

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 19 FEBRUARY 2020**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Donald MacMillan BEM
Councillor Robin Currie	Councillor Jean Moffat
Councillor George Freeman	Councillor Alastair Redman
Councillor Graham Hardie	Councillor Richard Trail

Attending: Patricia O'Neill, Governance Manager
Graeme McMillan, Solicitor
Ally Evans-Jones, Trainee Solicitor
Stephen Fox, Applicant
Sgt Iain MacNicol, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Rory Colville, Lorna Douglas, Audrey Forrest, Roderick McCuish and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF TAXI DRIVER'S LICENCE (S FOX, OBAN)

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

The Chair advised that a representation from Police Scotland had been received outwith the time period allowed by the Civic Government (Scotland) Act 1982 for making objections or representations. He invited Sgt MacNicol to explain why the representation from Police Scotland had been submitted late.

Sgt MacNicol advised that a letter dated 11 December 2019 advising of this application was received by the Dumbarton Police Office on 20 December 2019 just before the festive public holidays. He said there was a disparity regarding the disclosed convictions on the application form as the Police system had different versions of events and they had to wait until clarity on this had been sought from the Procurator Fiscal.

The Chair sought the view of the Applicant as to whether or not this late representation should be taken into consideration. Mr Fox confirmed that he was happy for the Police representation to be submitted to the Committee for consideration.

The Chair sought the views of Members as to whether or not this late representation should be taken into consideration.

The Committee agreed to take this late representation into consideration and copies were circulated.

The Chair then invited the Applicant to speak in support of his application.

APPLICANT

Mr Fox advised that he was applying for a Taxi Driver's Licence as he wanted to start a company based in Oban. He said that he wanted to start a tour operator company offering tours from Oban to Fionnphort and Staffa, and also to Glencoe and castles close to Oban. He advised that he wanted to offer tours that could be done in a day.

POLICE SCOTLAND

Sgt MacNicol referred to a letter of representation submitted by the Chief Constable which advised of the circumstances surrounding a conviction of Assault to Injury & Permanent Disfigurement which the Applicant had received at court on 23 August 2012 as a result of an incident which took place on 28 August 2011

MEMBERS' QUESTIONS

Councillor Trail asked why Mr Fox was applying for a Taxi Driver's Licence and not a Private Hire Driver's Licence if he was just going to operate tours. Mr Fox explained that when he had asked for an application form for a Private Hire Driver's Licence he was advised on the phone to apply for a Taxi Driver's Licence as this would allow him to drive both taxis and private hire vehicles on that licence. Mr Fox confirmed that he did not want to drive taxis, and only wanted to drive private hire vehicle.

Councillor Trail sought clarification from Officers on Mr Fox applying for a Taxi Driver's Licence instead of a Private Hire Driver's Licence. The Council's Solicitor, Mr McMillan, explained that in terms of the provisions of the Act a Taxi Driver's Licence would allow the licence holder to drive taxis or private hire vehicles which would give flexibility to provide cover for other businesses in the area. He said that as it was only a driver application that was sought that was why this advice was given.

Councillor Hardie sought and received confirmation from Mr Fox that before and after his conviction he has worked at Sanda Quarry.

Councillor Currie asked how a Taxi Driver's Licence corresponded to conducting tours. Councillor Kinniburgh explained that if you held a Taxi Driver's Licence this allowed you to drive taxis or private hire vehicles. He advised that as Mr Fox has intimated that he wishes to do tours then he would then apply for a Private Hire Operator's Licence. He asked Mr McMillan if that was correct. Mr McMillan replied yes and advised that if this licence was granted and until Mr Fox applied for an Operator's Licence he could, if he wished, drive taxis or private hire vehicles. He confirmed that if Mr Fox wishes to have his own business he would need to apply for an Operator's Licence. He said that the Taxi Driver's Licence would open up options for employment.

Councillor Freeman sought and received confirmation from Officers that if Mr Fox's application was approved today he would be able to work as a taxi driver.

Councillor Kinniburgh asked Mr Fox if it would be his intention to drive taxis even if he was granted a Private Hire Operator's Licence in the future. Mr Fox confirmed that he had no intention of being a taxi driver or working the ranks. He said that he wanted to start his own business and wanted to apply for a driver licence first before purchasing a car.

Councillor Freeman asked Officers to confirm if the Committee could legally put conditions on the licence to ensure Mr Fox only operated the tours he referred to. Mr McMillan advised that the licence issued would be a standard taxi driver licence and it would be up to the licence holder how much they wished to utilise that licence. He said that he would advise against putting conditions on it.

Councillor Moffat asked Mr Fox if he had looked into setting up a tour business and if he had obtained any facts or figures and information about running the business. Mr Fox said that he had spoken to a lot of people and had first approached Visit Scotland in their Oban office to find out what people were looking for. He said that they had advised him that 75% of their customers were looking to book tours to Staffa and that he had a friend who owned a boat. He said that the availability of tours to Glencoe was poor and that bus times were not the best so he hoped to fill a gap there too. He also referred to there being many castles in the area and he hoped to offer tours to these as well.

Councillor Blair referred to the assault in 2011 and noted that Mr Fox had paid back his debt to society. He pointed out that it was really important to have reliable, dedicated, upfront folk and when reading about the assault he would have concerns about his daughter, wife or granny getting into Mr Fox's vehicle unless he could be assured that Mr Fox had changed. He asked Mr Fox if he could confirm that he was a better person now than he was in 2011. Mr Fox advised that, although it was not an excuse, the crime was fuelled by alcohol. He said that he was celebrating his birthday and that it was a moment and not a sustained attack. He advised that the person he assaulted had thrown a beer mat at him which caught him above his eye and in that moment he had reacted with the glass he was holding.

Councillor Currie asked Mr Fox if he agreed that this was a good way of getting a business set up by applying for a Taxi Driver's Licence first rather than taking a risk with all the costs involved in purchasing a vehicle and applying for a Private Hire Operator's Licence. Mr Fox confirmed that he could not afford to take that risk. He said he was not sure if it would be possible in the future to apply provisionally for an Operator Licence and be granted a licence before purchasing a car as this would certainly take the risk away.

Councillor Kinniburgh advised that he agreed it was a good idea to apply for the Driver's Licence first as there was always a risk attached to purchasing a vehicle to use as a taxi or private hire vehicle. He referred to the report on the survey for unmet demand recently conducted and said there was less of a risk for private hire vehicles than for taxis given the findings of the survey.

Councillor Moffat referred to Mr Fox admitting that alcohol had been involved during the incident and asked if he had now given up alcohol. Mr Fox advised that he did

not go out as much and that he hardly ever took a drink but he had not given up alcohol and would still have a drink if he was going out to a party.

Councillor Kinniburgh referred to Mr Fox declaring other convictions on his application form and asked Sgt MacNicol why Police Scotland had not reported on these. Sgt MacNicol advised that these other convictions were classed as spent convictions.

SUMMING UP

Police Scotland

Sgt MacNicol advised that the representation from the Chief Constable was to alert Members to the fact that the Applicant had this conviction and the circumstances which led to this conviction.

Applicant

Mr Fox advised that he hoped that his past was in the past would not hinder his future. He confirmed that he was sorry for what he had done before and hoped to be able to prove himself to be better in the future.

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

DEBATE

Councillor Hardie advised that having thought about the serious nature of this conviction he would not be recommending the granting of this application.

Councillor Redman said that normally he was someone that was a big believer in law and order and crime and punishment and that past crimes should have consequences. He advised that he also believed in reforming criminals and that 8 years ago was a long time. He said he felt that to take away future opportunities to develop yourself and move on from your past would help no one and that he was minded to approve the application.

Councillor Currie advised that he respected Mr Fox's honesty in respect of the answer he gave to Councillor Moffat. He said that he believed Mr Fox was genuinely sorry for what had happened 8 years ago. He advised that everyone deserved a second chance and he was willing to do that in this case.

Councillor Moffat advised that the most telling thing about this case which swayed her to agree was the fact that the Police had given the Committee this information but were only making a representation and not an objection. She advised that she was minded to grant the application as she felt Mr Fox had learnt his lesson and she hoped he would not prove her wrong.

Councillor Blair advised that good quality taxi drivers were expected and that he was happy to support this application.

Councillor McMillan confirmed that he was happy to support the application.

Councillor Kinniburgh said that initially looking at it on paper it was obvious the offence was quite serious even though it was only a representation from the Police. He advised that one of the biggest problems the Committee were faced with was people not disclosing their convictions. In this case Mr Fox had put down convictions he did not need to declare as they were spent, hence the reason the Police did not refer to them. He referred to the incident happening 7½ - 8 years ago and if there had been any other problems he assumed they would have been before the Committee for consideration. He advised that taking that into account and the fact that Mr Fox had appeared here today and provided very honest answers to the Committee, which, he said, made the Committee's job easier, he believed that what Mr Fox had said today was a fair account of what had taken place and that it had been a one off incident.

Motion

To agree to grant a Taxi Driver's Licence to Mr Fox.

Moved by Councillor David Kinniburgh, seconded by Councillor Alastair Redman.

Amendment

To refuse Mr Fox's application for a Taxi Driver's Licence.

Moved by Councillor Graham Archibald Hardie, seconded by Councillor George Freeman.

On a show of hands vote the Motion was carried by 7 votes to 2 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant a Taxi Driver's Licence to Mr Fox.

(Reference: Report by Head of Legal and Regulatory Support, submitted and letter from Police Scotland dated 24 January 2020, tabled)