

**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
Grayham Plumb, Applicant
Sergeant David Holmes, Police Scotland

1. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Audrey Forrest.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A STREET TRADER LICENCE (G PLUMB, DALMALLY)

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 Plumb said that he had moved up from England 12 months ago and was looking to improve his lifestyle and mental health. He advised that it had been a dream of his from 16 years old, to work in a catering van. He said that he had seen a gap in the market and that he was really passionate about doing this and had everything set up and ready to go.

POLICE SCOTLAND

Sergeant Holmes referred to a letter dated 18 October 2022 from the Divisional Commander 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 by virtue of a conviction dated 12 February 2020 which related to assault occasioning actual bodily harm.

MEMBERS' QUESTIONS

Councillor Kain asked Mr Plumb to outline what the assault related to. Mr Plumb advised that he and a friend went to Wales for a night out and water sports. A friend of his friend also came along on the night out and that he did not know him at this point. He advised that they went out for a meal and a couple of beers and then on to a night club. At closing time they came out of the club and he saw 20 to 30 people, mainly girls, having a squabble and scuffle. He said that after 2 or 3 minutes he realised that the person that had come out with him and his friend was in a fight. He said he did not go near the fight. He advised that the boy his friend's friend was fighting with came towards him with his arms open and that he had taken this as a threat and threw a punch. He said that the Police arrived and he admitted to what had happened.

Councillor Kain commented on the conviction being extreme for one punch. He asked Mr Plumb if there were other charges. Mr Plumb advised that due to the person having the fight first being a friend of his friend, and as he had fought with the same person, his offence was put together with what the other person was charged with. He advised that in the Court they were charged with the same thing. He said it was classed as if they had both fought at the same time but it had not been like that.

Councillor Armour asked Mr Plumb why he had not declared his conviction on his application form when it clearly stated that all convictions should be declared. Mr Plumb said it had been an honest mistake and that he had nothing to hide. He advised that when the incident happened he was the first person to hold his hand up and admit fault. He referred to going through the application with his mum and girlfriend and that they had thought that as the suspended sentence had been done there was no need to declare it.

Councillor Armour referred again to the application form clearly stating that all criminal convictions should be stated. Mr Plumb said he could only apologise for not reading the application properly, or misinterpreting it. He said he was not trying to get away with anything and that it was just a mistake.

Councillor Brown referred to part 5 of the application which referred to the ownership of land where the burger van would be sited. She noted that Mr Plumb had indicated he was not the owner of the land. She sought and received confirmation from Mr Plumb that he had received permission from the land owner via an email. Mr Plumb advised that he had forwarded this email 2 or 3 months back confirming he had permission.

Councillor Brown sought and received confirmation from Mr Plumb that he had his Food Hygiene certificate from Environmental Health. He advised that there was another couple of courses he would like to do to improve things and that he also had the experience of working in catering vans for 3 or 4 years.

Councillor Brown asked Mr Plumb what days and times he would operate as this detail was not filled out on the application form. Mr Plumb said he was not sure yet and that he needed to work out when the best times would be for business. He said he was thinking about working Thursdays – Sundays from 8 am. He hoped to provide for tourists as well as locals.

Councillor Brown asked Mr Plumb if the disposal of a suspended prison sentence for 48 weeks and compensation of £1,000 was just for him or if the other person got the same. Mr Plumb said the other person got a longer suspended sentence of a few more weeks. He did not receive a fine as he was on benefits and that he was given community service.

Councillor Kennedy sought and received confirmation from Mr Plumb that the victim was not hospitalised at the time of the incident. Mr Plumb advised that if he remembered correctly, the victim got 4 stitches the day after.

Councillor Kennedy asked Mr Plumb how long before the conviction the offence occurred. Mr Plumb said the offence was in 2019 just before Covid. He said that everything was adjourned 3 or 4 times. He advised that he had pled guilty right away but the other person pled not guilty which caused a lot of problems. He advised that at the last minute the other person pled guilty. He said there was no trial.

Councillor Kennedy commented on Mr Plumb not declaring his conviction on the application form and advised that as far as he could recollect failing to disclose a conviction could lead to being charged with an offence. He asked Mr Plumb if he had been charged for not declaring his conviction and Mr Plumb said he had not been charged.

Councillor Kennedy sought clarity on whether a person could be charged for not declaring a criminal conviction on their application form. The Council's Solicitor, Fiona Macdonald referred to section 6 of the application form which advised that anyone giving a false declaration could be liable to summary conviction or a fine not exceeding £2,500. She pointed out that this statement was directly before where the application was signed by the Applicant.

Councillor Kennedy queried whether Police Scotland had considered that option. Mr Plumb said that he had not tried to hide his conviction. He acknowledged that it was a huge error to leave it off the application form and that he wished he had not. He said he was not trying to get away with anything. He said that he did the punishment and was trying to get on better with things now.

Councillor Howard commented that the letter of consent from the landowner was ticked off as supplied on the application. She sought and received confirmation from Mr Plumb that he was set up and ready to apply for third party insurance if his licence was granted.

Councillor Irvine sought and received confirmation from Mr Plumb that the extent of his involvement in the incident was a single punch and that he had then surrendered to the Police.

Councillor Irvine referred to the publically available court report which stated something different – it said that Mr Plumb had punched and kicked the person on the ground. He sought clarification on this from Mr Plumb. Mr Plumb said that he had been tarnished with the same brush as the other person. He said that he was calm and that it was the other person that was pulled away by security staff for kicking the victim on the ground. Referring to CCTV evidence, he advised that he had pointed out to the Police who he was on the footage. When it came to Court he thought it would be outlined who was who as all you could see was a scuffle in the distance but this information was not provided. He said that he threw one punch.

SUMMING UP

Police Scotland

Sergeant Holmes advised that he had nothing further to add.

Applicant

Mr Plumb thanked the Committee for hearing him out. He said that he knew it would be easy to look at what he had done and that it was not good. He advised that he would like it considered that what was on paper was not necessarily a person. He advised that he had changed his lifestyle and moved here for more tranquillity and peace of mind. He said his brain moved slower and this was the next step to keep progressing. He thanked everyone for listening.

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

DEBATE

Councillor Hardie advised that the fact that Mr Plumb had not declared his conviction on his application form did not fill him with confidence and due to the seriousness of the conviction he was minded to refuse the application.

Councillor Armour sought clarification from Officers as to whether or not the application was valid because the convictions were not declared and because there appeared to be no physical evidence of permission from the land owner. Ms Macdonald advised that it would be up to Members based on what had been put forward by the Applicant. She said she would need to seek advice on the validity of the application. She pointed out that she understood there had been occasions in the past where convictions had been over looked on applications and that the Police may have a view or not on that.

Councillor Armour sought clarity on whether or not the email from the land owner had been received by anyone. Ms Macdonald advised that she would have expected that any paperwork in relation to the application would have been forwarded to the licensing section and that could be clarified. She said she understood everything in respect of Environmental Health was done and dusted in advance of the hearing today. She said there was no reason to believe that the email had not been sent but she did not have a copy of it in front of her today. She advised that in the interest of fairness the Committee could decide to continue consideration of this application but that would be up to them.

Sergeant Holmes advised that Police Scotland had received a copy of the email that the Applicant had referred to. Councillor Green commented that he was aware the land owner had been advertising for someone to take this business on.

Councillor Armour expressed his concern about whether or not the application was valid and that he would be looking for a continuation. With regard to the conviction, he said he was split down the middle with that but he did have concerns.

Councillor Hume advised that he thought the hearing should be continued as he did not believe the Committee had all the facts and that he could not make a decision today.

Councillor Kain agreed that there should be a continuation as the application was incomplete in terms of dates and times of operation and that the Applicant had been a bit vague about how often and how long he would operate.

Councillor Howard said that she could not remember seeing all documents for other cases and could not understand why the Committee should be demanding them now. She commented that the surroundings of a quiet car park would be quite different from a night club and that she did not think Mr Plumb would get as wired up or mad as in a drunken state outside a night club. She said she was inclined to give him the benefit of the doubt. Referring to the days of operation, she advised that when starting a new business in a new place you would not necessarily know until you actually started what hours and days of business would be best. She said that she thought the Committee should give Mr Plumb the benefit of doubt and let him try it and see and if it didn't work out the licence could always be revoked.

Councillor Kennedy said that he had sympathy for the Applicant but noted that the conviction was fairly recent and had been omitted from the application form. He said that he would be keen to know if Mr Plumb would be operating the van by himself. He said he would like to give him a chance but it was pretty soon after that event.

Councillor Brown said she was a bit conflicted. She commented that Mr Plumb only had the one conviction. She referred to the missing bits and omissions on the application form and said she would like to think that was just a mistake. She said that although she was conflicted she would like to give Mr Plumb the benefit of the doubt.

Councillor McCabe said she could understand Councillor Brown being conflicted. She commented on what Mr Plumb had gone through today before the Committee and said that it was as bad as being at Court. She said that he'd had to sit here and that it had not been a nice day for him for one offence. She referred to having her own catering business and advised that she did not know what days she should open and when she would be busy and that she'd had to adjust as she went along. She said she would like to give Mr Plumb the benefit of the doubt.

Councillor Amanda Hampsey said she would like to see a continuation of this case so that anything that was felt by the Committee to be missing could be put in place. She said that she would like to see Mr Plumb have a chance at this and if this meant a continuation to get things in place it would give him a fair hearing.

Councillor Daniel Hampsey also advised that he thought the Committee should go for a continuation. He said it was a positive thing to start a new business. He referred to Mr Plumb having only one conviction and said it would not be fair to him to have to wait years and years before moving forward. He said it would be nice to give him the benefit of the doubt.

Councillor Green referred to the Committee being satisfied in the past with applications that had slight errors or omissions and that the Committee have gone on to grant or reject applications. He said he did not think there would be grounds for continuing. He advised that he personally thought the Committee should be making a decision today and that the key thing was the conviction and whether or not Mr Plumb was a fit and proper person.

Councillor Green referred to the various views around the table and suggested that a vote should be taken as to whether or not a continuation should be agreed or if the Committee should proceed to make a decision today. Councillor Amanda Hampsey advised that she

would like to retract her earlier comment to have a continuation and advised that she would second a Motion from Councillor Green to come to a decision today.

Motion

To agree make a decision on the application today.

Moved by Councillor Kieron Green, seconded by Councillor Amanda Hampsey.

Amendment

To agree to continue consideration of this application to allow for additional information to be provided to the Committee.

Moved by Councillor John Armour, seconded by Councillor Andrew Kain.

A vote was taken by calling the role.

Motion

Councillor Brown
Councillor Green
Councillor A Hampsey
Councillor D Hampsey
Councillor Hardie
Councillor Howard
Councillor Irvine
Councillor Kennedy
Councillor McCabe
Councillor Wallace

Amendment

Councillor Armour
Councillor Hume
Councillor Kain

The Motion was carried by 10 votes to 3 and the Committee resolved accordingly.

Motion

On the basis of the Police objection and the seriousness of the offence, to refuse the application on the grounds that the Applicant was not a fit and proper person to hold a licence.

Moved by Councillor Graham Hardie, seconded by Councillor Paul Donald Kennedy.

Amendment

To agree to grant a Street Trader Licence to Mr Grayham Plumb.

Moved by Councillor Liz McCabe, seconded by Councillor Fiona Howard.

A vote was taken by calling the roll.

Motion

Councillor Armour
Councillor Hardie

Amendment

Councillor Brown
Councillor Green

Councillor Hume
Councillor Kain
Councillor Kennedy

Councillor A Hampsey
Councillor D Hampsey
Councillor Howard
Councillor Irvine
Councillor McCabe
Councillor Wallace

The Amendment was carried by 8 votes to 5 and the Committee resolved accordingly.

DECISION

The Committee agreed to grant a Street Trader Licence to Mr Grayham Plumb and noted that he would receive written confirmation of this within 7 days.

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