

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 21 MAY 2014**

Present: Councillor David Kinniburgh (Chair)

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

Attending: Patricia O'Neill, Central Governance Manager
Graeme Forrester, Solicitor
Ms Scott, Applicant
Sergeant Quinn, Police Scotland
Constable Hamilton, Police Scotland

1. APOLOGIES FOR ABSENCE

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

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR THE GRANT OF A MARKET OPERATOR'S LICENCE (CONTINENTAL MARKET LTD, DUNFERMLINE)

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and invited the Applicant to speak in support of her application.

Applicant

Ms Scott advised that she was applying to hold a market in Rothesay as she believed a place like Rothesay was ideal for this kind of thing. She stated that she travelled around Scotland bringing something different to an area, attracting tourists and supporting local businesses. She advised that the Police objection was an objection to the previous person responsible for the day to day management of the markets. She confirmed that since March this year she had taken over the complete running of the market side of the business. She advised that the objection was not about her it was about the previous Manager. She confirmed that this was her sole business now and all that she wanted to do was to run the markets professionally. She stated that she had been faced with this objection 3 times now in this area and that she had no problems in other parts of Scotland.

Questions from Police

Sergeant Quinn asked if Mr Yaich still had any connections to company. Ms Scott advised that the company had been split into two and that she operated the market side of the business and Mr Yaich arranged for stalls within shopping centres. She added that he had nothing to do with the market side of the business. When asked she stated that there stalls had been set up within Clyde Shopping Centre, Motherwell, Falkirk, Dundee, Aberdeen and Livingstone.

Sergeant Quinn stated that the Police had not been notified of the company working within Clyde Shopping Centre and sought clarification. Ms Scott advised that she was not sure how these applications were dealt with.

Sergeant Quinn sought and received confirmation that Ms Scott had applied for a market traders licence in Aberdeen. He asked if she was aware that an objection had been made by the Police in respect of the application to trade in Aberdeen. Ms Scott advised that she was not aware of any objection.

Sergeant Quinn asked what Mr Yaich did when she was at the markets. Ms Scott advised that he stayed at home. When asked she confirmed that he sometimes accompanied her to the markets and that she could not stop him from going to a market if he wished.

Police

Sergeant Quinn read out the contents of the Chief Constable's letter of objection, acknowledging that it was out of date, however, he stressed that the Chief Constable objected to this application on the grounds that a person responsible for the management of the company was not a fit and proper person to derive benefit from the activity by virtue of incidents that had taken place at the market held in Oban on 22 and 23 June 2013 which resulted in Mr Yaich, the Manager of that market, being reported to the Procurator Fiscal for 4 contraventions of the Civic Government (Scotland) Act 1982 for continually failing to comply with the conditions attached to the Market Operators Licence issued to Continental Market Ltd. The matter was concluded with no further action taken. He also referred to the Market Operator's licence being suspended at a hearing held on 16 August 2013 and further licences issued revoked as a result of the incidents which occurred on 22 and 23 June 2013. He further referred to Mr Yaich being convicted at Cumbernauld JP Court on 5 April 2013 for contravention of Section 7(1) of the Civic Government (Scotland) Act 1982 which resulted in a fine. This was for an offence which occurred between 16 and 17 November 2012 in Cumbernauld. He stated that Mr Yaich was named as the person responsible for the day to day management of the business on the application form for a market in Oban submitted to the Council dated 7 January 2013. Police enquiry revealed that Ms Scott was the sole director of Continental Market Ltd, however a phone call to the company on receipt of an application received from West Dunbartonshire Council on 31 January 2014 was answered by Mr Yaich

who stated that he was the day to day manager of the company which was also confirmed by Ms Scott.

Questions from Applicant

Ms Scott asked Sergeant Quinn if he had any objection to her personally and he replied no.

Ms Scott sought and received confirmation that an application to West Dunbartonshire Council which had been objected to by the Police had been granted.

Ms Scott asked why the Chief Constable objected to her running markets in this area but in no other area across Scotland. Sergeant Quinn advised that applications were considered by the Police on a case by case basis and that it was not the Chief Constable himself that read every application. He confirmed that this task was devolved to licensing sections in each area of the country.

Members' Questions

Councillor McNaughton expressed concern regarding the dates proposed to run the market in Rothesay in August as this would clash with the Bute Highland Games and he sought clarification on this. Ms Scott advised that if the licence was granted she would be happy to change the date to a different time.

Councillor McNaughton asked Mr Forrester if this could be done. Mr Forrester advised that he was not sure a variation of licence would be the most appropriate way to deal with this as the Councillors had to consider the dates before them as these had been consulted on. He confirmed it was a matter for the Members to consider the granting of these dates and if the Applicant no longer wished these dates to be considered then the Members could consider the other dates applied for on their own.

Councillor Currie sought clarification on what Mr Forrester had advised. Mr Forrester confirmed that if the Applicant wished to amend the date this would require a new application for alternative dates. He confirmed that the current application could be considered with the removal of the August dates.

Councillor Currie sought and received clarification from Sergeant Quinn that the Police had no objection to Ms Scott. He then stated that he could not understand why an objection about someone else was being considered.

Councillor Kinniburgh advised that he understood from last month's hearing in respect of the application for a market trader's licence in Oban by the same Company, that Mr Yaich was still connected to the business and continued to still have a connection to the business.

Councillor Currie stated that the Applicant had received confirmation from the Police that they had no objection to her and advised that she was the

day to day Manager.

Councillor Trail asked Ms Scott how many people worked for her. She confirmed that it was only herself and that the traders at the markets were all self-employed.

Councillor Trail noted that Ms Scott applied for the licence and asked who took responsibility for the behaviour of the traders. Ms Scott confirmed that she was responsible and that she attended all the markets herself to check the stalls were set up correctly, that only permitted goods were being sold and that everything was labelled correctly.

Councillor Trail asked if it was only in Argyll Police had a problem with the markets and in Aberdeen. Ms Scott advised she was not aware of an objection in Aberdeen. She advised that West Dunbartonshire was covered by the same licensing section as Argyll and Bute and that an application was granted for that area.

Councillor Freeman sought and received clarification from Mr Forrester that all applications were normally displayed to the public in the Council area so that anyone could object if they wished and that all dates applied for were displayed and that was why it would not be possible to change the dates applied for at this stage.

Councillor Freeman referred to the Chief Constable's letter and sought and received clarification from Sergeant Quinn that the list of persons operating the stalls requested in January 2014 had still not been received.

Councillor Freeman sought and received clarification from Sergeant Quinn that the Police had no objection against Ms Scott but objected to the application as it was believed her partner would derive benefit and it was their contention that he was still involved in the management of the business.

Councillor Colville referred to the Company holding two licences within the North Lanarkshire Council area and asked why Mr Yaich had been convicted of operating a market in Cumbernauld without the appropriate licence from North Lanarkshire Council. Ms Scott explained that they held licences to hold markets in Cumbernauld and Motherwell on specific dates and that on that occasion there had been a mix up with the dates which resulted in a market being held in Cumbernauld on the wrong dates.

Councillor Currie asked Ms Scott if she had operated a market in Rothesay before and she confirmed that this would be the first time.

Councillor Currie asked Mr Forrester if the Committee were supposed to consider whether or not Ms Scott was a fit and proper person to hold a licence. Mr Forrester confirmed that this was a ground for refusal and read out the different grounds for refusal which applied.

Councillor Trail sought and received clarification from Ms Scott that she was the sole Director of the Company when the market was held in Oban

last year.

Councillor MacIntyre sought and received clarification that Ms Scott had advertised her proposed market in Rothesay.

Councillor Colville noted that Ms Scott intended utilising the Pier public toilets and asked if she had checked if they would be open till 7 pm and she replied no.

Councillor Kinniburgh asked Ms Scott if Mr Yaich was still connected with Continental Markets. Ms Scott advised that last year he took over the day to day onsite management of the markets as she had been in a full time job and was also attending University. She confirmed that in March this year she left her full time job and took over the complete running of the Company. She stated that to save money she allowed Mr Yaich to use the name of the Company to run stalls in shopping centres and that she hoped to be able to afford to split the Company in the future. She advised that the stalls at Clyde Shopping Centre had been the only side of the business that had produced a profit in the last 3 months. She confirmed that since last months hearing Mr Yaich had been totally cut off from the market side of the business. When asked she advised she was not sure how many bookings he had for over the summer in shopping centres booked under Continental Markets Ltd.

Councillor McNaughton asked which community services would have been made aware of the application to run a market in Rothesay. Mr Forrester confirmed that notification was issued to the Police, the Area Environmental Health Officer, Fire and Rescue and the Roads Authority and that no representations had been received other than the Police objection and confirmation from Fire and Rescue that they had received the notification.

Councillor Taylor referred to the issue in Oban and asked Ms Scott how she would exercise adequate management control to prevent this from happening again. Ms Scott advised that the Market Operation Company was there to assist the market holders not to jeopardise the Market Company. If traders turned up who were not on the list to trade they would be turned away and if they brought produce not on the list of items permitted to be sold they would not be allowed to sell them. She advised that she would make sure the market was run properly. She confirmed that if anyone refused to leave she would contact the Police.

Councillor Colville referred to the application to run the market for 5 days from 9 am to 7 pm and advised that he did not think this would be a good thing for Rothesay and suggested that 2 days from 10 am to 5 pm would be more acceptable. Mr Forrester confirmed that Members could apply a condition to the licence to limit opening hours and the number of days but as this could affect the running of the market and the viability of operating it, it would be appropriate to seek the views of the Applicant. He confirmed that any conditions applied would need to be reasonable and would need to be stated.

Councillor Kinniburgh asked Ms Scott if she dictated what the traders

could sell. Ms Scott advised that she issued a list of market days but did not instruct traders what they could sell. She advised that they applied to her to run a stall and provided a list of what they proposed to sell and she then told them what items from their list they would be permitted to sell.

Councillor Kinniburgh referred to the list of items intended to be sold as detailed in her application form and asked Ms Scott what etc meant. Ms Scott advised that she had over 50 items and could not type them all into the application form. She gave other examples of items such as jewellery.

Councillor Kinniburgh sought clarity on this from Mr Forrester and he advised Members that when considering whether or not to grant the application they could restrict the licence to a list of specific items.

Summing Up

Police

Sergeant Quinn confirmed that the Chief Constable's objection was to the Applicant which was the Company and not to Ms Scott. He stated that Mr Yaich was not a fit and proper person and that he was still involved. He advised that it had been confirmed that Mr Yaich still made bookings in shopping centres on behalf of the Company and that Ms Scott had no knowledge of the details of these bookings. He stated that Ms Scott repeatedly said "we" but was apparently the sole Director. He questioned whether she travelled all over Scotland to the markets.

Applicant

Ms Scott advised that she said "we" because it sounded better. She confirmed that it was her Company and that she was running it. She stated that she had no criminal convictions. She confirmed that she would be onsite to deal with any issues and confirmed that the way in which the business now operated had changed.

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

Debate

Councillor Freeman advised that there appeared to be a lot of confusion. He said that officers had made it clear what the grounds for refusal were in the Act and that these include if some person who was not a fit a proper person was going to derive benefit from the activity. He advised that he would move to refuse this application.

Councillor Currie advised that the discussion that had just taken place had nothing to do with the granting the application it was just if the person was a fit and proper person. He referred to the mistakes made in Oban last year and noted that the Applicant had changed the management as a result of these mistakes. He asked if this was going to be raised against the Company for all future applications. He advised that he would move to grant this application.

Councillor McNaughton advised that he was minded to refuse as he did not think the Guilford Square in Rothesay was the most appropriate place to hold the market as this was the main parking area in Rothesay right at the end of the main shopping area.

Councillor Colville advised that to hold a market in Rothesay for 5 days was overkill and that the licence should only be granted for 2 days. He stated that relations had to be rebuilt.

Councillor Trail advised that there was a lot of confusion and double speak. He stated that Ms Scott had advised that Mr Yaich was no longer involved in the business yet he was using the name of the business to get stalls into shopping centres. He referred to the incident which occurred in Oban the previous year. He advised that he did not believe Ms Scott to be a credible witness.

Councillor MacIntyre advised that he was surprised no objections had been received from Rothesay and that was why he had asked if the proposed market had been advertised. He stated that the objection was not against Ms Scott but against the Company.

Mr Forrester advised that the Police had referred to Mr Yaich deriving benefit from the activity. Mr Forrester advised that the grounds for refusal include if the applicant is not a natural person, any director of it, or partner in it, or any other person responsible for its management is not a fit and proper person to be the holder of the licence.

Councillor McQueen advised that the shopkeepers were struggling and that the application should be refused.

Councillor Taylor advised that the Committee needed to consider whether or not the applicant was a fit and proper person right now and that he supported Councillor Currie.

Councillor Kinniburgh agreed that the Committee should consider if a person responsible for the management of the applicant company is not a fit and proper person to be the holder of the licence and from the answers received from the applicant he could not be 100% certain that Mr Yaich had no involvement in the business.

Motion

To agree to refuse the application for the grant of a Market Operator's Licence to Continental Market Ltd on the grounds that the activity to which it relates would be managed by or carried out for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself.

Moved by Councillor George Freeman, seconded by Councillor David Kinniburgh

Amendment

To agree to grant a Market Operator's Licence to Continental Market Limited

Moved by Councillor Robin Currie, seconded by Councillor Sandy Taylor

The Motion was carried by 6 votes to 3 and the Committee resolved accordingly.

Decision

Agreed to refuse the application for the grant of a Market Operator's Licence to Continental Market Ltd on the grounds that the activity to which it relates would be managed by or carried out for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself.

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

Councillor Alistair MacDougall left the meeting during consideration of the foregoing application.