



NORTH AYRSHIRE
COUNCIL

Cunninghame House,
Irvine.

27 March 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 **MONDAY 31 MARCH 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. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8

Submit report by the Chief Executive on the circumstances relating to an Application for Landlord Registration (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

31 March 2014

Licensing Committee

Subject: **Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8**

Purpose: To inform the Committee of the circumstances relating to an Application for Landlord Registration.

Recommendation: That the Committee should (a) decide whether or not to make a Resolution excluding the public from the meeting at which this Report is to be considered; (b) consider the Application and (i) decide whether or not to grant it; and (ii) if refusing, 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 Application, or to delegate authority to the Solicitor (Licensing) 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 Applications for Registration have been made by the Applicant listed in the attached Schedule. The Application relates to the rented houses listed in the Schedule.

1.3 The Committee will consider information about the Applicant's criminal convictions or their prosecution. Such information is "Exempt Information":

"Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime." (as defined by Local Government (Scotland) Act 1973, Schedule 7A, Part 1, Paragraph 14).

1.4 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)).

- 1.5 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 proper officer shall make a written summary of the proceedings without disclosing the 'Exempt Information' (Section 50C(2)), and that summary shall be included with the publicly-accessible Minutes (Sections 50C(2) & 50C(1)(b)).
- 1.6 In Landlord Registration cases, the summary will record:
- (a) applicant name,
 - (b) addresses of any house for which Registration was sought,
 - (c) the Committee decision to grant or refuse the application,
 - (d) the Committee decision whether or not to make a Rent Penalty Notice in relation to that house or houses.
- 1.7 Although the Committee's Agenda and connected Reports are generally to be made public information 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 under Section 50A(4) to exclude the public during consideration of that item of business.
- 1.8 Accordingly the Schedule to this Report (which give details of such information in relation to the Applicant) is not part of the publicly-available Agenda, although the individual Applicant has been given notice of the information and of the Committee Meeting.

The Landlord Registration Scheme

- 1.9 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.
- 1.10 The Act specifies conditions which prospective 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.

- 1.11 The Applicant's convictions are relevant to the consideration of whether or not he is 'fit and proper' to be Registered. Section 85(2) lists material which is relevant, including material which shows that the Landlord, Agent or other person applying for registration has:
- (a) committed any offence involving fraud or other dishonesty, firearms, violence or drugs or has committed a sexual offence;
 - (b) practised unlawful discrimination in, or in connection with, the carrying on of any business; or
 - (c) contravened any provision of any Letting Code, the law relating to housing, or landlord and tenant law.
- 1.12 In any case, the Council may take into account any material (even if not expressly listed in the statute) if it considers that the material is relevant to the 'fit and proper' question (Section 85(4)).
- 1.13 Where the Council is not satisfied that the conditions for Registration are met, the Council is obliged to refuse Registration (Section 84(2)(b)).

Rent Penalty Notice

- 1.14 If a Landlord rents a house without being Registered, or if Registration is revoked, then 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.
- 1.15 In addition, if Registration is revoked, 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 of up to £50,000.

2. Current Position

- 2.1. The Application has not been determined. Most such Applications are approved under delegated powers, but in the case described in the Schedule the Solicitor (Licensing) has information indicating that the exercise of delegated powers is not appropriate.
- 2.2. The legislation does not provide for police vetting in all cases, but Scottish Government Guidance recommends sampling. Accordingly, a proportion of Applications are sent to the Police for comment. Where the Police report that the Applicant has either no convictions, or convictions which may be disregarded under the Scheme of Delegations previously approved by the Committee, the Application is granted. Alternatively, if the Police report material which makes the use of delegated powers inappropriate, the case is referred to the Committee.
- 2.3. In addition, where the Solicitor (Licensing) acquires information of any other material, e.g. that the Applicant has breached housing law, the case may be referred to the Committee.

3. Proposals

- 3.1. The Committee should consider the Application and decide whether or not to grant it.
- 3.2. If the Committee decides to refuse, and if it is satisfied that the house is presently occupied by a Tenant, it should 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 Application.
- 3.3. If it is not so satisfied, it may delegate authority to the Solicitor (Licensing) to make a RPN if and when the Solicitor (Licensing) 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 Solicitor (Licensing) to issue a RPN if the Solicitor (Licensing) later receives information that the house is occupied by a Tenant.

4. Implications

Financial Implications

- 4.1 If a 'Rent Penalty Notice' is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive HB.

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 'Rent Penalty Notice', 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 Implication

- 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. The Schedule contains information supplied by the Police or other agencies.

6. Conclusion

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



ELMA MURRAY
Chief Executive

Reference : MCG

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

Background Papers

None