

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 19 DECEMBER 2018**

Present: Councillor David Kinniburgh (Chair)

Councillor Robin Currie	Councillor Roderick McCuish
Councillor Lorna Douglas	Councillor Sandy Taylor
Councillor Audrey Forrest	Councillor Richard Trail
Councillor Donald MacMillan	

Attending: Charles Reppke, Head of Governance and Law
Graeme McMillan, Solicitor
Allegra Evans Jones, Trainee Solicitor
Sergeant Ian MacNicol, Police Scotland
Mr A Gallacher, Licence Holder
Mrs J MacLeod, Licence Holder's Representative

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, Rory Colville, Mary-Jean Devon, Graham Archibald Hardie, Jean Moffat and Alastair Redman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER'S LICENCE (NO. 2664) (A GALLACHER, DUNOON)

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed.

Mrs MacLeod requested continuation as the matter had not yet been dealt with in court. She advised that Mr Gallacher had only received his citation that week with a court date of 31 January 2019 for the first calling, and that he was still to speak to his solicitor.

Mr Reppke advised that the Committee could determine to proceed with the hearing despite Mrs MacLeod's submission. He advised that in similar cases in the past the Committee had gone through the hearing procedure and then taken the decision to continue until after there had been an outcome from the courts.

The Chair intimated that the Committee would continue with the hearing process and invited Police Scotland to speak in support of the Chief Constable's complaint.

POLICE SCOTLAND

Sergeant MacNicol referred to a request from the Chief Constable that, in terms of Paragraph 11(1) of Schedule 1 of the Act, the Licensing Committee suspend Mr Gallacher's Licence. He advised that the Chief Constable complained, in terms of Paragraph 11(2)(a) of Schedule 1 of the Act that Mr Gallacher was no longer a fit

and proper person to hold the licence. He confirmed that the Chief Constable was also asking the Committee to order the immediate suspension of Mr Gallacher's Licence, in terms of Paragraph 12(1) of Schedule 1 of the Act, on the grounds that the carrying on of the activity to which his licence relates would likely cause a serious threat to public order or public safety. In support of the Chief Constable's request Sergeant MacNicol read out the details of an incident which occurred on 31 October 2018. He confirmed that as a result of this incident Mr Gallacher was charged with Section 3 of the Road Traffic Act 1988 and a report has been sent to the Procurator Fiscal. He advised that as this matter was sub-judice, he was constrained with regard to the nature of any further information he could provide at this time.

QUESTIONS FROM LICENCE HOLDER

There were no questions from Mr Gallacher.

LICENCE HOLDER

Mrs MacLeod spoke on behalf of the licence holder advising that the position was that Mr Gallacher had only received a citation to attend court that week and that he would be consulting with his solicitor with a view to entering a plea at the end of January. She advised that the complaint was not serious in nature and that there was a question around whether the crossing patrol officer had just stepped off the pavement when Mr Gallacher passed but she advised that she did not want to go into any further detail around the incident. She referred to a case where the Committee had continued a hearing for the suspension of licence where the driver had been involved in a much more serious incident and asked that the Committee took a similar view and continue the matter until the case had been through court.

QUESTIONS FROM POLICE SCOTLAND

There were no questions from Police Scotland.

MEMBERS' QUESTIONS

Councillor Kinniburgh asked Police Scotland to confirm that the time taken between the incident happening on 31 October 2018 and the first court date being called on 31 January 2019 was within the normal time scale. Sergeant McNicol confirmed that this was within normal timescale.

Councillor Trail asked how long Mr Gallacher had been a taxi driver. Mrs MacLeod confirmed that he had been a taxi driver since 1976, and therefore had been driving taxis for 40 plus years. She added that he was a part time driver with an excellent record and that his licence had never been challenged. She said that Mr Gallacher had a large client base in Dunoon and was a well-respected, popular driver.

SUMMING UP

Police Scotland

Sergeant McNicol said that although the charge was for careless driving which was not the most serious charge, the point was that the incident had been captured on CCTV, that he had been charged with not stopping for a school crossing patroller and the disregard for the authority of the crossing patroller was what was concerning. He advised that his attitude should have been to stop, let the patroller do his job and then proceed and that was why this case had been brought to attention.

Licence Holder

Mrs MacLeod said that as the case was still to come to court Mr Gallacher was entitled to be treated as not guilty until the matter had been to court.

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

DEBATE

Councillor Currie said that he was of the view that the Committee should continue determination until after the court case as a person was innocent until proven guilty.

Councillor Trail agreed with Councillor Currie but advised that he took a dim view of cars going past school crossing patrollers as they did a good job in dangerous circumstances.

Councillor MacMillan advised that he agreed with Councillor Currie also.

Councillor Kinniburgh agreed with Councillor Trail saying that he too took a dim view of someone passing a crossing patroller but taking into account the number of years Mr Gallacher had been driving he was willing to move continuation of the case until after the court case.

DECISION

The Committee agreed to continue determination of the suspension of Mr Gallacher's licence until after the case had been to court.

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