

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING
COMMITTEE held BY MICROSOFT TEAMS
on WEDNESDAY, 26 JUNE 2024**

Present: Councillor Gordon Blair (Chair)

Councillor John Armour
Councillor Graham Hardie

Councillor Fiona Howard
Councillor Peter Wallace

Attending: Shona Barton, Governance Manager
Katie Clanahan, Solicitor
Alison MacLeod, Licensing Standards Officer
Andrea Halo, Applicant
Jenny Peet, Applicant's Agent

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Jan Brown, Audrey Forrest, Kieron Green, Amanda Hampsey, Daniel Hampsey, Mark Irvine, Andrew Kain, Paul Kennedy, Liz McCabe and Dougie Philand.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982, THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022 (A HALO, KIRN, 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 Mrs Halo and her Agent, Ms Peet joined the meeting by MS Teams.

The Objector had advised that he did not wish to attend the hearing.

The Chair invited the Licensing Standards Officer to speak to the terms of the report.

Thereafter the procedure set out in Appendix 6 of the report was followed and the Chair invited the Applicant to speak in support of her application.

APPLICANT

Ms Peet spoke on behalf of the Applicant. She advised that it was their understanding that using a car to access the property would be ruled out. She pointed out that there were other bed and breakfast establishments in place which stated that there was no parking available which did not necessarily rule out visitors staying. She advised that Mrs Halo's property was close to the ferry and that there were also bus services at the bottom on the hill on Marine Parade and that the property was close enough for visitors to walk

into town and walk to and from the ferry. She said that Dunoon was a high profile tourist destination with a big emphasis on outdoor pursuits. She advised that Mrs Halo proposed promoting the area as a place to visit for outdoor pursuits such as cycling, wild water swimming and walking. She advised that people could come by ferry with their bicycles and arrive at the property that way. She advised that Mrs Halo also proposed a minimum stay so there were less people coming every week.

She advised that there may be room to allow this licence with these plans in place which would bypass the issue of traffic. Recognising that it would be difficult to police, she also suggested the installation of CCTV to monitor traffic coming up and down the lane.

Ms Peet advised that Mrs Halo had been all around the town taking photographs of where cars had to come out of the same sort of junctions and it had been noted that this happened quite a lot around the town and as far as they were aware there have been no accidents. She asked the Committee to consider granting the application on condition that the property not be accessed by car and for Mrs Halo to make it clear on her website that parking was not available. It could also be pointed out that there was plenty of parking available on Marine Parade and Alexandra Parade so that those who were physically fit could walk to the property in order to minimise traffic on the narrow lane.

MEMBERS' QUESTIONS

Councillor Howard asked how many residents had cars that used the lane on a regular basis. Ms Peet advised that there were 6 or 7 residents but not all used cars. The property at the bottom of the lane did not use the lane as access to their property was straight off the main road. She said there were 4 properties accessed by car via the lane.

Councillor Howard sought and received confirmation from Ms Peet that the property could be accessed from the top road via a footpath. Ms Peet said she regularly used that footpath rather than walk up from Marine Parade.

Councillor Howard sought and received confirmation from Ms Peet that there was a road and parking at the top of this footpath.

Councillor Wallace sought and received confirmation from Ms Peet that this was a public road with no restrictions and that it was used by local bus services.

Councillor Wallace sought and received confirmation from Ms Peet that the property was approximately 120 metres from parking at Marine Parade and Alexandra Parade. It was noted that access from the top road down the foot path would be shorter. Mrs Halo presented a map on screen to show the location of the property, the access road and the footpath down from George Street.

Councillor Howard asked if there were any statistics of accidents in addition to the one mentioned by the Objector in the paperwork before the Committee. Ms Peet advised that she was not aware of any accidents in the 3.5 years she has lived here, with the exception of the accident mentioned in the objection. She advised that she frequently turned left and sometimes right to access the lane and has had no issues. She said that from personal experience she has had no issues and that as long as you positioned yourself on the road and signalled, people would wait. She said she had not experienced anyone undertaking her.

Councillor Blair sought and received confirmation from Ms Peet that the speed limit on Marine Parade and Alexandra Parade was 30 mph.

Councillor Wallace sought and received confirmation from Ms Peet that Mrs Halo did not own the access lane but had shared right of access.

Councillor Blair commented that he was aware that there was a lot of parking available on Marine Parade. He asked the Applicant if any thought had been given to installing lighting on the access road to assist people walking up and down. Ms Peet advised that Mrs Halo's husband was an electrician and would be happy to install some sort of lighting if this was deemed necessary.

Councillor Blair asked if other lane users would have any difficulty with lighting being installed. Ms Halo advised that the other residents had been approached about this and while they did not think it would be necessary, they would not have any issue with lighting being installed.

Councillor Howard asked if there was a pavement at the bottom of the lane beside the main road, as it did not look like there was from the aerial view provided in the Agenda Pack. Mrs Halo presented a photograph on screen and pointed out that there was a footpath there. Ms Peet advised of the pavement being wide enough for walkers to use it with a pram.

SUMMING UP

Applicant

Ms Peet advised that Mrs Halo has sought to address road safety concerns including providing photographic evidence of the proposed entrance and suggesting that parking at the property be restricted. She advised that she would be committed to making it clear to guests that there would be no parking. She also suggested the installation of a convex mirror to help and the cutting back of the high hedge.

Ms Peet asked the Committee to consider granting the licence with permission for people to use cars and failing that to give consideration to allowing people to come without their cars.

At this point Councillor Blair sought comment from the Council's Solicitor in respect of what the Committee could and could not do.

Ms Clanahan advised that she would like to make it clear that if this licence was granted today it could not be used and bookings could not be accepted until planning permission has been granted.

Ms Clanahan advised that in terms of property law the lane was privately owned by each property which adjoined the lane. She said it would not be possible to impose a condition on the licence regarding installation of a convex mirror or lighting as you could not impose conditions that would affect third parties.

In regard to any condition applied about not being able to use cars on the lane, she advised that it was unlikely that the Committee could do this as it could be seen considered as overreaching. She pointed out that it would also be difficult for the Applicant to police.

In terms of the safety aspect as highlighted in the report and raised by the Agent, it would not only be an issue of safety for cars using the lane but also a safety issue for pedestrians using the lane when cars might be on the lane. Ms Clanahan highlighted that it would be for Committee Members to determine the risk to safety of both car users and pedestrians on the basis of the information before the Committee today.

She advised that the Applicant could have it stated on the website that cars could not park at the property and that they could not traverse the lane by car with an explanation why. She said the Applicant could have difficulty policing that and Committee should consider whether this should just be a recommendation from the Committee, rather than a condition on the licence as there was a risk of overreaching.

She referred to the suggestion of installing CCTV and advised that care would need to be taken to ensure the CCTV was only directed at the Applicant's property. She said this was a condition that would be open to Members to place on the licence.

Councillor Wallace sought and received confirmation from Ms Clanahan that it would not be possible to condition where visitors should park as it was her opinion that would be overreaching. She said the property had a right of access to the lane so could be used and the Applicant had a right to park at the property. She said it was a legal grey area.

Mrs Halo and Ms Peet confirmed that they had received a fair hearing.

DEBATE

Councillor Howard said that she was having trouble coming to a decision on this. She said she really could not picture what the problem was and asked if it would be possible to arrange a site visit. Ms Clanahan advised that if a decision was not made on this application today it would become a deemed grant.

Councillor Armour said he did not have any issue with the problems raised by the Roads Officer. He said he did not think it would be feasible to allow any vehicle to come to the property via the lane other than those already using it. He said that if there was a way to grant this licence without any parking or any vehicle using the lane he could support that. He advised that as the application stood at the moment he could not support it.

Councillor Hardie said he agreed with Councillor Armour that as the application stood now he could not support it being granted but if it was feasible to have some sort of condition that no vehicles could use the lane that would be good.

Councillor Wallace advised that he agreed with colleagues. He said he could not see a way for the licence to be granted using the lane at the front. He said he would like to see if a condition could be added that stated access should be via the foot path at the back.

Councillor Blair asked the Council's Solicitor if there were any conditions or restrictions the Committee could put on this licence. Ms Clanahan said that there might be a possible in terms of parking at the property but it was a grey area. She confirmed that no condition could be placed on the property that specified which route people should use to access the property. She said that would be ultra vires.

Councillor Blair asked the Council's Solicitor if the Applicant could make it a condition herself on her website and highlight in her advertising materials where car parking was

available elsewhere in the town. Ms Clanahan advised that the Applicant could make this request and it may go some way to addressing the issue but the Applicant would have difficulty policing that. She questioned what the Applicant would do if people arrived in their cars and parked at the property or came with their car to drop off luggage. She advised that it was open to the Members to grant the licence on the basis of the assurances given by the Applicant but this was not a condition the Committee could put in place as it would be overreaching in terms of where to allow people to drive their cars.

Councillor Hardie advised that he would like to move a Motion to reject the application on the basis of what was said in the report and the roads issues. He said it was too complex at this stage.

It was established that there was no seconder to this Motion and Mrs Barton advised that it was for the Members to decide if they wished to formulate a Motion to grant the licence.

Councillor Howard said she would like to grant the application with conditions attached that no road access was available for cars and that guests should arrive on foot. Ms Clanahan said the Committee could not do that. She advised that they may be able to require that there is no parking at the property but that is as far as the Committee could go. She said the Committee could not ask people not to drive there.

Councillor Armour asked if it would be possible to place a condition on the Applicant to put on her website that the lane cannot be used by car to access the property.

The Chair ruled, and the Committee agreed, to adjourn the meeting at 10.55 am so that the Council's Solicitor could seek advice on Councillor Armour's question.

The Committee reconvened at 11.00 am.

Ms Clanahan it was a grey area and would be for the Members to make a decision on. She said an option open to Members would be to make this a recommendation rather than condition but there would be no guarantee that a vehicle would not drive up to the property. It would not be possible to bring this back to a future hearing solely on the basis that the recommendation had not been followed. A further hearing could only be triggered if, for example, complaints were received.

Ms Clanahan stressed again that if this licence was granted Mrs Halo would not be able to operate without planning permission being in place and if she did operate without this permission she could be seen by the Committee as not a fit and proper person.

Councillor Howard sought and received confirmation from Ms Clanahan that if this licence was refused today and the Applicant was subsequently granted planning permission she would need to wait one year before applying again for a short-term let licence. Ms Clanahan advised that Mrs Halo had been advised of this and that she had also been advised that if she had withdrawn this application before it was refused she could have re-applied at any time when, and if, planning permission was granted.

Councillor Wallace asked if the Committee could impose a condition that nothing happens until planning permission is granted. Ms Clanahan advised that as the planning process was a separate regime that would likely be overreaching and would also not be necessary as the licence could not be used until planning permission was in place. She advised that if the licence was granted and then operated before planning permission was in place, then enforcement action would likely be taken by planning and they would inform the

licensing team if this happened. A decision would then be taken on whether or not to convene a hearing to revoke or vary the licence.

Further discussion took place on how to proceed.

The Chair ruled, and the Committee agreed, to adjourn the Committee at 11.15 am to seek advice on a competent Motion to approve the application.

The Committee reconvened at 11.30 am.

The Chair read out a Motion which was unanimously agreed to and became the decision of the Committee.

Decision

The Committee:

1. Agreed to grant the Short-term Let Licence, subject to the following condition:-

The Licence Holder takes reasonable steps to prevent parking within the property or otherwise accessing the property via motor vehicle; and

2. Noted that the Council's Solicitor had sought and received confirmation from the Applicant that she understood that this licence could not be used until planning permission was granted. The Applicant also confirmed she understood that if the licence was used without planning permission she would likely be subject to enforcement action and that would be taken into consideration by the Committee in terms of determining whether or not she was a fit and proper person to hold such a licence if a decision was taken to hold a hearing to revoke or vary the licence.

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