

Cunninghame House,  
Irvine.

22 September 2016

### **Licensing Committee**

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in the Council Chambers, Cunninghame House, Irvine on **WEDNESDAY 28 SEPTEMBER 2016** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

*Please note that, whilst the items on this Agenda are public documents, consideration of some reports at the meeting may necessitate the passing of a resolution to exclude from the meeting the press and public in terms of Section 50A(4) of the Local Government (Scotland) Act 1973.*

**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. Minutes (Page 5)**

The accuracy of the Minutes of the meeting held on 7 September 2016 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

- 3. Civic Government (Scotland) Act 1982: Licensing Matters (Page 11)**  
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).
- 4. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 (Page 19)**  
Submit report by the Chief Executive on Landlord Registration matters (copy enclosed).
- 5. Urgent items**  
Any other items which the Chair considers to be urgent.

---

## Licensing Committee

---

Sederunt: Ronnie McNicol (Chair)  
Tom Marshall (Vice Chair)  
Robert Barr  
John Bruce  
John Easdale  
Grace McLean  
Catherine McMillan  
Alan Munro  
Donald Reid  
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:



Licensing Committee  
7 September 2016

**Irvine, 7 September 2016** - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

**Present**

Ronnie McNicol, Tom Marshall, Robert Barr, John Easdale, Catherine McMillan and Donald Reid.

**In Attendance**

P. Kelly, Team Manager (Anti Social Behaviour and Community Safety) and E. Anderson, Team Manager (Private Sector Housing) (Place); W. O'Brien, Solicitor (Licensing), K. Sharkey, Solicitor (Contracts and Licensing), A. Toal, Administrative Assistant and A. Little, Committee Services Officer (Chief Executive's Service).

**Also In Attendance**

Inspector B. Skimming and Sergeant G. Griffiths (Police Scotland).

**Chair**

Councillor McNicol in the Chair.

**Apologies for Absence**

John Bruce and Grace McLean.

**1. Chair's Remarks**

The Chair, in terms of Standing Order 9.3 agreed to vary the order of business to allow consideration of the Landlord Registration Application No. 5 as the first item within Agenda Item 4 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8).

**2. Declarations of Interest**

There were no declarations of interest by Members in terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors.

**3. Minutes**

The accuracy of the Minutes of the ordinary meeting of the Committee held on 17 August 2016 was confirmed, and the Minutes were signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

## **4. Civic Government (Scotland) Act 1982: Licensing Matters**

### **Part A: Hearings**

#### **4.1 Public Entertainment Licence (Temporary) - Kelburn Arts Ltd**

The applicant, having been duly cited to attend, was represented by Z. Shaw and A. Boyd.

Representatives from Police Scotland were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing. The representatives from Police Scotland addressed the Committee on the terms of a letter setting out proposed conditions and a recommendation in relation to the application, as previously intimated in writing to the applicant. Thereafter the applicant's representatives addressed the Committee on the issues raised in the Police letter and responded to questions. The representatives accepted the additional conditions suggested by the Police, and the exception that they wanted the time of Police attendance to be changed to 2030 - 0430. The applicant's representatives confirmed that the licensed event would end at 0.400, but they suggested that continuing Police presence would assist dispersal of event goers.

#### **Decision**

The Committee unanimously agreed to (a) grant the application subject to the Council's standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982, as modified in accordance with the Police recommendations, accepted by the applicant's representatives, subject to the exception relating to Police attendance times.

#### **4.2 Street Trader Operator's Licence - Cumbrae Kitchen**

The applicant, having been duly cited to attend was not in attendance.

The Solicitor (Licensing) set out the background to the Hearing and advised that the premises do not have a Food Safety Certificate as required by Civic Government (Scotland) Act 1982, Section 39(4).

#### **Decision**

The Committee unanimously agreed to refuse the application in terms of Section 39(4) of the Civic Government (Scotland) Act 1982.

## **5. Exclusion of the Public and Press**

The Licensing Committee, being of the view that it was likely, in view of the nature of the business to be transacted and the nature of the proceedings at the current meeting that if members of the public were present during consideration of that business there would be disclosure to them of 'Exempt Information', as defined in section 50J of and Schedule 7A, to the Local Government (Scotland) Act 1973, resolved under Section 50A(4) to exclude the public from that meeting and all other such meetings. The 'Exempt Information' concerned is that described in 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") (a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.)

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

Submitted report by the Chief Executive on the circumstances relating to applications for Landlord Registration under the 2004 Act:-

### **6.1 J. McD.**

The Registered Person, having been cited to attend, was not present or represented. The Committee were given copies of correspondence from his agent.

Representatives from the Council's Anti Social Behaviour and Community Safety and Private Sector Housing Teams were in attendance.

The Committee considered the case and information from Council Officers.

### **Decision**

The Committee unanimously agreed (a) under Section 89 to remove the Registered Persons from the Register; and (b) to delegate authority to the Clerk, the Solicitor (Licensing) or any Solicitor engaged in Landlord Registration to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the house included in the application in the event the property becomes tenanted.

### **6.2 W. B.**

The applicant, having been cited to attend, was not present but represented by Mr J. B.

The Solicitor (Licensing) set out the background to the application. The representative provided further information in relation to Mr B. and responded to questions.

The Committee considered the application and information provided.

### **Decision**

Councillor Marshall, seconded by Councillor Reid, moved that the application be granted and no Rent Penalty Notice issued. As an amendment, Councillor Barr, seconded by Councillor Easdale moved that the application be continued to a future meeting to allow the representative to seek legal advice.

On a division, there voted for the amendment 2 and the motion 4 and the motion was declared carried.

Accordingly, the Committee agreed (a) to grant the application; and (b) not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the property referred to in the Application.

### **6.3 S. C.**

The applicant, having been cited to attend, was not present.

The Committee considered the application and information from Council Officers.

### **Decision**

The Committee unanimously agreed (a) under Section 84(2)(b) to refuse to enter the applicant in the Register; and (b) to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the house included in the application.

### **6.4 B. McC.**

The applicant, having been cited to attend, was not present.

The Committee considered the application and information from Council Officers.

### **Decision**

The Committee unanimously agreed (a) under Section 84(2)(b) to refuse to enter the applicant in the Register; and (b) to delegate authority to the Clerk, the Solicitor (Licensing) or any Solicitor engaged in Landlord Registration to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the house included in the application in the event the property becomes tenanted.



## **6.5 D. K and I. B.**

The Registered Persons, having been cited to attend, were not present.

The Committee considered the application and information from Council Officers.

### **Decision**

The Committee unanimously agreed (a) under Section 89 to remove the Registered Persons from the Register; and (b) to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the house included in Registration.

The meeting ended at 11.10 p.m.



---

## NORTH AYRSHIRE COUNCIL

### Agenda Item 3

28 September 2016

#### Licensing Committee

---

**Title:** **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. Executive Summary

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. Background**

### **Appendix A:**

Licences where Hearings have been convened;

### **Appendix B:**

Applications for the grant or renewal of licences and permits

## **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**

<b>Financial:</b>	There are possible financial implications in relation to the refusal of any application.
<b>Human Resources:</b>	None
<b>Legal:</b>	There are possible legal implications in relation to the refusal of any application.
<b>Equality:</b>	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision.
<b>Environmental &amp; Sustainability:</b>	None
<b>Key Priorities:</b>	An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their cars, helps achieve one of the "High Level Outcomes" of the "NAC Community Planning Partnership Single Outcome Agreement 2013-17": "A Safe and Secure North Ayrshire".
<b>Community Benefits:</b>	Not applicable, as the Report does not relate to tendering or procurement exercises.

**5. Consultation**

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

A handwritten signature in black ink that reads "Elma Murray". The signature is written in a cursive, flowing style.

ELMA MURRAY  
Chief Executive

Reference : PAT

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

**Background Papers**

None



## Hearings

<b>Hearing 1</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00187 (New)</b>
Applicant and Address	Douglas <b>Wraith</b> 45 Hollywood Largs KA30 8SR	
<b>Hearing 2</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00189 (New)</b>
Applicant and Address	David <b>McBlain</b> 41/2 Caledonian Road Stevenston KA20 3LG	
<b>Hearing 3</b>	<b>Taxi Driver's Licence</b>	<b>TDL/02003 (New)</b>
Applicant and Address	Ravinder <b>Singh</b> 40 Bank Street Irvine KA12 0LP	
<b>Hearing 4</b>	<b>Taxi Driver's Licence</b>	<b>TDL/00937 (New)</b>
Applicant and Address	Carolyn Ann <b>Wright</b> 76 Rubie Crescent Irvine KA12 8HB	
<b>Hearing 5</b>	<b>Public Charitable Collection</b>	
Applicant and Address	<b>Hansel</b> Sheila McLean Broadmeadows Symington KA1 5PU	
<b>Hearing 6</b>	<b>Public Charitable Collections</b>	
Applicant and Address	<b>Be Child Cancer Aware</b> Tracey McCue St James Business Centre Linwood Road Room 115 Paisley PA3 3AT	

## Hearing 7

## Public Charitable Collection

Applicant and Address

**Ivy Fundraising Ltd**  
Anne Jaconelli  
Trident House  
175 Renfrew Road  
Paisley  
PA3 4EF



Applications for Licences/Renewal of Licences	
Type of Licence/Reference Number	Details of Applicant
TDL/00456 (Renewal)	Gordon <b>McGregor</b> 120 Argyle Road Saltcoats KA21 5AQ



---

## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 4**

**28 September 2016**

#### **Licensing Committee**

---

<b>Title:</b>	<b>Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8.</b>
<b>Purpose:</b>	To inform the Committee of Landlord Registration matters.
<b>Recommendation:</b>	<p>That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report and its Schedules is to be considered;</p> <p>For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and:</p> <p>(a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;</p> <p>(b) if appropriate, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house, or to delegate authority to the Clerk to issue such a Notice.</p>

---

#### **1. Executive Summary**

- 1.1 The Licensing Committee have 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
  - already Registered under the 2004 Act, or
  - are not Registered.

Each person has one Schedule. The rented houses concerned are listed in the Schedules.

Although the scheme under the Antisocial Behaviour etc. (Scotland) Act 2004 is described as "Landlord Registration", it is the fact that living accommodation is occupied that is important, not the question of whether or not a formal Lease has been entered into or rent paid or the occupier has the formal status of "tenant". The Act applies to both (i) a Lease and (ii) an Occupancy Arrangement, and most of the laws relating to rented housing also apply as much to occupiers as tenants.

For convenience, in this Report:

- (a) Applicants seeking Registration, and
  - (b) people who are already Registered ("Registered Persons"), and
  - (c) people who own houses occupied as residences,
- are called "Landlords" and the occupiers are called "Tenants".

#### Exempt Information

- 1.3 Landlord Registration cases are referred to the Committee using two documents:
  - (a) this Report, and
  - (b) one or more Schedules.
- 1.4 This is done because the Committee may consider that the cases involve "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A, so that information about the cases should not be disclosed to the public. The Committee are 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 Since the Committee have frequently made the necessary Resolution in the past, it is permissible for future Schedules to be withheld from publication. Although a 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 are likely to make a Resolution to exclude the public during consideration of the Schedules.

- 1.6. Accordingly, individual cases do not appear on the public agenda. The Report operates as a 'front page', and only appears once, regardless of how many individual cases are being referred to the Committee. The Report is general and sets out the legal structure. The Schedules detail the alleged facts of the particular cases and how the legislation appears to apply.
- 1.7. Depending on the circumstances of the individual case, the Schedules contain:
- (a) information about the Landlord'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).
- 1.8. 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."
- 1.9. "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".

- 1.10. 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).
- 1.11. Accordingly, if a Resolution is made the publicly-accessible Minutes:
- (a) must exclude so much of the proceedings during which the public were excluded (Section 50C); but
  - (b) shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 1.12. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.

#### The Landlord Registration Scheme

- 1.13. 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 - Registration is not automatically renewed. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.14. 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.
- 1.15. 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).

1.16. 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. Background**

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 Landlord 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 decide to refuse an Application, or to remove a Registration, and if they are satisfied that the house is presently occupied by a Tenant, they should then decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice' or 'RPN') in respect of any house referred to in the Application or Registration.
- 3.3. If they are not so satisfied, they may delegate authority to the Clerk to issue 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

<b>Financial:</b>	If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.
<b>Human Resources:</b>	None.
<b>Legal:</b>	<p>Where the Council makes any decision to refuse or revoke Registration, to make a RPN, or to refuse to recall a RPN, the Landlord may appeal to the Sheriff or the First Tier Tribunal.</p> <p>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) &amp; (8).</p> <p>For example:</p> <ul style="list-style-type: none"> <li>(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 RPN);</li> <li>(b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;</li> <li>(c) the Landlord continues to have repairing obligations.</li> </ul> <p>If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).</p>
<b>Equality:</b>	None.
<b>Environmental &amp; Sustainability:</b>	None.
<b>Key Priorities:</b>	None.
<b>Community Benefits:</b>	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. Consultation**

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



ELMA MURRAY  
Chief Executive

Reference : GEN09/WOB

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

### **Background Papers**

Schedules (not to be published - Local Government (Scotland) Act 1973, Section 50B(2))