

**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  
Sgt Wendy Maginnis, Police Scotland  
Scott Robertson, Licence Holder  
Kevin McGuinness, Licence Holder's Solicitor

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from 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.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF TAXI DRIVER'S LICENCE (NO. 4990) (S ROBERTSON, OBAN)**

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed and invited Police Scotland to speak in support of the Chief Constable's complaint.

**POLICE SCOTLAND**

Sgt Maginnis referred to a request from the Chief Constable that, in terms of Paragraph 11(1) of Schedule 1 of the Act that the Licensing Committee suspends Mr Robertson's licence. She advised that the Chief Constable complained in terms of Paragraph 11(2)(a) of Schedule 1 of the Act that Mr Robertson was no longer a fit and proper person to hold the licence. In addition, she advised that the Chief Constable was requesting the Committee to order the immediate suspension of the 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 the licence relates was likely to cause a serious threat to public safety. In support of the Chief Constable's request Sgt Maginnis read out the details of an incident which occurred on 4 October 2019. She confirmed that a report had been submitted to the Procurator Fiscal and that as the matter was sub-judice she was constrained with regard to the nature of any further information she could provide at this time.

## LICENCE HOLDER

Mr McGuinness advised that his client, Mr Robertson, was a 46 year old man who was married and had two young daughters. He confirmed that he has held a taxi drivers licence for approximately 8 years and had an exemplary record. He referred to this matter being brought to the Committee's attention by Police Scotland following an incident which has led to criminal proceedings against Mr Robertson being considered. He confirmed that the Procurator Fiscal would consider in due course whether or not to prosecute. He said that whilst these wheels of justice turned Mr Robertson enjoyed in law the presumption of innocence and that he was entitled to maintain silence which he was doing so on legal advice. He advised that in due course, if the Procurator Fiscal was persuaded to issue a prosecution, Mr Robertson would have the opportunity to discuss his position on this matter and that the Sheriff would consider this in due course. He advised that it would not be appropriate at this time to disclose in public the details of Mr Robertson's position.

He asked the Committee to bear in mind the presumption of innocence itself. He commented that the presumption of innocence was not a silver bullet for every situation and that it would be appropriate for the Committee to consider whether or not the allegation was serious enough that it would merit the imposition of a penalty at this stage when Mr Robertson could still be exonerated later.

Mr McGuinness asked the Committee to consider the impact on Mr Robertson if his licence was suspended at this time. He said that he was a married man with two young children and that he had a mortgage. He advised that over the last month or so Mr Robertson had only managed to work his taxi on one occasion as he was so anxious about things. He said that the family have managed to live off savings and have had financial assistance from parents. He advised that Mr Robertson's wife had also been off work due to anxiety which stemmed from all this. He said that this family unit were under enormous pressure at this time. He advised that if Mr Robertson's licence was suspended it may be several months before the Procurator Fiscal made a determination and that would only be the start of it. He explained that there would be a process through the Court system which again could add three months. He said that it could be July or August before Court proceedings reached a conclusion. He advised that if Mr Robertson's licence was suspended today this would result in irreparable financial harm to this family unit. He indicated that the two children would feel the brunt of it and said that there would be substantial mortgage arrears and personal debt. He said that at the end of the process Mr Robertson could be acquitted in late summer of 2020 but his life would be in ruins if his licence was suspended today. He referred again to the presumption of innocence not being a silver bullet and said that he could imagine if a taxi driver was found with live firm arms an allegation of this sort would be serious enough to warrant the immediate suspension of a licence. Mr McGuinness referred to the charges against Mr Robertson relating to simple possession of a very small amount of a controlled substance. He suggested that this was not serious enough to displace the presumption of innocence, particularly having regard to the impact the suspension would have on this family. He confirmed that Mr Robertson had no previous convictions under the Misuse of Drugs Act and that this was the first time he had ever faced the possibility of Court proceedings under this legislation.

He invited the Committee to refuse the Chief Constable's request and allow Mr Robertson to continue to provide for his family.

## **MEMBERS' QUESTIONS**

Councillor Trail asked Mr McGuinness if Mr Robertson would be willing to give a statement on what happened and if there were any mitigating circumstances. Mr McGuinness said that it appeared Mr Robertson had a defence but advised that it would be highly inappropriate to disclose that before any Court appearance.

Councillor Trail commented that there was nothing to say whether or not Mr Robertson was a regular drug supplier or was using his taxi to supply drugs. He said that if the Committee allowed Mr Robertson to continue this for another 4 or 6 months then it would be on the Committee's conscious. Mr McGuinness advised that there were no suggestions that this was taking place. He referred to the allegation read out by Sgt Maginnis and said there were no suggestions of Mr Robertson being near a primary school or being involved in the supply of drugs.

Councillor Colville sought and received confirmation from Sgt Maginnis that the charge against Mr Robertson was for possession not supply.

Councillor Currie referred to the Committee finding themselves in this situation nearly every second hearing. He questioned the process and said he did not think the Committee should be taking a decision until the matter had been dealt with at Court. He pointed out that he had made this view at Committee on numerous occasions in the last months and years. He said he did not see this case as being any different and that the Committee should wait until the Court makes a decision. He sought comment from Officers.

Mr McMillan advised that in terms of the current process and the mechanism for that, Police Scotland can make a complaint and request a suspension of a licence as they have done so in this case. He referred to the threshold for holding Civic Government Suspension Hearings and advised that on 21 November 2007 it was agreed to delegate to the Head of Service, in consultation with the Chair and Vice Chair, the decision on whether or not to hold a suspension hearing under the Civic Government (Scotland) Act 1982. He confirmed that Police Scotland were exercising their right to raise concerns. He advised that the purpose for holding this hearing was so that Members could consider whether or not they had sufficient information to give them concern as Police Scotland have alleged that Mr Robertson was no longer a fit and proper person. He advised that the Committee had to have regard to what Police Scotland have said and also to what Mr McGuinness has said in support of the Licence Holder.

Councillor Currie pointed out that in 9 out of 10 cases it was normal to wait until a decision was taken by the Court. Councillor Kinniburgh advised that there did not need to be the same standard of proof for a Civic Hearing as was the case in Court. He advised that it was his view that it was perfectly right to hold a hearing when Police Scotland make a complaint and that it was up to the Members to decide what weight to put on that.

Councillor Douglas advised that she had concerns that Mr Robertson may have been under the influence of drugs at the time. She asked if anyone could confirm whether or not Mr Robertson had been intoxicated. Sgt Maginnis advised that there had been no report of intoxication.

## **SUMMING UP**

### **Police Scotland**

Sgt Maginnis confirmed that Mr Robertson had been reported to the Procurator Fiscal on drug possession charges. She advised that Police Scotland had a concern for public safety.

### **Licence Holder**

Mr McGuinness asked the Committee to bear in mind the presumption of innocence and stated that this was at the heart of the legal process. He referred to the impact the suspension of Mr Robertson's licence would have on the family. He pointed out that Mr Robertson could be found not guilty in late summer next year and questioned what good that would do him if his licence was suspended today.

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

## **DEBATE**

Councillor Redman said that his view, as always, has been that presumed innocence was a must. He confirmed that he did not believe someone was guilty until proven innocent. He advised that it would be really worrying if the Committee stripped someone of their livelihood and was then found to be innocent. He confirmed that he would be voting to not suspend the licence and hoped that other Committee Members would do the same.

Councillor Moffat said that she was quite surprised that this case had come before the Committee if Mr Robertson was not under the influence of drugs. She said that she did not see a lot of people being picked up with drugs. She suggested that Mr Robertson was being made a case of because he was a taxi driver and said that she found this a bit unfair. She referred to the amount of drugs not being huge and advised that she thought Police Scotland should presume innocence at this stage.

Councillor Colville advised that he believed it was right that Police Scotland had come with their concerns. He commented that this was a taxi driver with drugs in his car whether for personal use or distribution. He advised that he had taken account of what Mr McGuinness had said, had noted that Mr Robertson's wife was present and that Mr Robertson had shown a degree of contrite which, he said, suggested to him that there was more to this case than meets the eye. He confirmed that he would be happy for the Court to decide.

Councillor Currie said he wanted to move continuation of this matter.

Councillor Kinniburgh advised that like Councillor Colville he defended the right of Police Scotland to bring concerns to the Committee at any time as that was what the Committee were here for. He pointed out that the matter did not need to go to Court for the Committee to decide on a course of action to take. He said that the Committee had to decide whether or not Mr Robertson created a danger to the public in the meantime based on the information provided. He acknowledged that the Committee did not know the full circumstances. He referred to hearing from Police Scotland that the amount of drugs led to a charge of possession and not supply so, he said, he did not think there was any insinuation that Mr Robertson was

dealing in drugs. He confirmed that it was his view that this matter should go before the Court before the Committee take a decision. He advised that he had noted the point made by Councillor Colville about Mr Robertson being present with his wife. He referred to Mr Robertson having a young family and advised that he believed it would be unfair to suspend the licence at this time. He referred to Mr Robertson's anxiety and said he believed Mr Robertson would realise that due to what has been said today the Committee would take a serious view if the Court case did not go his way.

Councillor Kinniburgh confirmed that he thought this matter should be continued until the outcome of the legal proceedings was known.

## **DECISION**

The Committee agreed to continue consideration of this matter until the outcome of the legal proceedings was known.

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