

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 20 NOVEMBER 2019**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Jean Moffat
Councillor Robin Currie	Councillor Alastair Redman
Councillor Lorna Douglas	Councillor Sandy Taylor
Councillor Donald MacMillan BEM	Councillor Richard Trail

Attending: Patricia O'Neill, Governance Manager
Graeme McMillan, Solicitor
Colin McNeill, Applicant
George Finlay, Objector
Lisa McCandlish, Objector

1. APOLOGIES FOR ABSENCE

Apologies for absence were intimated on behalf of Councillors Gordon Blair, Mary-Jean Devon, Audrey Forrest, George Freeman, Graham Archibald Hardie and Roderick McCuish.

2. DECLARATIONS OF INTEREST

There were no declarations of interest intimated.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF PRIVATE HIRE CAR OPERATOR LICENCE (GLASGOW COACH DRIVERS LIMITED, GLASGOW)

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 his application.

APPLICANT

Mr McNeill spoke to the terms of his application on behalf of Glasgow Coach Drivers and advised that in his experience a number of people request an 8 seater vehicle when making taxi bookings and that he had noted a distinct lack of vehicles of this size available for hire within the area, hence his application.

QUESTIONS FROM OBJECTORS

Mr Finlay asked Mr McNeill to explain why he currently uses a 5 seater Skoda Estate car, when he claims the demand is for an 8 seater. Mr McNeill confirmed that he is collecting private hire fares using the Skoda Estate car, and that his other 8 seater vehicle is currently off the road.

Mr Finlay enquired as to the status of his other vehicles given that he has more than one licensed vehicle. Mr McNeill confirmed that he has a Skoda Estate and a Ford 8 seater. He confirmed that the Ford 8 seater was in the garage and had been for a prolonged period, due to issues, which were being addressed under the manufacturer's warranty.

Mrs McCandlish enquired as to who was driving the Skoda Estate car when it is on hire. Mr McNeill advised that it was either Mark Franks or Steven Muir, depending on who is available.

OBJECTORS

Mr Finlay spoke to the terms of his objection and advised that he was also aware that Mr McNeill had been disqualified from driving on his bus licence for a period of 25 years by the Traffic Commission and he believed that he had been illegally operating as a Private Hire operator prior to obtaining his licences. He also spoke of legal issues Mr McNeill had encountered due to failing to change his home address and how the use of a booking system had diverted potential customers to his own businesses, under a variety of names, including Trident Taxis, which was similar to another well-established business within the area, to the detriment of individual operators within the Helensburgh and Lomond area.

Mrs McCandlish advised that she believed Mr McNeill had lied to the Committee at a previous meeting, by advising that he had been granted 2 licences in 2018, one being from Argyll and Bute Council, however this was not the case as the one from Argyll and Bute Council had not been granted until March 2019.

QUESTIONS FROM APPLICANT

Mr McNeill confirmed he had no questions.

MEMBERS' QUESTIONS

Councillor Colville enquired as to whether there were any police objections to the application. The Council's Solicitor, Mr MacMillan advised that there had been no police objections.

Councillor Colville asked Mr McNeill to advise whether he had had an opportunity to read the results of the recent LSVVA survey and how he felt they impacted on his application. Mr McNeill confirmed that his view was the same as the conclusion of the survey in that there was no overprovision for Private Hire licences.

The Council's Solicitor, Mr MacMillan confirmed the outcome of the survey in the Helensburgh and Lomond area in relation to the assessment of taxi numbers. He advised that it had shown that there was no unmet demand. He also confirmed that the survey found that there was no overprovision of private hire licences over Argyll and Bute as a whole.

Councillor Trail enquired as to the 8 seater vehicle that currently has a licence. Mr McNeill confirmed that the vehicle had been off the road for over 4 months. He advised that he had had the problem sorted and had it back for a fortnight, only for it

to break down again due to an issue with the adblue system and it was currently back with Ford to be repaired under warranty.

Councillor Moffat enquired as to whether there had been any report done, specifically in relation to the provision of vehicles of a certain size. Mr MacMillan confirmed that there is no policy within Argyll and Bute Council that relates to the size of the vehicle, but that there was one in relation to wheelchair adaptability.

Councillor Douglas asked Mr McNeill whether the application was simply to cover for other vehicle breakdowns. Mr McNeill confirmed that he had three vehicles and he wished to operate three vehicles.

Councillor Douglas sought clarity from the Council's Solicitor in relation to the complaints raised by the objectors as she felt that some were out of the remit of the committee. Mr MacMillan confirmed that it was open to the objectors to raise concerns that could ultimately prove that the applicant is not a fit and proper person to be the holder of a licence.

Councillor Douglas then asked the objectors to clarify the reason for raising a complaint on the operation of a business. Mr Finlay explained that if a person uses another business name, such as Trident Taxis on a website, then if a potential customer selects this on the belief that a Trident Taxi will turn up, however this would be diverted to one of Mr McNeill's other businesses, away from individual operators and this pretence would suggest that he is not a fit and proper person. He also suggested that the 25 year disqualification from the Traffic Commission further proved that he is not a fit and proper person. He highlighted that the exact reason for the disqualification was unknown.

Councillor Douglas sought clarification on the disqualification from the Council's Solicitor. Mr MacMillan advised that having consulted Police Scotland in relation to the application, there were no concerns raised with Mr McNeill's licence.

Councillor Trail expressed concern that Mr McNeill was deliberately subverting the business of both Trident Taxis and Neptune Cars. Mr McNeill advised that the phone number of Trident Taxis is registered and operated by a booking system. He advised that depending on how a taxi is booked, the driver will get the notification on his phone, if they are unable to supply a taxi at that time, the booking will be diverted onto another company or driver and depending on the destination of the passenger, this could be a Private Hire company or driver from another area.

Councillor Currie reminded the Committee that the application is for a Private Hire Operators Licence, and any driving history is irrelevant at this point as the vehicle could be operated by any other licensed driver. Councillor Currie asked whether there was a gap in the market for an 8 seater vehicle, and Mr McNeill advised that he believed that there was.

Councillor Moffat asked Mr McNeill if he could elaborate on the reasons that the bus licence had been suspended. Mr McNeill advised that his licence had been suspended as he had failed to provide information in relation to a speeding offence back in 2012. He advised that he did not realise that the licence had been suspended until he tried to apply for the renewal of his licence at his fiftieth birthday in 2017.

The Chair, Councillor Kinniburgh enquired as to the position with regards to his European Community Driving Licence. Mr McNeill advised that he had received a letter from the Traffic Commissioner and that he had never had this licence in his hand.

Councillor Kinniburgh asked Mrs McCandlish how she came about the licence. Mrs McCandlish advised that it appears on a number of webpages that Mr McNeill owns. She advised that she had emailed the Traffic Commissioners office, who confirmed that it was illegal and was being looked into.

Mr MacMillan reminded the Committee that they were here to consider an application for Private Hire Operator's Licence. He advised that it was right for the objectors to make their objections, and while it is open for Members to ask questions, he suggested that they shouldn't let it detract from the application in front of them.

Councillor Kinniburgh enquired as to the use of the booking system. Mr McNeill outlined the way in which calls are handled when they come in and how bookings are distributed out to drivers who have registered with the booking system.

Councillor Kinniburgh asked about cost for registering to use the booking system and also the number of drivers using the system at present. Mr McNeill confirmed that there was no charge to register with the booking system and that there were thousands of drivers across the UK registered to it. He further explained that you would only get a job if it related to the area you are licensed to drive in, and confirmed that relevant checks are made prior to a person's details being added to the system.

Councillor Colville referred to the newly added subsections of Section 10 of the Civic Government (Scotland) Act 1982 and asked whether this was the new Scottish Government guidance. Mr MacMillan confirmed that the new guidance was not yet available and advised that the new subsections permitted the refusal of an application on the grounds of overprovision. He further advised that the normal grounds for refusal still apply, and can be found in paragraph 5 of schedule 1 of the Act. He explained that if none of the grounds exist then it would be the duty of the Committee to grant the application.

SUMMING UP

Objectors

Mr Finlay asked the Committee to take into consideration that Mr McNeill had been disqualified from driving on his bus licence for a period of 25 years by the Traffic Commission; that he had been illegally operating as a Private Hire operator prior to obtaining his licences for a period of 3 years and the legal issues Mr McNeill had had due to a change of address. Mr Finlay spoke of how the use of a booking system had diverted potential customers to one of Mr McNeill's own businesses to the detriment of individual operators within the Helensburgh and Lomond area.

Mrs McCandlish asked the Committee to take into account that the LVSA Survey had been carried out on a busy weekend in May. She advised that only 9 taxi

drivers took part in the survey and she did not feel that they represented the taxi community as a whole.

Applicant

Mr McNeill advised that he felt that there were not enough Private Hire operators to cover the whole Argyll and Bute area. He advised that he'd be happy to help other operators who did not have an 8 seater vehicle.

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

DEBATE

Councillor Currie advised that he felt the Committee had gone down some unnecessary roads on this journey and that this case was pretty straightforward. He referred to paragraph 2.5 of the report by the Head of Legal and Regulatory Support which stated that under the Civic Government (Scotland) Act 1982 a private hire car licence could only be refused if there was over provision. He pointed out that the recent survey carried out said there was no over provision so on that basis he was minded to grant this licence.

Councillor Redman advised that he was minded to agree with what Councillor Currie had said. He said that the only people saying there was over provision were those who would be affected by competition. He referred to free markets and the recent survey report and advised that there was no point in issuing reports if the findings were not acknowledged. He advised that it was his belief that there was no over provision. He said that competition was a good thing and that he was minded to approve the application.

Councillor Trail advised that he took a slightly different view. He said that he did not think Mr McNeill had shown any regard to the existing Trident business. He referred to Mr McNeill setting up business in the same name and registering the name under him and advised that he thought this was a blatant attempt to affect the other business. He advised that he did not think Mr McNeill was a fit and proper person to run a private hire business in Helensburgh.

Councillor Currie advised that from reading the report the only reason the Committee could refuse was on the basis of over provision and he sought clarity on this. Mr McMillan advised that over provision was an additional ground of refusal in addition to the others under the Act which included whether or not a person was a fit and proper person to be the holder of the licence; whether or not the activity to which the licence relates would be managed or carried on for the benefit of a person other than the licence holder who would be refused the grant or renewal of the licence; and whether or not the carrying on of the activity to which the licence relates would cause undue public nuisance or a threat to public order or public safety. Mr McMillan confirmed that the over provision aspect was why applications for private hire operator licences would now come to Committee whether or not there was an objection to the application.

Councillor Douglas advised that she had taken on board what other Members had said about over provision. She advised that she thought it was what had come out at the hearing today that mattered. She said that as a Member of this Committee she had a duty of care and that she was of a similar mind to Councillor Trail.

Councillor Colville advised that he shared the same concerns as Councillor Trail but felt he was restricted by the Act. He said that it was quite obvious to him that taxis in the Helensburgh area were acting as private hires. In terms of the Act he said that he did not think it would be correct unless someone was to convince him otherwise to refuse this application.

Councillor Kinniburgh said that he found this a difficult case. He acknowledged everything that had been said and advised that he was leaning towards the thoughts of Councillor Trail. He advised that by the same token he felt constrained by the Act. He advised that he would leave it to the other Members to move a Motion.

Motion

To agree to grant a Private Hire Car Operator Licence to the Applicant.

Moved by Councillor Alastair Redman, seconded by Councillor Jean Moffat.

Amendment

To agree to refuse the application for grant of a Private Hire Car Operator Licence on the grounds that the Applicant was not a fit and proper person to be the holder of this licence.

Moved by Councillor Richard Trail, seconded by Councillor Lorna Douglas.

The Motion was carried by 5 votes to 3 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant a Private Hire Car Operator Licence to Mr Colin McNeill.

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