

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held in the COUNCIL CHAMBER, KILMORY, LOCHGILPHEAD
on WEDNESDAY, 22 FEBRUARY 2012**

Present: Councillor Daniel Kelly (Chair)

Councillor Gordon Chalmers	Councillor Donald MacMillan
Councillor Robin Currie	Councillor Roderick McCuish
Councillor Mary-Jean Devon	Councillor Alex McNaughton
Councillor David Kinniburgh	Councillor Al Reay
Councillor Alister MacAlister	

Attending: Charles Reppke, Head of Governance and Law
Graeme Forrester, Solicitor
Mr MacLean, Applicant
Mr Ferguson, Objectors' representative
Ms Munro, Objector
Ms Lawrie, Objector

1. APOLOGIES FOR ABSENCE

Apologies for absence were intimated from Councillors Rory Colville, Neil Mackay, James McQueen and Bruce Marshall.

2. DECLARATIONS OF INTEREST

None declared.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION TO AMEND STREET TRADER'S LICENCE (C MACLEAN, CAMPBELTOWN)

The Chair introduced himself and invited those present at the meeting to do likewise and then outlined the procedure that would be followed.

Mr Reppke advised that one objection had been received from A & L Barr of Plaice for Taste, Campbeltown outwith the 28 day period allowed for objections and representations to be made and that Mr Ferguson, in attendance to speak on behalf of the objectors, was available to explain why this objection was submitted late. It was for the Committee to decide whether or not they would wish take this late objection into consideration.

Mr Ferguson advised that he had no substantial information as to why the objection had been submitted late and could only assume that notification of the application had not come to his clients' attention in time. Ms Munro confirmed that it took Mr and Mrs Barr a while to source this information.

The Committee agreed to take into consideration the late objection and a copy of this was circulated to Members.

The Chair invited the Applicant to speak in support of his application.

Applicant

Mr MacLean advised that he had submitted an application to change his vehicle as the trailer used at the moment was unstable on windy days and that he was losing a lot of days business because of the wind. He referred to a previous application submitted for change of vehicle which had been refused and that no reason had been given to him at that time why the application had been refused and that he had no opportunity of commenting on the refusal. He referred to his request for the removal of the condition from his licence which requires that there is a distance of at least 100 metres between his van and that of Ms Munro and explained that he was looking for this request to be considered only if his application for change of vehicle was refused. He advised that he was not interested in starting any "burger wars" and that he had made the request as this would allow him to move his current vehicle to a place sheltered from the wind. He also referred to his request to be able to sell fish and chips advising that his was the only burger van he knew of on the West Coast of Scotland that was unable to supply chips.

The Chair invited the Objectors to question the Applicant.

Objectors

Mr Ferguson referred to the request to sell fish and asked the Applicant if he had previously been refused permission to sell fish in the past. Mr MacLean advised no.

Mr Ferguson referred to the 100 metre rule, and asked Mr MacLean where he would position his van if this condition was removed from his licence. Mr MacLean confirmed that he would not be moving his van right up close to Ms Munro's and that he would be moving it just far enough to gain shelter from the wind.

The Chair invited the Objectors to speak.

Objectors

Mr Ferguson advised that he was in attendance to speak on behalf of Ms Munro and referred to the details of his letter submitted which outlined the reasons for Ms Munro's objections to this application. He referred to the Committee's decision in October 2011 to refuse another application submitted by another applicant to substitute a vehicle and that it was his understanding that the Committee were dealing with the same proposed vehicle as was considered at the Hearing in October 2011.

He advised that the main reason for objection to this application was the declining available trade in Campbeltown for hot food take away and that there were less customers with less money to spend. He advised there was an over provision of such services in Campbeltown and read out a list of 15 establishments providing such facilities. He advised that Mr MacLean's current proposal was an attempt to claw in a greater share of the market and in doing so would put other traders at risk. He referred to there being poor relations between the parties involved and that there would be difficulty in working side by side. He advised that due to the current market conditions Ms Munro had put

her vehicle up for sale and that nothing had changed in respect of market conditions since the previous application was considered in October 2011. He referred to the larger vehicle enabling customers to come inside the van and to the use of LPG for cooking and advised that it would take people longer to clear the area in an emergency.

Mr Ferguson advised that he was also in attendance to speak on behalf of Ms Lawrie and asked the Committee to take into consideration her employment concerns.

Mr Ferguson also advised that Mr and Mrs Barr's business was struggling badly due to a general downturn in trade and that they had both had to take on other employment to make ends meet.

Mr Ferguson advised that there was already an over provision of hot food premises in Campbeltown and that the Applicant was driven by a desire to obtain a larger share of limited available market and that his various clients were looking for this application to be refused.

The Chair invited the Applicant to ask the Objectors questions.

Questions to Objectors

Mr MacLean advised that it was his understanding that as from this afternoon Ms Munro's business had been sold and asked if this were the case. Ms Munro advised that as far as she was aware this was not the case.

The Chair invited Members to ask the Applicant and Objectors questions.

Members' Questions

Councillor Devon referred to the size of the proposed new vehicle and asked the Applicant how customers would gain entry to it. Mr MacLean advised that there was a flight of aluminium stairs with a rail at the rear of the vehicle.

Councillor MacMillan asked for clarification on the condition of traders not being allowed to trade within 100 metres of each other if selling the same types of food. Mr Reppke advised that this was a general condition and there could be variations and that he would clarify this at the end of the Hearing.

Councillor Devon asked how many customers could enter the proposed new vehicle at the same time and Mr MacLean advised about 5.

Councillor Devon asked if the entrance to the vehicle was also the exit. Mr MacLean advised yes and that there was also another exit at the other end of the vehicle which could be used in an emergency, just for staff.

Councillor Devon referred to Mr MacLean's request to sell fish and chips and asked if there was a demand for this type of food. Mr MacLean advised that there was a demand for chips but not fish.

Councillor Currie asked if Mr MacLean had a licence to sell burgers and Mr MacLean advised that he currently had a licence to sell hot and cold filled rolls

but could not sell chips.

Councillor Currie referred to the size of the proposed vehicle and asked Mr Ferguson what the difference was if a vehicle was 16 ft, 15 ft or 18 ft and asked what his concern was in this respect. Mr Ferguson advised that a larger vehicle would allow for an increase in trading capacity and that the only logical reason for a larger vehicle was to increase trade.

Councillor Currie asked if there was over provision in the area and Mr Ferguson confirmed that his client advised there is and referred to the 15 establishments he had read out in his presentation.

Councillor Reay referred to Mr MacLean wishing to sell frozen fish and chips and asked for clarification on this. Mr MacLean advised that it was his intention to supply frozen fish and chips for storage reasons and that other establishments sold fresh fish. He confirmed that he would be happy to drop the request to sell fish from his application.

Councillor Chalmers asked for clarification that Mr MacLean was only looking to move his vehicle closer than 100 metres to Ms Munro's vehicle if his request to change to a larger vehicle was refused and Mr MacLean confirmed that this was the case.

Councillor Chalmers asked Mr MacLean if his request to sell chips was so he could sell these along with burgers and Mr MacLean replied yes.

Councillor Kinniburgh asked Mr MacLean to confirm if he had a licence for the Esplanade and for Kinloch Road. Mr MacLean replied yes but that he did not have planning permission to sit at Kinloch Road and therefore was only allowed to trade there 28 days over the year.

Councillor Kinniburgh asked if moving to Kinloch Road would enable Mr MacLean to shelter from the wind and Mr MacLean replied yes but he would need to apply for planning permission and he would still be within 100 metres of Ms Munro's vehicle to shelter from the wind.

Councillor Kinniburgh asked how many days Mr MacLean had lost due to the weather and Mr MacLean replied over 50 days.

Councillor Kinniburgh asked Mr Ferguson if it was a fair comment that the 100 metre rule would need to be broken to trade on Kinloch Road. Mr Ferguson advised that it was an appropriate rule that the Council adopted in such situations and that there was may be scope for a modest reduction in this if this would assist Mr MacLean but overall the thrust of the objection is the new vehicle that is proposed and concern that parties should trade close to each other. Ms Munro advised that 9 years ago herself and Hawkins, another trader, had reached an agreement and took turnabout trading at the Esplanade and Kinloch Road. Ms Munro advised there was planning permission in place to trade on Kinloch Road and that this was for everyone not just herself.

Councillor Kinniburgh asked Ms Munro if it was possible to trade in Kinloch Road without the removal of the 100 metre rule and Ms Munro replied yes.

Councillor Chalmers asked Ms Munro if she would object to Mr MacLean selling chips but not fish. Ms Munro advised that she would not be happy with this as it would not stop at chips. She believed there was over provision and that this would affect everybody. Mr Ferguson advised that in relation to the Barrs, no.

Councillor McCuish referred to the size of the proposed new vehicle and asked Mr MacLean to confirm the size of his current vehicle. Mr MacLean advised it was 12 ft x 6 ft.

The Chair invited the Objectors and Applicant to sum up.

Summing Up

Objectors

Mr Ferguson advised that all the comments he needed to make were included in his presentation and that he would wish all 3 parts of the application refused.

Applicant

Mr MacLean advised that all he was trying to do was trade and that he was not trying to put people out of business. He confirmed he had customers and that he was unable to serve them during bad weather.

The Chair asked the Applicant and Objectors to confirm they had received a fair hearing and they all confirmed this to be the case.

Debate

Councillor Kinniburgh asked Mr Reppke for clarification on the 100 metre rule. Mr Reppke advised that this rule originally applied to premises and that attributed to why the types of food being sold needed to be known. He referred to the agreement reached 9 years ago and advised that the parties involved would have come to this agreement outwith the formal licensing process. He confirmed it would be possible to accommodate a van in Kinloch Road 100 metres away from Ms Munro but it may adversely affect Mr MacLean's trading position.

Councillor MacMillan advised that he thought the current arrangements should stay in place.

Councillor Reay asked for clarification on whether or not there was a limit to the size of vehicles that could be used and also sought clarification on whether they would need to be DDA compliant. Mr Reppke advised that he was not aware of any legal requirements regarding the size of vans and that it was for the Committee to decide the appropriate size of vehicle for the location. He advised that in respect of being DDA compliant this did not apply to vehicles only buildings. He advised that different legislation would apply to vehicles which was not a concern of the Committee and would be for the Applicant to sort out if there was an issue.

Councillor Currie advised that he could not understand why the size of the vehicle would matter to the Objectors and could understand why the 100 metre

rule should apply. He advised that what types of food being sold should not be an issue either as this would mean more choice for the customer. He advised that he supported the Applicant's request as it would mean a more sturdier vehicle would be used.

Councillor Kinniburgh sought clarity regarding the previous application that was referred to and asked why Mr MacLean had not been notified of the decision to refuse this application within 7 days. Mr Reppke advised that the circumstances around this would need to be checked and that it was normal practice to issue the decision of the Committee within 7 days and it was possible that the correspondence had gone missing in the mail and was sorry if that was the case. He also advised that the previous application had been submitted by Mr MacPherson and that the letter advising of the decision of the Committee would have been sent to Mr MacPherson and not Mr MacLean.

Councillor McAlister advised that the length of the proposed vehicle would be shorter than the combined length of the current trailer when attached to a car and that this was something to take into consideration.

Councillor Reay referred to the possibility of over provision and asked if there was any guidance on over provision. Mr Forrester advised that there was nothing in the Act to take a view on over provision and that this was a matter for Members to take account of.

Councillor Kelly referred to the number of existing hot food take away establishments in Campbelltown.

Councillor Currie advised that it stretched the imagination to suggest Tesco's and the Coop were in the hot food take away category.

Councillor Chalmers advised that there were well established reasons for the 100 metre rule and that he saw no reason to waive this. He referred to Mr Ferguson's comments about the size of the proposed vehicle and thought that it was not so much the size of the van but the types of food being sold that would be an issue. He advised that a more sturdier van would be better for the customers and that he was inclined to allow the larger vehicle. He advised that he would also be minded to allow some latitude for types of food.

Councillor McCuish advised that the Committee were not looking at a different application here and that in his mind it was no different to the application before the Committee in October which was refused and that the situation has not changed since then.

Councillor Devon advised that the Objectors have already demonstrated that there is over provision in the area with the potential loss of 7 part time jobs and that the Applicant did not justify a need for the variation to his licence and that she was inclined to refuse.

Councillor McNaughton agreed with Councillor McCuish and that it seemed no time since the debate on the previous application and that he saw no reason to change from the decision made regarding that application.

Councillor Chalmers also agreed with Councillor McCuish that this was the same

application with a different applicant and that he was inclined to go with a refusal.

Councillor Reay advised that it was his view that there was a case for over provision and that it may well put others out of business if the application was approved and that he agreed with Councillor Devon's analysis of this.

Councillor Kelly advised that there were 3 parts to the application and that they each should be dealt with separately.

Motion in respect of Proposed New Vehicle

The request to change the license to allow the use of larger vehicle should be refused.

Moved by Councillor Devon, seconded by Councillor McCuish

Amendment in respect of Proposed New Vehicle

The request to change the licence to allow the use of larger vehicle should be approved.

Moved by Councillor Chalmers, seconded by Councillor Currie

The Motion was carried by 7 votes to 3 and the Committee resolved accordingly.

The request for the removal of condition from licence that requires a distance of at least 100 metres between Applicant's van and that of Ms Munro was unanimously refused.

Motion in respect of allowing the sale of chips

The request to be allowed to sell chips should be allowed.

Moved by Councillor Chalmers, seconded by Councillor Currie

Amendment in respect of allowing the sale of chips

The request to be allowed to sell chips should be refused.

Moved by Councillor Reay, seconded by Councillor Devon

The Amendment was carried by 7 votes to 3 and the Committee resolved accordingly.

Decision

Agreed to refuse the Applicant's request to amend his street trader's licence in respect of all 3 parts and that the Applicant will be notified of this decision within 7 days.

(Reference: Report by Head of Governance and Law, submitted)