

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 18 JANUARY 2023**

Present: Councillor Kieron Green (Chair)

Councillor John Armour	Councillor Willie Hume
Councillor Jan Brown	Councillor Mark Irvine
Councillor Amanda Hampsey	Councillor Andrew Kain
Councillor Daniel Hampsey	Councillor Paul Donald Kennedy
Councillor Graham Hardie	Councillor Liz McCabe
Councillor Fiona Howard	Councillor Peter Wallace

Attending: Stuart McLean, Committee Manager
Fiona Macdonald, Solicitor
Kevin Oliphant-Smith, Applicant
Sergeant David Holmes, Police Scotland

1. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Audrey Forrest.

2. DECLARATIONS OF INTEREST

Councillor Paul Donald Kennedy advised that he held a Taxi Driver's Licence and operated in the Helensburgh and Lomond area. He stated that as this application was for the Bute and Cowal area he felt this would not prevent him from taking part in this hearing.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (K OLIPHANT-SMITH, DUNOON)

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 video call and joined the meeting by Microsoft Teams. Police Scotland opted to proceed by way of audio call and Sergeant David Holmes joined the meeting by telephone.

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

APPLICANT

Mr Oliphant-Smith referred to the 2008 conviction which had not been declared on his application form and advised that he had not been aware that he had to declare it as he thought it was spent. He said that before submitting his application to the Council he had attended Dunoon Police Station and took all his files with him. This included his Disclosure Certificate which detailed his convictions. He advised that a Police Sergeant had informed him that he did not think it would be necessary to add this conviction to the application form but in the interests of transparency suggested that he should add a code.

He said that he did not know the code and that the Police Sergeant had obtained this for him and added it to the form. He advised that he had been surprised that an objection from Police Scotland had been received. He said that he now had a clean driving licence with no points and that he had no disqualifications. He said that he had received no other convictions, cautions or reprimands over the last 9 years. He advised that he held a Taxi Driver Licence for the Isle of Man and presented a copy of this for the Committee to view. He advised that he'd had no problems, cautions or reprimands while holding this licence. He said that it was his intention to move to Dunoon to be close to family and to contribute to Dunoon and Argyll and Bute. He referred to Argyll and Bute Council actively seeking people to come and live and invest in the local area and that he was trying to do that. He advised that he had previously worked in government in 5 separate departments. He referred to working in local hospitals during Covid on the Isle of Man on various wards, looking after vulnerable patients. He said he was also undertaking a Law Degree through the Open University which would take 5 or 6 years to complete and that this was very much his future idea. He also advised of previously being elected as a local authority Councillor on the Isle of Man in 2016 in which he was a member of several Committees.

POLICE SCOTLAND

Sergeant Holmes advised that the submission by Police Scotland was not an objection. He said it was a representation to allow the Committee to make an informed decision in respect of this application.

He referred to the letter from the Divisional Commander dated 18 October 2022 which advised that the Applicant had 2 convictions dated 16 December 2008 and 8 April 2014. Both of these convictions related to being in charge of a motor vehicle whilst over the prescribed alcohol limit.

MEMBERS' QUESTIONS

Councillor Brown referred to Mr Oliphant-Smith's conviction in 2014 which resulted in him being banned from driving for 6 years. She sought and received confirmation from Mr Oliphant-Smith that this ban was lifted in 2020 and that he had only been driving regularly for the past 2 years and that this would be 3 years in April 2023.

Councillor Kain sought and received confirmation from Mr Oliphant-Smith that he received his Taxi Driver Licence for the Isle of Man last year.

Councillor Kennedy asked Mr Oliphant-Smith why he had not declared his 2008 conviction on his application form. Mr Oliphant-Smith said that he had been confused between English and Scottish legislation regarding spent convictions.

Councillor Kennedy pointed out that Mr Oliphant-Smith had been charged twice for being in charge of a vehicle but not for driving. He commented that these sentences appeared quite severe for these charges. He asked Mr Oliphant-Smith to explain why he was banned from driving for so long. Mr Oliphant-Smith advised that Isle of Man laws were a lot stricter and came down harshly on any crimes. He said that in respect of the 2008 conviction, he advised that even though it stated 'in charge of a motor vehicle whilst over the prescribed alcohol limit', he was driving. He said that he had been just over the limit as he had not eaten all day. He advised that the Sergeant who breathalysed him had said that if he had eaten a sandwich during the day he would have been under the limit. Mr Oliphant-Smith confirmed that in respect of the 2014 conviction he was not driving and that he was in the back seat of the vehicle. The Police Officers who charged him made

the decision that this was a crime and the Courts followed the process that for 2 alcohol related offences within a 5 year period they had to issue the toughest sentence they could give.

Councillor Kennedy queried the difference between Scottish and English alcohol limits and asked which limits the Isle of Man used. Mr Oliphant-Smith said he believed that the Isle of Man had its own limits. He said that based on the limit of 35 micrograms of breath, the reading for his first conviction was 36.4 micrograms.

Councillor Kennedy referred to the cost of car insurance for taxi driving and suggested Mr Oliphant-Smith's might be quite high as a result of these convictions. Mr Oliphant-Smith said that his driving licence was clear with no penalty points and that car insurers did not consider convictions that were more than 5 years ago.

Councillor Hume asked Mr Oliphant-Smith what his breathalyser reading was in 2014. Mr Oliphant-Smith said he could not remember but he thought that it was a bit higher than in 2008. He said that the driving ban was not down to the reading but because of the proximity in time between the 2 drink driving convictions. He advised that if the reading had been high, based on guidance, he would have received a custodial sentence.

Councillor Armour said he had noted from the Police letter that Mr Oliphant-Smith had to retake his driving test and attend a drink driving rehabilitation course. He asked Mr Oliphant-Smith to advise when he attended this course and what it had entailed. Mr Oliphant-Smith said he attended the course in November 2014 and that it was a one day course, sitting in a classroom watching YouTube videos of American Police Officers showing car crashes in America in the 1980s. He advised that he did not find the course particularly helpful. He commented that it would be beneficial if they came up with a good rehabilitation course or education course which could be shown to young drivers before they got their licences. He said that would be useful and that he had suggested this in a letter to the Court following his attendance at the rehabilitation course. Mr Oliphant-Smith advised that he did not just lose his licence, he had also lost his job and that this had affected his family. He advised that educationally this conviction had been a very good lesson for him and something that he would like to put to use.

Councillor Brown asked if Mr Oliphant-Smith had undertaken any other counselling. Mr Oliphant-Smith said he did have counselling. He advised of losing a son just before the 2014 conviction and that he had been suffering from anxiety and depression, which he did not recognise at the time, and which led to him self-medicating with alcohol. Losing his licence led him to seek help and counselling. He added that when he started working in the hospital in 2020 he was sent on other counselling courses as a staff member in order to help patients. He said that these courses had also helped him.

Councillor Green referred to the dates of the convictions and asked Mr Oliphant-Smith to confirm when the offences took place. Mr Oliphant-Smith said that for the April 2014 conviction he believed the incident took place in March 2014. He said that for the 2008 conviction he was in Court the same day.

Councillor Green asked Mr Oliphant-Smith how his use of alcohol had changed since these convictions. Mr Oliphant-Smith referred to being older now and having other responsibilities. He said the idea of going for drink was no longer worth it. He said he had a son to look after and had to think ahead if he would need to drive the next day or think about whether he would want a hangover. Referring to his mental health, he said that if he did take a couple of drinks he found he did not feel great for a couple of days after. He

advised that after driving taxis on the Isle of Man, he decided to stop drinking altogether. He said that when you started as a taxi driver you were learning every day and were responsible for picking up people with very small children, and vulnerable people going to hospital, some of whom required assistance in and out of the car. He said you could not do any of these tasks if under the influence of alcohol from the night before and that it was not safe.

Councillor Green sought and received confirmation from Mr Oliphant-Smith that he was 22 and 28 years old when the offences took place and that he was now 36 years old.

Councillor Kennedy referred to Mr Oliphant-Smith receiving his Taxi Driver Licence on the Isle of Man and asked if he had to attend a Committee to obtain his Licence. He also asked what types of Committee Mr Oliphant-Smith sat on when he was a Councillor. Mr Oliphant-Smith confirmed that he had to attend a meeting of the Road Traffic Licensing Committee which was an independent body separate from the Council. He advised that when he was a Councillor the Committee he sat on overseen beach management and waste management.

Councillor Kennedy asked Mr Oliphant-Smith if the Committee that granted his Taxi Driver Licence had discussed his convictions in a severe manner. Mr Oliphant-Smith said that the Committee had been quite harsh. He said that the meeting had been adjourned after an hour and that he had been called back for a second meeting. He said the whole process took 4 months. He said that it was worse than going to court. He advised that the process followed by Argyll and Bute Council was a lot easier and that everyone was a lot nicer.

Councillor Kennedy asked Mr Oliphant-Smith if there were any mitigating circumstances that swayed the Isle of Man Committee to grant the licence. Mr Oliphant-Smith referred to his previous standing in the community, references from charities he worked with, and his work in the local community. He also referred to the fact that he had not been in any trouble with the Police in 9 years and that it could be seen from his history that he had turned his life around. Mr Oliphant-Smith confirmed that if this Committee wished, he could obtain references to support this application.

Councillor Kennedy sought and received confirmation from Mr Oliphant-Smith that he was not currently employed in Dunoon. He said that he had parents in Dunoon who helped and supported him. He advised that if he could not gain any meaningful employment in Dunoon he would need to consider moving elsewhere.

Councillor Green sought and received confirmation from Mr Oliphant-Smith that he was in politics for 10 years but was not a Councillor on the Isle of Man for very long. He advised that he had resigned from this post after 2 months due to being a victim of crime within the Council.

Councillor Hardie referred to Mr Oliphant-Smith using alcohol to self-medicate. He asked if life got stressful again would Mr Oliphant-Smith go back to alcohol or if he had other support mechanisms in place. Mr Oliphant-Smith said he had not self-medicated because of stress. He referred to having a lot of symptoms at the time which later led to a diagnosis of fibromyalgia which resulted in pain in the upper part of his back. He said he found that lifestyle changes were the best approach. He said that alcohol was the worst thing for that condition. He said he had turned his life around in a health sense.

SUMMING UP

Police Scotland

Sergeant Holmes advised that he had nothing further to add.

Applicant

Mr Oliphant-Smith thanked the Members for the opportunity to talk.

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

DEBATE

Councillor Kain said he was minded to approve this application. He commented that the Police submission was a representation and not an objection. He said that bearing in mind that the Isle of Man had stricter rules, Mr Oliphant-Smith was granted a Taxi Driver Licence there 12 months ago, and that he was inclined to approve this application.

Councillor Kennedy said he was very much of the same mind as Councillor Kain. He referred to the offences occurring some time ago, with the most recent one 9 years ago for being drunk in charge. He said that it appeared Mr Oliphant-Smith had turned a corner and wanted to make a go of it and have a future in law. He said he was minded to grant this licence.

Councillor Armour said he could not disagree with anything said by Councillors Kain and Kennedy. He commented that Mr Oliphant-Smith had given frank and full information as requested. He said he had done a bit of “googling” and could see that Mr Oliphant-Smith had done a lot in helping out as a volunteer. He advised that he thought that Mr Oliphant-Smith was someone that had made mistakes and that he had learnt from these mistakes. He advised that he would not want to stop anyone from gaining employment and trying to put the past behind them. He confirmed that he fully supported granting this licence.

Councillor Hume said that he totally agreed with his colleagues. He advised that he thought Mr Oliphant-Smith had been very transparent and honest and that he had no objection to granting this licence.

Councillor Daniel Hampsey said he was of the same mind. He advised that as a Dunoon Councillor it was good to have more people in business for the local economy. He said that Mr Oliphant-Smith had been very transparent with everything that had happened and that he supported the granting of this licence.

Councillor Hardie said that Mr Oliphant-Smith had been very open and honest and that he had no problem with granting this licence.

Councillor Green referred to Mr Oliphant-Smith being 22 and 28 years old when the offences took place. He commented that being older now, with different responsibilities, Mr Oliphant-Smith gave the impression of having learnt his lesson regarding alcohol and vehicles and in that respect he was happy to grant the licence.

DECISION

The Committee unanimously agreed to grant a Taxi Driver Licence to Mr Kevin Oliphant-Smith and noted that he would receive written confirmation of this within 7 days.

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