

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY SKYPE
on WEDNESDAY, 23 SEPTEMBER 2020**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Graham Hardie
Councillor Rory Colville	Councillor Donald MacMillan BEM
Councillor Mary-Jean Devon	Councillor Alastair Redman
Councillor Lorna Douglas	Councillor Sandy Taylor
Councillor Audrey Forrest	Councillor Richard Trail

Attending: Shona Barton, Committee Manager
Stuart McLean, Committee Manager
Graeme McMillan, Solicitor
Sergeant Gall, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Robin Currie, Roderick McCuish and Jean Moffat.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER LICENCE (NO. 4274) (D MACINTYRE, OBAN)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by Video Call, by Audio Call or by written submission. For this meeting the licence holder's representative opted to proceed by way of written submission and Police Scotland opted to participate by audio call.

At the hearing on 19 August 2020, the Committee agreed to continue consideration of this matter in order to request further information from parties about the incident to which the suspension relates.

Licence Holder

Mr McMillan referred to the written submission from the licence holder's representative which had been circulated in Supplementary Pack 1. Mr McMillan read out the written submission and explained that the licence holder's representative was requesting further continuation until after a trial date which had been set for 19 October 2020 in relation to a drink driving charge. Mr McMillan advised that the request was due to the fact that the information sought by the Committee related closely to the charge and criminal proceedings and the licence holder's representative was fearful that any information disclosed prior to the trial may prejudice the licence holder's position and his right to a fair trial. The written submission had provided some information such as the date of the offence and

advised that the licence holder had not been driving a taxi at the time. Following the trial more information could be provided.

Mr McMillan advised that due to the circumstances, the request seemed reasonable and that a short continuation would allow for a full explanation and would allow Members to consider all of the facts.

The Chair invited Sergeant Gall to speak on behalf of Police Scotland.

Police Scotland

Sergeant Gall advised the Committee that Police Scotland would be supportive of continuation until after the trial as they could not disclose any information surrounding the charge until this time.

The Chair invited questions from Members of the Committee.

Questions/Debate

Councillor Colville advised that the next scheduled meeting of the Committee was 21 October and asked if the outcome of the trial would be available by that date. Mr MacMillan advised that in terms of paperwork, the Council were required to provide two weeks' notice prior to calling a hearing which may be too tight. Mr McMillan suggested the Committee agree continuation until after the outcome of the court proceedings rather than setting a particular date which would mean that it could be brought back at the relevant time.

Councillor Blair advised he had serious concerns because even although clarity had been given that the licence holder had not been driving a taxi, there was no clarity given over what vehicle he had been driving and therefore it could have been a people carrier or a minibus or other private hire vehicle. Councillor Blair referred to the request by Police Scotland for immediate suspension of the licence advising that he had zero tolerance in respect of drink driving. Mr McMillan advised that the licence holder's representative did not feel at liberty to provide any further information about the vehicle that was driven and Police Scotland could not provide that information either at that time. Councillor Blair advised that he had serious concerns over public safety and that it worried him that Police Scotland had requested suspension of the licence and the accused was still currently driving a taxi.

Councillor Kinniburgh agreed with Councillor Blair but referred to the intimation made by Police Scotland that they had no objection to a continuation of the hearing until after the trial.

Councillor Taylor expressed frustration because the Committee had been asked to consider immediate suspension but had been held back due to the legal process.

Councillor Redman advised that he would like to continue consideration until after the court date when all the facts could be considered as he felt it would be unfair to pass judgement without the full facts before them.

Councillor Kinniburgh asked the Committee to be aware that the Civic Government process and the court process were different and, although it was highly unlikely, the

Committee could take a different view to that of the outcome of a court decision. Mr McMillan explained the difference between the standards of proof required between a civil case and a criminal case and suggested that the Committee continue consideration to allow full evidence to come before the Committee.

Councillor Blair asked if the Committee had come to a decision to suspend the licence without the full facts before them would they have been entitled to do this. Mr McMillan advised that they would have been entitled to do this but the decision could be subject to challenge. Councillor Blair advised that he was at ease with the comments made by Police Scotland about continuing consideration but at the same time he did not want it to take away the regulatory role that the Committee had.

Councillor Devon advised that she felt very strongly against drunk driving having lost family members to this. She advised that she felt the messages from the Police were contradictory as they had asked for immediate suspension and then today advised that they were supportive of a continuation.

Councillor Hardie agreed with Councillor Devon and advised he shared Councillor Blair's concerns. He advised that he would be inclined to suspend the licence on the back of the request by the Police.

Mr McMillan advised that the role of the Police was to be a complainer and that they were required to make a case to the Committee to back up the complaint. He reminded the Committee that the Police had advised they were happy with a short continuation to allow all the facts to become available in order that they could make their case properly and effectively.

Councillor Kinniburgh advised he had concerns about how these hearings were conducted due to the pandemic, which he had raised at the previous meeting. He noted that there were only 2 days between the scheduled court case and the next meeting of the Committee and advised that if the court were to take relevant action, the accused would lose their driving licence and therefore be taken off the road regardless. He moved that the decision to suspend the licence be continued until after the outcome of the trial.

Decision

The Planning, Protective Services and Licensing Committee agreed to continue consideration of the suspension of the licence until criminal proceedings have concluded, the outcome of the trial becomes available and the Committee can be presented with the full facts of the case.

(Reference: Report by Head of Legal and Regulatory Support, and email from licence holder's representative dated 22 September, submitted)