

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 22 MARCH 2023**

Present: Councillor Kieron Green (Chair)

Councillor John Armour	Councillor Andrew Kain
Councillor Jan Brown	Councillor Liz McCabe
Councillor Graham Hardie	Councillor Luna Martin
Councillor Fiona Howard	Councillor Peter Wallace

Attending: Stuart McLean, Committee Manager
Sheila MacFadyen, Senior Solicitor
Fiona Macdonald, Solicitor
Nigel Judson, Applicant
Mrs Judson, Applicant's wife

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Audrey Forrest, Amanda Hampsey, Daniel Hampsey, Willie Hume, Mark Irvine and Paul Kennedy.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A STREET TRADER LICENCE (N JUDSON, SALEN, AROS, ISLE OF MULL)
(Pages 9 - 10)

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 requested that he be permitted to attend the meeting from the Council Chamber. This was agreed to and he was joined by Officers to facilitate his attendance to address the Committee by video call.

Police Scotland opted to proceed by way of audio call and Sergeant David Holmes joined the meeting by telephone.

The Chair referred to a preliminary matter and advised that Police Scotland had requested the Committee take account of number of a number of matters which were considered "spent" in terms of the Rehabilitation of Offenders Act 1974. It was noted that the Committee may take into consideration evidence relating to "spent" matters where they are satisfied that justice could not be done except by admitting such evidence.

The Chair outlined the procedure that would be followed in this respect and invited Police Scotland to address the relevancy of the "spent" matters.

POLICE SCOTLAND

Sergeant Holmes advised that the Applicant had a number of matters which were considered "spent" in terms of the Rehabilitation of Offenders Act 1974 and that it was the

Chief Constable's contention that justice could not be done in this case except by admitting evidence relating to these "spent matters".

The Chair then invited the Applicant to ask Police Scotland questions and to address the relevancy of the "spent" matters to his application.

APPLICANT

Mr Judson said that he did not believe the "spent" convictions had anything do with his application and that he did not think they were relevant. He intimated that he would not have a problem with discussing them if it was decided that they should be disclosed.

Mr Judson then read out a statement explaining the circumstances of his medical condition Attention deficit hyperactivity disorder (ADHD) in order to give the Committee some insight into the difficulties that he now has and how it affects his life on a daily basis. He also advised of his qualifications, volunteering work, and other licences held which were relevant to his application. He advised that his medical condition was managed by medication and the support of family and friends. He referred to the Police objection and he explained the background to this. He said that his mother had called the Police in the hope that they could have helped calm him down but they came and took him away. He commented that the Chief Constable's assertion that he was not a fit and proper person had left him feeling worthless and a lost cause. He said that he has never behaved inappropriately towards any member of the public or work colleague and advised that he was ashamed of his past. He said he was not a bad person and that he just got overwhelmed at times.

The Chair invited Police Scotland to comment on the Applicant's submission and Sergeant Holmes confirmed that he had nothing further to add.

The Chair then invited Members to ask questions and determine the relevancy of the "spent" convictions.

MEMBERS' QUESTIONS AND DEBATE

Councillor Wallace sought and received confirmation from Mr Judson that the first "spent" conviction was dated 1988 and the last was dated 2013.

Councillor McCabe sought and received confirmation from Mr Judson that there were 10 "spent" convictions.

Councillor Howard asked Mr Judson if any of the "spent" convictions directly related to his business. Mr Judson advised that most of them had happened when he was young and before he was diagnosed. He said that he had never been in trouble working for other people or himself.

Councillor Hardie advised that as there were 10 "spent" convictions he thought it was essential that the Committee hear about them.

Councillor Green agreed that it would be helpful to hear the detail of these.

The Committee agreed that justice could not be done without admitting the "spent" convictions into the process due to the number of them spanning a number of years. A

letter dated 6 February 2023 from the Chief Constable outlining the detail of the “spent” convictions was circulated.

After a brief adjournment the Chair outlined the hearing procedure that would be followed and invited the Applicant to speak in support of his application.

APPLICANT

Mr Judson referred to the detail of each “spent” conviction in turn. He said there was no excuse for them. He explained that he was young and foolish and, without being diagnosed with ADHD at that time, he was easily led and influenced. He said that he had grown up in a little village which was an ex mining community. He advised that once the collieries closed down this led to a lot of unemployment in the community and in the majority of these cases the children suffered for it. He said that it has taken a lot of time for him to look into his past and understand his behaviours. He referred to travelling to school by bus and being bullied by 7 children from the same family. He had to travel on this bus with these children for 10 years and in order to try and stop the bullying he took the easy route and tried to fit in with them. He advised that his parents were good parents. He said that his father drank every night of the week except Christmas. He advised that the first thing he looked forward to when he turned 18 was to stand at a bar and drink a pint. He said he started to be institutionalised and did not seem able to fit in with the good kids that were from the area he lived. He said he got in with the wrong crowd. He commented that his mum had been a nurse and when she worked nights he would be out till 2 am as a young child getting up to no good.

Referring to the earlier convictions he said he disputed the assault on a Constable. He said that none of these offences were physically violent and that they were little more than arguments which, he said, was why he questioned their relevancy. He said that he wanted to set up the burger van to get a better life and advised that the Police wanted to make things sound far worse. He referred to the justice system encouraging people to plead guilty to speed up the process.

He referred to his conviction on 25 January 2023 and explained the circumstances of it. He said that he had pled guilty on the advice of his solicitor. He advised that he was told that if he pled not guilty he would not get home. He said that he had punched a wall as he was angry at himself. He said that his wife could confirm that he was not violent. Mrs Judson confirmed that her husband had not been aggressive towards her on that occasion and that he never had been. He said that Oban Police, knowing his medical condition, had not taken that into account and that he felt his treatment by them was cruel and barbaric.

He referred to the most recent incident on 2 February 2023 and commented that Lochgilphead Police Officers had been very kind and said that the case would not be taken any further. He said he was shocked to find that he had been reported to the Procurator Fiscal and that the letter from the Chief Constable stated that it could be reasonably inferred that he intended to commit a crime.

He questioned what the difference would be to him working in McDonald’s or having his own business. He referred to his catering van which he said he had spent nearly £30,000 on, the report from Environmental Health, and all the certificates he had in place to carry out his business. Mr Judson read out a reference from a previous employer at Tralee Holiday Park in Benderloch, which stated that Mr Judson proved to be a reliable,

conscientious employee, able to work alone or as part of a team as required and that there would be no hesitation in recommending him as a good employee.

Mr Judson said that he was a fit and proper person and had done everything he had been asked to do. He said that he was quite able and always put 110% into any task. He said he hoped to employ someone to assist him. He added that he had been drinking when all of the offences had taken place and that he had now stopped drinking.

QUESTIONS FROM POLICE

Sergeant Holmes confirmed that he had no questions.

POLICE SCOTLAND

Sergeant Holmes advised that Mr Judson had covered the detail of all his convictions and that he had nothing further to add. He commented that if Mr Judson felt he had not been treated well by the Police he could raise a complaint with them.

QUESTIONS FROM APPLICANT

Mr Judson said he had no questions.

MEMBERS' QUESTIONS

Councillor Brown referred to Mr Judson advising that all of his convictions related to drink and that he had now stopped drinking. She said that she hoped that he would continue to stop drinking. She said that she appreciated what he had said about his ADHD and about getting angry and frustrated. She advised that she would have a concern about Mr Judson working in the burger van if a customer became obstructive and annoyed him and this led to him losing his temper. She asked Mr Judson what he could say to alleviate her worries. Mr Judson said that the customer was always right. He referred to the reference he read and advised that his job had involved taking bookings up to 10 pm, visiting people in their rented caravans and calling on private owners. He said that he had only drank in his personal life and never in his working life. He said that he had stopped drinking and intended to keep it that way. He advised that he had used alcohol to rest his mind. He said that when it came to work he was entirely professional.

Councillor Wallace referred to Mr Judson advising that some of the convictions were arguments and not assaults. He asked Sergeant Holmes to comment. Sergeant Holmes advised that some of these convictions went back several years and that he did not have the Procurator Fiscal reports as they were English convictions. He referred to the assault in Oban at the Oyster Bar and said that Mr Judson was charged with a physical assault.

Councillor McCabe sought and received confirmation from Mr Judson that it had been about 8 weeks since he had stopped drinking. He said he was not addicted to alcohol and that he had just used it to de-stress.

Councillor Armour sought and received confirmation from Mr Judson that he was first diagnosed with ADHD when he was 39 or 40 years old.

Councillor Martin referred to Mr Judson drawing comparisons between working for himself and working for a company. She asked Mr Judson if he felt, with his treatment and

medications, he would be able to cope with the added stress of working for himself. Mr Judson advised that he had worked for himself most of his life.

Councillor Hardie asked Mr Judson how the mental health team felt about him starting up this business. He asked if they were supportive. Mr Judson said that his Community Psychiatric Nurse (CPN) thought this would be a good thing. He referred to being trapped in his house and that he needed something to keep his mind occupied. He said that due to his ADHD, when he did anything, he always gave 150%.

Councillor Hardie asked Mr Judson if the licence was granted, would his CPN support him if things got difficult. Mr Judson said yes and that his CPN would be happy to provide a report if required.

SUMMING UP

Police Scotland

Sergeant Holmes advised that he had nothing further to add.

Applicant

Mr Judson said he just wanted the chance to get on with his life and that he was sorry for the nuisance he had caused.

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

DEBATE

Councillor Hardie said that it had been an interesting hearing. He referred to Mr Judson's criminal record being slightly concerning but said that it filled him with confidence that Mr Judson had the support of the mental health team and, with that in mind, he would be happy to grant the licence.

Councillor Brown commented that since Mr Judson had been diagnosed his last "spent" conviction was in 2013 and that there had been nothing further up until now. She referred to the tough time Mr Judson had gone through in his personal life recently, including the death of his father and the stress and strain of looking after his elderly mother in his home. She said she hoped that now his mother was moving into a home Mr Judson would be able to get back to normal family life. She commented on the support he received from the mental health team, his medications, and his attitude, and said she would second Councillor Hardie's comments and would be happy to grant this licence.

Councillor McCabe said that she took a different view. She said there was too much here and felt there would be a big risk if Mr Judson happened to have a drink and someone was angry at him while working. She said she was not convinced this would work.

Councillor Howard said she would like to give Mr Judson the chance. She advised that being back at work and having to keep a van going and organising everything, she felt that this would keep Mr Judson from straying more than anything. She suggested granting a licence for 6 months to try it out.

Councillor Kain said that he agreed that everyone needed a chance. He advised that in this case there had been too many repeats. He referred to the last incidents occurring in

January and February this year which, he said, was not long ago. He referred to Mr Judson being diagnosed for some considerable time and questioned on what basis he was referred and if this had been connected to the convictions. He also referred to the definition of common assault.

Councillor Armour referred to the detail provided by Mr Judson and the difficulties he had overcome. He commented that it must have been very difficult for Mr Judson to go over that today. He acknowledged that Mr Judson had been very open, but advised that he did have concerns about granting the licence. He asked if it would be possible to get a report from the mental health team that could give the Committee some confidence that the licence could be granted. He also advised that he would support the suggestion by Councillor Howard of granting the licence for 6 months. He asked if there was a possibility of getting this report and of granting the licence initially for 6 months as he was keen to award the licence to Mr Judson.

Councillor Brown referred to the length of time between convictions. She pointed out that it had been nearly 10 years since the last "spent" conviction.

Councillor Martin asked whether the mental health team had been supporting Mr Judson before the most recent conviction and alleged offence. She said it would be reassuring to get a mental health report.

Councillor McCabe commented that although it had been 9 years since the last "spent" conviction, there had already been 2 convictions this year within a very short timeframe.

The Committee Manager, Mr McLean, pointed out to Councillor McCabe that there had only been one conviction this year, not two.

Councillor Green asked if it would be possible for the Committee to adjourn until a mental health report was received. Mr McLean said that there would be nothing to prevent the Committee continuing consideration of this application and invited the Council's Senior Solicitor to comment. Mrs MacFadyen advised that there would be nothing to prevent the Committee continuing the hearing in order to seek a report. She pointed out that the Applicant would need to give his consent to the Committee receiving this report. Mrs MacFadyen also confirmed that the Committee could grant the licence for a shorter period if they felt this was appropriate.

Councillor Armour suggested that the Committee should continue this hearing that if Mr Judson contact the Social Work team to obtain a report and forward this to the Legal Team or subsequent consideration by the Committee.

Councillor Green advised that before doing this it would be worth checking with Mr Judson if he would be happy with that report being asked for. Mr Judson confirmed that his only concern was regarding permission he had received from Mull and Iona Community Trust to pitch his van on their land for the season which was about to start on 1 April 2023. He said he had no objection to the request for the report and he would have no objection to the licence being granted for a shorter period. He advised that he did have a concern that he could lose the pitch if he was not able to start on 1 April. He commented that he had never drunk during employment and that if he misbehaved he would lose the pitch.

Mrs MacFadyen pointed out that if the licence was granted today it would be 28 days before it would come into force due to the Police objection.

Councillor Hardie said he would like to see the mental health report before granting the licence. He suggested that if Mr Judson explained the situation to the land owner they would understand the delay.

Councillor Armour asked Mrs MacFadyen if it would be possible to grant the licence today, request the report from Social Work for consideration at the April meeting of the PPSL, and if it was felt at that stage it was not suitable to grant the licence, it could be revoked at the April meeting. Mrs MacFadyen said that would not be competent as the Committee should only grant the licence today if they believed that Mr Judson was a fit and proper person.

Councillor Howard said she would like to grant the licence for 6 months and also get the report to reassure the Committee. She said that 6 months would give Mr Judson the chance to settle down and establish himself.

Mrs MacFadyen said that if the Committee were satisfied that Mr Judson was a fit and proper person they could grant the licence today. She advised that it would not be competent to grant a licence subject to a report being provided.

Councillor Martin sought and received confirmation from Mrs MacFadyen that the Committee could grant the licence for 6 months or get a report first.

Councillor Armour confirmed that he would like the hearing to be continued to April and in the interim period ask for a report to come from Social Work.

Decision

The Committee agreed to continue consideration of this Application to the next meeting in April 2023 and to request the Applicant submit a report from his health care provider to the Legal Team for consideration at the next meeting.

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