 2 of the report, with the heading "Executive summary" and under a sub-heading of "Recommendations" a recommendation is made in relation to the application at paragraph 1.d) that the sub-committee members grant the application. From page 4 the report sets out the background and reasons for making that recommendation.

[21] As a preliminary, Mr Armstrong pointed out that whilst reference was made at paragraph 1.2 on page 4 to Edinburgh Airport Ltd (EAL) having re-tendered taxi and private car operations at the airport in 2013 and as a result EAL had entered into a contract with City Cabs Edinburgh Ltd (City Cabs) to operate a taxi stance it was clarified later in the report at page 7 paragraph 2.18 that the area in the multi-storey car park used by taxis was not a taxi stance appointed by the first defenders under section 19 of the Act. Similarly, the

waiting area for private hire cars in the multi-storey car park was not a “stance” (appointed under section 19 otherwise).

[22] Paragraph 2.10 of the report refers to Council officers and the cab inspector from Police Scotland having visited the site on a number of occasions. Officers had been advised that the second defenders would operate the booking office and private car hire operations strictly in accordance with the Act. At paragraph 2.13 the cab inspector and the Police Inspector with responsibility for airport are noted as being fully aware of EAL and the second defenders’ proposals for changes. Appropriate statutory consultations had taken place and a number of visits had taken place to the site. No objections to the application had been made by Police Scotland. At paragraph 2.16 the sub-committee are advised that in terms of licensing and trading standards there were no objections or matters of concern to raise with them. Checks had been made to ascertain whether complaints had been made about the then current operation of the second defenders’ booking office since it opened under a temporary license in August 2013. Two complaints had been received from members of the public. One complaint related to the pick-up charge (permitted by the fare table) and the other complained that the requirement to provide details before booking a private hire car resulted in a delay (i.e. the traveller could not immediately enter the private hire car without pre-booking). Specifically, no one had complained that they had been misled or confused about the difference between private hire cars and taxis.

[23] At paragraph 2.17 the report records that the first defenders had received four complaints from taxi drivers and the first pursuers in relation to the temporary booking office. These had been investigated involving the cab inspector and no offence or breach of conditions had been found. The first pursuers had complained that a mystery shopper was able to enter a private hire car without their details being taken. This was disputed by the second defenders and the first defenders were not supplied with the details of the shopper to allow it to investigate. At 2.19 it is said that the objections which had been made to the application rely in large part on an assertion that certain criminal offences or breaches of the licence conditions will take place. The report goes on to say that no such offence or breach had ever been proved and that any complaint would be investigated by the first defenders

and/or Police Scotland as appropriate. At paragraph 2.20 of the sub-committee are advised that applications for licences under the Act must be granted unless the sub-committee considers that the grounds for refusal set out in paragraph 5(3) of schedule 1 to the Act are established. These grounds are said to be set out in full in Appendix 7 of the report and it is stated that it is important to note that the onus is on the objectors to show that there are grounds of refusal. Paragraph 21 sets out mandatory conditions if a booking office licence is granted and at paragraph 2.22 the sub-committee are advised that they can add such other reasonable conditions as they see fit.

[24] At paragraph 2.9 the report states that the second defenders had advised the officers that every passenger who passes through the booking office will provide their name and destination to an employee of the second defenders and will be booked on to one of their private hire cars (or one of their taxis, as the second defenders have some taxis in their fleet). The booking will be logged on a computer and communicated to the driver of a vehicle in the pick-up area. The passenger will then make their way out of the booking office to meet the private hire car or taxi in the pick-up area outside.

[25] At paragraphs 2.23 to 2.32 the report sets out and discusses legal issues relating to the operation of private hire cars. At paragraph 2.28 the sub-committee are advised that it is important to note that the phrases "pre-booking" or "pre-booking by telephone" or "plying for hire" do not form part of the Act. At paragraph 2.29 the report sets out that a private hire car licence holder and a private hire car driver licence holder must ensure that they do not act in such a way so that they commit an offence in terms of section 7(1) or section 21(1) of the Act. It is stated that the arrangements for the hire of the private car should not be made between the driver and a passenger for a journey beginning there and then. Paragraph 2.31 sets out that condition 172 of the first defenders conditions for taxis, private hire cars, taxi drivers and private hire cars also contain the condition that "The driver of the private hire car shall not canvass or importune on any public place or street for employment, or otherwise ply for hire". The sub-committee are advised that this is a local licensing condition and that it is a criminal offence to breach a licensing condition.

[26] At page 10 of the report it is recommended that Committee Members a) note the contents of this report; b) hear from the applicant objectors; c) note that no objection to the granting of this licence had been made by the Office of the Council, Police Scotland or Fire Scotland and d) grant the application.

[27] Appendix 1 to the report shows the site plans for the booking office. The photographs already referred to in the first defenders' productions (item 4) were before the sub-committee. With reference to the sign shown in photo F situated within the multi-storey car park on entering the building to the left of the zebra crossing running from the entrance doorway, Mr Armstrong pointed out that with reference to private hire cars the statement "must be pre booked or booked at the booking office" meant in that context that "pre booked" referred to booking before the passenger had travelled on holiday etc but that the sign points out that booking at the booking office is required if the passenger wanted to book when leaving the airport. He submitted that ultimately it is a question of fact if the signage is clear or not and that that judgement was a matter for the sub-committee to decide. The analyses of the mystery shoppers report showed that the majority of them were not confused by the signage. Photograph H points one direction for taxis and another direction for private hire cars.

[28] Mr Armstrong highlighted the last paragraph of page 3 of the notification of decision and statement of reasons of the sub-committee dated 14 March which contains a summary of the pursuers' case before the sub-committee at the last paragraph of page 3. Mr Hajducki had advised the sub-committee that the objection of the first pursuers had been made on the basis that they considered that the application should be refused having regard to paragraph 5(3)(c)(ii) and (d) of schedule 1 of the Act, specifically that the premises for which the licence was sought were not suitable or convenient for the conduct of a booking office having regard to the nature and extent of the activity, and that there was other good reason for refusal. Mr Armstrong submitted that this suggested that an objection had been made about the location of the premises which was a separate issue. The pursuers had taken a point before the sub-committee in terms of paragraph 5(3) (c)(ii) regarding the nature and extent of the proposed activity but they did not put forward any objection under paragraph

5(3)(c)(i) in relation to the location of the booking office. When giving its reasons for its decision the sub-committee stated at reason 2 that the suitability of the applicants to hold the licence was not questioned with none of the objectors having sought to argue that the second defenders were not fit and proper to hold a booking office licence. Flowing from that, at reason 3, the sub-committee stated that therefore their attention was focused on the premises for which the booking office licence was being sought. It noted the extent of the premises for which that application was being made. It referred to the location of the office having been agreed between the airport and the second defenders. The location of the private hire car and taxi vehicle waiting areas was also determined by the airport. The sub-committee did not agree that it would be appropriate to extend their determination of the booking office licence beyond the scope of the relevant statutory provisions, specifically in relation to these waiting areas. There were no stances appointed by the first defenders in the vicinity.

[29] At paragraph 4 the sub-committee noted that the objectors were asking for refusal of the licence on the basis that the arrangement proposed would not ensure a clear distinction between taxis and private hire cars was maintained at the location of the booking office. They also noted objections that the close proximity of vehicles, the signage used at the airport and the manner in which marshals were operating could all lead to confusion and that the operation of the booking office adjacent to the private hire cars which in turn were adjacent to the taxis combined to create an impression that private hire cars were effectively operating as taxis. In paragraphs 5 and 6 of the reasons the sub-committee set out the pursuers' position that the effect of the booking office being adjacent to the private hire cars created a situation where an almost instantaneous booking could be made which was no different from the situation with taxis where a booking could be made there and then. At the conclusion of paragraph 6 of the reasons the sub-committee record that they sought clarification on the extent to which the objectors considered there would be considered to be a sufficient separation in terms of time of booking or location from the journey beginning from the objectors but no specific response to that query was provided. At paragraph 7 they stated that they were satisfied that adequate arrangements to pre-book a private hire car were in place from evidence provided by the applicant.

[30] The sub-committee had noted the comments made by the objectors about near “instantaneous” or “immediate” booking but did not accept the arguments advanced by the objectors as to the interpretation of the relevant statutory provisions on this point. They considered that there was an arrangement in place which involved the booking of vehicles by members of the public. Only upon making such a booking would the passengers be able to proceed to a private car hire. The sub-committee preferred the legal analysis provided in the report to it by the solicitor for the first defenders and counsel for the second defenders. They made a judgement on the factual position that was before them and had preferred the submissions in law put forward on behalf of the second defenders to those made on behalf of the pursuers. At paragraph 14 of the reasons the sub-committee had noted the information about the booking arrangements at the booking office. There was a requirement for prospective passengers to enter the office and take action to make a booking in order to obtain a particular vehicle. The speed with which the vehicle might be made available was not considered by the sub-committee to be a relevant consideration in that regard: the important consideration was that a clearly discernible booking was made. They were satisfied that the requirements of the legislation in ensuring that a private hire car does not act as a taxi (whereby a driver made arrangements for a hire with the passenger there and then) were being met.

[31] At paragraph 8 of the reasons the sub-committee had noted the extent of the “mystery shopper” evidence and the reliance placed upon the comments section in each of the mystery shopper forms by Mr Hajducki with particular reference to the marshaling arrangements at the airport and the word “taxi” appearing on the bibs which they wore identifying themselves as marshals. Mr Armstrong referred to the sub-committee having satisfied themselves with the explanation provided by the second defenders, recorded in paragraph 9, with regard to the operation of the marshals and their having considered that with appropriate re-labelling of bibs being worn by the marshals, sufficient clarity as to their function could be maintained. With regard to the mystery shopper forms the sub-committee noted that the passenger experience was generally favourable and that in each case the passengers were aware that their journey was being made with the second defenders as a

private hire car firm. At paragraph 19 the sub-committee had stated that there had been no complaints made to date with regard to the operation of the booking office at the location in question. They were not persuaded that the selective quoting from comments in the mystery shopper forms which had been made on behalf of the pursuers' amounted to a sufficient basis on which to refuse the application.

[32] Mr Armstrong submitted that it was clear from the reasons given that the sub-committee did consider the mystery shopping evidence and that it was for the sub-committee as decision makers to weigh that up along with all the evidence that they referred to having considered as set out in their reasons. It was clear that each mystery shopper was asked in the booking office for their name and destination. No mystery shopper had said that they were not. None of the mystery shoppers had suggested that they could walk straight into the private hire car without making the booking at the office. The majority of the mystery shoppers had said the signage from the airport to the taxis and private hire cars were very clear. It was submitted that, when analysed, the mystery shopper evidence was far from supportive of the pursuers' case. Insofar as some comments by them suggested some confusion in relation to the nature of the booking office the shoppers were clear that they were taking a journey in a private hire car and referred to seeing the signs on the door of the cars before starting the journey. He submitted that the sub-committee had to consider all the evidence before it and evaluate the mystery shopper evidence with the rest of the evidence.

[33] At paragraph 10 of the reasons the sub-committee found that they disagreed with the view expressed by objectors that the signs direct passengers from the airport terminal to the multi-storey car park were misleading. The photographs of the signs had shown that the airport signage directed customers to taxis and, on reaching the car park, the customers were made aware by the signage there of the additional availability of private hire cars. It was noted by the sub-committee that no complaint had been made by anyone to the first defenders about being misled by the signs. At paragraph 12 they take note of the queuing arrangements of taxis and private hire cars and considered that the vehicles were clearly distinguishable with separate queuing arrangements in place for each category and a clear

separation in place between the queues. Mr Armstrong submitted that this was a judgement made by the Committee on the basis of the evidence before them.

[34] At paragraph 20 the sub-committee noted concerns expressed by objectors about the first defenders' licensing condition 172 regarding plying for hire. The sub-committee was not satisfied that the arrangements for the queuing of private hire cars at the airport created a situation in breach of this condition. It considered that with pre-booked hires only signs displayed on each private hire car and the process of the booking the objectors' contention that the private hire cars were plying for hire was not made out. At paragraph 21 they refer to comments of officers of the first defenders having been noted in that regard particularly in relation to enforcement of the condition of licence. The fact that there had been no complaints made nor breaches of condition reported during the period that the temporary booking office licence had been in place was considered by the sub-committee to be relevant.

[35] At paragraph 23 the sub-committee stated that it considered that subject to the marshaling role being clarified in future by means of improved labelling on bibs the booking office in place of the airport was capable of being licenced in such a manner as to ensure a continuing distinction between private hire cars and taxis. Mr Armstrong submitted that the sub-committee shown at paragraph 24 of its reasons that they had taken account of the then recent Inner House decision in *Spring Radio Cars* judgment and were aware of the distinction between taxis and private hire cars. They had however rejected Mr Hajducki's view of what has been the significance of the case and had preferred the conclusions put forward on behalf of the defenders in that regard. The Inner House had not imposed a proactive duty on the sub-committee to carry out investigations to the extent set out by the objectors. It was submitted that this showed a full and clear consideration of the application by the sub-committee.

[36] It was submitted that the sub-committee had applied the correct legal test to all matters and other issues were a matter of judgement. Only if the sub-committee had acted unreasonably could the pursuers mount a successful challenge to their decision. No distinction was made within the 2009 Order between booking offices for private hire car

offices and for taxis. The purpose of the regulation was to ensure that nothing untoward took place in any of the booking offices. There was nothing in the legislation that required private hire car offices to be restricted in any way as opposed to taxi offices. Whilst in terms of section 23 of the Act the driver of a taxi can make an arrangement with a member of the public for a journey beginning there and then, in the case of a member of the public going into the second defenders' booking office at the airport to arrange a journey the journey does not begin there and then because the passenger has to leave the booking office to commence the journey which has been booked through the office to be carried out by the private hire car. The sub-committee did not err in law by preferring the legal analysis provided in the report to it by its legal advisor and the submissions made on behalf of the first and second defenders.

[37] The approach that a sheriff should take in considering an appeal against the decision of a licensing sub-committee in a matter under the Act was discussed in the opinion of the Second Division in *Ranachan v Renfrew District Council supra*. At page 627 E-F of the report the court notes that the sheriff in that case accepted that it was a matter entirely for the appellants' sub-committee to determine whether or not they regarded a previous conviction as a serious matter and that it was not for him to substitute his own view on that. However, the sheriff in that case nevertheless erred by substituting his own view of the matters before the licensing authority. It was for the authority to determine the issue before them and it could not be said that their decision was so unreasonable that no reasonable authority could have reached it. The first defenders submitted that because of the detailed reasons provided by the sub-committee in the present case their decision could not be said to be so unreasonable that no reasonable authority could have reached it.

[38] I was also referred to *R (on the application of) Trashorfield Ltd v Bristol City Council supra* which related to a planning matter where Mr Justice Hickinbottom stated at paragraph 13 (ii) of his judgement that whereas what amounts to a material consideration is a matter of law the weight to be given to such considerations – the part any particular material consideration should play in the decision making process, if any - is a question of planning judgment, and is a matter entirely for those to whom Parliament has assigned the task of

planning decision making. They are democratically elected bodies (e.g. a committee of councillors), or persons accountable such as a body; and it is an important principal that planning decisions, which inevitably involve public interests, are made by those who are ultimately democratically accountable. He went on to say at paragraph 13(vi) "given the experience and expertise of the Planning Committee members is coupled with the fact that they are democratically elected, the judicial approach to challenges to their decision should be marked by particular prudence and caution" Mr Armstrong submitted the same principles could and should be applied by analogy when considering decisions by local authorities in relation to licensing issues.

[39] In the pursuers' submissions relating to legal definitions they had referred to the essence of a taxi being that it can be engaged in a public place by the passenger for a journey beginning "there and then". Mr Armstrong submitted that that definition left out the critical element of the taxi driver. The passenger may engage a taxi in a public place directly with its driver. It was not accepted by the first defenders that the potential passenger is engaging directly with the driver of the private hire car by arrangements made in a public place with the journey beginning there and then. The passenger provides their name and their destination to the booking office and it is through the booking office that the booking with the private hire car is made. That factual position, as identified in paragraphs 2.9 and 2.10 of the report for the sub-committee, entitled it to make the conclusion set out in paragraph 7 of the reasons. The operation as proposed and operated by the second defenders did not involve a potential passenger engaging with the driver for a journey beginning there and then when they made a booking at the second defenders' booking office. It did not involve an arrangement being made in a public place with a person acting on behalf of the passenger and the driver for a journey beginning there and then. It did not involve the private hire car picking up a passenger without prior booking. It did involve the private hire car picking up passengers in a public place by arrangement by means of prior booking. Accordingly the pursuers' argument was not well founded.

[40] In relation to the pursuers' contention that the failure of any booking being made in a location separate from where the private hire cars were waiting involves an almost

instantaneous hire of a private hire car being made in the same manner as a taxi engaged for hire it was submitted on behalf of the first defenders that the factual position before the sub-committee was that the drivers of the private hire cars were not canvassing, importuning for employment or otherwise plying for hire. The drivers did not take an active part in facilitating the booking. Accordingly there was nothing illegal about the process. There is no restriction in the legislation which precludes private hire cars being booked in the way proposed. Paragraphs 7-16 and 19-24 of the reasons set out the basis upon which the sub-committee rejected the pursuers' arguments that the grant of a licence would blur the distinction between taxis and private hire cars. In reaching these conclusions the sub-committee, it was submitted, exercised its judgement in a way that it was entitled to in the circumstances.

[41] In the guidance circular No 25/1986 produced by the Scottish Government (item 10 at the joint authorities) at paragraph 2.46 under the heading of "Radios in Hire Cars" there is reference to the parliamentary stages of the Act in which the general view was that there should be no power which would allow licensing authorities to ban the use of radios in private hire cars. The Secretary of State had therefore used his regulation making powers in the 1986 Regulations to provide that no condition attached to the grant of private hire car operators or drivers licence will have the effect of preventing the fitting or use of a radio or other such communication system in a private hire car. Paragraph 2.56 of the guidance refers to section 23 which defines a "taxi" and "private hire car" and states that these definitions provide that a taxi can do everything that a private hire car can do and in addition it can pick up passengers without prior booking in a public place. The taxi can therefore "ply for hire" and can be flagged down without prior arrangement in a street or other public place (defined by section 133). By contrast, although a private hire car can be made available for personal conveyance with a view to profit at a freely negotiated price it cannot, like a taxi, be engaged by arrangements made in a public place between the potential passenger and its driver for a journey beginning "there and then". Paragraphs 2.58 and 2.59 provide further guidance on the distinctions between a taxi and a private hire car. Paragraph 2.59 states that while a private hire car cannot, unlike a taxi, respond to a request to stop when being flagged down in the street or pick up passengers in any public place

without prior booking it can pick up passengers in a public place by arrangement by means of prior booking and can also respond to radio bookings.

[42] Circular 25/1986 is referred to in the Taxi and Private Hire Car Licensing; Best Practice Guidance for Licensing Authorities 2nd Edition April 2012 by the Scottish Government (item 8 of the Joint Authorities). At paragraph 1.4 of that guidance it states that local licensing authorities should, in addition to referring to that document and the Act, also make use of the information in circular 25/1986. Paragraph 5.12 refers to clear identification of a hire car and the requirement for pre-booking and signs, in compliance with that best practice, being required to appear on the doors of private hire vehicles. Chapter 7 of the guidance deals with the licensing of booking offices. It was pointed out that no distinction is made in the legislation relating to the licensing and booking offices between offices dealing with booking of taxis and offices dealing with the booking of private hire cars. Paragraph 7.5 states that the new legislation is not set out to be overly prescriptive to conditions that might be applied to licences and reference is made to the terms of paragraph 5 to schedule 1 of the Act which provides licensing authorities with the power to attach such other reasonable licensing conditions as they consider appropriate having regard to local circumstances and their own legal advice.

[43] Mr Armstrong submitted that no error of law had been made by the sub-committee. They had accepted legal advice and following that made a judgement and set out their reasons. In his submission they were entitled to do so. The sub-committee had considered the issue of confusion of the public and had set out their conclusion at paragraph 13 that they did not consider that the granting of the booking office licence would create confusion. In his submission they were correct to do. The advice at paragraph 2.20 of the report to the sub-committee pointed out that applications for the licence must be granted unless there are grounds for refusal as set out in section 5(3) of the Act. They had dealt with mystery shoppers at paragraphs 8, 9 and 19 of their reasons. In relation to the complaints made on behalf of the pursuers by Mr Hajducki about the Edinburgh Airport website that the website was misleading and added to a blurring of the distinction between taxis and private hire cars Mr Armstrong pointed out that the website stated that private hire cars must be pre

booked and therefore was not misleading. Details are also given of Edinburgh Airport Black Cabs.

[44] In conclusion Mr Armstrong submitted that if I found against the first defenders and considered that they had made an error in law the matter should go back to the sub-committee to be reconsidered. Similarly, if I considered that the first defenders had acted unreasonably the application should also go back before the first defenders for reconsideration. He reminded the court that only part of the evidence which was led before the five hour hearing before the sub-committee had been referred to in this summary application hearing. In conclusion he submitted that this application, being the first case seeking a decision under the 2009 Regulations, was a matter suitable for the employment of senior counsel. Mr Hajducki joined in that motion.

[45] For the second defenders Mr Cahill invited me to repel the pursuers' pleas-in-law and to dismiss the summary application. He adopted the submissions advanced by Mr Armstrong on behalf of the first defenders in their entirety. Having had discussion with the second defenders on whether there were any additional matters which they wished him to raise they had advised him that there were not.

Discussion and Decision

[46] It appears to me that in considering this summary application I require to follow the approach of the Inner House in *Spring Radio Cars v Glasgow City Council supra* at paragraphs [50] and [51] when they considered the licensing issue that was before them in that case. In this case the starting point is to ascertain what is the purpose, or legislative intention, in its context of article 2 of the 2009 Order. Article 2 designated the use of premises for the carrying on of a business which consists to any extent of the taking of bookings, by any means of communication, from members of the public for the hire of a vehicle in relation to which a taxi license or private hire car license has been granted in terms of section 10 of the Act, and that license is in effect, as an activity for which a license under Part 1 of the Act shall be required. As the use of such premises relates to the operation of taxis and private

hire cars the statutory provisions governing the licensing and regulation of taxis and private hire cars in Part II ss.10-23 of the Act are relevant in considering the purpose and legislative intention of the 2009 Order. Whilst the 2009 Order applies equally to applications for licences for taxi booking offices and for private hire car booking offices a local licensing authority, in my opinion, requires to take account of the intention of Parliament to make a clear distinction between the operation of a vehicle as a taxi and the operation of a vehicle as a hire car and that Parliament sought to avoid, as far as possible, confusion in the public mind between the two categories of vehicle and, in particular on the part of passengers and customers or potential customers.

[47] Lord Brodie states at paragraph [25] of his judgement in *Spring Radio Cars* that in return for the privilege of a taxi cab or a private hire car conveying members of the public for a fare the licensee undertakes to provide a certain level of service which conforms to certain standards. The market for this sort of transportation is being regulated in the public interest. He goes on to refer to vehicles which are not licensed whose drivers may nevertheless be prepared to pick up the unwary. This passage reflects, in my view, an underlying purpose within the licensing requirements of taxis and private hire cars of safeguarding the public from potential harm, such as may befall the unwary who accept transport in unlicensed vehicles and unlicensed drivers.

[48] The pursuers' argument in this case is, firstly, that the second defenders' booking office licence ought not to have been granted by the first defenders because the premises are not suitable or convenient for the conduct of a private hire car booking office and because of the extent of the proposed activity there in terms of section 5(3)(c)(ii) of schedule 1 of the Act; and secondly, that the license should not have been granted in terms of paragraph 5(3)(d) because there is other good reason for refusing the application. The pursuers' objections were said not to be an issue of unfair competition but that confusion had been caused by the location of the second defenders' booking office. However, as was pointed out on behalf of the first defenders, no objection was taken by the pursuers under paragraph 5(3)(c)(i) in relation to its location before the sub-committee and this summary application makes no case in that regard.

[49] Criticism was made by the pursuers before the committee that the signage which directs passengers emerging from the air terminal at the airport towards the multi-storey car park and the taxis and private hire cars waiting there led to confusion in the minds of those passengers as to whether they were heading towards taxis or private hire cars. Similar confusion was said to have been caused by the wording on bibs worn by marshals within the multi-storey car park who were there to direct passengers to the private hire car booking office. If those matters had the potential to create confusion in the public's mind between taxis and private hire cars these would have been matters which the sub-committee would have to take into account in relation to the application notwithstanding that the signage and the positioning of marshals were under the practical control of the airport. It can be seen from the terms of their Notification of Decision and Statement of Reasons that the sub-committee in fact did take them into account and considered them. If as a result of that consideration the sub-committee decided that the signage at the airport and the wording on the marshals' bibs did lead to confusion they might have provided a valid reason for the sub-committee to refuse to grant the application in terms of paragraph 5(3)(d) albeit that the first defenders did not have power to regulate those matters at the airport.

[50] However, I do not consider that sub-committee erred in law or exercised their discretion unreasonably by deciding that the signage had not caused and would not cause confusion between taxis and private hire cars as claimed by the pursuers. The photographs of the route for passengers from the main terminal to the multi-storey car park in the first defenders' productions show signs at the exit from the departure hall from the main terminal (photograph A,) in the tunnel for pedestrians (photographs B and C) and at the doorway leading into the multi-storey car park (photograph D) which refer to taxis but make no mention of private hire cars. They mark the route which in fact leads to where the waiting black cab taxis are positioned within the multi-storey car park as well as to the second defenders' booking office. Photograph D is at the doorway leading into the multi-storey car park. On passing through that doorway and entering the multi-storey car park, passengers will see a sign ahead of them on the left-hand side of a zebra crossing leading from the entrance doorway which is shown in photograph E and in close up in photograph

F. That sign indicates the location of pre-booked taxis, private hire cars and taxis by arrows pointing to the right. The sign shows a silhouette of a vehicle which looks like a traditional black cab underneath the word "taxis" which are described as "no booking required minimum six people". Beneath that, underneath the words "private hire cars", are shown silhouettes of different types of vehicles used as private hire cars (ordinary saloon car, estate car and people carriers) and the private hire cars are described on the sign as "must be pre-booked or booked at the booking office maximum eight people". Therefore at the point of passengers are entering into the multi-storey car park the signage makes a clear distinction between taxis and private hire cars. The sign indicates that both these types of vehicles are to be found off to the passengers' right when facing that sign. That is in fact where both private hire cars and taxis are located within the multi-storey car park. The private hire cars are located nearer to the entrance with the taxis located beyond them. The signage shown in photographs E and F is situated to the left just out of photograph G which shows the second defenders' booking office with private hire cars in view waiting outside it. That photograph also shows taxis waiting in the middle right of the photograph. Photograph H shows further signage (not visible in photograph G contrary to what is stated underneath that image) which would appear to be to the right of the areas shown in E, F and G on the approach to where the taxis were waiting. The sign in photograph H shows that pre-booked taxis and taxis are straight ahead and that private hire cars, from that view point, are off to the left. The pursuers' submission that the signage directs the potential taxi customers towards the second defenders' booking office rather than to the taxi rank is not supported in fact. The signage on entering the multi-storey car park clearly directs the passengers towards where each type of vehicle is situated and is in view. Further signage directs the passengers in the appropriate direction of their separate locations. This position is reflected in the report from Susan Mooney, Head of Services Community Safety, which was before the subcommittee at paragraph 2.9.

[51] The sub-committee in their notification of decision and statement of reasons at paragraph 4 had noted that the objectors were also asking for refusal of the application on the basis that the arrangements proposed within the multi-storey car park would not ensure a clear distinction between taxis and private hire cars was maintained at the location of the

booking office. They noted that the objections made by the pursuers in relation to the close proximity of the private hire vehicles to the booking office, the signage used at the airport and the manner in which marshals were operating could all lead to confusion and noted the objection of the pursuers that the operation of the booking office adjacent to the private hire cars which in turn were adjacent to the taxis combined to create an impression that private hire cars were effectively operating as taxis. At paragraphs 5 and 6 of their reasons it is clear that the sub-committee considered the pursuers' submissions on the effect of the booking office being adjacent to the private hire cars and the pursuers' view that this created a situation where an almost instantaneous booking could be made which was no different from the situation with taxis where a booking could be made there and then. At paragraph 6 they refer to having sought clarification from the pursuers as to the extent to which they considered there would be sufficient separation from times of booking or location from a journey beginning but this query was not answered by them. It therefore cannot be said that the subcommittee failed to consider the issues raised by the pursuers' objections. The subcommittee, on the basis of the legal advice with which they had been provided, did not accept that the words "instantaneous" or "immediate" in relation to booking were present in the relevant statutory provisions. The proposed arrangement required passengers to make the booking within the office and only once that booking was made would the passengers be able to proceed to a private hire car.

[52] There is nothing in the legislation and the pursuers were unable to provide any authority or regulation which specifies a period of time or distance which must elapse between the passenger making a booking, proceeding to the private hire car and continuing on their journey. It appears to me that the absence of such specification reflects the purpose of the legislation and the underlying objective of protection of the public. The holders of black cab licences are entrusted by the licensing legislation with accepting hires directly from passengers personally and without the prior intermediary of a booking office. The passenger asks the driver to accept the hire and once accepted the journey may begin there and then. Licensed taxi drivers are required by the first defenders to pass a test of their knowledge in terms of section 13(5) of the Act in order to obtain their licence. Private hire car drivers are not required to pass such a test of knowledge and are not entrusted by the

legislation to accept bookings from passengers themselves. That must be done in advance of the journey through a booking arrangement and records require to be made of the passenger's name and their proposed destination. It appears to me that once the required separate booking arrangement has been made and those details have been logged in the second defenders' computer system there is no further protection which would be provided to passengers by requiring them to walk any further than was practically necessary or to wait for any period that is longer than necessary for their journey to begin. That is not what is required by the legislation and the reality is that is not what passengers want. A suggestion made on behalf of the pursuers before the subcommittee and repeated to an extent before myself that the private hire car vehicles ought to be screened off from the view of prospective passengers in some way is similarly not required by the legislation and would not result in any enhancement of the legislative objectives. I therefore do not consider that the sub-committee erred in law or exercised their discretion unreasonably on this point when considering the factual position in the light of the legal advice which they had been given.

[53] The important point in relation to a private car hire booking office is that passengers are clear that they are booking a journey in a private hire car and not in a taxi. On the issue of the objections made by the pursuers about marshals having bibs bearing the word "taxi" when directing passengers towards the booking office, it is clear that the sub-committee took that into consideration and proposed that the wording on the bibs should be clarified. They did so against the background that they were aware of the requirement to distinguish between taxis and private hire cars. It was in my view not unreasonable for them to have satisfied themselves with the explanation provided by the second defenders and their undertaking that the wording on the marshals' bibs would be clarified as recorded in paragraph 9 of their reasons with regard to the operation of the marshals nor was it unreasonable that they had considered that with appropriate re-labelling of the bibs being worn by the marshals sufficient clarity as to their function in relation to bookings for private hire cars could be maintained. It was a matter that could be easily remedied. It was not expected to be an ongoing potential source of confusion. I do not consider that the sub-

committee erred in law in relation to the licensing legislation in that regard or that they exercised their discretion unreasonably..

[54] In relation to the mystery shopper evidence, it may have been the use at that time of the word "taxi" appearing on the bib of the marshals which it was proposed to have rectified, that led some of the mystery shoppers to indicate that they had been confused as to the nature of the booking office. However, it was clear that once they were in the booking office they were each asked for their name and destination as required. None of the mystery shoppers suggested that they could walk straight into the private hire car without making the prior booking at the office. The majority of them had considered that the signage from the airport to the taxis and private hire cars was very clear. All the mystery shoppers were clear before they commenced their journey that they were taking a journey in a private hire car. They had referred to seeing the signs on the doors of the private hire cars before starting their journey. It was submitted on behalf of the pursuers that the evidence of the mystery shoppers was not challenged before the sub-committee and that the sub-committee had taken no steps to make further inquiries or obtain further evidence in relation to the operation of the booking office. The subcommittee had noted the evidence of the mystery shoppers when stating at paragraph 12 of their reasons that they considered that the private hire cars and taxis were clearly distinguishable. There were separate queuing arrangements in place for each category of vehicle with a clear separation in place between the queues. I have accepted the submissions made on behalf of the first defenders that the sub-committee was under no obligation in terms of the legislation to make pro-active further investigations in relation to the application. They had to make their decision upon the material presented to them and they had considered all the material that was before them including the mystery shopper evidence. They had accepted legal advice and following that made a judgement in relation to the facts placed before them. The mystery shopper evidence was one piece of evidence which had to be balanced with other evidence. The sub-committee were not presiding over a proof in a litigation where failure to challenge or rebut a piece of evidence may result in it being held to have been proved. They had set out the reasons for their decision. I do not consider that the sub-committee erred in law or exercised their discretion unreasonably in relation to their consideration of the mystery shopper evidence.

[55] In conclusion, the advice provided to the subcommittee at paragraph 2.20 of the report had pointed out that the application for the booking office licence must be granted unless there are grounds for refusal. The sub-committee had not been satisfied on the basis of the material that was before them that there were grounds for refusal and accordingly granted the application. I accept the submission made on behalf of the first defenders that the opinion expressed by Mr Justice Hickinbottom in *Trashorfield supra* in relation to the judicial approach to challenges to decisions by democratically elected planning committee members can by analogy be applied to challenges to a decision of a licensing sub-committee. I have applied the understanding of the sheriff in *Ranachan supra* referred to at page 627F that the court can only overturn a decision of the licensing authority if it so unreasonable that no reasonable authority could have reached it in all the circumstances of the case. It may be the case that no licence for a private hire car booking office has been granted for an airport location by any other licensing authority. However, under reference to the *dicta* of Lord Menzies at paragraph [54] of *Spring Radio* other authorities may have different policies and practices which they consider appropriate to their own localities. It does not follow that the the first defenders sub-committee were not entitled to make the decision that they did or that their decision was unlawful. On the basis of the factual background which was agreed by the parties in this application and the sub-committee's application of the advice that it had received in relation to the licensing legislative framework which they required to apply I do not consider that their decision can be said to be so unreasonable that no reasonable authority could have reached that decision. They have not, in my opinion, erred in law or exercised their discretion unreasonably in doing so. Accordingly, I have refused the appeal by the pursuers against grant of the second defenders' booking office licence by the first defenders and have dismissed this summary application. As the defenders have been successful in their opposition to the application I can see no reason as presently advised as to why expenses in their favour should not follow success against the pursuers. However, I have assigned a hearing to be addressed on that issue and to consider how expenses should be awarded as between the various parties.

Edinburgh 23rd March 2015. Certified
a true copy this and the preceding
34 pages. *[Signature]*
Sheriff Clerk Depute of The Sheriff
Court District of Edinburgh