

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 23 FEBRUARY 2022**

Present: Councillor David Kinniburgh (Chair)

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| Councillor Rory Colville | Councillor Roderick McCuish |
| Councillor Mary-Jean Devon | Councillor Jean Moffat |
| Councillor Kieron Green | Councillor Alastair Redman |
| Councillor Graham Hardie | Councillor Richard Trail |
| Councillor Donald MacMillan BEM | |

Attending: Shona Barton, Committee Manager
Graeme McMillan, Solicitor
James Hutchinson, Applicant
Sgt Wendy Maginnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Audrey Forrest and Sandy Taylor

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A PRIVATE HIRE DRIVER LICENCE (J HUTCHINSON, BOWMORE, ISLAY)

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 video call and joined the meeting by MS Teams. Police Scotland opted to proceed by way of audio call and Sgt Maginnis joined the meeting by telephone.

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

APPLICANT

Mr Hutchinson said he understood why the objection had been brought forward as the evidence did not look good. He advised that 5 to 6 years ago, when the incidents occurred he was not in a good way. He had problems at home, problems with family and that he was just not in a good place. He acknowledged that his mistakes were serious. He said that 5½ years on his life had totally turned around for the better. He advised that he has been fully employed for 4 years and in that time he had gained promotion twice. He also gained his HGV licence and had a family with 2 children and a girlfriend he provided for. He said that was why he was submitting this application as he wanted to provide for his family. He advised that he was embarrassed and ashamed about the offences. He said that at the time in 2015 when it happened he lost his job due to the offence and that he felt that he had served his time and he just wanted a chance to provide for his family. He advised that he was fully employed but as could be seen in the

news and the papers, life was getting harder for everyone. He said that he was in a totally different place and would like the opportunity to work and provide for his family. He advised that he has been given the opportunity help out at his family's local taxi firm. He said he would not quit his current job as he would just be helping out the taxi firm when needed.

POLICE SCOTLAND

Sgt Maginnis referred to a letter dated 29 November 2021 which advised that the Chief Constable objected to this application on the grounds that the Applicant was not a fit and proper person to be the holder of a licence by virtue of convictions Mr Hutchinson received at Court on 14 September 2009 and 29 September 2015.

MEMBERS' QUESTIONS

Councillor McCuish sought and received confirmation from Mr Hutchinson that the Council put him through his HGV licence.

Councillor McCuish asked Mr Hutchinson if he had to declare his convictions when he applied. Mr Hutchinson said he did not. He advised that he had to go for a medical and an eye test and that he passed both.

Councillor McCuish sought and received confirmation from Mr Hutchinson that he drove lorries, gritters, tractors and all sorts of other vehicles in his job with the Council.

Councillor Trail noted that Mr Hutchinson had said he was fully employed. He asked how he would be able to do the taxi work. Mr Hutchinson explained that the taxi job would be just to help out on the weekends and for events such as the Whisky Weekend. He said it would not interfere with his other employment.

Councillor Trail asked why Mr Hutchinson was applying for a private hire driver licence if he was going to work for a taxi firm. He asked if a taxi driver was different from a private hire driver. Mr McMillan advised that the application was for a private hire driver to drive a private hire car. He said he believed the operator was a private hire operator that Mr Hutchinson proposed working for.

Councillor Moffat referred to Mr Hutchinson driving lorries and gritters and commented that it would be unfortunate if he was not able to drive a private hire car. She asked Mr Hutchinson if he would agree. Mr Hutchinson replied yes. He said that he felt he had moved on so much with his life. He acknowledged that to drive HGVs was a massive responsibility and that he knew every time he went out in that vehicle he had peoples' lives in his hands. He said that if he could do that, and advised that he did so very professionally, he felt he could be a taxi driver.

Councillor Colville asked Mr Hutchinson what had brought him to Islay. Mr Hutchinson advised that he used to install soft surface flooring for play areas and 15 years ago, when working on Islay, he first met his girlfriend. He said that they lost touch while he was working around England and Wales and that 5 years ago they got back in touch. He came back to Islay and fell in love with it and the rest was history. He did not want to go back home. He advised that he and his girlfriend had a baby together and she also had another child. Their children were now 9 years and almost 2 years old.

Councillor Colville sought and received confirmation from Mr Hutchinson that he would be driving for his girlfriend's uncle.

Councillor Colville asked Mr Hutchinson why he did not declare his convictions on his application form. Mr Hutchinson advised that this had been an error. He thought that he did not need to due to the time that has passed since they occurred. He apologised for his mistake.

Councillor Devon sought and received confirmation from Mr Hutchinson that he worked for Argyll and Bute Council in the Roads Department on Islay. He said that in March he would be there 4 years and during that time he had gained promotion twice, going up the grades. He advised that he loved his job and liked working for the Council.

Councillor Redman sought and received confirmation from Mr Hutchinson that he had only 2 offences. Mr Hutchinson said he was embarrassed and ashamed and had done nothing before or after these offences. Sgt Maginnis confirmed that there were 2 offences that Police Scotland held on record.

Councillor MacMillan asked Mr Hutchinson if the Council had asked questions about any convictions when he applied for his job. Mr Hutchinson said no. He advised that he filled out a CRB check. He advised that he did not hold a HGV licence at that point. He only had a normal driving licence.

Councillor Kinniburgh asked Mr Hutchinson when he started working with the Council. Mr Hutchinson said thought it was from March 2018. He advised that his first job was on the roads as unskilled. He was then semi-skilled and now he was skilled. He confirmed that he had driving duties when he first started work.

Councillor Kinniburgh commented that he was surprised convictions did not have to be declared for employment. Mr Hutchinson advised that he could not recall all the forms he had to fill in.

Councillor Kinniburgh said he had taken on board that there were 6 years between the 2 offences that occurred. He commented that it was now approaching 6½ years since the last offence. He asked Mr Hutchinson to tell him what was different from then till now. Mr Hutchinson said everything was different. He advised that he had a totally different lifestyle and thought process. He said he now had children and a family and that he was in a totally different place from 6 years ago. At that point he did not have any children and he did not have a lovely home and family. He said that every aspect of his life was totally different.

Councillor Kinniburgh questioned when Mr Hutchinson first started working for the Council. He said he noted that Mr Hutchinson had driving duties at that time but had calculated that he would still have been disqualified from driving in March 2018 as he received his conviction in September 2015 which included a 3 year driving ban. Mr Hutchinson recalled that he started work in March 2019.

Councillor Kinniburgh asked Mr McMillan if it would be normal practice to declare convictions when applying for a job with the Council. Mr McMillan advised that as part of the HR process the Council would carry out criminal checks and that the Committee could only operate on the assumption that this happened when Mr Hutchinson applied for his job.

Councillor Kinniburgh asked Mr McMillan if these checks would normally identify any convictions. Mr McMillan confirmed that these would be flagged up on a basic disclosure check which, he believed, applied to most, if not all, Council jobs.

Councillor Kinniburgh asked if the Council had decided that Mr Hutchinson was employable at that time. Mr McMillan advised that the information before the Committee today would imply that and that it would be fair for the Committee to make that assumption.

SUMMING UP

Police Scotland

Sgt Maginnis confirmed that the Chief Constable objected to this application on the grounds that Mr Hutchinson was not a fit and proper person due to having drink driving convictions.

Applicant

Mr Hutchinson said he just wanted to be given the opportunity to provide for his family. He said that if anyone was worried about it coming up to 6 years since his last conviction, he advised he was a totally different person now and had too much to lose. He said he was a fit and proper person and had made 2 mistakes during his 37 years. He acknowledged that these were serious mistakes and that he just wanted to better himself and provide for his family.

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

DEBATE

Councillor McCuish said he firmly believed that Mr Hutchinson was not a fit and proper person at the time of the offences but he was happy with his explanation that he was now a fit and proper person given the fact that he drove HG vehicles around Islay. He commented that Islay was a very busy island and said the responsibility of a HGV driver could sometimes be greater than a taxi or private hire car driver. He said that a person became more responsible with the more responsibility they had. He advised that perhaps Mr Hutchinson was not a fit and proper person 5 years ago but he firmly believed he was now and would like to grant him the licence.

Councillor Colville said he agreed with Councillor McCuish. He advised that he was particularly impressed with Mr Hutchinson and his commitment to his family. He commented that having a young family was life changing and that to have a family member put faith in him was reassuring too. He confirmed that he would be happy to grant the application.

Councillor Green said he agreed with what had been said. He commented that 2009 and 2015 was quite a long time ago, particularly when you had someone here that was still young. He said that he had clearly moved on with his life and should be given a second chance. He advised that he thought the licence should be granted.

Councillor Devon said that Mr Hutchinson had really opened his heart to the Committee and that he had been very honest. She noted that he had held down a job and had been promoted twice. She said that did not take anything away from the offences committed in

2009 and 2015. She advised that she would have no hesitation in granting Mr Hutchinson his licence.

Councillor MacMillan said he had the same opinion and that he supported this application.

Councillor Moffat said she was delighted to share that 53 years ago she took on a partner who already had a child and that child was loved as much as her own children. She said that children needed a strong loving background and that this was a wonderful thing Mr Hutchinson was doing and that he should be proud.

Councillor Redman said he agreed with a lot that had been said. He advised that as a local Councillor he knew that Mr Hutchinson was well thought of. He commented that it was his opinion that it would be wrong to punish a man twice. He said that a lot of time had passed and that having a family changed you. He said he was minded to grant the application.

Councillor Kinniburgh said obviously there was a great responsibility when driving a private hire vehicle or taxi as there were other people in the car. He noted that Mr Hutchinson had acknowledged and realised the responsibility of driving a HGV. He commented that reading on paper he would have been reluctant to grant this application but having heard Mr Hutchinson he believed he had changed and that he did realise the responsibility that went with driving a HGV. He said he thought this responsibility would continue on driving a private hire car. He confirmed that he would also be happy to grant the licence.

DECISION

The Committee unanimously agreed to grant a Private Hire Driver Licence to Mr Hutchinson. It was noted that Mr Hutchinson would be notified of this decision within 7 days but would not be issued with his licence until after the 28 day appeal period.

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