

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD  
on WEDNESDAY, 24 JANUARY 2018**

**Present:** Councillor David Kinniburgh (Chair)

Councillor Rory Colville	Councillor Roderick McCuish
Councillor Robin Currie	Councillor Jean Moffat
Councillor Mary-Jean Devon	Councillor Alastair Redman
Councillor Audrey Forrest	Councillor Sandy Taylor
Councillor George Freeman	Councillor Richard Trail
Councillor Donald MacMillan	

**Attending:** Charles Reppke, Head of Governance and Law  
Sheila MacFadyen, Senior Solicitor  
Graeme MacMillan, Trainee Solicitor  
Remo Romolo Serapiglia, Applicant  
Patrick Campbell-Corcoran, Applicant's Solicitor  
PC Alison Simpson, Police Scotland

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gordon Blair, Lorna Douglas and Graham Archibald Hardie.

**2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982: APPLICATION FOR AMENDMENT TO A STREET TRADER'S LICENCE (R SERAPIGLIA, LARBERT)**

The Chair welcomed everyone to the meeting and introductions were made. He then outlined the procedure that would be followed.

Charles Reppke referred to written materials received from the Applicant's Solicitor which he advised would be circulated to the Members.

Mr Reppke also advised that a late objection to the application had been received from Mrs Potter and as she was not present to explain the reason for her late objection, Mr Reppke confirmed that in her letter she had advised that she had been unaware of this application and that was why her objection was late.

The Chair invited the Applicant to advise if he felt this late objection should be taken into consideration. The Applicant's Solicitor, Patrick Campbell-Corcoran stated that they did not feel that the late objection should be taken into consideration. He referred to the dates when the notice of the application was advertised and the deadline for submission of responses. He pointed out that this objection was 30 days late and should not be taken into account.

The Chair invited the Members of the Committee to consider whether or not the late objection should be taken into account. Mr Reppke confirmed, when asked, that the late objection was dated 21 January 2018 and a signed copy was received on 23 January 2018.

Councillor Currie advised that he did not think the late objection should be taken into consideration.

Councillor Freeman referred to notices of application being displayed in the local offices and that the local community were not aware of when these notices would be displayed. He stated that he felt the objection should be taken into consideration.

The Committee agreed not to take the late objection into consideration.

Having moved an Amendment which failed to find a seconder, Councillor Freeman asked for his dissent from the foregoing decision to be recorded.

The Chair invited the Applicant's Solicitor to speak in support of the application.

## **APPLICANT**

Mr Campbell-Corcoran advised that this hearing was regarding Mr Serapiglia's Street Traders Licence. He explained that Mr Serapiglia ran an ice cream van and has done so since the early 1980's and that the business has been in his family since the 1950's. He referred to the difficulties Mr Serapiglia was having trading in Luss. He pointed out that Mr Serapiglia held 6 other licences but the issue was only arising in Luss. He confirmed that Mr Serapiglia was seeking the removal of condition 17, the thrust of which did not permit Mr Serapiglia to trade within 100m of any establishment that sold similar produce. He referred to the paperwork circulated to the Members which summarised a court case – McCluskey vs North Lanarkshire Council and also provided details of a response to a FOI request to Argyll and Bute Council. He explained the details of the Court Case which sought to reverse a decision of a local licensing authority imposing a condition in terms of paragraph 18(1) of Schedule 1 to the Civic Government (Scotland) Act 1982 prohibiting trading within a distance of 250m from all secondary schools between 8 am – 5 pm on any school day during term time. The intention behind the condition was the promotion of healthy eating among children. He read out various paragraphs from the Sheriff Court judgement in the case (2016 S.L.T. (Sch Ct) 31) and said that it was found that the decision of the local authority was ultra vires. He also referred to the statement in the report which said that "licensing for the "optional" activities should be introduced only where it is shown to be necessary to prevent crime, to preserve public order or safety, or protect the environment. The purpose of licensing is not to restrict trade or competition". He advised the Members that condition 17 on Mr Serapiglia's licence had the effect of rendering him unable to trade in Luss and that he has not done so for some time. He said that Mr Serapiglia was unable to deal with his customers in Luss and it was not viable for him to keep checking the stock sold by nearby shops. He referred to the FOI response from Argyll and Bute Council which confirmed that this was a standard condition imposed as standard practice on street trader's licences. He advised that his client had a right to know what was legal and what was not. He questioned what 100m meant – did it refer to a measurement as the crow flies; or was it a line drawn from the van to the door step of a shop. He also asked if it was regarding ice cream in general or specific flavours of ice cream. He said that his submission was that condition 17 should be removed

from his client's licence and that the Committee had the power to do this. He referred to the Police letter which advised of a red light issue from 2017. He explained that Mr Serapiglia did not think the light had been red. He thought it was amber and that it was unsafe to stop. The case went to court and Mr Serapiglia was convicted and he had now put that behind him. He advised that there was no objection from the Police in respect of relevant convictions. He said that his client had 6 other licences and the only difficulty he had was in Luss. He advised that his client believed the local traders there were trying to protect their patch. He advised that there was no compelling issue to have this condition which restricted trade.

## **POLICE SCOTLAND**

PC Alison Simpson referred to a letter of representation from the Chief Constable which advised of a conviction received by the Applicant on 28 September 2017 as a result of an incident which took place on 18 June 2016.

## **MEMBERS' QUESTIONS**

Councillor McCuish referred to Mr Serapiglia's current application being due for renewal in June 2018 and he asked his Solicitor if this would not be a more appropriate time to apply for the removal of the condition. Mr Campbell-Corcoran advised that June was still a while off and it could potentially mean a decision not being made until the autumn. He pointed out that Mr Serapiglia has not been able to trade in Luss at all because of this condition.

Councillor Colville sought and received confirmation from Mr Reppke that the hearing held last year was not to do with the 100m rule and that the details of that hearing should be disregarded for this current application.

Councillor Freeman sought and received confirmation from Mr Reppke that if condition 17 was removed from Mr Serapiglia's licence this would apply to all the locations across Argyll and Bute listed on his licence and not just Luss.

Councillor Moffat sought and received confirmation from Mr Campbell-Corcoran that there were other shops in Luss selling ice cream.

Councillor Devon referred to the various paragraphs from the Sheriff Court report which Mr Campbell-Corcoran had read out and she commented that she believed that condition 17 was for licensing purposes and she sought and received further comment on this from Mr Campbell-Corcoran as to why he did not believe this was the case. He referred to the statement made in the report that a condition should only be attached in order to prevent a crime or public disorder.

Councillor Trail sought advice about the rationale behind condition 17. Mr Reppke explained that it was to ensure that street traders did not trade within 100m of shops selling similar goods. He advised that this condition has been in existence since the former Council resolved to licence street traders under the Civic Government Act. He said that this was a condition that many other Councils have adopted in the past and that many still had it.

Councillor Trail asked what the reasons were for the separation. He pointed out that there was nothing to stop ice cream shops setting up close to other ice cream shops.

Mr Reppke advised that this was something for the Members to consider during the debate.

Councillor Taylor referred to the Applicant's Solicitor saying that this was not a licensing issue and asked for Mr Reppke's opinion. Mr Reppke advised that it was a matter for the Committee to consider whether the clause had a proper purpose.

Councillor Currie asked the Applicant if it was his submission that competition rules should apply. He commented that there was nothing to stop a shop opening next door to another shop and selling the same goods and he asked the Applicant if this should also apply to street traders. He also referred to getting a tape measure out each time a new shop opens and he asked the Applicant if he was right to suggest that condition 17 was a burden. Mr Campbell-Corcoran replied that in terms of competition he could see no reason why a shop can open up but a street trader could not. He said that it seemed unusual for a street trader to be saddled with additional burdens which restrict competition and trade. He referred to paragraph 87 in the Sheriff Court report which said that the purpose of licensing was not to restrict trade. He referred to his client being obliged to take a tape measure out every time and questioned how he could plan his trade. He suggested that there was real risk of him committing an offence under this Act, given the current condition.

Councillor Freeman said that it was his understanding that the 100m rule did not apply to shops because they paid non domestic rates and a street trader did not. He asked Mr Reppke if he could confirm that this was the case. Mr Reppke advised that he could not comment, on that view.

Councillor Freeman referred to only one street trader licence having condition 17 removed and this was on Mull and this was because it was argued that the 2 adjacent traders did not offer similar goods. He commented that this condition was added to all street trader licences across Argyll and Bute and asked the Applicant's Solicitor if he believed this to be the case. Mr Campbell-Corcoran replied that judging from the FOI response this seemed to be applied across the board. He said the fact that one licence had the condition removed was neither here nor there. He suggested that there may be quite a few of these applications in the pipeline. He said that his reasons for bringing this case was because he believed it was still within the power of the Council to amend the condition.

Councillor Freeman sought and received confirmation from the Applicant's Solicitor that he duly accepted that the information provided in the FOI response was accurate and that barring one licence all the others had the 100m rule attached.

Councillor Redman referred to consumer choice and asked what Mr Serapiglia's weekly footfall of customers was. Mr Serapiglia advised that it was difficult to say as it depended on the weather etc. He confirmed that he had enough customers to survive and that there was a large demand for his product.

Councillor McCuish referred to the timeline between Mr Serapiglia's road traffic incident and the case coming to court and he asked why Police Scotland had not reported this at the hearing last year. PC Simpson replied that they had not been asked to talk. Mr Reppke explained the circumstances around the previous hearing being called which did not involve the Police.

Councillor Colville referred to paragraph 87 of the Sheriff Court report and advised that he would not find anything which differentiated between 100m and 250m and he asked if the decision made by the Sheriff in respect of 250m would also have applied if the distance was 100m. Mr Campbell-Corcoran advised that he did not think 100m or 250m was relevant. He said that the argument had the same underlying principle that there was some sort of restriction. He said that if the condition was not for a licensing purpose then it was ultra vires and the Council did not have the powers to attach it.

Councillor Colville said that the court case was quite specific about trading around schools. He asked if the Sheriff could take the same decision in respect of this case. He asked if this case made it enforceable.

Councillor Moffat advised that it may be helpful if someone could advise why the 100m restriction was put in place in the first place. She asked why Argyll and Bute Council put in place the 100m rule for street traders. Mr Reppke advised that this was a standard condition which has been in existence since it was resolved to licence street traders prior to 1986.

Councillor Freeman said that the Civic Government (Scotland) Act refers to conditions that can be attached and that is one that is there and not just Argyll and Bute can apply it. He referred to conditions having to apply to licensing and said that the North Lanarkshire case was clearly not about licensing and that it was about the promotion of healthy eating in school children. Mr Reppke advised that it was not correct that all conditions were set out in the Act. He advised that Councillor Freeman was correct to say that the Council could impose conditions. He also advised that Members needed to judge the matter before them and if a proposed decision was legal or not legal this would be dealt with at that time.

Councillor McCuish asked from a purely business point of view what this condition meant for Mr Serapiglia. Mr Serapiglia advised that it could mean him getting into trouble with the law. He said that people relied on the service he provided and that it was a shame to jeopardise that. He confirmed that if affected his business.

Councillor Colville referred to pages 23 and 24 of the Sheriff Court report which referred to the sale of food outside schools. He asked the Applicant's Solicitor to point out anything that reinforced the argument that any distance limit applied. Mr Campbell-Corcoran advised he was not saying any distance limit. He acknowledged that the Council had the power to apply conditions to a licence and that this was restrained by the Act itself. He said that the Sheriff tried to work out the restrictions and stated that these were prevention of crime and to preserve safety. He gave the example that the condition could apply to trading near a bus stop to prevent the bus driver's sightlines being restricted. He advised that the court case referred to obesity. He suggested that in this case it was a blanket policy. He said that if it was applied to protect local business the Sheriff was saying that you could not do that. He advised that it was his submission that this was the case here.

Councillor Currie asked the Applicant's Solicitor if he agreed that he has confused some of the Committee by producing these documents. He said that the Committee were not here to discuss the McCluskey case. He suggested that the Applicant's case was simply that he wished condition 17 to be removed because of the burden it was putting on his business. He suggested that there was a huge difference between an ice cream van which was mobile and a burger van which sold unhealthy

food. Mr Campbell-Corcoran confirmed that his client was asking for condition 17 to be removed because it was burdensome and onerous and prevented his client from providing a service in Luss.

## **SUMMING UP**

### **Police Scotland**

PC Simpson advised that she had nothing further to add.

### **Applicant**

Mr Campbell-Corcoran advised that he hoped that he had made his client's position clear that condition 17 was preventing him trading in Luss. He said there was plenty of trade in Luss and there was a high demand and that he would not be stealing customers. He pointed out that the business has been in the family for a long time and that this condition was too onerous. Mr Serapiglia advised that he was just an ordinary person trying to get on in life like everyone else. He said that he was just trying to do his job and that it was very difficult when people came up to the van to annoy you and that he did not want this. He also advised that he did not want to keep coming back before the Committee and that it was a big deal to come here for a day.

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

## **DEBATE**

Councillor Kinniburgh sought and received confirmation from Mr Reppke that a lot of licences would be due for renewal in the near future. Mr Reppke confirmed that a substantial body of renewals across a range of licences will be due and that these would be looked at from July 2018. Councillor Kinniburgh advised that he thought it would be more appropriate to consider a review of that condition at that time.

Mr Reppke stated that he understood the views of the Applicant's Solicitor and said that he did not entirely agree with all of these. He confirmed that there was a plan to bring to Committee before June a report asking the Committee to look at some of the issues regarding some of the standard conditions that the Council had and that Members would be invited to consider whether they would be appropriate for renewal or if there needed to be changes. He confirmed that the plan was to bring forward this report before the renewal applications came forward.

Councillor Freeman commented that the Applicant's Agent continued to refer to Luss. He pointed out that this was not a Luss issue as the licence related to lots of other areas across Argyll and Bute and if the condition was removed this would apply across Argyll and Bute. He pointed out that in June 2017 it was agreed that Mr Serapiglia's licence should remain unchanged until June 2018. He said that if they were dealing with one street trader then they should all be treated the same. He advised that the Committee should be given the opportunity of considering all the conditions. He confirmed that he thought the decision taken in June 2017 should remain and that the licence should remain unchanged until it was up for renewal.

Councillor Redman advised that he took the view that choice was good. He said that he liked the idea of choice as a consumer. He referred to the Applicant's Solicitor

mentioning stealing customers. He advised that customers would go where they wished if someone did a good job and sold a good product at a competitive price. He advised that the Committee should not be interfering with a person's livelihood or business.

Councillor Currie advised that the reason the Committee met last year was because of an alleged nuisance and it was not to do with conditions. He advised that he was supportive of removing condition 17 to allow free trade. He advised that if they were anywhere else than Luss these vehicles would be going around housing schemes with their bells chiming. He commented that Luss was jam packed with tourists gasping for ice cream and that it was unreasonable to put on a condition preventing trading within 100m. He said that it was his opinion that it was burdensome and unreasonable and that he would be supportive of removing it. He suggested that instead of waiting on other applications coming in, this case could be a pilot to see if it worked.

Councillor Moffat advised that she agreed with the views of Councillor Redman but she was inclined to go with the view of Councillor Freeman. She referred to dealing with precedent. She said there was a need to look at condition 17. She advised that it was grossly unfair for someone to buy or rent a premises and to start selling the same as a van outside. She said that vans should not be stopped from coming round. She said that she felt that condition 17 needed to be looked at and if it was taken away just now it would need to be taken away from everyone. She pointed out that this would not just apply to ice cream vans but to all street traders. She said that if the Committee took the decision today to remove condition 17 for this business then she believed the flood gates would open for all other street traders looking for the same. She said that the Committee should go ahead with Councillor Freeman's proposal and wait so that the Committee can review this in a considerate manner.

Councillor Colville confirmed that he was of a similar view to Councillors Moffat and Freeman. He advised that the Committee may need to remove this condition because of the court case but he was of the view that the Committee should hesitate to remove for just one at this moment in time. He commented that this case seemed to relate to one place, Luss. He said that he had no wish to restrict an Applicant's wish to trade in Luss and that there must be separate solution.

Councillor Sandy Taylor left the meeting at this point as he had another appointment.

Councillor Trail advised that he concurred with Councillor Freeman as the Committee needed to consider the implications of this issue.

Councillor McCuish advised that he took the opposite view. He asked why the Committee could not remove the condition till June and then it would fall in line with other licences when they came forward for renewal. He asked if it would be possible to remove the condition just for Luss. Mr Reppke advised that the Applicant was asking for the removal of the 100m rule and Members should deal with that. He confirmed that the application was for the complete removal and that Members should determine that. He said that if the Committee did not agree to that today there could be the opportunity to apply again.

Councillor McCuish asked if the condition could be removed till June. Mr Reppke advised that as the application was due for renewal then it would only last until that time.

Councillor Devon advised that whilst she had sympathy for the Applicant and the impact on his business, she referred to the Committee previously refusing a street trader licence for an ice cream van in Oban as there was already an ice cream van. She confirmed that she supported Councillors Trail and Freeman and that the licence should run its course until June. She said that the Committee's remit was to protect and to make sure licensing laws were adhered to.

Councillor Kinniburgh confirmed that he had listened to all that had been said. He said that he had formed an opinion which did not quite go to the extent of reconsidering in June. He said that what was clear to him was the need to review condition 17 and some others.

### **Motion**

To agree to continue consideration of this application to allow the Committee time to consider a report on the general issue of conditions and that a report on this should be brought to the PPSL Committee in March and that thereafter the Committee would resume consideration of this application.

Moved by Councillor David Kinniburgh, seconded by Councillor Jean Moffat

### **Amendment**

To agree to remove condition 17 from Mr Serapiglia's street trader's licence.

Moved by Councillor Roderick McCuish, seconded by Councillor Alastair Redman

The Motion was carried by 8 votes to 3 and the Committee resolved accordingly.

### **DECISION**

The Committee agreed to continue this application until March following consideration of a report on the general issue of conditions.

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