

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 19 JANUARY 2022**

Present: Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Graham Hardie
Councillor Mary-Jean Devon	Councillor Jean Moffat
Councillor Audrey Forrest	Councillor Alastair Redman
Councillor George Freeman	Councillor Sandy Taylor
Councillor Kieron Green	Councillor Richard Trail

Attending: Stuart McLean, Committee Manager
Sheila MacFadyen, Senior Solicitor
Graeme McMillan, Solicitor
Remo Serapiglia, Applicant
Robert Skinner, Applicant's Advocate
Jane Macleod, Applicant's Solicitor
Fiona Potter, Objector
Rowena Ferguson, Objector
Bob Cook, Objector – Loch Lomond & the Trossachs National Park Authority
Alastair McKie, Objector – Loch Lomond & the Trossachs National Park Authority
Amy Unit, Objector – Loch Lomond & the Trossachs National Park Authority

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Roderick McCuish and Donald MacMillan BEM.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR RENEWAL OF STREET TRADER LICENCE - 4861 (R SERAPIGLIA, LARBERT)

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, his Solicitor and Advocate opted to proceed by way of video call and joined the meeting by MS Teams.

Fiona Potter, Objector, opted to proceed by way of audio call and joined the meeting by telephone.

All the other Objectors present opted to proceed by way of video call and joined the meeting by MS Teams.

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

APPLICANT

Robert Skinner confirmed that he would speak on behalf of Mr Serapiglia who had applied to renew his street trader's licence to allow him to trade from his ice-cream van on the same terms as he presently enjoyed. He said that Mr Serapiglia came from a family that had provided a long service to the community. His father started the business in 1956 and Mr Serapiglia joined the family business when he was 17 and has continued to provide some 66 years of unbroken service to the community. He advised that Mr Serapiglia has held his street trader's licence since the inception of the Civic Government (Scotland) Act 1982 and there had been no issues with any licences since that time. He referred to Mr Serapiglia serving specialist Artisan ice-cream which was very popular and enjoyed by both the local community and tourists. He suggested that the popularity of this ice-cream was the true reason for the various trade objections as they did not want the competition. He said that objections to this application had only arisen from Luss. He advised that Mr Serapiglia had invested in the latest and greenest van, powered by battery and solar panels, meaning it had net zero carbon emissions. He added that it still had the appearance of a traditional ice-cream van. He referred to there being a long and torturous history in relation to the ice-cream van being at Luss and advised that formerly his licence had standard condition 17 attached which prevented Mr Serapiglia from trading within 100 metres of any shops selling similar produce. This was opposed in June 2017 as it amounted to unfair protection to other traders. He said there was strong support for the removal of this condition and he referred to the outcome of a Sheriff Court decision of McCluskey vs North Lanarkshire Council which concerned the restriction of burger vans operating near a school. He advised that a new condition 17 was drafted by Argyll and Bute Council to replace the old condition. This new condition had the effect that a van could not stay in a single location for more than 30 minutes and could not return to that position again within the same day. He advised that in December 2018 Mr Serapiglia sought to have his licence renewed with condition 17 removed and his argument was accepted at that time. Mr Skinner advised that the overriding purpose of licensing street traders under the 1982 Act was to preserve public order and prevent crime. He said that a condition should not be used to restrict trade and competition. He confirmed that the renewal of Mr Serapiglia's licence was granted with condition 17 removed so there was no restriction to his trading in any location. In February 2019 he advised that Mr Serapiglia applied to amend his licence to include Pier Road in Luss. He confirmed that this was granted for an agreed spot on Pier Road.

Mr Skinner said that all that was being asked for today was renewal of Mr Serapiglia's licence on the same terms as before.

Mr Skinner said that objections received were largely from local traders and any allegations they have made were disputed. He advised that Mr Serapiglia has always acted lawfully and has done all his life. He said that local objectors were making life as difficult as possible for a man that has worked all his life for long hours and not in the best of health. He said that this has involved parking to make it difficult for Mr Serapiglia to trade and coming out to the van and telling him he was not allowed to park there. He advised that Mr Serapiglia denies any breach of regulations or conditions of his licence. He said that none of the objections were tied any specific issues, time or place. He said that if Mr Serapiglia had acted illegally, one would have expected a conviction as a result. Mr Skinner advised that Mr Serapiglia has not been convicted, or charged, or spoken to by any authority. He pointed out that there has been no Police objection and that the most contentious issues raised related to a planning matter. Mr Skinner said that this was not a matter for this Committee today. He advised that the sole issue for this Committee was to

determine if there were any grounds for refusal: whether Mr Serapiglia was not a fit and proper person to hold a licence; whether he was acting as a front for someone else that was not a fit and proper person; whether there were any problems with the character or condition of the vessel, the nature of the proposed activity, the kind of person that would be in the vessel; and the possibility of undue public nuisance, or public order or safety. He said that if none of these concerned the Committee then none of these grounds for refusal applied to this application.

As far as planning was concerned, he advised that this licence was granted under the provisions of the 1982 Act and this did not, in itself, convey the right to trade where other permissions were required eg in respect of food hygiene or a landlord's consent. He said that it was a moot point as to whether or not the way Mr Serapiglia operated required planning permission. He referred to correspondence between Planning and Mr Serapiglia. He said that Mr Serapiglia, with legal assistance, had written to the planning authority setting out his reasons why planning permission was not a requirement and that to date he was still waiting on a response. Mr Skinner advised that if the planning authority believed there had been a breach of planning control they could take enforcement action. He advised that the systems and jurisdictions between licensing and planning were separate. He referred to page 3 of the letter of objection from the National Park which stated that "Planning enforcement is inevitably a lengthy process and one which is not straightforward to apply to a transient and seasonal use". Mr Skinner stressed that this Committee should not be used to bypass proper planning channels. He said that if lawful enforcement was taken and a planning application was required, Mr Serapiglia would have to obtain that. He said that if he was unable to obtain planning permission then Mr Serapiglia would have to trade in accordance with planning.

Mr Skinner said that this planning fight was for another day in front of another body and was not something this Committee could deal with today. He sought the renewal of Mr Serapiglia's street trader's licence in its present form.

QUESTIONS FROM OBJECTORS

Alastair McKie referred to paragraph 5 of schedule 1 of the 1982 Act and asked if Mr Skinner would agree that, although some of the other objections have been categorised as relating to the restriction of trade and competition, the objection of this licence on behalf of the National Park was because of the inappropriate siting of the ice-cream van in the context of nearby Listed Buildings and the Conservation Area. Mr Skinner replied that part of the National Park's objection advised that if the licence was to be granted the National Park would withdraw their objection if condition 17 was added to the licence so somehow the ice-cream van did fit into the surroundings but only for 30 minutes.

Mr McKie referred again to paragraph 5 of Schedule 1 of the 1982 Act and presented an extract of this on screen. He referred to Mr Skinner advising that there was a limited basis in which a licence could be refused. Mr McKie said that paragraph 5 set out the basis by which a licence could be refused.

He referred specifically to Ground 3 which stated "a licensing authority shall refuse an application to grant or renew a licence if, in their opinion -

(c) where the licence applied for relates to an activity consisting of or including the use of premises, or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to –

- (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel,
- (ii) the nature and extent of the proposed activity,
- (iii) the kind of persons likely to be in the premises, vehicle or vessel,
- (iv) the possibility of undue public nuisance, or
- (v) public order or public safety or

(d) there is other good reason for refusing the application.”

Mr McKie said that it was his view that these grounds provided more than ample grounds for the licensing authority to refuse on the basis of the National Park objection and he asked Mr Skinner if he would agree. Mr Skinner said it must be in relation to licensing purposes and that the primary purpose of the street trader’s licence was to preserve public order or safety or prevent public nuisance. He said that these were the reasons why a licence should not be granted and not simply to preserve or benefit other traders. Mr McKie advised he was not talking about competition and restraints to traders. He said he was talking about the Committee refusing the licence on the basis of the National Park objection. He said that Mr Skinner was seeking to persuade the Committee that the National Park objection was not competent as it related to planning. Mr McKie advised that this was not the case and that there was a considerable wealth of grounds that the Committee could refuse the licence or impose conditions if granting the licence. Mr Skinner said he disputed that granting the licence would lead to public disorder and advised that no one had suggested this. He advised that if this was a planning issue that was something the planning authority should deal with.

Rowena Ferguson sought clarity from Mr Skinner when he stated that Mr Serapiglia had not been prosecuted and had nothing against his name. She said that she thought Mr Skinner had also said Mr Serapiglia had not been spoken to. She advised that this concerned her as she knew from personal experience that Mr Serapiglia had been spoken to by the Police for displaying things he should not be selling and for operating out with agreed hours. She said that she believed Mr Serapiglia had not been prosecuted but to say he had not been spoken to was a step too far. Mr Serapiglia confirmed that the Police had visited his van to check his licence and that this had happened 2 or 3 times a day. He confirmed that he had never been prosecuted.

OBJECTORS

Fiona Potter said she had nothing further to add to what was contained within her written submission where she had questioned whether or not Mr Serapiglia was a fit and proper person to hold a licence when he continued to act without referring to the planning issue which had still be resolved.

Rowena Ferguson said that she had traded for 24 years in the village of Luss and was concerned that she was categorised as someone unhappy because of her own business there. She said that she had seen a lot of unhappiness from the residents of Luss. She advised that everything Mr Serapiglia provided was provided by her business. She said this was not just about having a go at Mr Serapiglia and advised that the planning permission issue was a concern. She advised that in order for her to obtain planning permission for her business she had to go to the High Court. She said it was a lengthy, involved and expensive process with a huge number of conditions applied. She questioned why Mr Serapiglia could continue to operate without going through the same planning process. She said that she noted that previously Police Scotland had an issue

with the ice-cream van trading and she could not see any reason why that would not still stand. She also advised that it was frustrating for other businesses that received complaints from customers about the prices Mr Serapiglia charged. She said there were a lot of issues regarding breaches of the licence due to trading outwith hours. She also pointed out that Mr Serapiglia's daughter had been trading in the van when she should not have been. She said there continued to be a number of issues and this was just frustrating. She said she did not believe that Mr Serapiglia was a fit and proper person and that there was a lot of unhappiness in Luss. She asked the Committee to bring this to a close as Mr Serapiglia could trade elsewhere in Argyll and Bute.

Bob Cook referred to the submission by the National Park dated 20 July 2021 which was contained within the Agenda pack before Members and he read out the 3 grounds for objection which were detailed in the submission. He proposed that the Committee must refuse the application under these terms as the nature and the extent of the activity was not suitable for the location, namely the Pier Road area of Luss. He referred to the siting of the mobile unit for extended periods of time, on busy days to the detriment of the setting of nearby Listed Buildings and the Conservation Area. He advised that the primary aim of the National Park was to preserve and enhance the cultural heritage of the area, which he said this activity did not. He advised that in the event Members were minded to grant the licence then this must be subject to the inclusion of Standard Condition 17 relating to the duration of trade.

MEMBERS' QUESTIONS

Councillor Colville sought confirmation from Mr Skinner that he had advised that Mr Serapiglia's son had recently joined the business. Mr Skinner invited Mr Serapiglia to respond. Mr Serapiglia said that his son was already in the business and that he worked alongside him in the same way that he had worked alongside his father.

Councillor Colville commented that there was no reference made to other family members in the application. He sought clarity on what the normal process was and questioned whether other employees should have been named on the application form. The Council's Solicitor, Graeme McMillan, advised that this application was for Mr Serapiglia and not for his business. He explained that a street trader's licence was for an individual. He said that Mr Serapiglia was required to have his own street trader's licence and that any employee would also be required to have their own street trader's licence. He said that all of Mr Serapiglia's employees had their own licences which were on the same terms.

Councillor Devon referred to Mr Skinner saying that Mr Serapiglia had never been spoken to, charged or cautioned. She asked Mr Skinner if it was not the case that Mr Serapiglia had been spoken to and cautioned by Trading Standards regarding pricing. Mr Skinner invited Mr Serapiglia to respond. Mr Serapiglia said he had never been charged by Trading Standards or cautioned. He advised that he had received a letter from Trading Standards which stated they were not taking any further action. He confirmed that Trading Standards had been to his van 3 times and that they were more than satisfied with the outcome of their visits.

Councillor Moffat said she was interested to hear that while the application was only for Mr Serapiglia, it had been stated by Mr Skinner that his daughter and son were in the business. She asked if they could work at any time in the van. Mr Serapiglia said his daughter no longer worked for him and that when she did it was in other areas. He said that his other children did not work in the Luss area.

Councillor Moffat sought and received confirmation from Mr Serapiglia that his son had a street trader's licence for Argyll and Bute. He said that his daughters had licences in the past but these had been surrendered as they had other jobs.

Councillor Kinniburgh commented that the Committee were here today to consider Mr Serapiglia's application and that whether or not other family members held licences was irrelevant to the discussions today.

Councillor Trail commented that the Committee were not lawyers and he referred to Mr Skinner giving a very good character reference in his opening remarks about Mr Serapiglia. He asked Mr Skinner if this was based on his own personal experience of Mr Serapiglia or based on a briefing he was given. Mr Skinner said it was based on what Mr Serapiglia had told him. He advised that there was nothing to suggest what was said was inaccurate in anyway.

Councillor Freeman referred to the long history of this issue and asked if Mr McMillan could confirm that over a number of years the Council had received numerous complaints relating to Mr Serapiglia. Mr McMillan advised that it was important to state that consideration of this application should be based on the objections lodged and before the Committee. He said the Committee were restricted to the information before them today. He acknowledged that this was a long running issue but from the papers presented there were no objections from Police Scotland in terms of any criminal activity. He said that any other complaints about the fitness of the licence holder were set out by the objectors in their letters.

Councillor Freeman said it was clear the main issue around this renewal related to planning. He commented that Mr Skinner had said planning was not an issue but the National Park, who were the planning authority, had made it quite clear all along and over a number of years that this activity at Luss required planning permission. He asked Mr Cook to confirm that over the years he had confirmed the need for planning permission to Officers of the Council and that he had written to Mr Serapiglia to make him aware of the need for planning permission. Mr Cook confirmed that the National Park had written to Mr Serapiglia confirming the need for planning permission. He said this came to light after previous licensing decisions which gave them concern. He advised that they wrote to Mr Serapiglia and held discussions with the licensing team. He said that standard condition 18 required the licence holder to have obtained relevant planning permission which he has not.

Councillor Freeman noted that the National Park have highlighted to Mr Serapiglia on a number of occasions that he should not be trading without planning permission. He asked Mr Cook if he was aware if Mr Serapiglia took any action as a result of the planning authority's view or did he continue to trade without planning permission. Mr Cook confirmed that the National Park had written to Mr Serapiglia and that he responded to say he did not require planning permission but did not expound in anyway why not. Mr Cook said there had been no change in trading patterns as a result of the National Park's communications with Mr Serapiglia.

Councillor Freeman commented that it was clearly the planning authority's view that no application had been submitted at any time and so no decision had been made. He said that if an application was submitted and a decision was taken by the National Park to refuse the application, he would presume that Mr Serapiglia would have a right to appeal this decision and that would be the correct way to take a final view on this matter. Mr

Cook said this was correct. He advised that no application had been submitted so none of that procedure had taken place.

Councillor Hardie referred to the National Park stating that if condition 17 was attached to the licence they would have no objection. He asked why condition 17 would remove the planning objection. Mr Cook said that the second version of standard condition 17 placed a time limit on the period a van could stay in the same location. He said the van would have to move after 30 minutes and because of this short duration that would not be considered a change of use of the land where the van was sited. He advised that if the van stayed for longer than that it introduced the planning position that the location was being used for a particular purpose and required planning permission. Mr McKie added that it was beyond 30 minutes when it became a material change of use. He said that if the van stayed beyond 30 minutes and the National Park were to take enforcement action it was important to note that it would be looking at a material change of use of the land on which the ice-cream van was sited. He said this would mean the National Park would be taking enforcement action against the land owner, Argyll and Bute Council.

Councillor Colville asked Mr McMillan if there would be any reason why the Committee could not re-impose condition 17 on the licence. Mr McMillan said that standard condition 17 had already been removed by the Committee on renewal of the licence previously. At that time Mr Serapiglia had made the case why it did not apply to him. He advised that, having regard to Paragraph 5 of Schedule 1 of the 1982 Act, it was within the realms of possibility that if the Committee were minded to re-impose condition 17, it would have to do this on the basis of the evidence to prevent undue nuisance, public order or safety. He said the Committee needed to have evidence to back that up. He said the evidence before the Committee was in the Agenda pack issued.

Councillor Colville asked Mr Skinner if he would be correct to say that if the Committee were to re-impose condition 17 on the licence, it would be open to Mr Serapiglia to apply for planning permission and continue trading on the site. Mr Skinner said that would be like putting the cart before the horse. He said there needed to be a lawful reason for re-instating condition 17. He said that condition should only be re-imposed under these circumstances as stated by Mr McMillan.

Councillor Colville sought and received confirmation from Mr McMillan that Loch Lomond and the Trossachs National Park Authority were the relevant planning authority for the village of Luss.

Councillor Redman asked the objectors and Mr McKie if there was any proof regarding trading terms. Ms Unitt advised that a number of the National Park staff from the planning monitoring office and the ranger team had observed the ice-cream van trading for longer than 30 minutes over the last 2 years. She said they had not taken enforcement action on this but could do so.

Councillor Kinniburgh pointed out that condition 17 did not apply to the current licence and therefore Mr Serapiglia was entitled to trade for longer than 30 minutes. Ms Unitt advised that by doing this Mr Serapiglia was in breach of standard condition 18 where he was required to have planning permission. Councillor Kinniburgh advised that the planning matter was for another day.

Ms Ferguson said that there certainly was proof of licensing violations. She said she had images of Mr Serapiglia's daughter trading when she was not permitted to trade and that this had been supplied to the Police. She also referred to images of Mr Serapiglia trading

during lockdown and had forwarded complaints to Mr McMillan. She said there was certainly enough there for her to be very concerned.

Councillor Green referred to the discussion around condition 17 and asked the National Park if it was their position that this was something they would apply generally on a place or person. Mr Cook said that condition 17 had a very relevant crossover on what they would apply to any mobile van proposal. He said that anything there for a longer duration required planning permission and that they had many cases of a planning permission regime for mobile vans eg in Luss car park. Ms Unitt advised that Luss was unusual as nearly all of west of Loch Lomond had permitted development rights removed and that in other areas mobile operators could operate for 28 days. She said the permitted development rights were removed a number of years ago before the National Park came into being and that now traders cannot operate for one day without planning permission, if required. Mr McKie said that condition 17 was a standard condition of the licensing authority and not a National Park condition. He said that as a standard condition it was expected that this would be part of a licence and to not apply it, there would have to be exceptional or unusual circumstances. He advised that he had read the minutes when condition 17 was dis-applied and said that, despite what Mr McMillan has said, Mr Reppke at that time said it was his view that this was a perfectly lawful condition and that it was a matter for the Committee to impose or not. He said that this remained the case today. He advised that he did not think the requirement of the condition needed to be based on public order or nuisance evidence. He said he thought it would be lawful to apply it based on the objection from the National Park in respect of the impact on the Conservation Area and nearby Listed Buildings.

Councillor Freeman commented that most of this resolved around standard conditions 17 and 18. He asked Mr Cook to confirm that with the removal of condition 17 it was his view as a planning authority that planning permission was required for this vehicle to operate within Luss and that it would only be with the inclusion of standard condition 17 that planning permission would not be required. Mr Cook said yes. He advised that if the van traded in excess of 30 minutes that would require planning permission. He said that if this condition was applied and enforced by the licensing authority there would be no planning issue.

Councillor Freeman sought confirmation from Mr McMillan that the schedule of licence conditions have been checked over and reviewed by Legal Officers on a number of occasions. He also asked Mr McMillan to confirm that the schedule and standard conditions were legal documents and that he had no concerns about them not being valid. Mr McMillan said that each of the standard conditions are reviewed on a periodic basis. He considered that as a licensing authority, Argyll and Bute Council was entitled to impose these on all licence holders. He said that Officers stood by the terms of the standard conditions and their legality.

Councillor Freeman commented that street traders were required to adhere to all conditions of their licence. He pointed out that in this case condition 17 had been removed so did not apply but condition 18 was still there. He commented that the Applicant should adhere to this condition which means he should get planning permission. He asked if it was the view of the Council's Legal Officer that condition 18 relating to planning permission should apply. Mr McMillan advised that standard condition 18 required the licence holder to have any necessary planning consent as well as other statutory consents required. He said that the issue of planning consent was a matter for the National Park as the planning authority. He advised that the licensing authority could not take a conclusive view on that until the planning process had been undertaken either

through planning permission or enforcement. If there had been a breach of condition 18 there needed to be evidence that planning control had been breached. He pointed out that the Committee had, as part of the representations received today, statements of principle from the National Park that the view of the National Park was that planning permission was required. He said that having planning permission required going through necessary processes that were a matter of fact to be judged on each case. He said the Committee needed to see the outcome of the planning process to see an actual breach of process.

Councillor Freeman said it appeared quite simple that condition 18 stated that the licence holder must ensure they have obtained relevant planning consent. He said the Committee have been told that planning consent is required so from that it followed that the Applicant was not complying with condition 18. He asked Mr Cook and Mr McMillan if they would agree with his statement. Mr McMillan said he would not for the reason already given. He said the planning process and legislation and the licensing process and legislation were 2 separate issues. He advised that the question of planning had to be established through the outcome of enforcement, receipt of consent, or confirmation that planning permission was not required. Only at that point could any action be taken under the licensing regime. Any action taken before then would be premature. Mr McMillan confirmed that was his advice to the Committee. Mr Cook said he agreed with Councillor Freeman and could not see, when there was a condition on the licence which related to planning that the 2 regimes could not be seen as interconnected. He said the condition stated that the licence holder required planning permission and the National Park have advised the Council that planning permission is required. He advised that Mr Serapiglia has said he did not need planning permission and that no application has been forthcoming. He said that the onus should be on the licensing authority to pursue this. He said that he really hoped that it could be agreed that this was a licensing matter.

Councillor Kinniburgh referred to the National Park advising that Mr Serapiglia required planning permission. He asked why, to date, the National Park have not taken any enforcement action. Mr Cook said it was the condition on the licence that required planning permission to be obtained if necessary and that the licensing authority should enforce that condition.

Councillor Kinniburgh asked why the licensing authority should enforce it when Mr Serapiglia has disputed the need for planning permission. He commented that the National Park were the planning authority and Mr Serapiglia's dispute was not over the condition, his dispute was over planning. He asked why the National Park had not taken enforcement action. Mr Cook said this was a licensing condition. He said it would be very convoluted for the National Park to take enforcement action and that it should be enforced by the licensing authority. Mr McKie said the Civic Government (Scotland) Act 1982 set a legal framework for the regularisation of activity including that of a street trader. He said that in circumstances where the licence authority imposed a condition on that licence, which in this case was condition 18, although that condition made it a requirement it did not absolve the licensing authority to enforce. He said that the Applicant has chosen not to engage with the planning system and that it was not a requirement of condition 18 that the National Park take enforcement action. He said that was a matter of discretion. He advised that if any activity was regulated by condition the National Park looked to the licensing authority to enforce and regulate the matter.

Councillor Kinniburgh commented that in Mr McKie's own words condition 18 required the street trader licenced to have planning permission if it was necessary. He pointed out that it was the opinion of the Applicant that planning permission was not necessary and the

opinion of the National Park that it was necessary. Councillor Kinniburgh said that, to him, this was a dispute about planning and had to be rectified through that avenue. Noting that this has gone on for years, he said he was confused as to why the National Park had not sought to take enforcement action against Mr Serapiglia. Mr McKie said this licence did not regulate the activity of the National Park, adding that this was about restrictions placed on Mr Serapiglia's licence.

Councillor Kinniburgh sought and received confirmation from Mr McMillan that any enforcement action taken by the National Park would be against Argyll and Bute Council.

Councillor Hardie sought and received confirmation from Mr McMillan that if this licence was renewed any planning issue should be dealt with by the National Park. Mr McMillan advised that following any actions taken by the National Park regarding the planning issue, it would be at that point the licensing authority condition could be looked at under the auspices of the licensing authority. Any time before that would be premature and would be using licensing to adjudicate a planning matter.

Councillor Moffat asked if the National Park had not been the authority that dealt with planning in this case and it was Argyll and Bute Council, could the planning issue and licensing issue have been dealt with in its entirety today. Mr McMillan advised no. He explained that this licensing hearing was convened under the 1982 Act. He advised that this Committee also dealt with planning applications at separate meetings to the Civic Government Hearings. He said it was not possible to hold hybrid meetings in order to pull in planning issues. He confirmed that the scope of the Committee's powers today were stipulated and prescribed by the terms of the 1982 Act.

Councillor Moffat sought further clarity on the issue around condition 18. She said she could not understand how it could be a valid licence when condition 18 was not being met regardless of which authority dealt with planning. Mr McMillan said it was all to do with the timing. He explained that standard condition 18 was in place and required, where necessary, planning consent along with other statutory consents to be in place. The fact of the matter was that the Applicant has advised that he does not need planning permission. It was the point of view of the National Park that planning permission was required but no application had gone through that process and no conclusive answer to that either through enforcement or the application process had been reached. Mr McMillan advised that to take enforcement against that condition, as stated before, would be premature or would be using the licensing regime to adjudicate what was a planning matter for the National Park. He advised that in his view, there was nothing before the Committee to show a breach of condition 18 at this time.

Councillor Moffat commented that this may set a precedent for others.

Councillor Kinniburgh asked again why the National Park had not taken enforcement action. Mr Cook said this was because it was a licensing condition that needed to be enforced. He said there was a much clearer route through licensing and that it should be resolved through this rather than getting into a situation where the National Park took action against everyone including the Council.

Mr Skinner said it did not become a breach of planning simply because Mr Cook said so. He advised that it had to be determined at the outset. He advised that condition 18 would only be breached if it was established that there was a requirement for planning permission and that was the advice the Committee were getting from their very competent

lawyer today. It was simply the case that until the planning matter was resolved under planning legislation there was no breach of condition 18.

Councillor Colville asked, due to the complexity of this matter, if it would be possible for the Committee to continue consideration of this hearing to allow them time to consider the detail of the McCluskey v North Lanarkshire case. Mr McMillan advised that the court case was considered by the same Committee as constituted today at renewal and it was agreed at that time to remove standard condition 17. He explained the findings of the court case and advised that the Committee could continue consideration if they wished, but it would have to be a short continuation ie to the next month, as it was not getting too far away from a 12 month deemed grant. Mr McMillan advised that he did not see a need to go into the minute detail of the provisions of the text of the McCluskey case as this Committee were dealing with a separate matter.

Councillor Colville referred to mounted Police being brought into Luss recently due to public disorder. He acknowledged this had nothing to do with the Applicant but said that as this disturbance happened right in the middle of where the application site was, if the hearing was continued, was this something the Committee could take into consideration. Mr McMillan said no. He said that if this had been the case the Committee would have heard from Police Scotland regarding disorder and it would have to have been directly related to this application and any likely safety concerns that could or had been caused.

Councillor Freeman asked Mr Cook to confirm that the issues he highlighted on screen gave the Committee a wide range of reasons why the elected Members can take decisions. Mr Cook said he would reiterate this position as a professional planning adviser. He said the Committee had the opportunity to take the matter on board.

Councillor Freeman commented that the Committee were being told to ignore the view of professional planning officers if not from Argyll and Bute Council. Mr Cook said the Committee should be taking the advice of Planning Officers and that the National Park were the Planning Officers for that area.

Councillor Forrest sought and received confirmation from Mr McMillan that condition 18 stated that planning permission needed to be obtained, if required, but in this case that had not been established. Even if it was the view of the Planning Officers, it still had to go through due process to establish that planning permission was required. If planning permission was sought and refused that would be the time to put condition 18 into effect. Mr McMillan agreed that the planning process needed to reach a conclusion and the Committee needed a decision on this before it could act on this condition. He confirmed it was his advice to the Committee that it would be premature to take action before then.

SUMMING UP

Objectors

Fiona Potter asked if Mr Serapiglia was granted his licence today and then had to make a planning application, which he had said he does not want to do, would the National Park refuse it.

Rowena Ferguson hoped the Committee realised from what they had heard today, that there was huge frustration from residents and established traders. She advised that between them, they had reported many issues to Mr McMillan and to Trading Standards and Police Scotland. She said this was not a bogus issue. She said she supported the

need for planning permission in Luss. She advised that Mr Serapiglia has already had many years to apply for planning permission and ignored it. She said that to her mind this did not make him a fit and proper person. She asked the Committee to exclude Luss from Mr Serapiglia's licence. She said they were not trying to take away his livelihood.

Alastair McKie reiterated the reasons why the National Park were opposed to this application. He advised that the primary function of the National Park was to preserve and enhance the natural beauty and setting of listed Buildings. This was at the heart of the National Park and why they were here today. He said he adopted the submissions by Bob Cook and Amy Unitt. Contrary to what Mr Skinner has said, the issues raised by the National Park directly related to the grounds set out in Paragraph 5 of Schedule 1 of the Act. He advised that the McCluskey case did not exclude per se the competency of the National Park objection. If planning matters were not relevant to Civic Government, he questioned why the Council had time trusted standard condition 18 relating to planning and standard condition 17 which also made reference to planning. As this was the case, he said it was implicit that planning did have a competent role to play in the licensing system. They were not operating completely in isolation and a degree of overlap could be seen here.

The primary position of the National Park was there was a breach of condition 18 of the licence and there was a considerable amount of evidence before the Committee that this has happened. On that basis the National Park's primary case was that the application should be refused. The National Park's secondary position was if the licence was granted it should be subject to standard condition 17 which relates to the van not exceeding 30 minutes at any location. He said this was a perfectly lawful and appropriate condition to impose. He said that if Mr Serapiglia wished to be a static trader in Luss this would cause a planning use.

He advised that the imposition of Condition 17 would be intra vires of the Committee rather than ultra vires. In that regard, Mr Reppke said this condition was lawful but at the discretion of the Committee. Mr McKie urged the Committee to either refuse the application or grant with the re-imposition of condition 17.

Applicant

Robert Skinner advised that what this Committee must not do was to assume what has yet to be established. He said it had yet to be established if planning permission was required for the way Mr Serapiglia operated his van. He said that just because Mr Cook said so, did not make that the law, it was simply his view. He pointed out that Mr Serapiglia had been operating under that regime for 3 years and that he would have expected the National Park to have taken enforcement action before now if planning permission had been required. He noted that this had yet to be done and that the National Park claimed the process would not be straightforward. He pointed out that the advice from the Council's legal adviser was that this Committee could not be used as a vehicle to bypass the proper channels. If it transpired that planning permission was required then Mr Serapiglia would be required to get that in hand and if he was unable to do that, and continued to trade, contrary to the planning determination, then that was when it would become relevant for this Committee. All this discussion was premature and the planning fight was for another day in front of another body. It was not something this Committee could properly deal with today.

Mr Skinner invited the Committee to deal with this application under the 1982 Act and to grant renewal of Mr Serapiglia's street trader's licence in its present form.

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

DEBATE

Councillor Hardie said he did not give much countenance to the argument about planning. He advised that he has seen the ice-cream van for himself without issue. He confirmed that he would accept the application and renew the licence as is.

Councillor Freeman indicated that he had drafted a Motion to approve the application subject to the removal of approval to trade at Luss from the licence. He read out the detail of the proposed Motion and also advised that he would be happy to consider the reinstatement of condition 17 to the licence.

Councillor Green agreed that this matter should be based on licensing issues and not planning. With reference to the application of standard conditions 17 and 18, one view was to not approve at all or suspend Luss. He said he was reluctant to go down either route. He said he was a bit unsure when it came to taking a decision on behalf of planning and advised that in some ways it worked the other way for him. If the Committee did not put condition 17 on any licence it could be seen to be taking a planning decision. He advised that the Committee had to be fair to the Applicant and respect the advice given by the range of professionals from the Council and the National Park. On that basis, he said he was inclined to grant the licence subject to standard condition 17 being added back on as it would be for any other licence in the area.

Councillor Redman said that based on the information before the Committee he was minded to renew the application.

Councillor Trail said he had more faith in the evidence that the local people had put forward about Mr Serapiglia's behaviour in the village than the views represented by the Advocate at the start. He advised he would like to see if it would be possible to conclude that Mr Serapiglia was not a fit and proper person to hold a licence but he was not sure if that would be a competent Motion to put forward.

Councillor Colville said he had come to the conclusion that this was a planning matter and that the licence should be granted and to leave the National Park to get on with it. He suggested not prolonging the position and to let the authority that could deal with it get on with it.

Councillor Freeman said he noted what Councillor Green had said about condition 17. He advised that across Argyll and Bute street traders had to comply with conditions 17 and 18 and that this was the only licence that did not have condition 17 attached. He advised that he would be happy to approve with the inclusion of condition 17. Councillor Green confirmed that he would be happy to second that.

Councillor Kinniburgh said that when the Committee considered the application to remove condition 17 he had been opposed to that but this is what the Committee decided to do. Having heard what has been said about Mr Serapiglia, and from his experience of Mr Serapiglia in the past, Councillor Kinniburgh said that he could appear to have an aggressive manner and that had been demonstrated one day in the Council Chamber. Having said that, Councillor Kinniburgh said he did not believe there was anything before the Committee to say that Mr Serapiglia was not a fit and proper person to hold a licence. No representation has been received from Police Scotland so there was nothing to back

up that view. Having heard all the evidence today, he advised that the Committee could only deal with licensing issues and that any planning issue was irrelevant at this time. He said he believed the planning issue was a matter for the National Park and Mr Serapiglia to sort out. The fact remained that the Committee removed condition 17 in the past and from the evidence heard today, he said he believed the Committee would be unwise to re-impose that on the licence.

Motion

To agree to grant renewal of Mr Serapiglia's street trader's licence no. 4861 in the form it currently exists.

Moved by Councillor David Kinniburgh, seconded by Councillor Graham Hardie.

Amendment

To agree to approve the application with the inclusion of Condition 17.

Moved by Councillor George Freeman, seconded by Councillor Jean Moffat

A vote was taken by calling the roll.

Motion

Councillor Colville
Councillor Forrest
Councillor Hardie
Councillor Kinniburgh
Councillor Redman
Councillor Taylor

Amendment

Councillor Devon
Councillor Freeman
Councillor Green
Councillor Moffat
Councillor Trail

The Motion was carried by 6 votes to 5 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant the renewal of Mr Serapiglia's street trader's licence no. 4861 in the form it currently existed.

It was noted that written confirmation of this decision would be issued within 7 days and that Mr Serapiglia's licence would not be issued until after the 28 day appeal period.

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