

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 24 MAY 2023**

Present: Councillor Kieron Green (Chair)

Councillor Gordon Blair	Councillor Fiona Howard
Councillor Jan Brown	Councillor Paul Donald Kennedy
Councillor Amanda Hampsey	Councillor Liz McCabe
Councillor Daniel Hampsey	Councillor Luna Martin
Councillor Graham Hardie	Councillor Peter Wallace

Attending: Stuart McLean, Committee Manager
Fiona Macdonald, Solicitor
Thomas Jones, Applicant
Sergeant David Holmes, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors John Armour, Audrey Forrest, Mark Irvine and Andrew Kain.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (T JONES, LOCHGILPHEAD)

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 referred to a preliminary matter and advised that Police Scotland had requested the Committee take account of a number of spent convictions the Applicant had which were considered "protected" in terms of the Rehabilitation of Offenders Act 1974. It was noted that the Committee may take into consideration evidence relating to spent convictions, protected matters, and similar where they were 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 matters to this application.

POLICE SCOTLAND

Sergeant Holmes advised that there were various spent convictions that were protected and that in line with public safety it was the Chief Constable's contention that justice could not be done in this case except by admitting this evidence into the process so that the full

facts were in front of the Committee prior to determination of this application from Mr Jones.

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

APPLICANT

Mr Jones said he was not sure exactly what the protected matters were but that he would have no problem with them being made available to the Committee. He confirmed that he had no questions for Police Scotland.

The Chair then invited Police Scotland to comment on the Applicant's submission and Sergeant Holmes confirmed that he had nothing further to add.

The Chair then invited the Members to ask questions and determine the relevancy of the protected matters.

MEMBERS' QUESTIONS AND DEBATE

Councillor Blair sought and received confirmation from Mr Jones that all of his convictions were of a similar nature.

Councillor Kennedy asked Sergeant Holmes why some convictions were protected and some were not. Sergeant Holmes referred to the Rehabilitation of Offenders Act 1974 and explained that it depended on the time of a conviction, the age of the offender and the disposal of a case.

The Committee agreed that the protected matters should be taken into consideration and a copy of the detail of these was circulated to the Committee.

A short adjournment was taken and the Chair then outlined the hearing procedure that would be followed and invited the Applicant to speak in support of his application.

APPLICANT

Mr Jones referred to the objection to his application due to his previous convictions and advised that he would be happy to explain what these were about. He advised that since the last conviction he had lived in Ukraine but then had to leave at the start of the war in 2022. He said that while in Ukraine he taught English and had military training. He and his family moved to England in March 2022 just after the war started. He said they lived in London for 4 months before moving to Ardrishaig and then Lochgilphead and that he currently worked for a breakdown recovery company. He said that since moving to the area he had also worked in a local pub and that he continued to teach English online. He said his employer at the Stag Garage was very pleased with his work and that he had received good reviews online.

Mr Jones advised that it was suggested to him by various people in the local community that he should apply to be a taxi driver. He said that he and his family had been accepted by the community and that they had received a lot of help and that he would like to put something back into the community and thought that this type of work would benefit him, his wife and family, and the community. He referred to his past which, he said, he could not deny and that he would be happy to answer any questions the Committee may have.

QUESTIONS FROM POLICE SCOTLAND

Sergeant Holmes confirmed that he had no questions.

POLICE SCOTLAND

Sergeant Holmes referred to a letter from the Divisional Commander dated 21 April 2023 which advised that the Chief Constable objected to this application on the grounds that the Applicant was not a fit a proper person to be the holder of a licence by virtue of five convictions dated 26 June 2008, 12 September 2012, 26 August 2013, 13 February 2014 and 13 March 2014 which he explained the detail of.

He also referred to a further letter dated 21 April 2023 which outlined seven spent convictions which were considered “protected” in terms of the Rehabilitation of Offenders Act 1974, which he also explained the detail of.

QUESTIONS FROM APPLICANT

Mr Jones advised that he had no questions.

MEMBERS' QUESTIONS

Councillor Blair referred to the conviction dated 8 June 1988 which was out of sync from the rest, which were in date order, and he received confirmation from Sergeant Holmes that this was correct.

Councillor Blair asked Mr Jones to confirm if he could guarantee that since moving to Argyll things had calmed down for him and that he had since changed his ways. He pointed out to Mr Jones that as a Taxi Driver he would be driving members of the public on behalf of the Committee and that the Committee wanted the very best people doing this.

Mr Jones said that there had been a long gap between now and when things went wrong from him. He commented that his last conviction was in 2016. He advised that his life was troubled in England and that it got to a point he decided he had to move himself from the situation. He said that he'd had a decent business in Sussex chartering yachts and that he had sold up and moved to Ukraine and had a good life out there. He said he was awarded medals for all the good he had done in Ukraine. He advised that he appreciated that his past would raise concerns. He advised that he wanted to be calm and that he had moved to a beautiful part of the world with his wife and step son.

He said it had been very hard last year but they had now settled into life in Argyll and that they have been treated so well. He said he would like to give back to the community and settle in Lochgilphead. He referred to many activities he was involved in including lawn bowls and tennis. He said he was very helpful in the community. He said he could understand concerns raised and that if his daughter got into a taxi with someone with his colourful past, he would raise questions too. He gave his assurance that things had changed. He advised that over the years he received counselling and also delivered a counselling course so that he could help others. He said he had tried to turn things around to help others.

Councillor Kennedy commented that some of the older convictions would have been when Mr Jones was very young so may be excusable. However, he advised he was more concerned about the more recent convictions from 2008 onwards. He pointed out that there was a lot of road traffic offences with disqualifications for driving which, he said, indicated a lack of respect. He asked Mr Jones why he was disqualified from driving in 2014.

Mr Jones said he was living in Dorset at the time. He said he was not aware that the Police had contacted the DVLA and that his licence had been cancelled. He said that he had moved away and did not get the notification. He said he found out when he was driving in Sussex which led to a disqualification. He said it was down to misinformation but it was his fault.

Councillor Kennedy referred to Mr Jones being disqualified from driving again in 2016. Mr Jones said he was not aware of that, he read out a list of convictions and said that he disputed some of those listed in the Police letter. Mr Jones said that he had a problem with the Dorset Police and that he had taken them to court. He had to sign a non-disclosure agreement with them as they admitted fault but he could not talk about it. Mr Jones advised that had he been aware that he was disqualified he would not have driven. He said that he'd had insurance and that he'd still had his licence. He said it was down to miscommunication. He said he could not deny he was not allowed to drive but he was not aware.

Councillor Kennedy sought and received confirmation from Mr Jones that he moved to Ukraine in May 2015 and returned to England on 2 March 2022. Mr Jones advised that he'd had no issues with the Police in Ukraine and that he had done some very good and worthy things there. He referred to the local press, the Argyllshire Advertiser, doing a touching article about him which could be read online.

Councillor Kennedy sought and received confirmation of the type of military training Mr Jones received in Ukraine. Mr Jones advised that as he could speak French, English, Italian and some Ukrainian he was commissioned by the Ukraine Army to meet and greet and to make sure information passed on was understood. He advised that he lived behind the military academy and that he had taught English there.

Councillor Green sought and received confirmation from Sergeant Holmes that the court conviction dated 19 May 2016 was as a result of an offence which took place on 13 April 2015.

Councillor Green sought and received confirmation from Mr Jones that he briefly came back to Sussex in 2016 to see his daughter and had attended that court hearing on 19 May 2016.

Councillor Wallace sought and received some background on the harassment convictions. Mr Jones referred to being in breach of a restraining order. He said that owning a business with someone in the same place had caused problems. Referring to the incident in question, he said the door was banged but the window was not smashed. He said that he had not been aware at that time that there was a restraining order. He said he eventually moved away from Dorset. He said he had felt victimised by the Dorset Police and that was why he sued them and had to sign a non-disclosure agreement.

Councillor Kennedy asked for details of the circumstances which led to the destruction of property. Mr Jones said the property was his. He advised that it happened when a severe toxic relationship was breaking down. He said it was a very volatile situation.

Councillor Brown commented that there seemed to be a lot of things that had happened to Mr Jones that he was not aware of such as the harassment order and the loss of his driving licence. She said that she appreciated that things had changed and that Mr Jones had moved on. She pointed out that the Committee had a big responsibility to ensure that members of the community were safe.

Mr Jones said that things did not make sense to him either and that he too would be concerned. He said he was confused about some of the dates in the Police letters and that some of these went back a long time.

Councillor Brown said she was not looking at the earlier dates as these were a long time ago. She said she had more concern about the convictions dated 2012, 2013, 2014 and 2016. She pointed out that these were only around 10 years ago. She said she appreciated that Mr Jones had been in a difficult situation and that she was a great one for giving someone another chance but at the moment she was concerned and conflicted.

Mr Jones replied that hindsight was a wonderful thing. He commented that his mental health had been impacted by staying in his previous relationship and referred to family abandonment issues. He said he was not trying to sugar coat things or excuse himself. He said that he had done some stupid things without care and thought to himself and to others. He said he was sorry and that he would rather not be sitting here trying to explain things which, he advised, were embarrassing and shameful. He said he took ownership for his past and that what he had done was not deniable. He advised that a lot of things had been done without care or thought and in the spur of the moment.

Councillor Kennedy sought and received confirmation from Mr Jones that he met his wife in Ukraine and that they were married a year and a half later in September 2016 and that she knew all about his past. He said it was his last choice to come back to England but they had to keep his family safe. He advised that he had taken on responsibility for his step son and wife and that they had a good life in Argyll. He said it had not been easy for his wife to move away from her home. He said her English was not good and that she was a bit timid and that his son had recently been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Autism.

Councillor Kennedy sought and received confirmation from Mr Jones that they moved to Lochgilphead in September 2022. They initially had a private rent in Ardrishaig but moved to an ACHA flat after 3 months.

Councillor Kennedy asked Mr Jones why he had not declared his convictions on his application form. Mr Jones said he had sought advice from the Council's legal staff and was told that if his convictions were more than 5 years old they did not need to be declared. He said that he had offered to put them on the form but was told not to. He acknowledged that he should have read the form more carefully himself.

Councillor Blair sought assurance from Mr Jones that what was in the past was in the past and that he would be a quality taxi driver in the area.

Mr Jones said he could not deny his past. He said that when he left for Ukraine he did not want to get into another toxic relationship or be in the kind of trouble he was in Dorset

again. He said he would be happy with a probationary period. He said his wife had helped him through these years and that he wanted to be calm in a great community.

Councillor Blair commented that section 2 of the application form was not clear and he asked if Officers could look at that part of the form to make it easier to understand and complete.

Councillor Kennedy referred to the 2014 conviction for driving with excess alcohol and asked Mr Jones if he had attended court on that occasion. Mr Jones said that he thought that he had.

Councillor Kennedy sought and received confirmation from Sergeant Holmes that Police Scotland did not routinely contact applicants about their previous convictions before submitting objections.

SUMMING UP

Police Scotland

Sergeant Holmes advised that he had nothing further to add.

Applicant

Mr Jones thanked the Committee for taking the time to hear what he had to say. He also thanked them for their concerns which, he said, he understood fully.

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

DEBATE

Councillor Brown said she would like to approve this application. She said that Mr Jones had answered a lot of questions and that she would like to give him a chance. She advised that she thought he deserved this chance and that she would like to move that the application be approved.

Councillor Kennedy advised that he had concerns with this application at this time. He pointed out that Mr Jones had a history which showed not much consideration for driving regulations combined with alcohol related offences. He referred to a gap of 5 or 6 years when Mr Jones was not in this country and to him advising that he had no issues while living in Ukraine. He commented that Mr Jones had only been back in this country a few months. He advised that some of the convictions showed Mr Jones to possibly have a bit of a temper and that driving a taxi may not be the best environment for Mr Jones depending on the customer. He advised that he was tempted to refuse the application and, giving more time, Mr Jones could apply again. He commented that Mr Jones had a job at the moment and had a full driving licence.

Councillor Howard said that she would second Councillor Brown's motion. She said that she thought Mr Jones had gone through a lot in his life and that she would like to give him a chance to make a go of his new life living here with his family.

Councillor Hardie said he would support Councillor Kennedy if he put forward an amendment to refuse.

Councillor Blair said he concurred with the thoughts of Councillor Brown and Councillor Howard. He advised that Mr Jones had demonstrated remorse for his previous activities. He commented that living in a small community all eyes would be on him and that any misdemeanour would be reported straight to the Council and the Police. He said that he liked to see someone given a hand to get on and that Mr Jones would be well aware of the Committee's expectations of a taxi driver in Argyll and Bute. He said he would be supportive of this application.

Motion

To agree to grant a Taxi Driver Licence to Mr Jones.

Moved by Councillor Jan Brown, seconded by Councillor Fiona Howard.

Amendment

To agree to refuse Mr Jones' application for a Taxi Driver Licence on the grounds that he was not a fit and proper person to be the holder of the licence.

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

A vote was taken by calling the roll.

Motion

Councillor Blair
Councillor J Brown
Councillor Howard

Amendment

Councillor Green
Councillor A Hampsey
Councillor Hardie
Councillor Kennedy
Councillor McCabe
Councillor Martin
Councillor Wallace

No Vote

Councillor D Hampsey
(due to having technical
issues and not being
present for the whole
hearing)

The Amendment was carried by 7 votes, with 3 votes for the Motion and 1 no vote, and the Committee resolved accordingly.

DECISION

The Committee agreed to refuse Mr Jones' application for a Taxi Driver Licence on the grounds that he was not a fit and proper person to be the holder of the licence by virtue of his previous convictions.

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