

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 21 NOVEMBER 2018**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Roderick McCuish
Councillor Rory Colville	Councillor Jean Moffat
Councillor Audrey Forrest	Councillor Alastair Redman
Councillor George Freeman	Councillor Sandy Taylor
Councillor Graham Archibald	Councillor Richard Trail
Hardie	
Councillor Donald MacMillan	

Attending: Iain Jackson, Governance and Risk Manager
Graeme McMillan, Solicitor
Allegra Evans-Jones, Trainee Solicitor
Samantha McKee, Applicant

1. APOLOGIES FOR ABSENCE

Apologies for absence was received from Councillors Robin Currie, Mary-Jean Devon and Lorna Douglas.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR AMENDMENT TO A STREET TRADER'S LICENCE (S MCKEE, TARBERT)

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and invited the Applicant to speak in support of her application.

APPLICANT

Mrs McKee advised that she moved to Argyll and Bute with her family in 2015. She indicated that she wanted to set up a local enterprise with a coffee van and that she started trading in 2017 selling barista style coffees and teas around Kintyre but mainly in Tarbert. She said that she had originally wanted to be more mobile than she is but she had encountered issues with being able to stop on the roadside as so many were single track. She confirmed that she changed her original model and was granted permission to trade at Tarbert Marina 5 mornings per week. She explained that she shuttled between the Marina and the Portavadie Ferry Terminal. She confirmed that she was aware of other businesses in the area selling similar produce and that she was more than 500 metres away from them when trading at both the Marina and the Ferry Terminal. She added that she also supported local events held at the Marina throughout the year.

Mrs McKee referred to licence restrictions and advised that she had issue with the recent change that has been made to standard Condition 17. She explained that this condition was stopping her day to day trading because as she was trading between two places and the condition only allowed her to trade at one location for a maximum of 30 minutes before she had to move, the condition prevented her from returning less than 200m away from the original location on the same calendar day. She advised that 200m away from the Ferry Terminal would take her out of the town and 200m from the Marina would bring her too close to other businesses. She advised that another major concern for her was Condition 3 which limited the number of events she could attend per calendar year to 12. She explained that she was entrepreneurial but also prided herself in integrating into the community. She advised that she held monthly coffee mornings at Skipness Village Hall during the winter season which brought neighbours together in their own village. She advised that as she is only allowed to trade for a maximum of 30 minutes before moving on she has to class this as one of her 12 events as it would not be viable to just trade for 30 minutes at that location. She confirmed that she has tried to work with existing businesses and support local events but the two conditions were restricting her ability to trade and support the community.

MEMBERS' QUESTIONS

Councillor Redman sought and received confirmation from Mrs McKee that if these conditions remained she could not see her trade continuing. Councillor Redman asked Mrs McKee if she believed this would have a detrimental effect on the area. Mrs McKee advised that her business received lots of local trade as well as from tourists. She pointed out that at the Marina there were lots of residents with boats that found her van a good place to congregate.

Councillor Trail sought and received confirmation from Mr McMillan that this type of street trader business, selling barista style coffee, was quite unique for the area compared to the usual larger burger vans and ice-cream vans.

Councillor Colville sought assurance from Mrs McKee that if her application was successful she would not later decide to sell such items as hot dogs or fish and chips. Mrs McKee advised that her current licence allowed her to sell pre-packed sandwiches. She explained that she did not do this and that she limited her stock down to what she seen as a gap in the community.

Councillor Freeman sought and received confirmation from Mrs McKee that she first obtained her licence in 2017. Mrs McKee acknowledged that her previous licence included Condition 17 although at that time it was worded slightly differently. She confirmed that the previous wording in Condition 17, which prevented her from trading within 100m of a business, did not affect her business. She advised that the new condition did not allow her to remain at the Marina for more than 30 minutes at a time and that was why she shuttled between there and the Ferry Terminal. She advised that the issue which was now affecting her was not being able to return to the same location on the same day.

Councillor Freeman asked Mrs McKee if she was aware of the standard conditions before applying for renewal of her licence. Mrs McKee explained that she was sent a letter from the Licensing Team about renewing her licence which explained that the Committee were in the process of making changes to Condition 17. She advised that the letter gave her 10 days' notice of this possible change which she objected to

and even although the Licensing Team could not confirm what the change may be she still had to pay for her renewal application. She advised that she heard nothing further until the licence was renewed with the revised Condition 17 on it and that she has now had to pay a further fee to apply for an amendment to the licence. She advised that she was not happy with the service she received from the Licensing Team.

Councillor Freeman asked Mrs McKee if she thought this change to Condition 17 was affecting other street traders. Mrs McKee said that she had noted that Argyll and Bute Council wanted Argyll and Bute to be open for business and to attract young people to the area. She explained that young people don't often have the money to set up businesses in buildings. She said she believed that this condition would affect people bringing the type of business that did not require buildings into the area. She said that she could not speak for other traders. She advised that she was not aware of any pre-consultation and that she only became aware 10 days before the decision was made when she received her renewal letter.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that when the Committee made the decision to change Condition 17 it was on the understanding that each individual trader could bring an application for amendment of the general standard conditions to the Committee. Mr McMillan confirmed that removing Condition 17 in respect of one street trader would not set a precedent as each case would be considered on its own merits.

Councillor Kinniburgh sought clarity around Condition 3 in respect of limiting a street trader to 12 events per year. He referred to Mrs McKee's comments about having to class her visits to Skipness Hall as an event. Mrs McKee explained that at the moment she ran her coffee mornings for 1 hour and 30 minutes at Skipness Village Hall and because she can only trade for a maximum of 30 minutes before moving on this needs to be classed as an event. She said that she has had to turn down other events as the limit of 12 means she has to consider which ones would give her more income. She advised that she would like to do more and if it was not possible for Condition 3 to be removed she would like the limit of 12 to be raised.

Councillor Kinniburgh sought and received clarification from Mr McMillan that if Condition 17 was removed Mrs McKee would no longer need to class her visits to Skipness Hall as an event as there would no longer be a requirement for her to move on after 30 minutes. Mr McMillan explained what could be classed as an event and gave the example of a community event in Lochgilphead. He confirmed that as long as a street trader from within Argyll and Bute advises the Council of their intention to trade at a community event and that they have received permission to trade from the event holder then their trade at that event would be permitted.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that if there was an event in the area of trade listed in the licence schedule this would not be classed as an event if Condition 17 was removed.

Councillor Kinniburgh referred to what had been clarified by Mr McMillan if Condition 17 was removed and asked Mrs McKee if the restriction to 12 events per year would still be an issue for her. Mrs McKee advised that this would allow her to do what she does just now but she would like to expand her business. She confirmed that the limit of 12 events per year would not be as detrimental to her business as it is now if Condition 17 was removed. She said that she could work with that but she would

like to do more. She explained that as well as attending events she also created and ran events herself for craft workers. She said that the ability to hold more events would help her and the community. She confirmed to Councillor Kinniburgh that raising the limit to 18 events per year would enable her to grow her business.

Councillor Trail sought and received confirmation from Mr McMillan that it was open to street traders to apply to vary their licence and amend their current areas of trade.

Councillor Moffat asked Mrs McKee if the areas she held her craft fairs were within her areas of trade. Mrs McKee advised that she was not entirely clear where her areas of trade were. She said her areas of trade seemed to be her pitches rather than a geographical spread. She said that she tried to do most of her events at the Marina using a marquee or at Skipness Village Hall. She advised that she attended the Kintyre Ultra which was classed as an event. Councillor Moffat suggested that if Condition 17 was removed this could lead to Mrs McKee having 12 extra events outwith her trading area.

Councillor Kinniburgh sought and received confirmation from Mrs McKee that she was aware of the areas of trade listed on the schedule attached to her licence. She commented that usually a street trader could stop on roads within their area but she was unable to do that due to there being so many single track roads.

Councillor Freeman advised that it has always been his understanding that a street trader could only attend an event held within their area of trade. Mr McMillan confirmed that a street trader would be authorised to attend an event out with their area of trade as long as they informed the Council of their intention to do so and that they had permission from the event organiser.

Councillor Taylor commented that he did not believe that the Applicant attending a coffee morning in Skipness Hall would be doing so as a Street Trader. Mr McMillan confirmed that in the case of a table top sale this did not come under the definition of a Street Trader. Councillor Taylor also referred to Market Operator Licences for large scale events such as the Mid Argyll Show and asked if small traders would be covered by that type of licence at that event. Mr McMillan confirmed that if a large event like the Mid Argyll Show had a Market Operator's Licence that could cover individual traders and that would be something for them to discuss with the event holder. If the organising body did not have a Market Operator's Licence then it would fall under the Street Trader Licence as long as an Argyll and Bute trader was attending.

Councillor Taylor sought and received confirmation from Mrs McKee that she did not operate within Skipness Village Hall. She explained that the hall was used for the craft businesses and that she worked outside from her van.

Councillor Blair sought and received confirmation from Mrs McKee that she would be happy if Condition 3 was changed to have the 12 events per year raised to 18.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that Mrs McKee's licence had the limit of 12 events as this was a standard condition.

SUMMING UP

Mrs McKee thanked the Committee for listening and helping her understand the process. She said that she hoped that they could see that she wanted to add to Argyll and Bute and work to continue to deliver a vibrant business.

Ms McKee confirmed that she had received a fair hearing.

DEBATE

Councillor McCuish advised that the Committee were in the unique position of being able to help a business grow and flourish. He said that he was delighted that it was within the Committee's powers to do this and that he would like to approve what has been applied for i.e. removal of Condition 17 and removal of Condition 3. He commented that as no objections have been received and this being a special case as the business was unique and the Council had the opportunity to make a business grow he supported the amendment requested.

Councillor Trail said he would also like to support the ambition of this business. He said that he believed the best way of doing this would be to remove Condition 17 and change the number of events to 18 at this stage.

Councillor Redman said that this was a prime example of what Argyll and Bute needed. He said Argyll and Bute needed young families and needed more businesses. He referred to events bringing lots of trade to the area and the local economy. He confirmed that he would like to see the removal of Conditions 17 and 3.

Councillor Taylor advised that he was delighted to see Members of a single mind and that he was happy to see the removal of Condition 17 but quite content to see the number raised to 18 for Condition 3. He commented that sometimes when the Committee grants a licence to someone most often this was with an element of risk. He noted that for events the Council has to be notified when a street trader is going to attend so it was not an open ended risk in this case.

Councillor Colville said that there was a need for the Committee to protect the public and stop abuse of the system. He commented that Mrs McKee had made an excellent case. He said that he was not sure if there was a need to vary from 12 to 18 events. He confirmed that he had no problem with the removal of Condition 17. Mr McMillan confirmed that 12 events per year was part of the licence as a condition and was not there by statute so it could be amended or removed.

Councillor Blair pointed out that rules and regulations were there for a purpose and that they were not tablets in stone. He confirmed that he was happy to support the Applicant. He said that he was concerned about the comments made about the Customer Service Mrs McKee had received during the process of renewing her application. He said that he was happy to support the consensus.

Councillor Kinniburgh advised he had noted the comments made about Customer Service. He pointed out that the Applicant was originally paying for the renewal of her licence and because she did not agree with what was in the licence this was the reason for submitting this new application. He said that he had listened to all that had been said and confirmed that he did not think there was anyone in disagreement

about the removal of Condition 17 in this instance. He advised that he had a different view regarding the 12 events per year. He said that he thought that by removing Condition 17 this would alleviate some of the problems the Applicant was experiencing. He acknowledged that Condition 3 could be varied but by removing Condition 17 this was opening up some these events.

Motion

To agree to remove Condition 17 and that Condition 3 remains on the licence limiting the Licence Holder to trade at 12 events per year.

Moved by Councillor David Kinniburgh, seconded by Councillor George Freeman

Amendment

To agree to remove Condition 17 and amend Condition 3 by raising the number of events per year the Licence Holder can trade at from 12 to 18.

Moved by Councillor Sandy Taylor, seconded by Councillor Alastair Redman.

On a show of hands vote, the Amendment was carried by 8 votes to 4 and the Committee resolved accordingly.

DECISION

The Committee agreed that Condition 17 on Mrs McKee's Street Trader's Licence be removed and that Condition 3 be amended to raise the number of events she can trade at per year from 12 to 18.

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