

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY SKYPE on WEDNESDAY, 21 APRIL 2021**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Roderick McCuish
Councillor George Freeman	Councillor Jean Moffat
Councillor Kieron Green	Councillor Alastair Redman
Councillor Graham Hardie	Councillor Richard Trail

Attending: James Hannah, Applicant
Shona Barton, Committee Manager
Graeme McMillan, Solicitor

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Mary-Jean Devon, Audrey Forrest, Donald MacMillan BEM and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR
AMENDMENT TO TAXI CAR LICENCE NUMBER 2130 (J HANNAH,
HELENSBURGH)**

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 Audio Call and joined the meeting by telephone. The Applicant had also made a written submission which was contained within a supplementary Agenda pack issued to the Committee. One of the objectors, Mr McAuley, had originally intended to proceed by way of Audio Call but proceeded by way of written submission following difficulties in joining the meeting.

The Chair advised that an objection had been received outwith the time period allowed by the Civic Government (Scotland) Act 1982 for making objections or representations. The Council's Solicitor, Mr McMillan, explained the procedure to be followed in this respect.

The Chair sought and received confirmation from Mr McMillan that Mr Haddow had been contacted within the statutory time frame to provide reasons for his objection having been submitted late and that none had been provided.

The Chair sought the view of the Applicant as to whether or not this late objection should be taken into consideration.

The Applicant advised that he felt that the objection should be ignored as it was submitted late.

The Chair sought the views of Members as to whether or not this late objection should be taken into consideration.

Councillor McCuish advised that he felt that the representation should be ignored as Mr Haddow had not responded to provide reasons for the objection being late.

The Committee unanimously agreed not to accept the late objection.

The Chair then outlined the procedure that would be followed and invited the Applicant to speak in support of his application.

APPLICANT

The Applicant advised that, as per information provided within the written submission to the Committee, Mr Cowin had approached the Applicant in relation to forming a partnership. The Applicant confirmed that he did not want any money in return for forming a partnership, and was originally intending not to renew his taxi car licence in June as he was turning 66 and would be of pensionable age. The Applicant noted that when Mr Cowin had approached him, he thought that the partnership would be beneficial to him as he could renew his taxi operators licence and work if and when he would want to.

The Applicant expressed concerns that objections from Mr McAuley were of a personal nature due to Mr McAuley's perceived dislike of Mr Cowin.

The Applicant noted that he understood, from Mr McAuley's objection, that Mr Cowin had approached other people in relation to potentially selling their taxi car licence plates after having been previously rejected by the Committee when applying for one, however when Mr Cowin had approached him it had appeared to be a good opportunity for them both and no money was changing hands.

The Applicant reiterated his concerns that the objections raised by Mr McAuley were of a personal nature and noted that Mr McAuley was incorrect in stating that Mr Cowin was working as a taxi driver, as he was working as a private hire driver and could not work at the taxi rank or put a sign on top of the car, which would potentially increase his trade.

OBJECTORS

The Chair sought and received confirmation from Mr McMillan that Mr McAuley's objection did not require to be read out to the Committee as it was provided within the agenda pack for the meeting.

MEMBERS' QUESTIONS

Councillor Colville sought and received confirmation from the Applicant that he had not originally been intending to sell the plate, but had been approached to ask if he would consider selling it. Councillor Colville asked if the Applicant had found the situation to be questionable as it was a serious offence to sell a taxi plate and usually when someone was considering retiring they would surrender their plate and give others the opportunity to apply for it.

The Applicant advised that his understanding was that Mr Cowin had previously applied to the Committee but had been rejected as no taxi licences were being granted by the Council at that time. When Mr Cowin had approached him, the Applicant had felt that it was a good option for both of them as it would give the Applicant the chance to work shifts when he wanted to and would allow Mr Cowin to have the taxi plate that he was looking for.

Councillor Colville noted that a taxi car licence had been granted at a previous Hearing earlier in the day and that each application was considered on its own merit by the Committee, with some being granted and some being rejected. Councillor Colville expressed his concern at this being a potential attempt to circumnavigate the rules.

The Chair asked the Applicant to clarify that the Applicant and Mr Cowin were entering into a partnership and what the benefit to the Applicant was of entering into this partnership. The Applicant confirmed that it was his intention to enter into a partnership with Mr Cowin and that Mr Cowin would be taking over the general running of the licence, with the Applicant driving the taxi from time to time when he wanted to. The Applicant confirmed that the benefit to him was that he would still be able to drive on occasion when he wished to do so, and noted that no money was changing hands.

The Chair requested clarification as to how long the Applicant envisaged the partnership lasting, the Applicant confirmed that he was unsure but he could envisage the partnership lasting between one to two years. The Chair asked Mr McMillan if there was any stipulation as to when one partner could exit the partnership. Mr McMillan confirmed that the licence holder of the taxi car licence would be the partnership and therefore if the Applicant was to withdraw from the partnership, the partnership as a legal entity would cease to exist and at that point the licence would require to be surrendered to the Council. Mr McMillan noted that the application was for an amendment to the partnership and as such the licence holder would be the partnership, therefore the licence could not then be transferred solely to Mr Cowin but another application for amendment to the partnership could be made at a future stage if applicable.

Councillor Trail sought and received confirmation from Mr McMillan that the partnership as a legal entity could continue if the partnership took on a third partner, and the Applicant then retired or withdrew from the partnership.

Councillor Freeman advised that he had dealt with taxis and partnerships for many years and expressed concern that if the Applicant was to withdraw from the partnership, Mr Cowin could then become the sole holder of the licence. Mr McMillan confirmed that this would not be the case as this would be a transfer of licence from the partnership to Mr Cowin and if the partnership was to come to an end, the licence would then require to be surrendered.

Councillor Freeman requested clarification as to why the licence would not be surrendered at present if the existing partner was to be removed and replaced with Mr Cowin. Mr McMillan confirmed that the application had been processed this way and brought to the attention of the Committee for consideration due to it being a request for the simultaneous removal of one partner to be replaced with another. Mr McMillan noted that it was for the Committee to consider whether they believed this to be a transfer of licence, which was not permitted in terms of the legislation.

Councillor Freeman expressed his concerns about the Applicant's indication that he could withdraw from the partnership within a relatively short time.

Councillor McCuish advised that it was his understanding that all the Committee were being asked to do was change the name of the partners involved in the partnership which was a common business practice and if the situation was to change in future, then the Committee could consider it at that point. Mr McMillan advised that it was a judgement call for the Committee to make as to whether they felt that it was a change of partnership or a transfer of licence.

The Chair sought and received confirmation from Mr McMillan that if the application for amendment was seen by the Committee as being a transfer of licence, this would not be legal in terms of the relevant legislation.

Councillor Colville advised that within the written submission from the Applicant, the Applicant had advised that Mr Cowin had approached him to ask if he would consider selling his taxi plate and asked Mr McMillan if he felt that these were actions expected of someone who was a fit and proper person to hold a licence. Mr McMillan responded that the selling of taxi plates was not a legitimate course of action and would not be permitted in accordance with the relevant legislation.

Councillor McCuish asked for confirmation that the partnership would continue in this instance, as one of the existing partners was still a member of the new partnership. Mr McMillan confirmed that the Applicant was an original partner of the partnership and the application for amendment would be for the simultaneous resignation of one partner and the addition of another, which would mean that the partnership would continue with these amendments.

The Chair sought and received confirmation from Mr McMillan that the taxi car licence holder was currently the partnership and that the licence would require to be surrendered by the partnership if the Applicant was to withdraw from the partnership in future. Mr McMillan confirmed that if the Applicant was to withdraw from the partnership in its proposed form, the partnership would cease to exist as a legal entity and the licence would require to be surrendered.

The Chair requested confirmation from the Applicant as to whether the licence was originally held by a partnership. The Applicant confirmed that the licence was originally held by a partnership of the Applicant and Mr Gordon Morton, and that following Mr Morton's withdrawal from the partnership the Applicant had formed a partnership with his daughter as a silent partner to protect the taxi plate in case anything was to ever happen to him.

The Chair expressed concerns that Mr Cowin had previously appeared before the Committee and made accusations that taxi plates were being bought and sold in the Helensburgh area, noting that it appeared that Mr Cowin had then attempted to purchase a taxi plate from the Applicant. The Chair requested absolute clarification from the Applicant that no money was changing hands in the course of this agreement. The Applicant confirmed that there was no money changing hands and that his original intention had been not to renew his taxi car licence in June, but he had seen an opportunity when Mr Cowin had approached him to enter into the partnership and do occasional work when it would suit him before retiring completely as he was still fit to work and drive.

The Chair asked the Applicant if Mr Cowin was aware that the taxi plate would require to be surrendered to the Council if the Applicant was to withdraw from the partnership in future. The Applicant advised that he was unsure of Mr Cowin's understanding of this.

Councillor Freeman noted that he had significant previous experience of the taxi trade in Helensburgh and had serious concerns about whether the application was indicative of a genuine change in partnership or a transfer of licence plate.

Councillor Green noted that a lot of information was being insinuated and speculated on and sought clarification as to what evidence was available on matters such as money changing hands or a suggestion of illegal transfers of licence plates that would allow the Committee to make a reasonable judgement on it. The Chair advised that Mr Cowin had stated at a previous meeting of the Committee that taxi licence plates were being bought and sold in the Helensburgh area. Councillor Colville noted that the written submission from the Applicant contained confirmation that Mr Cowin had requested to purchase the Applicant's taxi plate.

Councillor Freeman sought and received confirmation from Mr McMillan that the Committee were entitled to make a judgement based on the information available to them and did not require to have concrete evidence of these beliefs. Mr McMillan confirmed that the Committee could come to a view based on the evidence in front of them and on the balance of probabilities.

Councillor Redman advised that while he understood that the Committee did not have to have proof beyond reasonable doubt to come to a decision, he did believe in common law and absolute justice and would be worried if rumour and conjecture were to be considered when making a decision on the application.

SUMMING UP

Applicant

The Applicant reiterated that there was no money changing hands in terms of this application and that it would be a mutually convenient arrangement for both parties.

The Applicant advised that he understood from the objections received that Mr Cowin had approached others to request to purchase a taxi plate but in this instance, if the application was granted, it would allow Mr Cowin to receive a licence plate and would allow the Applicant to still drive a taxi occasionally when it would suit him.

When asked, Mr Hannah confirmed that he had received a fair hearing.

DEBATE

Councillor Hardie advised that he was concerned by advice that the application could be considered to be an illegal transfer of licence and on this basis would be minded to refuse the application.

Councillor Trail advised that it appeared to him that Mr Cowin could be taking advantage of the Applicant's plan to surrender his licence in June and have the taxi plate transferred to him at no cost. Councillor Trail noted that he believed that the

Applicant was not receiving any money for this, but did believe the application to be a transfer of licence.

Councillor Colville advised that he found consideration of the application difficult, noting that a taxi car licence had been granted at an earlier Hearing and it was possible to receive a licence by applying through the direct channels. Councillor Colville noted his concerns around the evidence in front of the Committee which indicated that Mr Cowin had requested to purchase the Applicant's licence plate and advised that he was minded to refuse the application.

Councillor Freeman advised that he shared concerns raised by Councillors Trail, Hardie and Colville.

Councillor Green advised that it was a difficult matter to consider as there was suggestion of a number of things taking place and he was unsure how much weight to give to these factors, however he was mindful of Councillor Redman's comments in relation to natural justice and innocence until proven guilty.

Councillor Moffat noted that she was unsure of how much weight she should place in her consideration of the application on Mr Cowin's request to purchase the licence from the Applicant as she was unsure whether it had been deliberate or a slip of the tongue.

The Chair advised that he found it difficult to come to a decision in terms of this application but was concerned about the fact that Mr Cowin had approached the Applicant to enquire about the taxi plate being for sale. The Chair noted that based on the evidence in front of the Committee, he believed that this application could be a transfer of licence and was therefore minded to refuse the application.

Councillor Colville expressed concerns that this could be seen by people as a way to circumnavigate the normal process in place for the granting of taxi licences. Councillor Colville noted that he had no concerns around the Applicant's honesty but had concerns around the bigger picture and the potential for this to become common practice for those wishing to use it as a means to receive a licence without following the normal procedure. The Chair advised that he shared the concerns raised by Councillor Colville around this.

Motion

To agree to refuse the application for an amendment to Taxi Car Licence Number 2130 on the basis that the evidence before the Committee showed the application to be a transfer of licence.

Moved by Councillor David Kinniburgh, seconded by Councillor Rory Colville

Amendment

To agree to approve the application for an amendment to Taxi Car Licence Number 2130.

Moved by Councillor Alastair Redman, seconded by Councillor Kieron Green

A vote was taken by calling the roll.

Motion

Councillor Colville
Councillor Freeman
Councillor Hardie
Councillor Kinniburgh
Councillor McCuish
Councillor Moffat
Councillor Trail

Amendment

Councillor Green
Councillor Redman

The Motion was carried by 7 votes to 2 and the Committee resolved accordingly.

DECISION

The Committee agreed to refuse the application for an amendment to Taxi Car Licence Number 2130 on the basis that the evidence before the Committee showed the application to be a transfer of licence.

(Reference: Report by Head of Legal and Regulatory Support and written submission from Applicant dated 1 April 2021, submitted)