

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 18 MARCH 2015**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Robert G MacIntyre
Councillor Rory Colville	Councillor Donald MacMillan
Councillor Robin Currie	Councillor Alex McNaughton
Councillor George Freeman	Councillor James McQueen
Councillor Alistair MacDougall	Councillor Richard Trail
Councillor Neil MacIntyre	

**Attending:** Charles Reppke, Head of Governance and Law  
Kate Connelly, Solicitor  
Mr A McEachern, Applicant's Representative  
Sergeant David Quinn, Police Scotland  
Constable Gordon Brown, Police Scotland

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were intimated from Councillors Mary-Jean Devon, Roderick McCuish and Sandy Taylor.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF PRIVATE HIRE DRIVER'S LICENCE (N MCEACHERN, BRUICHLADDICH, ISLAY)**

The Chair welcomed everyone to the meeting and introductions were made. He referred to a request from Police Scotland that the Committee take into consideration alternatives to prosecution which were considered "spent" in terms of the Rehabilitation of Offenders Act 1974. Prior to considering the merits of the Application the Committee must determine whether or not they consider the spent alternatives to prosecution should be admitted, it being noted that the Committee may take into consideration evidence relating to such matters where they are satisfied that justice cannot be done except by admitting such evidence. The Chair explained the procedure that would be followed in this respect and invited the Police to address the question of relevancy of the spent alternatives to prosecution to the Application.

**Police**

Sergeant Quinn advised that the Chief Constable considered that justice could not be done without disclosing the spent alternatives to prosecution as the offences were recent and one of them related to public disorder.

**Applicant's Representative**

Mr McEachern advised that he did not think the first offence was relevant but could understand why the second one would be and confirmed that he had no objection to the second offence being disclosed.

The Committee agreed that the spent alternatives to prosecution be taken into consideration in the determination of this Application as they believed that it was important to have all information before them to enable them to make an informed decision.

The Chair then outlined the hearing procedure that would be followed and invited the Applicant's representative to speak in support of the Application.

### **Applicant's Representative**

Mr McEachern explained that he was here to represent his son who was unable to attend due to work commitments. He advised that it was his fault that the convictions had not been disclosed on the Application form as he had filled out the form on behalf of his son. He confirmed that his son had signed the form. He referred to the spent alternatives to prosecution and explained why the first offence, which had taken place in March 2013, had occurred. He also explained the nature of the second offence which had taken place in February 2014. He advised that the report by the Chief Constable made it look like his son was the only person involved. He stated that the incident had involved a large number of youths who had all received fixed penalty fines. He advised that he believed that at least 12 tickets were issued by the Police on that occasion.

Mr McEachern referred to his son's Application which had been submitted as he wanted to support his son in getting on and that he hoped that he would be able to assist him with his taxi driving business. He referred to the offence which occurred in April 2014 and noted that the Chief Constable's letter advised that his son had been found guilty. He stated that his son had not been found guilty and that his son had plead guilty and had been charged accordingly.

### **Questions from the Police**

Sergeant Quinn sought and received clarification from Mr McEachern that his son had signed his Application form for a Taxi Driver Licence.

When asked Mr McEachern advised that he did not believe the incidents were all alcohol related and stated that his son very rarely drank alcohol now.

### **Police**

Sergeant Quinn confirmed that the Chief Constable objected to the granting of a Taxi Driver Licence to Mr McEachern as he was of the opinion that he was not a fit and proper person to be the holder of this Licence. He read out the nature of the offence which took place in April 2014 and resulted in Mr McEachern being found guilty of Assault to Injury and being issued with a fine and compensation order. He confirmed that the Applicant had failed to disclose his conviction on his Application form and had been issued a standard warning letter. Sergeant Quinn also read out the details of the 2 spent alternatives to prosecution.

## **Questions from Applicant's Representative**

Mr McEachern referred to the Court Case held in December 2014 following the incident which took place in April 2014 and advised that no photographic evidence was produced and sought confirmation that this meant there was no proof that the injured male had suffered bruising. Sergeant Quinn confirmed no evidence was presented as Mr McEachern had pleaded guilty to the offence of assault to injury as it had been libelled.

## **Members' Questions**

Councillor Trail sought and received confirmation from Mr McEachern that his son was not in attendance at the hearing as he had been unable to get time off work.

Councillor Currie sought and received clarification from Sergeant Quinn on the difference between a fixed penalty fine issued by Police Officers and a fine issued by the Procurator Fiscal.

Councillor Freeman referred to the Police saying that all three incidents involved alcohol and asked Mr McEachern if this was correct. Mr McEachern acknowledged that this may have been the case.

Councillor Freeman also referred to the incident which took place in March 2013 and asked when the hall had closed. Mr McEachern replied 1 am.

Councillor Blair referred to Mr McEachern's court case and asked was his Application for a Taxi Driver Licence not a bit premature. Mr McEachern advised that this was to enable his son to take responsibility for getting on with his life.

Councillor Colville asked what Mr McEachern's son had done since he left school and what his life was like when the incident took place in April 2014. He also asked if his son would be working full time or part time as a Taxi Driver.

Mr McEachern referred to his son working for him on his fishing boat until this was sold and to securing a job with one of the local distilleries. He advised that until he started work with the distillery he had struggled to get a job and had been frustrated which he acknowledged was no excuse for his son's behaviour. He advised that his son has since turned a corner and deserved support. He confirmed that his son was a good driver and he would be able to assist him with the night driving.

Councillor Colville sought and received confirmation from Mr McEachern that if his son was granted a Taxi Driver Licence and then committed another offence he would not allow him to drive for him anymore. He stated that he was sure his son would not get into trouble again. He confirmed that his son had a girlfriend who worked at the local primary school and that they were a responsible couple.

Councillor Currie sought and received confirmation from McEachern that the person assaulted by his son was known to his son. Mr McEachern advised that this person was well known locally and that he had been surprised that it was his son that went to Court.

Councillor Robert MacIntyre sought and received confirmation from Sergeant Quinn that before issuing Fixed Penalty Notices the Police make an assessment as to

whether or not the offender understands what he is being charged with.

Councillor Robert MacIntyre sought and received confirmation that medical treatment was offered but declined by the injured male.

### **Summing Up**

Sergeant Quinn advised that the spent alternatives to prosecution showed a pattern of behaviour and confirmed that the main item of concern was the conviction of assault to injury. He confirmed that this was not an alleged conviction as Mr McEachern had pleaded guilty to it. He advised that it did not matter if the other person involved was a dubious character as in this case he was the victim and he was not applying for the Licence. He added that it did not make the offence less violent because the parties knew each other. He confirmed that Mr McEachern was found guilty and was convicted and that the Chief Constable was of the opinion that he was not a fit and proper person to be the holder of a Taxi Driver Licence.

### **Applicant's Representative**

Mr McEachern confirmed that the incident took place in April 2014 and not December 2014. He advised that his son had since turned his life around and that he would be a great help to him in his taxi business and hoped that he could be given a chance.

The Chair asked both parties to confirm if they had received a fair hearing and they both confirmed this to be the case.

### **Debate**

Councillor Trail advised that he had a great deal of sympathy for Mr McEachern trying to support his son. He stated that he believed Mr McEachern wanted his son to be a taxi driver rather than this being a wish of his son. He noted that Mr McEachern had filled the application form out on behalf of his son and that Mr McEachern had made the journey to this hearing instead of his son. He also commented that Mr McEachern seemed to put the offences down to the high spirits of young people. He advised that he did not think his son would be suitable as a Taxi Driver and therefore did not support the application.

Councillor Freeman advised that he did not disagree with anything that Councillor Trail had said. He stated that the most recent incident occurred 3 months ago. He referred to this not being declared on the Application form. He advised he did not consider the Applicant to be a fit and proper person to hold a Taxi Driver Licence.

Councillor Colville said that he was impressed by the family support. He referred to a lot happening on Islay and stated that there has long been a population decline on the island. He advised that this was an opportunity for a young person to continue to live and work on the island and advised that he should be given a chance.

Councillor Currie advised that if there was a worry about the Applicant drinking then the solution was to grant him a licence as he would need to remain sober to drive. He advised that Councillor Freeman was getting confused and that the incident had occurred nearly a year ago. He added that he placed a great deal of importance on the fact that the people involved in the incident knew each other. He referred to comments about the Applicant not being present and stated that it was big ask for

someone to spend 15 hours away from home and work to attend a Hearing especially if they were not long in a new job.

Councillor Blair advised of his concerns in respect of the evidence before them. However he acknowledged that Mr McEachern wished to support his son and he believed that he would ensure that his son did the right thing. He advised that he would support the Application.

Councillor Kinniburgh advised of his concerns due to the incidents being so recent with the first being just over 2 years ago and the most serious happening in April 2014 resulting in a conviction in December 2014 when the Applicant appeared in Court. He referred to the Application being submitted less than a month later and the failure to declare that conviction. He advised that he believed the fix penalties should also have been declared. He referred to the incident and the argument about whether or not drink was involved. He stated that if the Applicant had been sober at the time that only made his behaviour even more intolerable.

### **Motion**

To agree to refuse the Application for grant of a Taxi Driver Licence on the grounds that the Applicant was not a fit and proper person to be the holder of the Licence.

Moved by Councillor Kinniburgh, seconded by Councillor Freeman

### **Amendment**

To agree to grant a Taxi Driver Licence to Mr McEachern.

Moved by Councillor Colville, seconded by Councillor MacDougall

The Amendment was carried by 9 votes to 3 and the Committee resolved accordingly.

### **Decision**

Agreed to grant a Taxi Driver Licence to Mr McEachern and noted that this would not be processed for 28 days to allow the Police to Appeal the decision if they wished.

(Reference: Report by Head of Governance and Law, submitted)