

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY SKYPE
on WEDNESDAY, 18 NOVEMBER 2020**

Present: Councillor David Kinniburgh (Chair)

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| Councillor Mary-Jean Devon | Councillor Jean Moffat |
| Councillor Kieron Green | Councillor Alastair Redman |
| Councillor Graham Hardie | Councillor Richard Trail |
| Councillor Roderick McCuish | |

Attending: Shona Barton, Committee Manager
Patricia O'Neill, Governance Manager
Graeme McMillan, Solicitor
Marcin Czerwinski, Applicant
Sgt Wendy McGinnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, Rory Colville, Lorna Douglas, Audrey Forrest, George Freeman, Donald MacMillan 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 LICENCE (M CZERWINSKI, LOCHGOILHEAD)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by Video Call, by Audio Call or by written submission. For this hearing the Applicant had opted to proceed by Video call but it was subsequently established that he had been unable to join in this way. He agreed to proceed by way of Audio Call and joined the meeting by telephone. The representative from Police Scotland had opted to proceed by Audio Call and also joined the meeting by telephone.

The Council's Solicitor, Mr McMillan, advised that Police Scotland had requested the Committee take into consideration an Alternative to Prosecution which was considered "spent" in terms of the Rehabilitation of Offenders Act 1974.

The Chair outlined the procedure that would be followed in this respect and invited Police Scotland to address the relevancy of the spent conviction.

Police Scotland

Sgt McGinnis advised that the "spent" Alternative to Prosecution related to a Recorded Police Warning given to the Applicant as the result of an incident which

took place in May 2020. She said the nature of the offence was relevant to someone holding a taxi driver licence and asked that it be taken into consideration.

Applicant

Mr Czerwinski said he did not think the “spent” Alternative to Prosecution” should be taken into account as he did not think it was relevant to his application.

Police Scotland

Sgt McGinnis asked that the details of the “spent” Alternative to Prosecution be heard.

At this point the Committee Manager advised that Councillor Mary-Jean Devon had lost connection to meeting briefly during the presentation given by Police Scotland and now just re-joined the meeting.

The Chair summarised for Councillor Devon, the presentations given by Sgt McGinnis and Mr Czerwinski.

The Committee agreed that the “spent” Alternative to Prosecution was relevant and agreed to take this into account. A copy of the letter submitted by Police Scotland regarding this, which had previously been issued to the Applicant, was shared with the Committee on screen and read out by Mr McMillan. The letter referred to the details of an incident which took place on 6 May 2020 and resulted in the Applicant receiving a Recorded Police Warning under the Misuse of Drugs Act 1971 Section 5(2).

The Chair then outlined the hearing procedure that would be followed and invited the Applicant to speak in support of his application.

APPLICANT

Mr Czerwinski explained the circumstances surrounding the incident which took place on 6 May 2020. He advised that during lock down he was a key worker and drove every day from his home to Tarbert. He advised that on this day he had been pulled over by the Police at Inveraray. After a short conversation about why he was driving during lockdown, he explained that he had been shopping for elderly people in his village. The Police asked his permission to search his car and he agreed to this. The Police search found a box containing herbal cannabis. Mr Czerwinski advised that the drugs were not his and that he had never used drugs. He said the drugs belonged to a girlfriend. He said she used cannabis as she suffered from PTSD. Mr Czerwinski said that he had previously been in the military and had the highest security clearance. He said that he had advised the Police Officer that he wanted to defend himself but they advised that he would just receive a warning. He said that he had explained to the Police about his application for a Taxi Driver Licence and they had advised that this would not affect his application and that it would be erased after 6 months.

In terms of his application, Mr Czerwinski advised that the whole idea of providing a service to his village came up because there currently was no service in his village. He said that previously there had been a full time taxi driver with a black cab but he gave his business up in the summer and the only service provided to the village

came from Dunoon. He said that this caused a problem in the village as the gentleman offering the service from Dunoon focussed mostly on long fares and was not as committed to providing a service for local trips.

Mr Czerwinski said he was a good driver, with 20 years' experience and no convictions. He advised that he needed to apply for a certificate of good conduct to apply for the licence. He said he had provided this and that it proved he had never had any problem with the Police or the law. He said the idea of Private Hire would be to provide a part time service as he did not think there was a need for a full time driver in the village. He advised that it was a small community with the majority being elderly people. He referred to the holiday park and said this was closed at the moment. He advised that he would like to provide a service to the local community and to the tourists that visited the Drimsynie Holiday complex. He said that in addition to this he would like to start a business next year focussing on fishing trips. He said that he became unemployed during lock down. He said that he had struggled to find another job and that his previous employment was in hospitality. He said he did not want to rely on money from the Government. He advised that he had some savings and that he had bought a car and bought a boat and applied for this licence. He said he was ready to start a Private Hire business.

POLICE SCOTLAND

Sgt McGinnis referred to a letter dated 31 July 2020 which advised that the Applicant had been convicted at Court on 31 January 2020 under the 70, 60, 50 mph (Temp speed limit) Order 1977 Para 3(b). He was fined £300 and had his driving licence endorsed with 4 penalty points. She read out the circumstances of this conviction which was as a result of an incident which took place on 1 December 2018. She also advised that, as a result of an incident on 27 June 2020, the Applicant was reported to the Procurator Fiscal for a contravention of Section 143(1) & (2) of the Road Traffic Act 1998. As this matter was sub judice, she was unable to comment further at this time.

Sgt McGinnis also referred to the letter advising of the circumstances in respect of the "spent" Alternative to Prosecution.

MEMBERS' QUESTIONS

Councillor McCuish sought and received confirmation from Sgt McGinnis that an Alternative to Prosecution was not a conviction and there had been no admission of guilt and not a finding of guilt. The Applicant had accepted a Recorded Warning as opposed to going to Court.

Councillor McCuish questioned whether it was fair to ask the Committee to take this into consideration if it was not a conviction. Sgt McGinnis explained that the incident had occurred, the crime/offence had taken place. The Applicant accepted the warning instead of going to Court to be found guilty or innocent.

Councillor McCuish sought and received confirmation from Sgt McGinnis that being found in possession of 3 grams of cannabis was a minor offence.

Councillor Trail referred to Mr Czerwinski saying he had been driving for 20 years without causing any offence but on 1 December 2018 he had been caught driving at 97 mph on the road from Tarbert to Campbeltown. He asked Mr Czerwinski if this

was something he did regularly. Mr Czerwinski said no. He advised that the incident had happened on 1 December 2018 and that he had pled guilty on the spot. He said that he had been driving on his own and this had been the only time he had acted stupidly and recklessly and that he had been punished and learnt his lesson. He said he was given 4 penalty points instead of 6 and that his fine had also been reduced. Since then, he advised, that he has never had any problem with speeding or causing danger on the road.

Councillor Trail said he hoped he would not take passengers driving at that speed. Mr Czerwinski confirmed he would not. He said he pled guilty and that he still felt guilty about that and that the points were still on his licence.

Councillor Devon said she was under the impression that if someone was caught driving at 97 mph there would be an instant dismissal and loss of licence. She sought clarification on this from Sgt McGinnis. Sgt McGinnis advised that the conviction Mr Czerwinski received is what the Court decided on the day. She said he pled guilty at the earliest opportunity which may have resulted in the discounted fine.

Councillor McCuish asked Mr Czerwinski if there was any reason for him driving at this speed. Mr Czerwinski explained the circumstances surrounding the incident. He advised he tried to overtake another driver within the speed limit but they had accelerated. Another car was coming the opposite direction and Mr Czerwinski said he had to speed up to try and get into the gap in front of the car he was overtaking. He said that the person he overtook continued to speed and was sitting right on his bumper. He said he did not realise he was going so fast. He advised that the Police Radar only recorded the speed of the first car so there was no evidence of the speed of car behind him. He confirmed that he was guilty and that he was sorry that he had done this. He said he was 40 years old, with 20 years' driving experience and this was the only time had had any issues.

Councillor McCuish sought and received confirmation from Mr Czerwinski that he had explained the situation to the Police when he was stopped. He said he was not sure if a Police report had gone to Court but if it had maybe this was why he was not punished so severely.

Councillor Green referred to Mr Czerwinski being found in possession of drugs in Inveraray and asked Sgt McGinnis if it was not normal practice to carry out a drugs test at the same time. Sgt McGinnis said the Police could not randomly drug test drivers. They would need to have some other evidence that they believed the person was under the influence of drugs, for example, driving manner, smell or glazed eyes. Sgt McGinnis confirmed that in this case a drugs test was not carried out as though drugs were found in the vehicle there was no evidence that Mr Czerwinski was under the influence.

Councillor Kinniburgh referred to the matter that was sub judice. He sought and received confirmation from Sgt McGinnis that a charge under Section 143 (1) & (2) of the Road Traffic Act 1988 related to driving without valid insurance. She said that this was a pending case but a letter had been issued by the Procurator Fiscal offering a fixed penalty. She said she did not know if this had been taken up or not.

Councillor Kinniburgh referred to Mr Czerwinski speeding while over taking the car because a car was coming in the opposite direction. He asked Mr Czerwinski why

he had not braked and slowed down instead. Mr Czerwinski said he was not over taking at the time of speeding. He said the overtaking took place 3 miles before. He said that when he over took he slowed back down to the speed limit. He advised that after a corner there was a long straight line and that person was still sitting on his bumper. He said the person over took him and slowed right down in front of him so he over took him again. He said he needed to speed up as the person continued to sit on his bumper. He said he did not cause the situation on the road which was a dangerous situation and he had explained this to the Police.

Councillor Kinniburgh sought and received confirmation from Mr Czerwinski that the Police were situated at the end of the road.

Councillor Kinniburgh suggested that a responsible person would have said 'let the guy past, let him go and I will stick to the speed limit'. Mr Czerwinski agreed that he should have done that. Councillor Kinniburgh asked Mr Czerwinski if he had got into a race with the other driver. Mr Czerwinski said it was not a race. He said this was a big van and that he was scared. He said he was shaken and was still shaking when he was explaining the situation to the Police. He said he felt 100% guilty but did not feel guilty for causing the dangerous situation. He acknowledged that he should have just let the other driver go.

Councillor Kinniburgh sought and received confirmation from Mr Czerwinski that he had previously been employed at the Drimsynie Holiday complex for 2 years but had lost his job during lock down.

Councillor Kinniburgh referred to Mr Czerwinski alluding to the fact that the 'spent' conviction was only for 6 months. He sought and received confirmation from Sgt McGinnis that this would now have expired.

SUMMING UP

Police Scotland

Sgt McGinnis referred to the speeding conviction, the pending conviction for no insurance and the 'spent' Alternative to Prosecution for drugs. She referred to Mr Czerwinski's explanation about the speeding and advised that it was a cause for concern that he had not seen the Police Officers due to the speed he was driving. She confirmed that the drugs issue was just for possession and that there was no inference that the driver was under the influence.

Applicant

Mr Czerwinski referred to the pending conviction for driving without insurance. He advised that he had received the letter from the Procurator Fiscal offering penalty points and a fine but he wanted to defend himself in Court.

He said that he would like to establish a Private Hire business as he was currently unemployed. He said he knew the community and had been here long enough to know the people well and that he felt comfortable in his village. He said he knew a service like this was needed in the village. Taking account of all the convictions, he advised that he could only say that for 20 years he was a trustworthy person. He was granted the highest military security clearance and had never been convicted before and always acted according to the law. He advised that if the Committee were to

grant this licence he would do his best to provide the best possible service within the regulations and rules. He promised not to break any regulations again.

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

DEBATE

Councillor Hardie advised that having listened to all the evidence and taking account of the Applicant's drugs possession, speeding and no insurance, he felt he could not allow him to receive a Taxi Driver's Licence at this stage so would reject this application.

Councillor McCuish said he took a different view. He advised he felt the drugs issue had been dealt with appropriately. He referred to speeding at 97 mph and said there was no excuse for that. He advised that he believed this too had been dealt with and Mr Czerwinski had paid the price for that. He noted that apart from that, in over 20 years, he had received no penalty points so he was prepared to take this offence as a one off. He acknowledged that driving at 97 mph was serious but he was happy to maybe, at the appropriate time, put forward a Motion to grant the application.

Councillor Trail said he had a similar view to Councillor McCuish. He said he took at face value that the drugs were not Mr Czerwinski's and that he did not take drugs. He said he was deeply concerned about racing down a straight road and advised this was a very dangerous thing to do. He said he took Mr Czerwinski's word that he had learnt his lesson and would not do anything similar again.

Councillor Green said the no insurance and cannabis did not really come into it. What it came down to was driving at 97mph but he thought this had been covered by the penalty issued. However, he said the difficulty he had was the emerging aspects which have come out about the repeated over takes which, he said, troubled him. He advised that at the moment he was leaning towards the same position as Councillor Hardie not to grant this application.

Councillor Redman said he was not overly concerned about the drugs charge as it was a very small amount. He said the speeding did concern him but he believed it had been dealt with and that he was not in the business of crucifying everyone that made a mistake even though this was a stupid and dangerous mistake. He said that Mr Czerwinski had paid the price for his crimes and that he was minded to agree to grant his application.

Councillor Moffat said that the speeding was a concern. She pointed out that Mr Czerwinski appeared to have been treated very leniently considering the speed involved. She said she was of the mind that he was forced into this position by another aggressive driver and that the Committee needed to give Mr Czerwinski the benefit of the doubt.

Councillor Kinniburgh said he found this a difficult case. He said he thought the drugs were not a concern as he did not believe they were for the Applicant's use. He said he totally believed all that Mr Czerwinski had said today and that he had tried to be as up front as he could be. He said he did have concerns that with the no insurance, which was sub judice, and the speeding there were 2 driving offences, one which Mr Czerwinski was convicted for, and the other which he has been charged with. He said it gave him concern as to whether Mr Czerwinski had learnt

his lesson in relation to road traffic matters. However, he advised that taking account of what has been said he believed somethings have got lost in translation. He believed the speed of 97 mph was very serious and that what was described appeared to be a very dangerous situation Mr Czerwinski found himself in. Councillor Kinniburgh advised that he had missed the opportunity to find out if there could have been a charge for careless or dangerous driving due to what was described. He noted that the service Mr Czerwinski wished to provide would appear to be local to Lochgoilhead and said he hoped he would not be able to get up to speeds of 97 mph there. He advised that he was of the same mind as Councillor McCuish and others to grant this licence.

Motion

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

Moved by Councillor David Kinniburgh, seconded by Councillor Roderick McCuish

Amendment

To refuse Mr Czerwinski's application for a Taxi Driver's Licence as he was not a fit and proper person to be the holder of that Licence.

Moved by Councillor Graham Archibald Hardie, seconded by Councillor Kieron Green.

A vote was taken by calling the roll.

Motion

Councillor Devon
Councillor Kinniburgh
Councillor McCuish
Councillor Moffat
Councillor Redman
Councillor Trail

Amendment

Councillor Green
Councillor Hardie

The Motion was carried by 6 votes to 2 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant a Taxi Driver's Licence to Mr Czerwinski which would not be issued until the 28 days Appeal period had expired.

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