

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: Stuart McLean, Committee Manager
Graeme McMillan, Solicitor
Sergeant Gillian 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: APPLICATION FOR RENEWAL OF TAXI DRIVER'S LICENCE (NO. 5011) (M MUNRO, 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 hearing the Applicant opted to proceed by way of written submission and copies of this were circulated to the Committee in a Supplementary Agenda Pack for this hearing. Sergeant Gall, on behalf of Police Scotland, joined the meeting by telephone.

The Chair then outlined the procedure that would be followed and invited the Council's Solicitor, Mr McMillan, to advise of the Applicant's written submission.

APPLICANT

Mr McMillan referred to an e-mail from Ms Munro, dated 10th September 2020, which advised that a trial date had been set for 20th October 2020 at Oban Sherriff Court, consequently Ms Munro requested that the Hearing be postponed until such time as the outcome and verdict of this court case was known. Ms Munro's e-mail also advised that a short continuation would allow her the opportunity to arrange legal representation.

Mr McMillan noted that the licencing team had sought and received clarification from Ms Munro that the court proceedings scheduled for 20th October 2020 related to an alleged incident which had taken place on 4th March 2020 and which was one of two incidents outlined within Police Scotland's objection letter.

Mr McMillan asked that Members note: that this was the first request for continuation from the Applicant in relation to this application; that the Applicant would be in a better position to provide further information at a hearing following a continuation when the matter was not subject to ongoing criminal proceedings; that the Applicant was seeking a continuation to allow her to arrange legal representation; and that continuation of this matter would not prejudice Police Scotland or the Committee in the interim as the licence was currently suspended and suspension would remain in place until such time as a decision was made in relation to the application as per the terms of the Act.

The Chair then invited Sergeant Gall to speak to Police Scotland's objection to the application.

POLICE SCOTLAND

Sergeant Gall confirmed that there were no objections from Police Scotland to the matter being continued until the outcome of the court proceedings was known as the licence was currently suspended. Sergeant Gall noted that the second charge which was outlined within Police Scotland's objection letter had not yet been marked by the Procurator Fiscal. Sergeant Gall advised that since the Applicant had applied for the renewal of their licence a further two incidents had taken place in July involving the Applicant, details of which could be lodged into proceedings by letter for Members' consideration at a future hearing.

The Chair then invited Members' Questions.

MEMBERS' QUESTIONS

Councillor Trail sought clarification from Mr McMillan as to whether the licence previously suspended by the Committee had already expired. Mr McMillan confirmed that the licence had not expired and noted that originally the licence had been due to expire on 13th May 2020, however the Applicant had submitted a renewal application on 1st May 2020 and in doing so had extended the lifetime of the old licence until the Committee were able to deal with the renewal application.

Mr McMillan noted that during this time Police Scotland had made a suspension request in relation to the licence holder which the Committee had dealt with previously and agreed to suspend the licence. Mr McMillan confirmed that the Applicant's licence was suspended and would remain suspended until a decision had been made in relation to the renewal application. It was noted that if the renewal application was refused then the licence would fall, however if it was granted then the suspension would be lifted.

Councillor Blair requested clarification around the statement that information provided to the Committee at this time could prejudice later criminal proceedings and noted that he did not understand how this could be the case if the applicant was truthful. Councillor Blair expressed dissatisfaction at this and noted that the Committee was at times limited in what it could do given a lack of available information until the outcome of a criminal case was known, advising that at times this made him question the reason for having a Committee to deal with licencing matters.

Councillor Kinniburgh responded that in this instance the licence had been suspended following a suspension request from Police Scotland and the Committee had therefore played its role.

Mr McMillan outlined the reasons underpinned in Scots Law for the Committee being unable to compel any party to provide evidence. Mr McMillan noted that it would be his advice that the Committee be aware that other proceedings, of a significant nature, were ongoing and that they wait until the appropriate time to consider all the available information, Mr McMillan also advised that the outcome of the court case could be a significant factor for the Committee to take into account when determining whether the Applicant was a fit and proper person to hold a licence.

Councillor Blair noted that his concern was around the interim period where further incidents could occur and Councillor Kinniburgh clarified that in this instance the licence would remain suspended until a decision was reached in relation to the application. Mr McMillan confirmed that he noted the points raised by Councillor Blair and reiterated that the licence would remain suspended until a decision was reached in relation to this application.

Councillor Redman advised that the right not to comment and the fact that speech can't be compelled was a right that everyone used to agree with and he felt that speech should never be compelled.

Councillor Kinniburgh sought clarification from Sergeant Gall around the second of the incidents outlined in Police Scotland's objection letter. Councillor Kinniburgh noted that the alleged incident on the 4th March 2020 was the matter which was due to be considered by the court in October and enquired as to whether the alleged incident on 31st August 2019 was being progressed and whether there was a time limit on it being brought to court. Sergeant Gall confirmed that the offences being libelled were not subject to time barring and that the matter was currently with the Procurator Fiscal who had not yet marked it.

Councillor Kinniburgh noted that if a continuation was to be granted, when the matter came back to the Committee for consideration the only incident which would have been considered by the court would be the alleged incident of 4th March 2020 and the other incident outlined in Police Scotland's objection letter and the further two alleged incidents mentioned by Sergeant Gall would likely remain outstanding with the courts. Mr McMillan confirmed that this was likely to be the case and noted that a continuation would also provide Police Scotland the opportunity to lodge a supplementary objection letter to advise of any of the recent alleged incidents which had been referenced by Sergeant Gall.

Councillor Kinniburgh advised that he was minded to grant a continuation pending the outcome of court proceedings in relation to the alleged incident on 4th March 2020. Mr McMillan confirmed that the Committee did not require the court to convict the Applicant to take certain action and that this could be revisited at the relevant time when all information would be available to Members.

Councillor Kinniburgh sought clarification from Mr McMillan that if the courts returned a decision on 20th October, the Applicant would be able to appear at the next scheduled meeting of the Committee on 21st October. Mr McMillan noted that in terms of Schedule 1 of the Act, 14 days' notice should be given to the Applicant prior to any hearing, consequently it was unlikely that the matter would be brought to the Committee on 21st October. Mr McMillan gave assurance that the matter would be brought to the next available Committee meeting following officers being made aware of the court's decision.

SUMMING UP

Police Scotland

Sergeant Gall confirmed that she had nothing to add to her original statement and that Police Scotland had no objections to the matter being continued until the outcome of the court case was known.

When asked, Sergeant Gall, Police Scotland, confirmed that she had received a fair hearing.

DECISION

The Planning, Protective Services and Licensing Committee agreed to continue the application until such time as matters have been considered by the Court.

(Reference: Report by Head of Legal and Regulatory Support, submitted; and written submission from the Applicant, submitted)