



NORTH AYRSHIRE
COUNCIL

Cunninghame House,
Irvine.

16 May 2013

Licensing Committee

You are requested to attend a Meeting of the above mentioned Committee of North Ayrshire Council to be held in Committee Room 2, Cunninghame House, Irvine on **WEDNESDAY 22 MAY 2013** 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. Minutes

The Minutes of the Meeting of the Licensing Committee held on 20 March 2013 will be 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

Submit report by the Chief Executive on (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 (copy enclosed).

4. Civic Government (Scotland) Act 1982 - Advertising on Taxis and Private Hire Cars

Submit report by the Chief Executive on the circumstances which appear to be in breach of policy relating to advertising on Taxis and Private Hire Cars (copy enclosed).

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

Submit report by the Chief Executive on circumstances relating to a registered Landlord (copy enclosed).

6. 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
Ian Clarkson
Ruth Maguire
Alex McLean
Alan Munro
Donald Reid
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
20 March 2013

IRVINE, 20 March 2013 - At a Meeting of the Licensing Committee of North Ayrshire Council at 2.00 p.m.

Present

Tom Marshall, Robert Barr, John Bruce, Ian Clarkson, Ruth Maguire, Alex McLean, Donald Reid and Robert Steel.

In Attendance

W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant, and A. Little, Committee Services Officer (Chief Executive's Service) and P. Brennan, Specialist Environmental Health Officer (Development and Environment).

Also In Attendance

Inspector Conway and PC McLean (Strathclyde Police).

Chair

Councillor Marshall in the Chair.

Apologies for Absence

Ronnie McNicol and Alan Munro.

1. Declarations of Interest

There were no declarations of interest by Members in terms of Standing Order 16 and Section 5 of the Councillors Code of Conduct.

2. Minutes

The accuracy of the Minutes of the Meeting of the Licensing Committee held on 6 February 2013 was agreed and the Minutes were signed in accordance with paragraph 7(1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Civic Government (Scotland) Act 1982: Licensing Matters

Submitted report by the Chief Executive on (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.

The Committee agreed to dispose of these matters as indicated in the attached Appendix LC1.

The meeting ended at 4.20 p.m.

Part A

Hearings

1. PEL/163 Temporary Public Entertainment Licence - Kelburn Productions Ltd

Kelburn Productions have applied for a Temporary Public Entertainment Licence.

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant.

Decision

The Committee unanimously agreed to grant the application subject to conditions in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

2. STL/O/261 (Renewal 3 year licence) Duncan David McIntyre

The Committee, at its meeting on 21 November 2012, agreed on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Committee, at its meeting on 6 February 2013, unanimously agreed to continue the application to the next meeting.

The applicant, having been duly cited to attend, was in attendance and represented. Representatives from Strathclyde Police and Environmental Health were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of a letter dated 1 November 2012 setting out the observations of the Chief Constable of Strathclyde Police in relation to the application. The representative from Environmental Health then addressed the Committee outlining the terms of their report and a letter dated 16 January 2013. Thereafter, the applicant and his representative addressed the Committee on the issues raised and responded to questions.

The applicant and his representative and representatives of Strathclyde Police and Environmental Health then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3. STLO/325 Ian Ewing

The Committee, at its meeting on 21 November 2012, agreed on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Committee, at its meeting on 6 February 2013, unanimously agreed to continue the application to the next meeting.

The licenceholder, having been duly cited to attend, was in attendance. Representatives from Strathclyde Police and Environmental Health were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the licenceholder. The representatives from Strathclyde Police then addressed the Committee on the terms of a letter dated 1 November 2012 setting out the observations of the Chief Constable of Strathclyde Police in relation to the application. The representative from Environmental Health then addressed the Committee outlining the terms of a letter dated 16 January 2013. Thereafter, the licenceholder addressed the Committee on the issues raised and responded to questions.

The licenceholder and representatives of Strathclyde Police and Environmental Health then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed to suspend the licence in terms of Paragraph 11 (9) of Schedule 1 of the Civic Government (Scotland) Act 1982.

4. TDL/00435 (Grant 1 yr Licence) Fiona Wagstaff

The Committee, at its meeting on 6 February 2013, agreed on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was not in attendance. Representatives from Strathclyde Police were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of a letter dated 13 November and 2012 and 30 January 2013 setting out the observations of the Chief Constable of Strathclyde Police in relation to the application.

The representatives of Strathclyde Police then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

5. TDL/01499 (Grant 3 yr Licence) Garry Hamilton

The Committee, at its meeting on 6 February 2013, agreed on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was in attendance. Representatives from Strathclyde Police were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of a letter dated 28 November and 4 December 2012 setting out the observations of the Chief Constable of Strathclyde Police in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

The applicant and representatives of Strathclyde Police then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

6. TDL/01750 (Renewal 1yr Licence) Gavin Newell

The Committee, at its meeting on 6 February 2013, agreed on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licenceholder, having been duly cited to attend, was in attendance. Representatives from Strathclyde Police were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of letters dated 30 November and 13 December 2012 setting out the observations of the Chief Constable of Strathclyde Police in relation to the application. Thereafter, the licenceholder addressed the Committee on the issues raised and responded to questions.

The licenceholder and representatives of Strathclyde Police then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

7. TL/179 (Renewal 1yr Licence) Deborah Bell

The Committee, at its meeting on 6 February 2013, agreed on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The licenceholder, having been duly cited to attend, was in attendance. Representatives from Strathclyde Police were in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Strathclyde Police then addressed the Committee on the terms of a letter dated 11 January 2013 setting out the observations of the Chief Constable of Strathclyde Police in relation to the application. Thereafter, the licenceholder addressed the Committee on the issues raised and responded to questions.

The licenceholder and representatives of Strathclyde Police then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

Decision

The Committee unanimously agreed (a) on the presentation of a vehicle testing certificate prior to 22 May 2013, to grant the application subject to the conditions in terms of Paragraph 5 (1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982; and (b) in the event the vehicle testing certificate is not presented prior to 22 May 2013, to continue the application to the next meeting.

Part B

Applications for Licences/Renewal of Licences

1. TDL/00951 (New) Scott Barry Morley

The Committee unanimously agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

2. TDL/01706 (New) Neil Black

The Committee unanimously agreed on the basis of the information presented to proceed to a hearing in terms of Paragraph 4 (2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3. TDL/01821 Richard Laing

The Committee unanimously agreed to grant the application subject to conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

22 May 2013

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.

2. Current Position

Appendix A:

Licences where Hearings have been convened; and

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

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 Implications

4.5 None

Implications for Key Priorities

4.6 None

5. Consultations

5.1 Consultations have been undertaken with Police Scotland, Strathclyde 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.



ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

None

Hearings

Hearing 1	Private Hire Operator's Licence	PHCL/322 (New 1 year)
Applicant and Address	Samuel Balmer 10 Camphill Drive Kilbirnie KA25 6DX	
Vehicle Details	Ford Mondeo EO11 URH	
Hearing 2	Taxi Driver's Licence	TDL/00779 (New 1 year)
Applicant and Address	John Lusk 19 Campbell Place Dreghorn KA11 4HP	
Hearing 3	Taxi Driver's Licence	TDL/00951 (New 1 Year)
Applicant and Address	Scott Morley 70 Larch Terrace Beith KA15 1EN	
Hearing 4	Taxi Driver's Licence	TDL/01706 (New 1 year)
Applicant and Address	Neil Black 9 Nursery Place Ardrossan KA22 7BU	
Hearing 5	Taxi Driver's Licence	TDL/01829 (New 1 year)
Applicant and Address	Kevin Steven 40 Springhill Terrace Springside Irvine KA11 3AL	
Hearing 6	Taxi Driver's Licence	TDL/01840 (New 1 year)
Applicant and Address	Derek Griffiths 96 Hunter Avenue Ardrossan KA22 8BD	

APPENDIX B

Applications for Licences/Renewal of Licences

Type of Licence/Reference Number	Details of Applicant	Comments
LHCL/108 (New)	Malthurst Petroleum Limited 4 Grove Lane Epping CM16 4LP	Application outwith Council policy
Premises	Mayfield Service Station High Road Saltcoats	
Public Charitable Collection	Kilwinning Friends of the Ayrshire Hospice Patricia McNeill 9 Atholl Gardens Kilwinning KA13 7DQ	Application outwith Council policy
STL/E/248 (New)	Nico Bradley Serapiglia 75 Dundonald Crescent Irvine KA11 5AX	Failure to disclose convictions and Police Observation received in connection with the application.
TDL/01070 (New 1 year)	John Douglas Simpson 15 Inverclyde View Largs KA30 9DP	Failure to disclose convictions and Police Objection received in connection with the application.
TDL/01613 (Renewal 3 Years)	Peter Andrew Strachan 60 Douglas Street Largs KA30 8PT	Failure to disclose a conviction during the term of his licence.
TDL/01624 (Renewal 1 Year)	James English Rafferty 61 Herbertson Crescent Irvine KA12 0QW	Failure to disclose conviction during term of licence and Police Observation received in connection with the application.
TDL/01834 (New 1 year)	Graeme Reid 137 Leven Place Castlepark Irvine KA12 9PB	Failure to disclose convictions and Police Observation received in connection with the application.

TDL/01836 (New 1 year)	Gavin Kerr Cousar 9 Campbell Place Dreghorn Irvine KA11 4HD	Police observation received in connection with this application.
TDL/01837 (New 1 year)	Mohammed Asli 20 Sophia Crescent Irvine KA12 9BL	Failure to produce qualification in English language.
TL/085 (Renewal 3 years)	Albert Lamberton 32 Elm Park Ardrossan KA22 7BZ	Failure to disclose convictions during term of licence and on application form. Police Observation received in connection with the application.

NORTH AYRSHIRE COUNCIL

Agenda Item 4

22 May 2013

Licensing Committee

Subject:	Civic Government (Scotland) Act 1982 - Advertising on Taxis and Private Hire Cars
Purpose:	To inform the Committee of circumstances which appear to be in breach of Policy.
Recommendation:	That the Committee considers these circumstances and revises its Policy.

1. Introduction

- 1.1 The 1982 Act, Section 14 regulates the display of advertising on Private Hire Cars (PHCs), in the sense of 'advertising' as meaning 'notices for public information identifying PHCs'.

Accordingly Government Guidance issued in 1983 was:

'the Secretary of State regards basic advertisements that a vehicle is a taxi or private hire car - such as displays of the name of the firm and its telephone number - as generally being in the public interest, because it permits ready identification' (SDD Circular 6/1983, para. 2.29 of Appx. A, as substituted by SDD Circular 25/1986)

- 1.2 The 1982 Act does not regulate advertising in the sense of 'commercial advertising' (e.g. adverts for shops, restaurants or service-providers).

- 1.3 The starting point for any discussion of commercial advertising is the European Convention on Human Rights:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” (ECHR, Protocol 1, Article 1).

- 1.4 The general system of licensing is itself a “control”, but it is not open to individual licensing authorities to impose arbitrary restrictions. Any restriction must be justified by a consideration of the public interest. There are relevant provisions of the legislation which authorise some degree of restriction in the interests of public safety:

(a) Section 10(2) prevents a Licensing Authority from Granting or Renewing a Taxi Licence or a PHC

“unless they are satisfied that the vehicle to which the Licence is to relate is suitable in type, size and design for use as a Taxi or Private Hire Car, as the case may be, and is safe for that use...”

This is the basis of the pre-Licence vehicle inspection and the NAC vehicle specification.

- (b) When determining any Application to Grant or Renew a Licence, the Licensing Authority shall refuse if any of a number of circumstances apply. One of these is:

“where the Licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to -

- (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
- (ii) the nature and extent of the proposed activity;
- (iii) the kind of persons likely to be in the premises, vehicle or vessel;

- (iv) the possibility of undue public nuisance; or
 - (v) public order or public safety;" (1982 Act, Schedule 1, Paragraph 5(3)(c)).
- (c) In addition, any Licence is subject to conditions, e.g. those which require re-inspection at intervals of 12 or 6 months (depending on the age of the vehicle).

- 1.5 The Committee has in the past accepted that it is necessary in the public interest to limit the position and the nature of commercial adverts on hire-cars.

On 12 August 2002 the Licensing Sub Committee agreed a system whereby operators of Taxis (but not PHCs) proposing to place adverts on their cars would require the prior approval of the Council, by applying for approval and describing their proposals. The fee charged was £25. The Minutes included:

"The Sub Committee agreed

- (d) that taxis be required to carry a roof sign and, subject to approval by the licensing authority, be permitted to carry advertisements on the side of the vehicle provided these are not signs for taxi companies;
- (e) that private hire cars be prohibited from carrying or displaying any sign or mark other than identification plates issued by the licensing authority, including window signs carrying telephone numbers;"

- 1.6 The conditions of approval were:

- (1) Advertising on taxis was limited to the door panels of the vehicle.
- (2) The permitted advertising categories were:
 - (a) Advertising of local retail businesses, leisure complexes, restaurants, hotels and similar establishments;
 - (b) Advertising of national products, under exception of any goods or facilities likely to cause offence to specific groups or individuals;

(c) Advertising of Operator's taxi business or organisation and contact telephone number;

(3) Advertising of cigarettes or any other tobacco-based product or specific alcoholic drinks was prohibited.

1.7 Following a meeting with trade representatives, the Committee on 23 March 2010 agreed that prior approval was no longer required, and that responsibility for observing the conditions for approval rested with individual operators. The restrictions were otherwise unchanged, and in particular continued to limit the positioning of adverts to door panels.

2. Current Position

2.1 Two Taxi operators have placed adverts covering large parts of their vehicles, including the windows at both side and rear. These adverts breach the current policy, which limits adverts to door panels. The adverts use a one-way material whereby people inside the vehicle can see out, but people outside cannot see in. Photographs of the vehicles will be shown to Members at the meeting.

2.2 The Committee should consider whether or not the existing approach to commercial advertising should be changed. The Committee may take the view that the placing of adverts over windows is not in the public interest, since it prevents the detection of licence breaches, e.g. a vehicle might be overloaded, or smoking might be happening within the vehicle.

2.3 A possible condition could be:

"Operators of Taxis or Private Hire Cars may display commercial advertisements on all parts of their vehicles, provided that

(a) the advertisements do not cover or obscure any window or light (an advertisement is prohibited if it prevents or reduces visibility in one or both directions, i.e. from inside-to-outside and outside-to-inside), subject to (c);

(b) the advertisements do not advertise tobacco, alcohol or gambling (although they may advertise premises selling or supplying such goods or services);

(c) on the front and rear windows, an area may be used to display notices stating:

- (i) the name of the operator, his firm, or the trade association he belongs to; and
- (ii) a contact telephone number or email address;

amounting in the case of each window to no more in total than 10% of the area of the window.”

3. Proposals

- 3.1 That the Committee considers these circumstances and revises its Policy.

4. Implications

Financial Implications

- 4.1 There are none for the Council but operators who already have adverts covering windows or lights may incur some expense in removing them.

Human Resource Implications

- 4.2 None.

Legal Implications

- 4.3 If an operator displays an advertisement in breach of licence conditions, the Committee may consider suspending the licence.

Equality Implications

- 4.4 None.

Environmental Implications

- 4.5 None.

Implications for Key Priorities

- 4.6 Increasing the effectiveness of the Licensing system and safeguarding the safety of passengers and other road-users is in the public interest.

5. Consultations

- 5.1 No consultations are appropriate.

6. Conclusion

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



ELMA MURRAY
Chief Executive

Reference : GEN37

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 5

22 May 2013

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 a registered Landlord.

Recommendation: That the Committee considers whether or not to:-

- (a) remove that person from the Landlords' Register, under Section 89;
- (b) make an order under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the two houses to which that registration relates.

1. Introduction

1.1 The system of Landlord Registration is regulated by the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8. Under that Act, a Landlord who wishes to let out a house should apply to the Council for Registration. The Council requires to determine that he is a fit and proper person. Only a random sample of 5% of applicants is vetted by the Police. The majority of applications are determined on the basis of declarations by the applicant himself.

1.2 The 2004 Act includes Section 89:

“Removal from register

(1) Where -

- (a) a person is registered by a local authority; and
- (b) subsection (2) or (3) applies,

the authority shall remove the person from its register.

(2) This subsection applies where -

- (a) the person was registered by virtue of section 84(3) ; and
- (b) paragraph (c) of that section no longer applies.”

Paragraph (c) is the condition that the applicant is ‘a fit and proper person to act as landlord’, so if the Council later determines that he is no longer ‘fit and proper’, the Council has no option but to remove the person from the Landlords' Register.

- 1.3 In deciding whether a person is a fit and proper person, the local authority is obliged to have regard (among other things) to the material described in Section 85. This includes material showing that the person has committed any offence involving violence or drugs.

A failure to disclose convictions is a breach of the law relating to housing, so that it is relevant to the assessment of ‘fit and proper’ (whether that failure arises at the stage of initial application Section 85(2)(c)(i), or after registration, when the person fails to inform the Council of a change in circumstances (Section 87).

- 1.4 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
 - (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 revoked, the Landlord can be prosecuted if he tries to obtain a new Tenant, e.g. by advertising the house for letting, discussing terms with a prospective Tenant: Section 93(2). The penalty is a fine up to £50,000.

1.5. The conditions for making a RPN are in Section 94(2):

“Those conditions are -

- (a) that the owner of the house is a relevant person;
- (b) that the house is subject to -

- (i) a lease; or
- (ii) an occupancy arrangement,

by virtue of which an unconnected person may use the house as a dwelling;

- (c) that the relevant person is not registered by the local authority; and
- (d) that, having regard to all the circumstances relating to the relevant person, it is appropriate for a notice to be served under this section.”

“relevant person” means anyone who is not a local authority, a registered social landlord, or Scottish Homes.

2. Current Position

2.1 On 13 August 2012 the Council granted an application by Philip Wade (d.o.b. 7 November 1970), 1/1 45 Main Road, Glengarnock, Beith KA14 3AA. This application related to two rental properties:

1 Smith Street
Upper-left
Dalry
KA24 5BZ

45 Main Road
Upper-Right
Glengarnock
Beith
KA14 3AA

2.2 The two houses referred to are occupied by tenants and Housing Benefit is paid to Wade's father.

- 2.3 On 8 April 2013, Wade was convicted at the High Court in Glasgow of various offences relating to the kidnapping, assault and murder of Lynda Spence, and attempting to defeat the ends of justice. He was sentenced to life imprisonment with a recommended minimum sentence of 30 years.
- 2.4 Police Scotland has confirmed that in addition Wade has other convictions:
- 21 August 2009, Kilmarnock Sheriff Court, contravention of Misuse of Drugs Act 1971, Section 5(2) (possession of Class A drugs) - fined £300.
- 18 June 2012, Glasgow Sheriff Court, contravention of Misuse of Drugs Act 1971:
- Section 5(2) (possession of Class A drugs) - fined £135
Section 5(2) (possession of Class C drugs) - fined £65
Section 23(4)(a) (obstructing drugs search) - fined £225
- 2.5 The decision to grant the application was based on information supplied by Wade, which included a declaration of 18 March 2012 that he had no unspent convictions. That declaration was untrue, as the conviction of 2009 was not spent.

3. Proposals

- 3.1 The Committee should determine whether or not Wade is no longer fit and proper to be registered.
- 3.2 If the Committee decides to remove the registration, the Committee should consider whether or not a RPN should be made. The statutory conditions are satisfied.

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 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.
- 4.4 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).
- 4.5 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.
- 4.6 Any breach by the Landlord or Agent of any statutory Letting Code, the law relating to housing, or Landlord and Tenant law will be relevant to any future consideration of Registration.

Equality Implications

- 4.7 None.

Environmental Implications

- 4.8 None.

Implications for Key Priorities

- 4.9 Increasing the effectiveness of the Landlord Registration scheme 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.

6. Conclusion

6.1 The Committee is invited to take the actions recommended.

A handwritten signature in black ink that reads "Elma Murray". The script is cursive and fluid.

ELMA MURRAY
Chief Executive

Reference : GEN09

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

Background Papers

None