

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE  
held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 19 OCTOBER 2011**

**Present:** Councillor Daniel Kelly (Chair)

Councillor Vivien Dance	Councillor Donald MacMillan
Councillor David Kinniburgh	Councillor Roderick McCuish
Councillor Bruce Marshall	Councillor James McQueen

**Attending:** Mr Charles Reppke, Head of Governance and Law  
Mr Graeme Forrester, Trainee Solicitor  
Mr D MacPherson, Applicant  
Mrs E Munro, Objector  
Mr I Ferguson, Objector's Agent

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were intimated from Councillors Gordon Chalmers, Rory Colville, Robin Currie, Mary-Jean Devon, Neil Mackay and Alex McNaughton.

**2. DECLARATIONS OF INTEREST**

None declared.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION TO AMEND STREET TRADER'S LICENCE - D MACPHERSON (CAMPBELTOWN)**

The Chair introduced himself and invited those present at the meeting to do likewise and then outlined the procedure that would be followed.

**Applicant**

The Chair invited the Applicant to speak in support of his application. Mr MacPherson advised that he was changing the current vehicle he used for a larger vehicle. He explained that his business was affected when the weather was bad and especially when windy and that the new vehicle would be far safer to work in and that it would also be beneficial to customers as it would allow them to come off the street and into the van to place their orders. He confirmed that no other changes would be made and that he would continue to sell the same types of food and site his vehicle in the same places as the current vehicle.

**Questions to Applicant**

The Chair then invited the Objector to ask the Applicant questions. Mr Ferguson, on behalf of his client, Mrs Munro, asked why the present vehicle was not safe. Mr MacPherson advised that he lost up to 17 days business per year due to the weather and he was worried his present trailer would get blown away in the wind.

Mr Ferguson asked Mr MacPherson if he was creating a situation where the public could enter his vehicle rather than stand outside and Mr MacPherson confirmed that this was correct.

Mr Ferguson referred to the size of the new vehicle and asked if this would be the size of a Royal Mail truck and asked if the public would be able to sit in to eat in the new vehicle. Mr MacPherson advised that this would not be the case.

Mr Ferguson asked if Mr MacPherson could give an indication as to the size of the vehicle and if this would be the same size as a West Coast Motors mail van. Mr MacPherson advised that the vehicle was 18 feet x 7.5 feet.

Mr Ferguson asked what the tonnage of the vehicle would be. Mr MacPherson advised that it had been downgraded to a van and was not a lorry.

Mr Ferguson asked if the vehicle would be the size of a 7 tonne truck like a West Coast Motors mail van. Mr MacPherson advised that the vehicle was 18 feet x 7.5 feet and would allow people to enter the van and that this would be safer for the public and that was the reason for requiring a bigger van.

Mr Ferguson asked if fuel would be carried and if it was diesel van. Mr MacPherson confirmed that the vehicle ran on diesel.

Mr Ferguson asked if the same products would be served as before and Mr MacPherson confirmed that this would be the case.

Mr Ferguson asked for confirmation that no food would be consumed in the vehicle and Mr MacPherson confirmed that this would be the case.

Mr Ferguson asked what type of fuel would be used to cook food and Mr MacPherson confirmed that he would use LPG Gas and electricity and that a generator would be used for the fridge.

Mr Ferguson queried again the size of the vehicle and Mr MacPherson advised that it was an 18 foot lorry.

Mr Ferguson then queried the ownership of the vehicle and who it was registered with. Mr MacPherson advised that he had the vehicle but it was registered in the name of Mr Charles MacLean.

Mr Ferguson asked if Mr MacPherson paid for the vehicle and referred to the contents of his letter of objection dated 9 September 2011 and the circumstances surrounding ownership of the vehicle. Mr MacPherson confirmed that he had paid for the vehicle and that he had not got round to registering it in his name. Mr MacPherson said the registered keeper did not need to be the same person as the owner.

Mr Ferguson asked if Mr MacLean was his business partner and Mr MacPherson confirmed that Mr MacLean worked for him.

Mr Ferguson asked if the new vehicle had been paid for by Mr MacLean and Mr MacPherson replied no.

## **Objector**

The Chair invited the Objector to speak in support of their objection. Mr Ferguson referred to the contents of his letter dated 9 September 2011 and stated that there were two issues of concern for his client who was a street trader herself. He advised that there were two Street Trader's Licences in Campbeltown, one in the name of Mr MacPherson and one the name of his client, Mrs Munro, and that both traders operated in the same locations and at similar times. He also advised that there were four fast food outlets in Campbeltown and any expansion of this type of trade was not good in the current economic climate. He advised that the size of Mr MacPherson's new vehicle, which would allow for people to enter and arguably eat in, put it in a different category to the current vehicle and it appeared that Mr MacPherson's change of vehicle would significantly expand his business and would lead to consumption of food on the vehicle. He advised that Mr MacPherson did not answer well his questions regarding the size of the vehicle and stated that if pictures of the vehicle could have been provided this would have been beneficial. Mr Ferguson also referred to the background of Mr MacPherson's existing Street Trader's Licence and his proposed new one. He advised that the current vehicle was in the ownership of Mr MacLean and not Mr MacPherson and that the new vehicle was registered to Mr MacLean. He stated that it was he and his client's belief that the new vehicle was bought and paid for by Mr MacLean and that it is Mr MacLean that runs the business not Mr MacPherson.

## **Questions to Objector**

The Chair invited the Applicant to ask the Objector questions and Mr MacPherson confirmed that he had no questions for the Objector.

## **Members' Questions**

The Chair then invited Members to ask the Applicant and Objector questions.

Councillor MacMillan asked if Health and Safety checks had been carried out to allow the public to enter the new vehicle to place orders and Mr MacPherson confirmed that Health and Safety checks had been carried out and that he had a certificate for this.

Councillor Kinniburgh asked Mr Ferguson for clarification on the different types of Ford IVECO vehicles. Mr Ferguson advised that his client's vehicle was a transit size van with a window on the side which opened up to reveal a serving counter and that the existing vehicle used by the Applicant was similar. He advised that there were different sizes of Ford IVECO vehicles and that the Applicant's new vehicle would be a different type and size.

Councillor Kinniburgh asked Mr MacPherson if his new vehicle would be of greater size and he replied yes.

Councillor Kinniburgh asked Mr MacPherson if the vehicle would have a single or double axle and Mr MacPherson confirmed that it would have a double axle.

Councillor Kinniburgh asked how customers would enter the new vehicle and Mr MacPherson advised that the entrance would be at the rear of the vehicle.

Councillor Kinniburgh asked how many customers could enter the vehicle at the same time and Mr MacPherson advised that there would be room for up to three customers.

Councillor Kinniburgh asked how much space would be allocated to cookers and equipment and Mr MacPherson advised that  $\frac{3}{4}$  of the space would be allocated for equipment and cookers.

Councillor Dance advised that she had calculated that the new vehicle would be 33% bigger than the old vehicle and asked Mr MacPherson what his motive was for expanding his business in the current economic climate when most businesses were cutting back and asked how much his overheads would increase by. Mr MacPherson advised that his new vehicle would allow for more room inside for cooking facilities and that there would be no increase to his overheads.

Councillor Dance asked Mr Ferguson if his client's van was 6 feet by 11 feet and Mr Ferguson replied yes.

Councillor Dance asked Mr Ferguson to expand on the statement made in his letter that the Applicant was not a fit and proper person to hold a Street Trader's Licence. Mr Ferguson advised that this may be seen as a separate issue and that there was significant history to this application. He stated that the whole set up was a sham and that it was not Mr MacPherson's vehicle or business and that the vehicle and business belonged to Mr MacLean.

Councillor McCuish referred to the new vehicle being required to allow customer protection from the weather and how this would be possible if only 2 or 3 people at a time would be able to enter the vehicle and they would not be able to stay in it. Mr MacPherson advised that most of his customers were lorry drivers who returned to their vehicles once they had received their food.

Councillor McCuish asked for clarification that it was about safety and Mr MacPherson replied yes for staff and for customers.

Councillor McCuish asked if it was Mr MacLean who ran the business. Mr MacPherson advised that Mr MacLean worked for him and that he did not have a Street Trader's Licence.

Councillor MacMillan referred to most of the Applicant's trading being done on the Esplanade and asked if he traded elsewhere. Mr MacPherson confirmed that he also traded at Kinloch Road and occasionally the Main Street.

Councillor MacMillan asked if the new vehicle would trade at these places and Mr MacPherson replied yes.

Councillor Marshall asked for clarification on whether or not Mr MacPherson had any involvement in the preparation and sale of food in Campbeltown. Mr MacPherson advised that yes he did have some involvement. He confirmed that Mr MacLean ran the business for him and was employed by him and received a wage. He advised that Mr MacLean managed the business for him as he had other employment.

Councillor Kinniburgh asked how many days trade Mrs Munro lost due to the weather. Mrs Munro advised that last year she lost one morning and to date this year no days had been lost. She advised that she worked 6 days per week and sometimes Sundays.

Councillor Dance asked Mr MacPherson to expand on the other employment he had and how many hours he spent in the preparation and sale of food. Mr MacPherson advised that he currently worked on the trailer two days per week and that four days per week he worked as a security guard.

Councillor McCuish referred to the size of the new vehicle and asked how far from the back wall of the Council Chamber would the vehicle come out to. Mr MacPherson guessed it would come out as far as three rows of chairs but that it was hard to say.

### **Summing Up**

The Chair invited the Objector and Applicant to sum up.

Mr Ferguson advised that the 18 foot length referred to the length of the trailer part of the vehicle and that the vehicle itself would be far longer. He advised that it was unfortunate that Mr MacPherson had not provided better evidence of the size of the vehicle and that photographs would have been useful. He referred to Councillor MacMillan's question about Health and Safety and suspected that the certificate Mr MacPherson was referring to would be an Environmental rather than Health and Safety certificate and that it would have been useful to see this. He advised that it was his client's view that this was not Mr MacPherson's business at all and that it was Mr MacLean's business and that Mr MacPherson only worked there on the very odd occasion. He referred to Mr MacPherson's claim that Mr MacLean ran the business for him and Mr Ferguson stated that it would have been useful to see evidence of payslips and contracts in this respect. He confirmed that he had evidence that the vehicles were registered in Mr MacLean's name and advised that this application was not truly the Applicant's application.

Mr MacPherson advised that the vehicle was 18 feet in length from the front bumper to the rear of the vehicle and included everything. He stated that he did not think it was right that Mr Ferguson could refer to him being not a fit and proper person and that it was for the Committee to make this decision.

The Chair invited the Applicant and the Objector to confirm they had received a fair hearing and this was confirmed.

Mr Reppke advised, that before the Committee went onto debate, Mr Forrester would be able to clarify the position regarding the holding of Street Trader's Licences.

Mr Forrester confirmed that Mr MacLean did hold a Street Trader's Licence which applied to the current vehicle operated by the Applicant. He also confirmed that a Street Trader's Licence is required by any person undertaking street trading whether on his own account or as an employee. Where there is more than one person trading from one van both or all shall require a licence permitting trade from that van. There is no distinction within the legislation

between those working a large number of hours or a small number of hours.

### **Debate**

Councillor Kelly advised that from what he had heard today and read in the paperwork it was his opinion that it was not necessary for the Applicant to operate from a larger vehicle which would not be suitable for the proposed locations and recommended refusal of the application.

Councillor Dance agreed with Councillor Kelly's comments and asked that the matter regarding who was operating the business should be investigated and Mr Reppke confirmed that an investigation was currently underway.

### **Decision**

It was unanimously agreed to refuse Mr MacPherson's application to amend his Street Trader's Licence on the basis that it was not a suitable vehicle for the licensed locations and that Mr MacPherson would be notified in writing within 7 days.

(Reference: Report by Head of Governance and Law, submitted)