



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Cunninghame House,
Irvine.

31 July 2014

Licensing Committee

You are requested to attend a Special Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 6 AUGUST 2014** at **2.00 p.m.**, to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

- 1. Declarations of Interest**
Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.
- 2. Civic Government (Scotland) Act 1982: Licensing Matters**
Submit report by the Chief Executive on Hearings to be determined and applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).
- 3. Licensing of Houses in Multiple Occupation (HMOs) under Housing (Scotland) Act 2006, Part 5**
Submit report by the Chief Executive on matters arising (copy enclosed).
- 4. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8**
Submit report by the Chief Executive on Landlord Registration matters (copy enclosed).

Licensing Committee

Sederunt: Ronnie McNicol (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
Ian Clarkson
Catherine McMillan
Alan Munro
Donald Reid
Robert Steel
Vacancy

Chair:

Attending:

Apologies:

Meeting Ended:

NORTH AYRSHIRE COUNCIL

Agenda Item 2

6 August 2014

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982: Licensing Matters**

Purpose: To advise the Committee of (a) Hearings to be determined; and (b) applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982.

Recommendation: That the Committee considers and determines the matters before it.

1. Introduction

1.1 In terms of the Civic Government (Scotland) Act 1982, the Council, as Licensing Authority, requires to determine issues in respect of the grant, renewal or suspension of licences.

1.2. A meeting of a local authority is open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under:

(a) the rule about 'confidential information' (as defined) or

(b) by Resolution.

(Local Government (Scotland) Act 1973, Section 50A, and especially Subsection 50A(4)).

1.3. Under the Resolution procedure, the Committee is entitled to resolve to exclude from the Meeting the press and the public for any one or more items of business on the grounds that otherwise "Exempt Information" of any type described in Part 1 of Schedule 7A to the Act might be disclosed.

1.4. The types of "Exempt Information" which may arise during Committee business include those described in Paragraphs 14 and 15 of that Schedule:

14. "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."

15. "The identity of a Protected Informant" (where "Protected Informant" is defined in Part III to mean a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.)

1.5. Such a Resolution, once made, continues until the end of the Meeting unless the Committee earlier Resolves to revoke it.

2. Current Position

Appendix A:

Licences where Hearings have been convened;

Appendix B:

Applications for the grant or renewal of licences and permits; and

3. Proposals

3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

4. Implications

Financial Implications

4.1 There are possible financial implications in relation to the refusal of any application.

Human Resource Implications

4.2 None

Legal Implications

4.3 There are possible legal implications in relation to the refusal of any application.

Equality Implications

4.4 None

Environmental and Sustainability Implications

4.5 None

Implications for Key Priorities

4.6 None.

5. Consultations

- 5.1 Consultations have been undertaken with Police Scotland, Scottish Fire and Rescue, and the appropriate Council Services.

6. Conclusion

- 6.1 The Committee is requested to consider and dispose of the matters before it.

A handwritten signature in black ink, reading 'Elma Murray' in a cursive style.

ELMA MURRAY
Chief Executive

Reference : PAT

For further information please contact William O'Brien, Solicitor (Licensing)
on 01294 324305

Background Papers

None

APPENDIX A

Hearings

Hearing 1	Taxi Driver's Licence	TDL/00462
Applicant and Address	Matthew Imrie 13 Ellisland Place Saltcoats KA21 6ED	
Suspension Hearing 2	Taxi Driver's Licence	TDL/01787
	David Brown 9 Broughton Green Irvine KA11 2EJ	
Hearing 3	Taxi Driver's Licence	TDL/01915
Applicant and Address	Joseph Donnelly 4 Barony Court Girdle Toll Irvine KA11 1AX	
Hearing 4	Public Charitable Collection	PCC
Applicant and Address	Anne Jaconelli Trident House 175 Renfrew Road Paisley PA3 4EF	
Hearing 5	Public Charitable Collection	PCC
Applicant and Address	Philip W Chinery 8 Morris Street Largs KA30 9HR	

APPENDIX B

Applications for Licences/Renewal of Licences

Type of Licence/Reference Number	Details of Applicant	Comments
PCC/	Kilwinning Community Events Donald Reid 6 Gladstone Road Saltcoats KA21 5LD	Outwith Council Policy
STL/E/260 (New)	David Hastings 113 Craufurdland Road Onthank Kilmarnock KA3 2HX	Police Observation received
TDL/01710 (New)	Steven Doran 3 Mongomerieston Place Kilbirnie KA25 6AD	Police Observation received
TDL/01790 (Renewal)	David Allen Denholm 45 Mains Avenue Beith KA15 2AT	Police Observation received
TDL/01919 (New)	Nigel Treverton 29 Broughton Green Lawthorn Irvine KA11 2EJ	Police Observation received
TDL/01916 (New)	Martin Muir 42 Adams Avenue Saltcoats KA21 6AW	Previous convictions declared

NORTH AYRSHIRE COUNCIL

Agenda Item 3

6 August 2014

Licensing Committee

Subject: Licensing of Houses in Multiple Occupation (HMOs) under Housing (Scotland) Act 2006, Part 5

Purpose: To inform the Committee of matters arising.

Recommendation: 1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report is to be considered;
2. That the Committee should consider the circumstances in the Schedule(s) to this Report and take appropriate decisions.

1. Introduction

- 1.1. The Licensing Committee has delegated authority from the Council to administer the Council's functions under the scheme for Licensing of Houses in Multiple Occupation ("HMOs") under the Housing (Scotland) Act 2006, Part 5.
- 1.2. The persons named in the attached Schedules are either Applicants for Licences, or are already licensed, or are unlicensed (each person has one Schedule). The rented houses concerned are listed in the Schedules.

Exempt Information

- 1.3. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or other or both of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 14: *"Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."*

Paragraph 15: *"The identity of a Protected Informant."*

- 1.4. "Protected informant" is defined in Part III of the Schedule and means:

"a person giving the Local Authority information which tends to show that—

(a) a criminal offence,

- (b) a breach of statutory duty,*
 - (c) a breach of planning control, within the meaning of section 123(1) of the Town and Country Planning (Scotland) Act 1997, or*
 - (d) a nuisance,*
- has been, is being or is about to be committed".*

- 1.5. For example, Paragraphs 14 or 15 would apply where it was alleged:
 - (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
 - (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his legal obligations, or
 - (c) that the Landlord had defaulted in another obligation applying to Landlords, or
 - (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).
- 1.6. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).
- 1.7. Accordingly, if a Resolution is made:
 - (a) the Minutes must exclude so much of the proceedings during which the public were excluded (Section 50C);
 - (b) the publicly-accessible Minutes shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 1.8. Although the Committee's Agenda and connected Reports are generally to be made public (Section 50B(1)), publication of the Schedules to this Report (but not the Report itself) has been withheld under Section 50B(2), as the proper officer has the opinion that they relate to items during consideration of which the Meeting is likely not to be open to the public, i.e. that the Committee is likely to make a Resolution to exclude the public during consideration of the Schedules.
- 1.9. Although the Schedules have not been published, in each case the individual relevant persons have been given appropriate copies and notice of the Committee Meeting.

The HMO Licensing Scheme

- 1.10. The general rule is that a person wishing to let out a HMO must be Licensed by the Council. "HMO" means any living accommodation, occupied by three or more persons who are not all members of the same Family or of one or other of two Families as their only or main residence (Student flats are deemed 'main residences': Section 125(4)(b)).
- 1.11. The requirement to be Licensed is subject to many exceptions, e.g. an HMO is exempt from the requirement to be licensed if it is occupied only by the owners of the HMO either alone or together with—
- (a) any persons in the same Family as any of those owners, and
 - (b) any number of other persons who are unrelated to any of those owners but who are members of the same Family or of one or other of two Families
- 1.12. The HMO legislation applies to
- (a) a house (a separate dwelling, other than a mobile home or any other living accommodation which is not a building), and also
 - (b) premises where the occupants share one or more of the "basic amenities" with each other.
- The "basic amenities" are—
- (i) a toilet,
 - (ii) personal washing facilities, and
 - (iii) facilities for the preparation or provision of cooked food.
- 1.13. The Licence lasts three years. A person must re-apply within that time to remain Licensed. An HMO licence cannot be renewed; there must be a new application, but if the new application is made before the old Licence expires, the old Licence is deemed to continue while the new Application, and any related Appeal, is pending.
- 1.14. There are four potential Grounds for Refusal:
- (a) Preliminary refusal: breach of planning control (Section 129A)
 - (b) Suitability of applicants and agents (Section 130)
 - (c) Suitability of living accommodation (Section 131)
 - (d) Overprovision (Section 131A)

In an Application for a new Licence, all Grounds apply. When the Committee is considering whether or not to Revoke a Licence already granted, Grounds (b) and (c) are relevant, as is any allegation of breach of Licence condition.

1.15. Once a Licence has been granted, the Council is entitled to revoke it on the grounds that:

- (a) the licence-holder or his agent is unsuitable;
- (b) the living accommodation is no longer suitable for occupation as an HMO;
- (c) that any condition of an HMO licence has been breached.

1.16. Under the HMO Licensing scheme, the 'fit and proper' considerations are the same as those in the Landlord Registration scheme under the Antisocial Behaviour (Scotland) Act 2004.

1.17. If a Landlord rents an HMO without being Licensed, or if the Licence is revoked, two things can happen:

- (a) the Council may make an Order under 2006 Act, Section 144 (often called a 'Rent Suspension Order' or 'RSO'), meaning:
 - (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and
 - (ii) any Housing Benefit stops being paid.
- (b) the Landlord can be prosecuted for a criminal offence under 2006 Act, Section 154 (as amended by the Private Rented Housing (Scotland) Act 2011). The penalty is a fine up to £50,000.

2. Current Position

2.1 The circumstances of individual cases are described in the Schedules.

3. Proposals

3.1 The Committee should consider each case and decide what action should be taken.

4. Implications

Financial Implications

- 4.1 If a RSO is made, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit if any is claimed for the house.

Human Resource Implications

- 4.2. None.

Legal Implications

- 4.3. Where the Council makes any decision to refuse or revoke a Licence, to make a RSO, or to refuse to revoke a RSO, the Applicant or Landlord may appeal to the Sheriff.

If the Council makes a RSO, only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected.

For example:

- (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the RSO);
- (b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;
- (c) the Landlord continues to have repairing obligations.

Equality Implications

- 4.4. None.

Environmental Implications

- 4.5. None.

Implications for Key Priorities

- 4.6. None.

Community Benefit Implications

- 4.7. Preventing unfit or unlicensed Landlords from operating, or preventing unsuitable accommodation from being used for human habitation, may contribute to the wellbeing of the community. Preventing Housing Benefit being paid to unlicensed Landlords safeguards public funds.

5. Consultations

- 5.1 No consultations are appropriate. Depending on the circumstances, the Schedules contain information supplied by the Police, NAC Departments, or other agencies.

6. Conclusion

- 6.1 The Committee is invited to take the actions recommended.



ELMA MURRAY
Chief Executive

Reference : GEN23/WOB

For further information please contact William O'Brien, Solicitor (Licensing) on 01294-324345.

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 4

6 August 2014

Licensing Committee

Subject:	Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8
Purpose:	To inform the Committee of Landlord Registration matters.
Recommendation:	<ol style="list-style-type: none">1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report is to be considered;2. For each Review Proposal described in the Schedules: That the Committee should consider each case and: (a) decide whether or not the Relevant Person should be removed from the Register; (b) if removing, to decide whether or not to make an order under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house referred to in the Registration, or to delegate authority to the Clerk to make such an order.

1. Introduction

- 1.1. The Licensing Committee has delegated authority from the Council to administer the Council's functions under the Landlord Registration Scheme regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.
- 1.2. The persons named in the attached Schedules are either Applicants for Registration, or are already Registered, under the 2004 Act (each person has one Schedule). The rented houses concerned are listed in the Schedules.

Exempt Information

- 1.3. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. Depending on the circumstances of the individual case, the Schedules contain:
 - (a) information about the Relevant Person's criminal convictions or their prosecution; and/or

- (b) information that suggests that he is not a 'fit and proper' person by reason of his conduct in relation to alleged Anti-Social Behaviour; and/or
 - (c) information that suggests that he is not a 'fit and proper' person by reason of his breach of the legal obligations on Landlords; and/or
 - (d) information about conduct involving nuisance or crime (whether or not there have been any criminal Court proceedings).
- 1.4. The information is covered by one or other or both of the following categories of "Exempt Information" under Schedule 7A:
- Paragraph 14: *"Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."*
- Paragraph 15: *"The identity of a Protected Informant."*
- 1.5. "Protected informant" is defined in Part III of the Schedule and means:
- "a person giving the Local Authority information which tends to show that—*
- (a) a criminal offence,*
 - (b) a breach of statutory duty,*
 - (c) a breach of planning control, within the meaning of section 123(1) of the Town and Country Planning (Scotland) Act 1997, or*
 - (d) a nuisance,*
- has been, is being or is about to be committed".*
- 1.6. For example, Paragraph 15 would apply where it was alleged:
- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
 - (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his legal obligations, or
 - (c) that the Landlord had defaulted in another obligation applying to Landlords, or
 - (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

- 1.7. The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).
- 1.8. Accordingly, if a Resolution is made:
- (a) the Minutes must exclude so much of the proceedings during which the public were excluded (Section 50C);
 - (b) the publicly-accessible Minutes shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 1.9. Although the Committee's Agenda and connected Reports are generally to be made public (Section 50B(1)), publication of the Schedules to this Report (but not the Report itself) has been withheld under Section 50B(2), as the proper officer has the opinion that they relate to items during consideration of which the Meeting is likely not to be open to the public, i.e. that the Committee is likely to make a Resolution to exclude the public during consideration of the Schedules.
- 1.10. Although the Schedules have not been published, in each case the individual Relevant Persons have been given appropriate copies and notice of the Committee Meeting.

The Landlord Registration Scheme

- 1.11. The general rule is that a person wishing to let out a house must be Registered with the Council. Registration lasts 3 years. A person must re-apply within that time to remain Registered. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration. The Act specifies conditions which Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.12. Once a Landlord has been Registered, the Council is entitled to review the Registration. If not satisfied that the 'fit and proper' condition for Registration is met, the Council is obliged to remove Registration (Section 89).

1.13. If a Landlord rents a house without being Registered, or if Registration is removed, two things can happen:

(a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or 'RPN'), meaning:

(i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and

(ii) any Housing Benefit stops being paid.

(b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

In addition, if Registration is removed, the Landlord can be prosecuted if he tries to obtain a new Tenant, e.g. by advertising the house for letting, or discussing terms with a prospective Tenant: Section 93(2). The penalty is a fine up to £50,000.

2. Current Position

2.1 The Clerk has received information set out in the Schedules. This information suggests that there may be a basis for the Committee concluding that the Relevant Person is not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed.

3. Proposals

3.1. The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.

3.2. If the Committee decides to refuse an Application, or to remove a Registration, and if it is satisfied that the house is presently occupied by a Tenant, it should then decide whether or not to make an order under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house referred to in the Registration.

3.3. If it is not so satisfied, it may delegate authority to the Clerk to make a RPN if and when the Clerk is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he was unregistered, the Committee may wish to delegate authority to the Clerk to issue a RPN if the Clerk later receives information that any house which is currently covered by the Registration is occupied by a Tenant.

4. Implications

Financial Implications

- 4.1 If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3. Where the Council makes any decision to refuse or revoke Registration, to make a RPN, or to refuse to recall a RPN, the Applicant or Landlord may appeal to the Sheriff.

If the Council issues a RPN, only the Tenant's liability to pay rent will cease. The other rights and obligations of the Lease will be unaffected: Section 94(3) & (8).

For example:

- (a) the Tenant will continue to have whatever security of tenure he already had (he cannot be evicted for non-payment of rent where that non-payment is due to the Notice);
- (b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;
- (c) the Landlord continues to have repairing obligations.

Equality Implications

- 4.4. None

Environmental Implications

- 4.5. None.

Implications for Key Priorities

- 4.6. None.

Community Benefit Implications

- 4.7 Preventing unfit Landlords from operating may contribute to the wellbeing of the community. Preventing Housing Benefit being paid to unregistered Landlords safeguards public funds.

5. Consultations

- 5.1 No consultations are appropriate. Depending on the circumstances, the Schedules contain information supplied by the Police, NAC Departments, or other agencies.

6. Conclusion

- 6.1 The Committee is invited to take the actions recommended.



ELMA MURRAY
Chief Executive

Reference : WOB/GEN09

For further information please contact William O'Brien, Solicitor (Licensing) on 01294-324345.

Background Papers

None