

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 22 JUNE 2022**

Present: Councillor Kieron Green (Chair)

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| Councillor John Armour | Councillor Willie Hume |
| Councillor Jan Brown | Councillor Mark Irvine |
| Councillor Audrey Forrest | Councillor Andrew Kain |
| Councillor Amanda Hampsey | Councillor Liz McCabe |
| Councillor Graham Hardie | Councillor Luna Martin |
| Councillor Fiona Howard | Councillor Peter Wallace |

Attending: Patricia O'Neill, Governance Manager
Sheila MacFadyen, Senior Solicitor
Sarah Osborne, Applicant
Sgt David Holmes, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Daniel Hampsey and Paul Kennedy.

2. DECLARATIONS OF INTEREST

Councillor Graham Hardie declared a non-financial interest in this application as he knew the Applicant personally. He left the meeting and took no part in the determination of this application.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (S OSBORNE, HELENSBURGH)

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 opted to proceed by way of audio call and joined the meeting by telephone. Police Scotland also opted to proceed by way of audio call and Sgt David Holmes joined the meeting by telephone.

Reference was made to a preliminary matter that Police Scotland had requested the Committee take account of a matter that was considered "protected" in terms of the Rehabilitation of Offenders Act 1974. It was noted that the Committee may take into consideration evidence relating to protected matters where they are satisfied that justice could not be done except by admitting such evidence.

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

POLICE SCOTLAND

Sgt Holmes advised that it was the Chief Constable's contention that justice could not be done in this case except by admitting the evidence relating to the 'protected' conviction.

The Chair then invited the Applicant to ask Police Scotland questions and to address the relevancy of the protected matter to her application.

APPLICANT

Ms Osborne advised that she presumed the conviction was spent and did not realise it was protected. She said that she could only apologise. She said that she had worked as a paediatric occupational therapist in Glasgow. She referred to working as secretary for the Highland Games Committee and that she also worked as a carer during Covid. She said that she was a kind and caring person and would like to continue to work.

The Chair invited Police Scotland to comment on the Applicant's submission and Sgt Holmes advised that he had no comment to make.

The Chair then invited questions from Members and noted there were none.

The Committee agreed that they would like to consider the protected matter as part of this application and a copy of a letter from Police Scotland was circulated by email to the Committee.

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

APPLICANT

Ms Osborne advised that she assumed the conviction was spent and did not realise it was protected. She said that she had turned her life around since then. She referred to her previous line of work as an occupational therapist and said that she would like to get back to work and have some routine in her life which all hinged on the decision that would be taken today.

POLICE SCOTLAND

Sgt Holmes referred to a letter dated 9 May 2022 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. He advised that as a result of an incident which took place on 16 December 2008, Ms Osborne was convicted under the Road Traffic Act 1988 section 5(1) (A) at court on 14 October 2009. She received a fine of £500 and was disqualified from driving for 18 months. In terms of the protected matter, which related to the same incident which took place on 16 December 2008, the Applicant received a conviction under the Road Traffic Act 1988 section 170(2) and (4) which related to failing to remain in the locus of the incident and failing to provide details. She received a fine of £50 and her licence was endorsed.

Sgt Holmes also advised that Ms Osborne had been reported to the Procurator Fiscal for a contravention of section 3 Sexual Offences (Scotland) Act 2009 and was also charged with a contravention of section 5 (2) of the Misuse of Drugs Act 1971 as a result of an incident which took place on 20 January 2022. As this matter was sub-judice, he advised that he was constrained with regard to the nature of any further information he could provide at this time.

MEMBERS' QUESTIONS

Councillor Green sought and received confirmation from Sgt Holmes that with reference to the sub judice matters, Section 52 of the Misuse of Drugs Act 1971 related to a person having a controlled substance on their person and Section 3 of the Sexual Offences (Scotland) Act 2009 was related to sexual assault.

Councillor Irvine asked Sgt Holmes if Section 52 of the Misuse of Drugs Act 1971 also concerned intent to supply. Sgt Holmes confirmed this section was just about personal possession.

Councillor Armour referred to the conviction in 2009 being 13 years ago. He asked Sgt Holmes why Police Scotland were opposed to the granting of a licence as a result of an incident that took place 13 years ago. Sgt Holmes said that Police Scotland believed these convictions were relevant. He advised that they related to a drink driving offence and this was an application for a taxi driver. Police Scotland felt it was important from a public safety point of view to bring this to the attention of the Committee so that the Committee could make an informed decision.

Councillor Howard asked the Applicant why she was applying for a taxi driver licence. Ms Osborne explained that she enjoyed driving and had always wanted to be a HGV driver. She said that she enjoyed talking to and meeting people and that the hours would be flexible. She advised that she's had a clean licence since the incident and said that the flexible hours would really suit her life style. Ms Osborne referred to the most recent incident which was sub judice and advised that she had not been in a good head space then. She advised that she had turned her life around since March this year. She said life was good and a job opportunity like this only came around once.

SUMMING UP

Police Scotland

Sgt Holmes advised that he had nothing further to add to the objection submitted.

Applicant

Ms Osborne apologised for what had happened and asked the Committee to grant her licence and send her on to a better future.

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

DEBATE

Councillor Brown said that she agreed that people should be given a second chance and be able to move on. She sought confirmation on how long the Applicant would have to wait to reapply should the Committee decide to refuse the application today and if the other issues were resolved at Court. Mrs MacFadyen advised that she thought that the Applicant would have to wait a year but would check the legislation and come back to Councillor Brown to confirm.

Councillor Hume said he thought someone should be able to turn their life around and that the Committee should support this application.

Councillor Irvine advised that he had serious concerns about approving the application. He said the Committee had a duty of care to members of the public who would be using this vehicle. He referred to the motoring offences and advised that in terms of the other issues, while he would not prejudge something that had still to go to Court, he would be concerned about public safety at this time.

Councillor Armour said that if it was only the incidents from 2008 he would be minded to accept this application. He referred to the outstanding issues and commented that he wished the Applicant had waited until these had been dealt with before making the application. He said that he did not want to judge before anything came to Court but felt that it would not be right to approve this application today. He advised that he was sad about that as he had noted the Applicant did want, and was showing that she was trying, to turn her life around. He advised he could not support this application at the moment.

Councillor McCabe advised that though she felt sorry for the Applicant, she felt that in light of the concerns raised by Police Scotland in relation to being a fit and proper person to have a licence she could not support the application.

Councillor Martin advised that she had concerns for public safety and said that as the Committee did not know what the conclusion would be of the ongoing issues, she felt there would be a risk there.

Councillor Kain said he agreed with what had been said that everyone should get an opportunity but advised that the application should not be approved at this point in time.

Councillor Hampsey advised that it was with regret that she agreed with the other Members on this matter. She said that as there were ongoing proceedings she felt it would be wrong to grant a licence at this time.

At this point the Applicant left the meeting.

Councillor Howard said that she was struggling with this application. She said that she would have liked to have granted the licence and thought that the Applicant probably would have deserved it if it had not been for this one more mistake. She said the Applicant should be encouraged not to give up.

Councillor Brown said that until the current case came to Court the Committee should not grant the licence. She advised that the Applicant needed to be encouraged to reapply if the outcome of the Court went her way.

Councillor Hampsey said that it was a shame that the Applicant had not waited to hear the comments from Councillors Howard and Brown. She advised that due to the outstanding proceedings, she felt it would be impossible to grant the licence at this time.

Councillor Forrest advised that in the past this Committee have taken the option of deferring a decision on an application until Court proceedings were complete. She asked if this was an option in this case. Mrs MacFadyen confirmed that the Committee had, in the past, continued an application to a future meeting if they did not want to prejudge a decision. She confirmed that if the Committee refused the application today the Applicant would have to wait one year before she could reapply. She confirmed that continuation of the application to a future meeting would be an option for the Committee today.

Councillor Hume advised that people needed to be supported to move forward.

Councillor McCabe advised that she agreed people should be given a second chance but the Committee did not know anything about the Applicant. She referred to the Chief Constable's concerns in relation to being a fit and proper person to hold a licence. She commented that the Committee did not know what else the Police may be aware of and about how she lived her life. She advised that a person may say they have turned their life around just so they can get their licence.

Councillor Forrest said she would like to move continuation of this application until the legal matters were concluded.

Councillor Green sought and received confirmation from Mrs MacFadyen that the Committee would have to make a decision within 9 months as under the current legislation a licence would be automatically granted after that time. Sgt Holmes advised that there was no fixed date set for a trial at the moment.

Councillor Green advised that it was the role of the Committee to determine whether or not a person was a fit and proper person to hold a licence. He referred to the representation from the Applicant and the representation from Police Scotland. He said that the Committee can take on board what the Police have said about the Applicant not being a fit and proper person but the Committee did not need to take that at face value and should be satisfied that fair process has been followed. In terms of deferring this application, he would not want the Committee to not have the opportunity of determining the application. Mrs MacFadyen advised that she would ensure the timescales were observed and suggested that an update on progress with any Court proceedings be brought to the Committee in 6 months time or sooner if the legal issues were concluded before then.

DECISION

The Committee agreed to continue consideration of this application until December 2022 or until legal proceedings were concluded, whichever was earlier.

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