

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

Present: Councillor Kieron Green (Chair)

Councillor John Armour	Councillor Mark Irvine
Councillor Jan Brown	Councillor Paul Donald Kennedy
Councillor Audrey Forrest	Councillor Liz McCabe
Councillor Amanda Hampsey	Councillor Peter Wallace

Attending: Stuart McLean, Committee Manager
Sheila MacFadyen, Senior Solicitor
Iain MacLean, Applicant
Sergeant David Holmes, Police Scotland

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, Daniel Hampsey, Graham Hardie, Andrew Kain, Luna Martin and Dougie Philand.

2. DECLARATIONS OF INTEREST

There were no declarations of interest. Councillor Paul Kennedy advised that he was a Taxi Driver but as this was for the Helensburgh and Lomond Area he would remain in the meeting and take part in the hearing.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR GRANT OF A TAXI DRIVER LICENCE (I MACLEAN, DUNBEG)

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 opted to proceed by way of video call and Sergeant David Holmes joined the meeting by MS Teams.

The Senior Solicitor advised that an objection from Police Scotland had been received outwith the time period allowed by the Civic Government (Scotland) Act 1982 for making objections or representations. It was noted that it would be competent under Paragraph 3(2) of Schedule 1 of the 1982 Act for the Committee to entertain a late objection or representation if they were satisfied that there was sufficient reason for it not having been made within the time allowed. She advised that the objection had been received on 30 August 2023 but due to an administrative error Police Scotland had not been notified of the application until 21 August 2023 the day after the 28 day period had expired.

The Chair invited Police Scotland to comment.

Sergeant Holmes confirmed that the application had been made on 24 July 2023 and that the Police would have had until 18 August 2023 to lodge any objection. Notification of the

application was only received by Police Scotland on 21 August 2023 and they endeavoured to respond to this as quickly as possible with an objection being submitted on 30 August 2023.

The Chair sought and received confirmation from the Applicant that he had no comment to make.

The Chair sought the views of Members as to whether or not this late objection should be taken into consideration.

The Committee agreed to accept the late objection from Police Scotland and a copy of this was circulated by email to the Committee.

Reference was then made to a request from Police Scotland that 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 such evidence relating to protected matters where they are satisfied that justice cannot 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

Sergeant Holmes advised there was one “protected” conviction which was connected to the licence applied for. He confirmed that it was Police Scotland’s position that justice could not be done in this case except by admitting the evidence relating to this “protected” conviction.

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

APPLICANT

Mr MacLean referred to all his convictions being years ago and in the past. He advised that he was currently working full time for Argyll and Bute Council and that he had children. He said that he was looking to do extra part time work at the weekends to help out his Uncle. He said that all the convictions were in the past and that he had not been in trouble since. He advised that he has been working for Argyll and Bute Council for nearly 3 years. He said he had nothing further to add in respect of the “protected” conviction.

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

The Chair then invited questions from Members.

Councillor Irvine sought and received confirmation from Sergeant Holmes that the date of the “protected” conviction was 7 October 2020.

Councillor Kennedy asked Police Scotland why the conviction was “protected”. Sergeant Holmes explained that in terms of the Rehabilitation of Offenders Act 1974 there were certain convictions that Police Scotland could and could not disclose. Although a fairly

recent conviction, this fell under the protection status due to the nature of the offence and the outcome of the court disposal.

Councillor Green sought and received confirmation from Sergeant Holmes that it was considered that this conviction was connected to the licence applied for and that justice could not be served without admitting this evidence to the Committee today.

Councillor Kennedy advised that he agreed justice could not be done without admitting this evidence if it was considered relevant to the application.

Councillor Irvine referred to the date of the conviction being after the other convictions and thought that this may be something that would be relevant to this application.

Councillor Forrest advised that she agreed that justice could not be done without admitting this evidence and that she would like to hear the detail of it.

The Committee agreed to consider the protected matter as part of this application on the grounds that justice could not be done in this case without admitting this evidence and a copy of the letter from Police Scotland was circulated by email to the Committee.

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

APPLICANT

Mr MacLean advised that he had applied for a Taxi Driver Licence so that he could help out his Uncle and that this would be a part time job for himself. He said that the convictions were several years ago and that he had not had any recently. He said he was hoping for a good outcome today. He advised that he had submitted his application in July and had hoped to be able to help out his Uncle a lot sooner. He said that he hoped that things could be resolved today and that he could help his Uncle part time at the weekends.

QUESTIONS FROM POLICE SCOTLAND

Sergeant Holmes advised that he had no questions.

POLICE SCOTLAND

Sergeant Holmes referred to a letter dated 30 August 2023 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 22 June 2009, Mr MacLean was convicted of Breach of the Peace on 15 September 2009 and received a fine of £300.

Sergeant Holmes also advised that as a result of an incident which took place on 18 October 2009, Mr MacLean was convicted under the Road Traffic Act 1988 Section 178(1)(a) and Section 5(1)(a) on 22 December 2009 and received fines of £275 and £675 and was disqualified from driving for 18 months and had his licence endorsed.

Sergeant Holmes further advised that as a result of an incident which took place on 16 July 2012, Mr MacLean was convicted under the Criminal Law (Consolidation) (Scotland)

Act 1995 Section 50A(1)(b) and (5) on 16 July 2012 and received a fine of £430 on 24 July 2012.

Sergeant Holmes also advised that as a result of an incident which took place on 2 March 2014, Mr MacLean was convicted of Assault to Injury on 3 March 2015 and received a fine of £400.

In terms of the protected matter, Sergeant Holmes advised that as a result of an incident which took place on 2 July 2019, Mr MacLean was convicted under the Road Traffic Act 1988 Section 3 on 7 October 2020 and received a fine of £540 on 1 December 2020.

QUESTIONS FROM APPLICANT

Mr MacLean advised that he had no questions.

MEMBERS' QUESTIONS

Councillor Kennedy asked Mr MacLean why he had not declared his previous convictions on his application form. Mr MacLean advised that as the charges were so long ago he did not think they needed to be disclosed. When questioned about the driving convictions, Mr MacLean advised that he had not realised that a driving conviction was a criminal conviction. He said that he had put all that behind him and that he had not been in trouble since. He said he wanted to better himself and earn some extra money. Mr MacLean confirmed that he understood now that he should have declared all his convictions on the application form.

Councillor Brown asked Mr MacLean why he did not think to declare the careless driving charge on his application form given this was an application for a taxi driver licence. Mr MacLean said that it was a simple mistake as he did not realise that a driving offence would be classed as a criminal conviction. He referred to the incident in question and advised that it had been an accident.

Councillor Green sought and received confirmation from Mr MacLean that the accident had occurred as a result of him being blinded by the sunlight. Mr MacLean advised that it had happened so fast. He said that he clipped a van mirror and panicked which caused him to go off the road.

Mrs MacFadyen pointed out to the Committee that as this particular conviction was 'spent' the Applicant would not have been required to disclose it on his application form.

Councillor Irvine sought and received confirmation from Sergeant Holmes that Section 3 of the Road Traffic Act 1988 related to careless driving without due care and attention.

Councillor Kennedy referred to some of the convictions in the past involving members of the public. He pointed out that carrying out the duties of a taxi driver would involve meeting members of the public. He asked Mr MacLean how his life had changed since these incidents had taken place. Mr MacLean advised that he had a partner and 2 children and that the majority of these incidents had occurred before he had children. He explained that he worked for Argyll and Bute Council and had a Heavy Goods Vehicle (HGV) Licence. Part of this role involved gritting the roads. He said that all his crimes were in the past and that he had since matured. Going forward he wanted to help his Uncle and earn some extra money.

Councillor Armour sought and received confirmation from Mrs MacFadyen that Mr MacLean did not need to declare the 2020 conviction on his application form. She confirmed that there were other convictions that should have been declared.

Councillor Green sought and received confirmation from Mr MacLean that being blinded by the sunlight had been a one off. He advised that in future, if this were to happen again, he would be more cautious, reduce his speed or stop, and try to find an alternative route to avoid being blinded.

Councillor Kennedy sought and received confirmation from Mr MacLean that he had accepted the charge of careless driving at Court and that the case did not go to trial. He confirmed he was charged under Section 3 of the Road Traffic Act 1988.

Councillor McCabe sought and received confirmation from Mr MacLean that he obtained his HGV licence after the incident in 2020. He advised that the Traffic Commissioner had allowed his licence as he needed it for his job.

Councillor Green sought and received confirmation from Mr MacLean that he had obtained his HGV licence towards the end of 2020 after the accident had occurred.

SUMMING UP

Police Scotland

Sergeant Holmes advised that he had nothing further to add.

Applicant

Mr MacLean advised that he had nothing further to add.

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

DEBATE

Councillor Green commented that the offences were regrettable, however, he had noted the dates and the Applicant's age at the time. He pointed out that Mr MacLean had just turned 18 at the time of the first offences and the ones in his early 20s were relatively minor in relation to driving. He referred to the most recent driving conviction and said that he was satisfied that Mr MacLean had learnt his lesson and from that he was minded to grant the licence.

Councillor Kennedy advised that looking at the whole case and what Mr MacLean had said about his change in behaviour and lifestyle, he would tend to concur with Councillor Green. He pointed out that Mr MacLean had a good job which he needed to keep. He said that he hoped that Mr MacLean had learnt from his past and that he was inclined to grant this licence.

Councillor Brown said that she agreed with what had been said and that Mr MacLean should be given a chance. She commented on him driving for a living with his HGV licence and that there had been no incidents since 2020. She confirmed that she would like to grant this licence.

Councillor Armour agreed with what had been said. He commented that Mr MacLean had been 18 years old and in his early 20's when the incidents occurred and that they were in the past and that he was a family man now. He advised that due to the previous convictions being a fair time ago and the circumstances around the most recent one regarding being blinded by the sunlight, he would be willing to agree to grant the licence.

Councillor Hampsey said she would agree with the previous comments made. Taking into consideration the age of Mr MacLean when the offences were made, and being encouraged to hear of his role currently working with the Council driving HGVs, she said this played quite a role in her willingness to grant this licence and that she would wish Mr MacLean well if it was granted.

DECISION

The Committee agreed to grant and Taxi Driver Licence to Mr MacLean and noted he would receive written confirmation of this within 7 days. It was further noted that the licence would not be issued until after 28 days due to the objection from Police Scotland.

(Reference: Report by Head of Legal and Regulatory Support, submitted and letters from Police Scotland dated 30 August 2023, tabled)