

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY SKYPE
on MONDAY, 22 JUNE 2020**

Present: Councillor David Kinniburgh (Chair)

Councillor Gordon Blair	Councillor Donald MacMillan BEM
Councillor Rory Colville	Councillor Roderick McCuish
Councillor Robin Currie	Councillor Jean Moffat
Councillor Mary-Jean Devon	Councillor Alastair Redman
Councillor Lorna Douglas	Councillor Sandy Taylor
Councillor George Freeman	Councillor Richard Trail
Councillor Graham Archibald Hardie	

Attending: Shona Barton, Committee Manager
Stuart McLean, Committee Manager
Graeme McMillan, Solicitor
Ally Evans-Jones, Solicitor
Sgt Gillian Gall, Police Scotland
John Paul Gallacher, Licence Holder's Solicitor

Members were asked to suspend Standing Order 5.4 – the Member who is presiding at the meeting must do so from the specified location for the meeting and cannot join by video conferencing.

The requisite two thirds of Members present agreed to suspend Standing Order 5.4 to enable discussion of reports on the Agenda.

1. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Audrey Forrest.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: REQUEST FOR SUSPENSION OF ITINERANT METAL DEALER LICENCE (NUMBER 4782) (W CAMERON, BY LOCHGILPHEAD)

The Chair welcomed everyone to the meeting and introductions were made. Sgt Gall, on behalf of Police Scotland, and Mr Gallacher, on behalf of the Licence Holder, joined the meeting by telephone.

The Committee were advised that Police Scotland had requested that the Committee take into consideration a conviction which was considered “spent” in terms of the Rehabilitation of Offenders act 1974.

The Council's Solicitor, Mr McMillan, outlined the procedure that would be followed in this respect and the Chair invited Police Scotland to address the question of relevancy of the spent conviction.

POLICE SCOTLAND

Sgt Gall advised that the spent conviction was relevant to the current charges the Licence Holder was looking at.

LICENCE HOLDER

Mr Gallacher advised that it was his opinion the spent conviction was irrelevant at this stage. The reason for this being he was aware that when Mr Cameron's current metal dealer's licence was granted in 2018 this conviction was before the Committee on that occasion and the licence was granted. He advised that it was his submission to reconsider that conviction again would be unjust. He said that all the information was before the Committee on that occasion and the application was granted so it would be unjust to reconsider especially as the licence was granted on the previous occasion.

POLICE SCOTLAND

Sgt Gall commented that the spent conviction may not have been relevant at the time when the application was granted but due to the new charges it was her view that it would be relevant to admit the evidence in relation to the spent conviction.

DEBATE

Councillor Currie advised that he agreed with the comments made by the Licence Holder's Solicitor. He said that it seemed crazy to him to call something spent if it was not spent. He advised that considering that the Committee addressed this last time round and still awarded the licence, he did not see why the Committee should re-look at this today.

Councillor Kinniburgh sought and received confirmation from Sgt Gall that it was her opinion that the circumstances around the spent conviction were relevant to this hearing.

Councillor Colville referred to the Police letter requesting the suspension of the licence. He commented that the letter stated that the spent conviction was a similar conviction to the current charge, and said perhaps it would be relevant for today's hearing.

Councillor McCuish advised that he thought it would be relevant and that the Committee should hear more about it and decide whether to give it more or less weight this time.

Councillor Redman said he agreed with Councillor Currie as given the licence was granted before he could not see how the spent conviction would be relevant now.

Councillor Kinniburgh advised that he personally thought the spent conviction would be relevant. He said that the Police seem to have insinuated that it was the same type of offence which made him think that it would be relevant to today's hearing. He

commented that when the Committee made the decision to grant the licence the last time the Committee may have taken the view that if anything similar occurred again it would come before the Committee.

The Committee agreed that the spent conviction was relevant and agreed to take this into account. A copy of this was circulated via email to the Committee. It was also read out by Mr McMillan and presented onscreen.

The Chair then outlined the hearing procedure that would be followed and invited Police Scotland to speak in support of the Chief Constable's complaint.

POLICE SCOTLAND

Sgt Gall advised that the current charge was similar to the previous conviction. As it was a matter of public record she said she could advise that the lower reading of the breath sample provided by the Licence Holder contained 41 micrograms of alcohol in 100 millilitres of breath, exceeding the limit of 21 micrograms which, she advised, was almost double and similar to the last time.

LICENCE HOLDER

Mr Gallacher advised that Mr Cameron was deemed to be a fit and proper person when his licence was last granted in 2018 and said that at this stage nothing had changed. He asked the Committee to take account of his innocence until otherwise proven guilty. He advised that he believed Mr Cameron has held his scrap metal licence for 5 years and, as previously said, on that last occasion he was deemed to be a fit and proper person to hold this licence. He referred to the Chair advising that it may have been said at the time that if anything similar to his previous conviction came up again it would be brought to the Committee. He said that he was not sure if it was concrete that had been said the last time or if it may have been said and it was not possible to know this for sure. He advised that Mr Cameron was a 44 year old man who worked for the Council and only had one previous conviction from 6 years ago. He acknowledged that Mr Cameron was just under twice the limit the last time, but asked the Committee not to suspend his licence and allow him to continue to operate his licence. He pointed out that Mr Cameron was in production for himself and for the wider community. He picked up lots of scrap lying around and worked an 80 mile radius, travelling down to Campbeltown and up to Oban. He advised that his work benefited the community and asked the Committee to take that into consideration. He said that a decision had still to be taken on the charge and he was still innocent until proven guilty. He advised that he has been instructed by his client to plead not guilty and asked the Committee to take account of that also.

MEMBERS' QUESTIONS

Councillor McCuish referred to Mr Gallacher advising that since 2018 nothing had changed. He asked if he would agree that the breath test readings have changed since 2018. Mr Gallacher said that he had not seen all the evidence and was not sure if the device used was correct so he could not comment on that at this time.

Councillor McCuish asked Mr Gallacher what the relevance was in mentioning that this gentleman worked for the Council. Mr Gallacher said he meant it in regard to Mr Cameron being an upstanding member of the community and a hardworking individual.

Councillor Trail asked Mr Gallacher if he would accept that having 2 incidents of a similar nature over the last 6 or 8 years was starting to show a pattern of behaviour. Mr Gallacher advised that there has only been one conviction at this stage. He said that if Mr Cameron was found guilty on the next occasion if he went to trial then it could be said that it was showing a pattern of behaviour but said there was quite a significant amount of time between each incident.

Councillor Colville referred to Mr Gallacher advising that Mr Cameron had held his metal dealer's licence for 5 years and asked what he did 6 years ago. Mr Gallacher said he thought he was just starting out and that he had applied for his licence in 2013. He advised that he did not have that in writing and that he had only just taken instructions from his client and had only spoken to him on 2 occasions. He said that Mr Cameron operated his licence for leisure as he worked full time for the Council. He commented on the previous occasion, and said he believed that when he was disqualified from driving he employed someone else to drive the vehicle and had provided insurance details.

Councillor Freeman referred to Mr Gallacher advising that Mr Cameron worked full time for the Council and that his metal dealing business appeared to be a side line. He asked Mr Gallacher if he could confirm that Mr Cameron did not depend on his metal dealer's licence for his livelihood. Mr Gallacher said it did make a contribution to this livelihood along with his full time employment with the Council.

Councillor Currie asked both parties if they would agree that if Mr Cameron did lose his driving licence this would not necessarily mean he was not a fit and proper person to be a metal dealer. He commented that even if he did not have a driving licence he could still be a metal dealer as Mr Gallacher had advised that he could have someone else drive whatever vehicle was required to carry out the activity.

Mr Gallacher agreed with what Councillor Currie said and advised that was why he had raised the point. He said that if Mr Cameron was found guilty and disqualified from driving, and should he be in a position to maintain his metal dealer's licence, he was sure he would do so.

Sgt Gall said there was a concern about safely carrying on the activity.

Councillor Freeman asked Mr Gallacher if he could confirm that the legislation was clear and allowed the Licensing Committee to suspend a licence prior to any court conviction. Mr Gallacher said that as he did not have the legislation in front of him he could not confirm.

Councillor Freeman asked Mr McMillan the same question. Mr McMillan referred to the Licensing Committee being a quasi-judicial body and being a civic body where any decisions taken were based on a balance of probabilities in terms of burden of proof. In order for any conviction to be secured in court a case had to be made for beyond reasonable doubt which was a higher standing. He confirmed that the Committee did not necessarily require a conviction for grounds to suspend a licence. He advised there was still a body of evidence and information that the Committee required to satisfy that a case for suspension of a licence had been made.

Councillor Blair asked if Mr Cameron's driving licence was suspended would that have an effect on his duties as an employee of the Council. Mr Gallacher advised

that Mr Cameron used his own vehicle and not a Council vehicle. He said that he believed on the last occasion, he was employed by the Council and maintained his employment during that disqualification. He confirmed that Mr Cameron was an HGV mechanic.

Councillor Colville commented that the Committee were not here to convict the Licence Holder of drunk driving. He said the Committee were here to look at his licence as an Itinerant Metal Dealer.

Councillor Kinniburgh sought clarification from Sgt Gall on whether the readings of the alleged offence were similar to the readings of the past conviction. Sgt Gall advised that the current reading was 41 with the limit being 21. She said that last time the reading was 66 and the limit was 35.

SUMMING UP

Police Scotland

Sgt Gall advised that as a result of an incident on 2 May 2020 Mr Cameron was reported to the Procurator Fiscal for driving a Ford Tipper Van with a reading of 41 micrograms of alcohol in 100 millilitres of breath. He was due to appear in court for that on 6 August 2020. She advised that if Mr Cameron continued to drive up to 80 miles in his tipper van there could be a threat to public safety if this vehicle was loaded with scrap metal while he carried out his activity as an Itinerant Metal Dealer.

Licence Holder

Mr Gallacher asked the Committee to take account that Mr Cameron was deemed a fit and proper person the last time. He advised that Mr Cameron had not pled guilty to anything. He pointed out the burden of proof had been explained to the Committee by Mr McMillan. He said this was not a man who was 6 or 7 times over the limit. He advised that he was under double the limit 6 years ago and that conviction was now spent. He asked the Committee to take into consideration the fact that should Mr Cameron be disqualified from driving he would still be in a position to employ someone else to drive his vehicle so that he could maintain his metal dealer's licence. He acknowledged that Mr Cameron was in full time employment with the Council but he did not doubt that he also relied upon the income he received from being a metal dealer in order to survive. He asked the Committee to take that into consideration.

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

DEBATE

Councillor Colville advised that he thought the Committee should wait until the court decided what action to take and said he would move continuation of this case. He suggested that this would be until the September meeting as the court appearance was not until August.

Councillor Moffat said her propensity was to always wait until the outcome of court proceedings, however, she advised that she was not inclined to do so this time. She commented that this was 2 incidents that were the same in a very short space of

time and they had not occurred in a private car. She said she was afraid to say she could not back Councillor Colville's supposition.

Councillor McCuish referred to Mr Gallacher advising of the burden of proof and said that the Committee had to consider the burden of risk if the Committee were to do nothing about this. He asked if the Committee could suspend the licence until the outcome of the Court appearance. Mr McMillan advised that would be an option open to the Committee but it would not be possible to have one period of suspension and then immediately order another. He advised that if the Committee first decided to suspend they would then need to decide on a definite period for the suspension or agree the maximum term which would be the unexpired portion of the licence. He said that it would not be possible to suspend for 2 months and then after 2 months bring back to the Committee and then decide on another period of suspension.

Councillor Kinniburgh sought confirmation from Mr McMillan that if the Committee did take the decision to suspend the licence today and if the case subsequently went to court and the Licence Holder was found not guilty of the charge against him, he would have the option to come back to the Committee for reinstatement of his metal dealer's licence. Mr McMillan confirmed that it would be possible under Schedule 1 of the Act for any party or, the licence authority of their own accord, to make an application to recall the suspension. He advised that the immediate question for the Committee first of all was to consider whether or not to order the suspension in the broadest sense.

Councillor Currie said he could not see any reason why this person could not continue as a metal dealer. He advised that the Licence Holder could sit in his house as long as he had the licence and another person could use the vehicle to collect and drive. He advised that removing his metal dealer's licence would be a bad move and suggested that in this time of hardship the Committee had to allow people to make some sort of income. He commented that the case did not come to court until August and until that time if his metal dealer's licence was suspended this person could still drive his vehicle loaded with anything as long as he was not dealing. He suggested that the Committee should wait until August at the very least.

Councillor Redman said that the notion of taking away the metal dealer's licence based on a potential offence seemed wrong to him. He said the Committee would be depriving the man of a source of income. As Councillor Currie had stated, he pointed out that another man could do the driving if he was proven to be guilty. He said he was leaning towards favouring the Licence Holder.

Councillor Blair advised that he would be keen to suspend the licence until September and reassess at that point depending on the court case. He said the Committee needed to be serious about zero tolerance to drink driving.

Councillor Freeman said this was probably the most serious charge any driver could face. He referred to the Licence Holder already having a previous conviction and although this case had not been to court there was now a similar charge hanging over him. He commented that the man did not rely on his driving licence for his main employment which was full time. He confirmed he supported Police Scotland and would suspend the licence. He pointed out that if the individual was then found not guilty then the Committee could consider lifting that suspension.

Councillor Taylor said he was absolutely in line with Councillor Currie as far as this was concerned that this was a licence to deal, not a licence to drive. He said it would be different if this was an issue of honesty, criminal intent, or a risk to vulnerable people. He said this was the wrong time for the Committee to take action.

Councillor Trail said he took a different view. He said it was almost hard to believe that it was only twice this person had drunk and drove and been caught, so there may be a pattern of behaviour. He said he was in favour of suspending the licence today.

Councillor Colville referred to Councillor Currie and Councillor Taylor advising that there was nothing to stop this person carrying out his metal dealer job if the court removed his driving licence, as the last time the court removed his driving licence the Committee did not remove his ability to be a metal dealer. He advised that metal dealer's, from his experience, travelled together as the loads they carried were very heavy. He advised there was nothing to stop the man continuing with his job and employing someone else.

Councillor Kinniburgh advised that he had heard what was said about this being a metal dealer's licence and had heard from Mr McMillan regarding what the Committee were here to consider. He also referred to the breath test readings given by Police Scotland. He advised that it seemed to him these were 2 similar offences, though the most recent one had not been to court. He advised that based on what Mr McMillan had said, he thought it would more likely than not go to court. He said that he believed a suspension should be carried out in this instance.

Motion

To agree to suspend Mr Cameron's Metal Dealer's Licence.

Moved by Councillor David Kinniburgh, seconded by Councillor George Freeman.

Amendment

To agree not to suspend Mr Cameron's Metal Dealer's Licence.

Moved by Councillor Robin Currie, seconded by Councillor Alastair Redman.

A vote was taken by calling the roll.

Motion

Councillor Gordon Blair
Councillor Mary-Jean Devon
Councillor Lorna Douglas
Councillor George Freeman
Councillor Graham Archibald Hardie
Councillor David Kinniburgh
Councillor Roderick McCuish
Councillor Jean Moffat
Councillor Richard Trail

Amendment

Councillor Rory Colville
Councillor Robin Currie
Councillor Donald MacMillan
Councillor Alastair Redman
Councillor Sandy Taylor

The Motion was carried by 9 votes to 5 and the Committee resolved accordingly.

The Chair advised that the Committee now had to determine the length of the suspension. He invited Mr Gallacher to speak in relation to the duration of the suspension.

Mr Gallacher asked the Committee to take into consideration that although this was not Mr Cameron's main source of income, it was still a source of income. He advised that he could not comment on whether or not Mr Cameron would be disqualified from driving as if he was found guilty he was not sure if he would lose his licence. He advised that he was not sure if anything else he said would be relevant at this stage. He asked the Committee to impose the minimal amount of suspension available to them at this stage.

DEBATE

Councillor Moffat asked if Mr McMillan could recommend the length of the suspension. Mr McMillan said the Committee should consider what was proportionate in relation to the evidence. He advised that the suspension should be either for a definite period of time, for example, X number of week or months, or for the default period which was the unexpired portion of the licence which, in this case, would be June 2021. He said it was for the Committee to decide, but any suspension order must be proportionate in relation to the information before the Committee.

Councillor Colville asked what the position would be if the case came to court and the Licence Holder was found not guilty and this Committee have suspended his licence based on information it did not have. He advised that now it has been agreed to suspend the licence, he would suggest that this suspension only run until the outcome of the court appearance.

Councillor Kinniburgh pointed out that this had been covered by Mr McMillan earlier on. Mr McMillan advised that if a suspension was ordered for X number of weeks or months at the end of the suspension period the same complaint could not be tied to another suspension on the back of the first one. He said that the Committee could not string 2 suspensions together from one complaint. He advised that from what Councillor Colville had said, a suspension could run from the first court appearance.

Councillor Colville asked if it would be competent to have the suspension start once there was a second conviction. He said the Committee were working on the basis that this man was guilty and this was not known. He said the Committee would look really foolish if the Court found him not guilty.

Councillor Kinniburgh advised that was why he had asked the earlier question about whether or not the Licence Holder could come back to this Committee. Mr McMillan advised that if during the period of the suspension order circumstances came to light to justify the recall of that suspension, the Licence Holder could make an application to recall that suspension in light of the new information available.

Councillor Currie asked if he was right in thinking that now a decision had been taken to suspend the licence, if Mr Gallacher was to appeal that decision right now or tomorrow, the suspension would not happen until that appeal was considered. Mr McMillan said that in addition to agreeing the length of suspension the Committee also have to determine the commencement date of the suspension. He advised that

usually a suspension did not take place until 28 days after the decision as that was the appeal period. He advised that if the Committee decided there was enough gravity they could order the immediate suspension of the licence but this decision would still be appealable.

Councillor Currie sought clarity on whether the suspension could be put on hold. Mr McMillan advised that it would depend on what the Committee decided in regard to the commencement of the suspension. It could be immediately or 28 days after today's decision.

Motion

To agree to suspend Mr Cameron's Metal Dealer's Licence with immediate effect for the unexpired portion of the licence.

Moved by Councillor David Kinniburgh, seconded Councillor George Freeman.

Amendment

To agree that the suspension of Mr Cameron's Metal Dealer's Licence should commence 28 days after today for the unexpired portion of the licence.

Moved by Councillor Robin Currie, seconded by Councillor Alastair Redman.

A vote was taken by calling the roll.

Motion

Councillor Gordon Blair
Councillor Mary-Jean Devon
Councillor Lorna Douglas
Councillor George Freeman
Councillor Graham Archibald Hardie
Councillor David Kinniburgh
Councillor Roderick McCuish
Councillor Jean Moffat
Councillor Richard Trail

Amendment

Councillor Rory Colville
Councillor Robin Currie
Councillor Donald MacMillan
Councillor Alastair Redman
Councillor Sandy Taylor

The Motion was carried by 9 votes to 5 and the Committee resolved accordingly.

DECISION

The Committee agreed to suspend Mr Cameron's Itinerant Metal Dealer's Licence with immediate effect for the unexpired portion of the licence as he was no longer a fit and proper person to be the holder of this licence.

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