

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held by MICROSOFT TEAMS on WEDNESDAY, 22 SEPTEMBER 2021**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Donald MacMillan BEM
Councillor Mary-Jean Devon	Councillor Jean Moffat
Councillor Audrey Forrest	Councillor Alastair Redman
Councillor Kieron Green	Councillor Richard Trail
Councillor Graham Hardie	

Attending: Patricia O'Neill, Governance Manager
Graeme McMillan, Solicitor
Sgt Wendy Maginnis, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, George Freeman, Roderick McCuish and Sandy Taylor.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF TAXI DRIVER LICENCE (D BROWN, DUNOON)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, and following the Council's current approach to the Coronavirus pandemic, 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 opted to proceed by way of written submission which was contained within a supplementary Agenda pack issued to the Committee. Police Scotland opted to proceed by way of audio call and Sgt Maginnis joined the meeting by telephone.

It was agreed that there would be no requirement for the written submission to be read out as the Committee confirmed they were all aware of the contents. Sgt Maginnis confirmed that she had also received a copy.

The Chair then outlined the procedure that would be followed and in the absence of the Applicant, invited Police Scotland to speak to the objection lodged by the Chief Constable.

POLICE SCOTLAND

Sgt Maginnis referred to a letter dated 13 July 2021 which advised that the Chief Constable objected to this application on the grounds that the Applicant was not a fit and proper person to be the holder of a licence. Sgt Maginnis advised that as a result of an incident which took place on 4 September 2020, Mr Brown was reported to the Procurator Fiscal for a contravention of Section 3 of the Road Traffic Act 1988. The Procurator Fiscal decided to proceed with a contravention of Section 2 of the Road Traffic Act 1988 and a trial date was set for 10 August 2021. She confirmed that the case went to Dunoon Sheriff

Court on 10 August 2021 and the subject pled guilty to an amended charge. He was subsequently fined and had his licence endorsed with 6 penalty points.

MEMBERS' QUESTIONS/DEBATE

Councillor Colville sought and received confirmation from Mr McMillan that a medical certificate was received by the Licensing Team along with the renewal application.

Councillor Kinniburgh commented that it was difficult to ask questions when the Applicant was not in attendance.

Councillor Trail advised that he did not have an issue with this. He commented that he thought this was a man of mature years who had advised that he had never been in trouble before with driving and that this was a moment of carelessness. Councillor Trail pointed out that Mr Brown had admitted that and he had been punished for it. He advised that could see no reason why the Committee should not grant the licence.

Councillor Redman said he agreed. He commented that Mr Brown had admitted his mistake and paid for this error. He said he did not think it was necessary for him to be punished for a second time.

Councillor Green referred to the full and frank statement from the Applicant. He pointed out that he had pled guilty and that should be taken into account. Councillor Green advised that he got the impression that Mr Brown had learnt his lesson and that he did not think the Committee should stop him from continuing to be a taxi driver.

Councillor Hardie said that he agreed with his fellow Councillors. He commented that Mr Brown had stopped and phoned for an ambulance for the person which showed the kind of man he was. He advised that he saw no problem in renewing the licence.

SUMMING UP

Police Scotland

Sgt Maginnis advised that the subject was driving a licensed taxi at the time of the incident and that he had pulled away from a stationary position without looking in front and was instead looking in his mirrors. He struck a pedestrian who had to go to hospital and that was why Police Scotland were objecting to this application.

Sgt Maginnis confirmed that she had received a fair hearing.

DEBATE

Councillor Kinniburgh said he had some concerns. He questioned whether Mr Brown should have contacted the Council at the time when he was charged or when he was convicted in August. He advised that he could accept that Mr Brown had phoned for an ambulance and that he was a man of mature years. He commented on the current process for hearings and the regulations that were in place at the moment. He referred to a consultation that was out just now which proposed to proceed in this way in the future. He said that in an instance like this it was always better to have the Applicant in front of the Committee. He advised that although he had difficulties with this, for the reasons other Members have given, he would approve this application.

Councillor Colville commented that the application had been submitted on 16 June 2021 and even though the accident occurred prior to that it was only a requirement to disclose convictions on the application form and the Applicant would not have been convicted at that time.

Mr McMillan advised that it was material changes that needed to be declared and that was more so when a conviction was issued on a Licence Holder. In this case the relevant date was 10 August 2021, when Mr Brown pled guilty and was handed down a disposal at Court, and not the date of the incident as the presumption of innocence operated throughout.

Councillor Colville said he had certain reservations. He commented that the man was of an age like himself and that he now found himself double checking when driving. He advised that he was worried that a more serious accident could happen in six months time. He commented that everyone reached an age when anything they did was not as quick as before. He said it was difficult with the gentleman not being present at this hearing. He said he had a question mark as to whether the Committee would be doing the right thing. He advised that based on the evidence before the Committee today he could not disagree with what the other Members had said.

Councillor Kinniburgh commented that a letter from the DVLA had been received stating that Mr Brown satisfied the medical standards for safe driving.

Councillor Green commented that he believed that once a person reached a certain age it was a requirement of the DVLA that certain driving standards had to be met on a regular basis. He said that he presumed the Applicant was now under that regime based on his age, so he would not have any concerns about his fitness to drive.

Councillor Hardie advised that any reference to age and medical records were covered by the DVLA examination. He said that it gave him confidence that the Applicant has been proven to be capable and able to drive and that was why he had come to his decision today.

Councillor Devon advised that like Councillor Colville she had some apprehension about making a decision without all the facts. She asked if there was any way the Committee could wait until the outcome before making a decision. She commented that if the Chief Constable said he was not a fit and proper person she would be guided by that.

Mr McMillan advised that the outcome of the criminal charge had been confirmed. He pointed out that the detail of this was in the Applicant's written submission and it had also been alluded to by Sgt Maginnis that on 10 August 2021 at Dunoon Sheriff Court the Licence Holder had pled guilty to an amended charge of careless driving under Section 3 of the Road Traffic Act. This resulted in him receiving 6 penalty points and a £240 fine. In relation to the incident he had been found guilty of careless driving and the criminal case did not continue meantime.

Councillor Kinniburgh advised that he did have reservations but based on the information in front of the Committee, he would move that the application for renewal of the licence is granted on this occasion.

Motion

To agree to grant the application to renew Mr Brown's Taxi Driver Licence.

Moved by Councillor David Kinniburgh, seconded by Councillor Kieron Green.

Amendment

To agree not to renew Mr Brown's Taxi Driver Licence as he was no longer a fit and proper person to be the holder of the Licence.

Moved by Councillor Mary-Jean Devon, seconded by Councillor Rory Colville.

A vote was taken by calling the role.

Motion

Councillor Kieron Green
Councillor Graham Archibald Hardie
Councillor David Kinniburgh
Councillor Donald MacMillan
Councillor Jean Moffat
Councillor Alastair Redman
Councillor Richard Trail

Amendment

Councillor Rory Colville
Councillor Mary-Jean Devon
Councillor Audrey Forrest

The Motion was carried by 7 votes to 3 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant the application to renew Mr Brown's Taxi Driver Licence (No.1506).

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