

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 18 AUGUST 2021**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Kieron Green
Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Roderick McCuish
Councillor Audrey Forrest	Councillor Richard Trail

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
Rebecca Robertson, Applicant
Albert Robertson, Applicant's representative
Rowena Ferguson, Objector

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors George Freeman, Jean Moffat and Alastair Redman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR AMENDMENT OF A STREET TRADER LICENCE (R ROBERTSON, ARROCHAR)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, and following the Council's current approach to the Coronavirus pandemic, 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 and Objector opted to proceed by way of Video Call and they both joined the meeting by Microsoft Teams.

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

APPLICANT

Albert Robertson spoke on behalf of the Applicant, Rebecca Robertson. Referring to various letters, emails and photographs on a power point presentation, he advised that Miss Robertson had held her licence for just over a year. She had been offered a new pitch from Luss Estates at the beginning of April. This was within the new south car park in Luss. She was advised that it was on private land and that she would probably not require a street trader's licence. He said that Miss Robertson had contacted the Licensing Team at Kilmory to find out if a street trader's licence would be required on private land. She received no reply and tried to make contact again on 18 April 2021 to ask for advice.

On 29 April 2021 Miss Robertson received an email from the Licensing Team to advise that she should apply for an amendment to her current street trader's licence. No

comment was made about whether this was for trading on private or public land. He advised that Miss Robertson submitted her paperwork and did not hear anything further until 26 May 2021. The Licensing Team contacted Miss Robertson to advise her that she needed to amend the paperwork she had submitted and that she would need a street trader's licence even though she would be trading on private land. At this point Mr Robertson drew the Committee's attention to Section 39 of the Civic Government (Scotland) Act. He said that this section talked about street trader's licences only being required for trading in a public place. He said that the advice given to Miss Robertson from the Licensing Team was incorrect.

He then advised that Miss Robertson received a further email from the Licensing Team the next day giving details on what would happen next. He said that at the bottom of the email Miss Robertson was advised to keep trading as usual. Miss Robertson had taken that to mean that she could continue to trade at the new south car park in Luss. Mr Robertson said that this new pitch had been ready by the beginning of May, that Miss Robertson did not want to give up such a lucrative pitch, and that her old pitch would no longer be available. He said that an explanation was also given why there had been a delay in the Licensing Team getting back in touch with Miss Robertson.

On 16 June 2021, he said that Miss Robertson received a further email from the Licensing Team to advise that a complaint had been made about her continuing to trade at the south car park in Luss. He advised that Miss Robertson thought she was allowed to continue to trade there and that she had heard nothing about a complaint. He commented that they thought this complaint had come from a lady about a planning application issue. He said that Miss Robertson stopped trading on 15 June 2021. He referred to takings sheets on a slide to show that Miss Robertson did not trade from then until 11 July.

He then referred to a letter dated 11 June 2021 from a Solicitor from the Council to the complainant. He commented that he was not sure if there had been a breach of Data Protection legislation as the letter contained full and frank details about Miss Robertson's licence. The letter did not mention planning permission and it did not mention that the site may be on private property. He said that the letter indicated that Miss Robertson had been told not to trade. He pointed out that the Licensing Team had not been in touch with Miss Robertson until 15 June 2021. He said that the letter advised that Miss Robertson would not be trading until the licence application was dealt with. He advised that it looked like the same lady had sent in other complaint on 22 June 2021 advising that Miss Robertson was trading on 12 June 2021 and that she was in breach of her licence. He confirmed that Miss Robertson had been trading on that date as she thought from the advice given in email dated 11 June 2021 that she could continue to trade.

Mr Robertson advised that he was a retired Police Inspector. He said there was very little evidence in photographs from the Objector as to what Miss Robertson was doing in the van. He said that the second complaint appeared to be a direct result of the letter sent by the Council's Solicitor on 11 June 2021. He said this was not an objection but an allegation of an offence against Miss Robertson trading in breach of her licence. He commented that he was not sure if this could be dealt with as an objection. He then advised that the second part of the objection referred to over provision. He said that over provision was a difficult issue for the Council to decide on and that he was not sure if this was a street trading issue. He suggested that this objection was invalid. He said that Miss Robertson stopped trading when advised to do so. She was advised that there would be a hearing but not for at least 8 weeks.

Mr Robertson pointed out that Miss Robertson had submitted her application back in April 2021. He said that to not be dealt with for 5 months was a long time when putting your life savings into a new business. He advised that she went back to Luss Estates and sought advice. They in turn sought advice from their lawyers and were advised that the land was private property. Cars could only gain entrance to the car park by paying a fee. He referred to legislation which said that a place could only be defined as public if the public could enter with no restrictions. He pointed out that there were signs up to say this was private land and signs up that a fee would have to be paid to park there. The car park was a long way off from the rest of the village of Luss. Luss Estates have advised that only people using the new car park could be served by the van. He referred to various letters between Luss Estates and the Council's Legal Team and that there appeared to be a difference of opinion. He said that Miss Robertson was stuck between a rock and a hard place. Luss Estates were saying this was private land and she could trade there but the Council were unable to offer a resolution for 5 months. He said that during that time she had only received one official letter from the Council and that was to invite her to this hearing. He said that she either lost her business or continued to trade on legal advice. He advised that they decided to send a letter into the Council to advise that they did not think this application should have to come to a hearing and that the objection was vexatious. To date, he advised they had received no reply.

In summary, he said they were not sure if this was private property if a street trader's licence was required. They were not sure if this was the best forum to decide this and maybe it should go to a court of law. He said they did not think the objections raised were relevant. He said the first one related to planning permission and should be dealt with by the planning department and not this forum. He referred to the second letter and said this related to an allegation of an offence and to over provision. He said it was not really over provision. He referred to the north car park and pointed out that there were at least 3 traders in that car park and 3 or 4 other commercial type food premises between Miss Robertson's pitch and the objector's pitch. He said this objection was not valid and should not hold up the process. He advised that Miss Robertson was a new trader and that she had tried her very best to comply with legislation. She had put in her application as advised by the Council and had also sought legal advice about whether this was a private or public pitch. He referred to the length of time it had taken to convene this hearing. He said they had concerns about the Solicitor's letter to the Objector as commercially sensitive information had been provided to the Objector. He said the whole process seemed to have been flawed from start to finish. He advised that Miss Robertson had expected to receive lots of advice and guidance from the Council and that she did not get any.

At this point Councillor McCuish raised a point of order. He asked that if it has not been established if the business required a street trader's licence or not, how could the Committee agree to an amendment of the licence.

The Council's Solicitor, Mr McMillan, advised that an application had been made by the Licence Holder to include a new area of trade on her licence and that was what the Committee were tasked to consider. He said that he took on board the comments and submissions made that perhaps there was no requirement for that licence. He said that was a judgement for the Licence Holder to make based on their own legal advice. He advised that just to be clear the Licensing Authority had looked at it and even though it was privately owned land, it was considered that the car park was a public place in terms of the Civic Government (Scotland) Act 1982. He said the Committee were not being asked to consider whether a licence was needed or not. They were being asked to consider an application for amendment to add a location to the licence.

OBJECTOR

Ms Ferguson said that she had lived and worked in the area for a number of years and her business was the Coach House Coffee shop in Luss. She confirmed that she was the person that had made the complaints as she had seen that Miss Robertson was trading without permission. She said that her own business had been closed for 8½ months over the last year. They were open again but it was very disappointing to discover that roughly when she had opened, with lots of additional costs and challenges, Miss Robertson had been trading in the new car park set up by Luss Estates without a licence. She said it had been very frustrating that Miss Robertson had continued to trade with only a very brief interlude. She said that Luss Estates owned the car park and that they were fully aware of the permission requirements. She said she understood that a licence was required and that planning permission was also required to be in place. She said that Luss Estates owned Miss Robertson's previous pitch so there should be no issue with her going back to the previous pitch. She said that she did not wish to deprive Miss Robertson of her livelihood but she asked the Committee to consider the other businesses. She said that they all had the correct permissions in place. She said that when she set up her business she went through the full process of obtaining all permissions before opening and trading. She said that she thought Miss Robertson should have done this first too.

QUESTIONS FROM APPLICANT

Mr Robertson commented that in her presentation, Ms Ferguson had not stated what her current objection was. She did not provide any evidence in relation to her objection. He asked Ms Ferguson what her current objection was to the amendment to the licence. Ms Ferguson said she thought it was clear that Miss Robertson did not have permission to trade in the car park. She said that Miss Robertson had given an assurance she would cease trading until her licence was in place. She said she did not think Miss Robertson was a fit and proper person to be running her business as she did not have planning permission in place. She pointed out that Miss Robertson had put outdoor seating in place with a promise of more to come which gave a level of permanence. She said that this was a public car park.

Mr Robertson asked Ms Ferguson if she had investigated other traders in Luss. Ms Ferguson confirmed that she was fully aware of all the traders' licences in Luss. She said she had objected to one other trader who was trading outwith the time limits of his licence. She said she had made a formal complaint which would be dealt with in due course by a future hearing of this Committee.

Mr Robertson asked Ms Ferguson if she thought these other traders were causing harm to her business and asked how this was Miss Robertson's fault. He asked why Miss Robertson was the focus of her frustration. Ms Ferguson said it was not just Miss Robertson. She said she was in good terms with all the traders and that she was happy with good competition with everyone that had permissions in place. As it stood, she advised that Miss Robertson did not have permissions in place and she believed she should have to go down that route first before trading.

Mr Robertson commented that Ms Ferguson had provided no evidence of Miss Robertson trading. Ms Ferguson said that she had supplied the Council with a number of photographs which she could produce and that she also gave her word. She said she had witnessed Miss Robertson trading in this manner fairly consistently from 1 May right through until yesterday.

Mr Robertson commented that there was no date or time stamp on any of the photographs and no evidence of what Miss Robertson was doing in the van.

MEMBERS' QUESTIONS

Councillor Colville referred to Miss Robertson's original permission to trade at the other car park in Luss. He pointed out that condition 17 of this licence clearly stated that if you wanted to be in a permanent location for more than 30 minutes then planning permission must be obtained. He asked if Miss Robertson had planning permission to trade at the other site and if it was her intention to apply for planning permission for this site. Mr Robertson said that they thought planning permission was an issue for the landlord to deal with. He said that Miss Robertson has been in discussions with the landlord about this and that a planning application has been lodged. He said that it was purely a lack of knowledge and understanding on their part.

Councillor Colville sought clarity from Mr McMillan on the issue of permissions required for a private car park. Mr McMillan said the Council's position was clear. It was taken on board this was a privately owned car park, but people that paid a fee could park there. In terms of footfall this was a place that was accessible to the public in terms of Section 39 of the Act. They had to pay but it was not unrestricted to the public. The Council position was that this was a public place and if someone wanted to trade from there then a street trader's licence was required. He said this hearing was not about considering whether a licence was required or not. It was to consider a request to amend a licence to add this car park to the list of locations the licence holder could trade.

Councillor Colville asked Mr McMillan why it had taken so long to bring the application to the Committee. He said that it seemed a long time from when the Council had given out advice until now to arrive at a decision. He asked if this was a reasonable amount of time to wait. Mr McMillan advised that in terms of finalising and holding a hearing it was. He referred to the lead in time to holding a hearing, and advised that a number of issues had to be clarified. He also referred to the summer recess when the Committee did not meet and also to the number of renewal licences that had come in by the deadline of 30 June 2021. He explained that a lot of licences had a fixed 3 year term and they all expired at the end of June and had to be processed by the legal team. He also pointed out that in terms of Section 3 of the 1982 Act, when an application was lodged the licensing authority had a statutory deadline of 9 months to process this application. Due to the Coronavirus pandemic this deadline has been extended to 12 months through emergency legislation. He advised that although these were deadlines in terms of statute, the licensing team tried to work to a lot shorter timescales than that.

Councillor Devon referred to hearing from the Objector that she had submitted photographic evidence and asked Mr McMillan if he could confirm this was the case. Mr McMillan referred to the village of Luss and said that Argyll and Bute Council were not the planning authority for the village of Luss and that it was Loch Lomond and the Trossachs National Park. In terms of the objection, he confirmed that a complaint had come in about the trader initially and that this had triggered the application for amendment to the street trader's licence. Following public notice about this application the Objector had lodged objections.

Councillor Kinniburgh sought clarity from Miss Robertson that the Park Authority had been approached about planning permission. Mr Robertson said this was being dealt with by Luss Estates and Hay Partnerships. He said they were not in a position to provide

information about how far the application had gone and that the Council would need to speak to Hay Partnerships about that.

Councillor Trail asked Mr McMillan if it was down to the Park Authority to decide if Miss Robertson could trade or not. Mr McMillan advised that in terms of the planning issue and enforcement matters this was for the National Park as the Planning Authority. He said there was interplay with the street trader's licence regarding information about a possible breach of the licence. He said the Council could only act on this breach once evidence was received that planning enforcement had been taken. This needed to reach a conclusion first.

Councillor Trail sought and received confirmation from Mr McMillan that the planning issue was not a consideration for the Committee today. It was just whether the street trader's licence could be extended to add this location as an area of trade to the licence. Mr McMillan advised that the fact that there was a planning application ongoing was something the Committee may wish to consider but the key supporting documentation, that there was permission from Luss Estates to trade, had been provided.

Councillor Kinniburgh asked if it was possible that different planning authorities could come to a different conclusion as to what required planning permission. He asked if it might be the case that Argyll and Bute Council required planning permission but the Loch Lomond and Trossachs National Park had a different view. Mr McMillan said that this may be possible but advised the Committee not to take a decision on this. He said the Park Authority decision would take precedent.

Councillor Kinniburgh commented that if the Council were of the opinion that an amendment to the street trader's licence was required to carry on trading on that site it may not be possible to adhere to Condition 17 of the licence as it would not be known what the Park Authority would decide regarding planning permission. Mr McMillan advised that whether planning permission was required or not the Council still believed that an amendment to the street trader's licence was required.

Councillor Blair asked if the Committee should just be deciding on the street trader's licence and to leave the planning issue to the Park Authority. Mr McMillan advised that this was in line with his advice to the Committee. The planning issue was for the Park Authority to decide on. Their decision may have an impact on the licence but this could not be considered at the moment.

Councillor Colville asked both the Applicant and Objector how far the van would be from the nearest shop/trader producing a similar service. Mr Robertson advised that Miss Robertson was the only trader in the south car park. There were 3 traders in the north car park and the nearest trader to Miss Robertson would be the Loch Lomond Hotel. There were no other traders until you entered the village itself. He said there were much larger traders around the Objector's premises. He said that Miss Robertson was probably further away from most traders in the village of Luss.

Ms Ferguson said that Luss was a fairly small village and this was one of 2 car parks within a few hundred yards. She said there were plenty of traders already there supplying teas, coffees and cakes, which Miss Robertson supplied.

Councillor Kinniburgh sought clarity from Mr McMillan about being able to apply condition 17 to the licence if the Committee were minded to grant the amendment to the licence.

He asked if this would be subject to planning permission being obtained or if the condition would no longer apply for this particular licence at this time, at that pitch. Mr McMillan referred to standard condition 18 and advised that this was the one that required licence holders to have all other legislation in place and that would be the one to come back to should the Committee be minded today to grant the licence today and it turned out that planning permission was required. As long as the Park Authority followed through in terms of investigation and enforcement process then the licence could come back to the Council at that stage. He said there was no need to change the wording of standard condition 17 at the moment.

Councillor Kinniburgh referred to the letter from Luss Estates which stated that a licence fee of £300 per month would be charged. He sought and received clarification from Mr McMillan that this related to the lease of that area of land to trade from Luss Estates to the trader.

SUMMING UP

Objector

Ms Ferguson advised that it was over to the Committee to decide what the best approach was to take. She advised that there were already a number of traders including herself in Luss. This was another individual coming in and it was disappointing to have her come in without any permissions. She advised that Luss Estates had not yet applied for planning permission. She said that Miss Robertson should have everything in place before trading. She advised that it was in Luss Estate's interests to have her there and that they could easily give her back the other pitch. She said she was not looking to deprive Miss Robertson of her livelihood but she did not think she should be in Luss at the moment in competition with other traders struggling to get back on their feet.

Applicant

Mr Robertson thanked the Committee for hearing them today and for listening to the complex issues. He advised that the amendment should go ahead as the objections were not valid. The first one was about planning permission and for the Park Authority to deal with. Ms Ferguson talked about Miss Robertson not being a fit and proper person but this was not stated in any of her letters which were about over provision and trading without a licence. He said that he had explained the sequence of events and advised that there had been a misunderstanding of the law. He said that over provision was quite difficult and objections had not been received from any of the other traders in the village. He advised that it was important not to stifle healthy competition. He commented that there may be other legal issues to be dealt with but it was quite right that Members focussed on what needed to be done today. He said they were disappointed in the delays to the process and that for someone coming along with a new business and putting their life savings into it, 5 months was too long to wait. He said it took 6 weeks to get a reply and this had nothing to do with the recess etc it was just a breakdown in communication.

When asked, both parties confirmed that they had received a fair hearing.

DEBATE

Councillor Colville advised that he had listened to all that had been said. He said he was reassured by the fact that the Applicant had signs up that only users of the car park could be served by her van. He advised that he would support the application as he believed

the van would be far enough away from existing premises and that they would not be competing for the same clientele.

Councillor Green advised that for him he was just trying to focus on the street trader aspect rather than the other aspects. He acknowledged that the delays were regrettable. Having a new car park in the village was a significant change and he could understand why someone would like to be based there. In terms of competition, he advised that having a new car park may increase the footfall coming into the village and could alleviate some of the competition. All things considered, he was happy to support the amendment to the licence.

Councillor Hardie said that he had listened to all of the arguments. He advised that he had visited Luss over the summer months and had seen how busy it was. He did not think having a wee café in the car park would be a problem and he was happy to grant the application.

Councillor Forrest thanked both parties for putting forward good arguments. She said that she accepted that Miss Robertson had acted in good faith and that she was happy to support the amendment to the current licence.

Councillor Blair said he concurred with the comments made by colleagues and that he was minded to support the application.

Councillor Kinniburgh said he was like minded to those that had spoken and he was minded to grant the application for the amendment. He said it was obvious there were issues to sort out and that he was sure these would be addressed in due course. He confirmed he was happy to support the amendment to the street trader's licence.

DECISION

The Committee unanimously agreed to grant Miss Robertson's application for Amendment to her Street Trader's Licence. It was noted that the amended Licence would be issued after the 28 days' notice appeal period and that Miss Robertson could only trade once she had received her amended Licence.

(Reference: Report by Head of Legal and Regulatory Support, submitted)