



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Cunninghame House,
Irvine.

26 February 2015

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 4 MARCH 2015** at **10.00 a.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 accuracy of the Minutes of the ordinary meeting of the Committee held on 21 January 2015 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**
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 - Taxi Stance at Invercloy, Isle of Arran**
Submit report by the Chief Executive on the background and their legal powers (copy enclosed).
- 5. Civic Government (Scotland) Act 1982: Taxi Fare Review**
Submit report by the Chief Executive on the initial steps in the consultation procedure for the Taxi Fare Review for 2015 (copy enclosed).
- 6. Caravan Sites and Control of Development Act 1960**
Submit report by the Chief Executive on a request for the Variation of Conditions of two Site Licences at Crosbie Towers CS, West Kilbride, and Seaview CS, Ardrossan Road, Seamill (copy enclosed).
- 7. Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8**
Submit report by the Chief Executive of Landlord Registration matters (copy enclosed).

Licensing Committee

Sederunt: Ronnie McNicol (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
Ian Clarkson
Grace McLean
Catherine McMillan
John Easdale
Donald Reid
Vacancy

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
21 January 2015

IRVINE, 21 January 2015 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Tom Marshall, Robert Barr, John Bruce, Ian Clarkson, Grace McLean, Catherine McMillan, Donald Reid and Robert Steel.

In Attendance

W. O'Brien, Solicitor (Licensing), K. Sharkey, Trainee Solicitor, A. Toal Administrative Assistant and D. McCaw, Committee Services Officer (Chief Executive's Service).

Also In Attendance

Inspector Oates and PC McLean (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies for Absence

John Easdale.

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 Ordinary Meeting of the Committee held on 19 November 2014 was confirmed and the Minutes 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; (b) applications for the grant or renewal of licences and permits; and (c) issues arising in respect of existing licences, all in terms of the Civic Government (Scotland) Act 1982.

Part A: Hearings

3.1 Taxi Driver's Licence TDL/00556 (1 year) - William Burley

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

Decision

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

3.2 Taxi Driver's Licence TDL/01944 (1 year) - Mark Beattie

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application.

Decision

The Committee unanimously agreed to refuse the application in terms of Paragraph 5(1)(c) of Schedule 1 of the Civic Government (Scotland) Act 1982, on the grounds set out in Paragraph 5(3)(a)(ii) of the said Schedule, that the applicant is not a fit and proper person to be the holder of a Taxi Driver's Licence.

3.3 Taxi Driver's Licence TDL/01947 (1 year) - Rhonda Morrison

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

Decision

After discussion, Councillor Bruce, seconded by Councillor McMillan, moved to grant the application.

As an amendment, Councillor McLean, seconded by Councillor Steel, moved to refuse the application.

On a division, there voted for the amendment 3 and for the motion 6, and the motion was declared carried.

Accordingly, the Committee agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.4 Taxi Driver's Licence TDL/01950 (1 year) - Rana Ahmad

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application.

Decision

After discussion, Councillor Reid, seconded by Councillor Bruce, moved to grant the application.

As an amendment, Councillor Barr, seconded by Councillor McLean, moved to refuse the application.

On a division, there voted for the amendment 4 and for the motion 5, and the motion was declared carried.

Accordingly, the Committee agreed to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.5 Taxi Driver's Licence TDL/01955 (1 year) - Mark Boyd

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

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives of Police Scotland then addressed the Committee on the terms of a letter setting out an observation in relation to the application. Thereafter, the applicant addressed the Committee on the issues raised and responded to questions.

Decision

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

Part B: Applications for Licences and Renewal of Licences

3.6 TDL/01954 (1 year) Callum Findlay Campbell

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

3.7 TDL/01956 (1 year) Robert Crozier Boyd

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

Part C: Issues in Respect of an Existing Licence

3.8 SHDL/160 Justin Reilly

The Committee unanimously agreed to take no further action.

The meeting ended at 10.50 a.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

4 March 2015

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; 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 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.



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	House in Multiple Occupation	HMO/016 (New)
Applicant and Address	Melissa Brown 62A Garnock View Kilwinning KA13 7AF	
Premises	Flat 100 1 Seagate Irvine KA12 8RH	
Suspension Hearing 2	Taxi Driver's Licence	TDL/01889
Licenceholder and Address	David Clarkson 18C Linthouse Vennel Irvine KA12 8QG	
Duration of Licence	05/03/2014 - 28/2/2015	

Applications for Licences/Renewal of Licences		
Type of Licence/Reference Number	Details of Applicant	Comments
MOL/058 (New) Premises	Continental Market Ltd 47 Petrel Way Dunfermline Fyfe KY11 8GY Dockhead Street Saltcoats	A number of observations received
MOL/057 (New) Premises	Continental Market Ltd 47 Petrel Way Dunfermline Fyfe KY11 8GY Brodick Isle of Arran	A number of observations received
MOL/059 (New) Premises	Continental Market Ltd 47 Petrel Way Dunfermline Fyfe KY11 8GY Bridgegate Irvine	A number of observations received
TDL/01785 (New)	Alan Boyle 21c Orchard Street West Kilbride KA23 9AG	Previous conviction disclosed

NORTH AYRSHIRE COUNCIL

Agenda Item 4

4 March 2015

Licensing Committee

Subject: **Civic Government (Scotland) Act 1982: Taxi
Stance at Invercloy, Isle of Arran**

Purpose: To inform the Committee of the background and their
legal powers.

Recommendation: (1) that the Committee should consider whether or
not a proposal to revoke the appointment of the Taxi
Stance near the putting green at Invercloy, Isle of
Arran should be considered;

(2) and if so:

(a) that the Committee should instruct the Clerk to
commence the statutory procedure for intimating that
proposal;

(b) that the Committee should continue
consideration until after that intimation has taken
place;

(c) that, on resuming consideration, the Committee
should decide whether or not to revoke the
appointment;

(d) and if the Committee decides to revoke the
appointment, to request the Chief Executive to make
appropriate alterations to signs or road markings.

1. Introduction

- 1.1. Taxi Stances are appointed by the Council (as Licensing Authority, not
as Roads Authority) under Civic Government (Scotland) Act 1982,
Section 19. The Council has powers, not duties. For example, where a
Stance is temporarily unusable because of road-works, the Council is
not obliged to set up an alternative.

- 1.2. Only Taxis may use appointed Stances. Drivers of other vehicles (including 'Private Hire Cars') face prosecution under Section 21(7):

"If any person, without reasonable excuse, causes or permits any vehicle other than a Taxi to wait on any Stance for Taxis during any period for which that Stance has been appointed by a Licensing Authority under section 19 of this Act, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale." (i.e. £500)

- 1.3. There is a distinction between:

- (a) Stances which are appointed by the Council;
- (b) Private Stances (these are on private ground and Taxis stand there by arrangement between the land-owner and Taxi Operators. The Council has no involvement).

The Section 21 offence only applies to Council-appointed Stances.

2. Current Position

- 2.1. There are two appointed Stances on Arran:

- (a) Brodick Ferry Terminal : 3 vehicles.
- (b) Brodick Public Car Park/Putting Green : 3 vehicles.

The Council has received a representation that Stance (b) should be revoked.

- 2.2. The Act permits the Licensing Authority to do 4 things:

- (a) appoint a Stance (Section 19(1))
- (b) vary the number of Taxis permitted (Section 19(3))
- (c) alter the position of such Stances (Section 19(3))
- (d) revoke the appointment (Section 19(3))

- 2.3. All of these require consultation with Taxi operators or representative organisations. No other intimation of the proposal or publication is required. Section 19(4) only relates to actions (a) and (b), and not (d):

"Before appointing any Stance for Taxis or varying the number of Taxis permitted to be at each Stance, the Licensing Authority shall give notice to the chief constable of the area in which the Stance is situated and shall also give public notice of the proposal by advertisement in at least one newspaper circulating in their area and shall take into consideration any objections or representations in respect of such proposal which may be made to them in writing within 28 days of the first publication of such notice."

- 2.4. The present Report will appear on the Council's public website as usual, and the Minutes will be published shortly after the Meeting. To allow for the 28 day intimation to the Licence Holder, the earliest available meeting of the Committee at which this matter can be considered is 20 May 2015. Whenever this matter is to be again considered, due public notice of the Agenda will be given. The Committee would not be obliged to take account of written representations from other parties, but would be entitled to do so.

3. Proposals

- 3.1. The Committee should consider the position and then decide whether or not the appropriate statutory procedure should be carried out with a view to revoking the appointment of the Stance.
- 3.2. If the Committee proposes to proceed with Stance revocation, the Clerk will write to the sole holder of a Taxi Licence on Arran, inviting him to make written representations concerning the proposal within 28 days. When the Committee resumes consideration, the Committee should then have regard to any representations made. The Committee would not be obliged to hold a public hearing or allow oral representations.

- 3.3 Under Section 19(2) a Licensing Authority may:

- (a) erect and illuminate signs;
- (b) cause lines or marks to be made on roads;

indicating the limits of Taxi Stances. If the Committee decides to revoke the appointment, the Committee could also request the Chief Executive to make appropriate alterations to signs or road markings.

4. Implications

4.1 Financial Implications

The Revocation does not itself involve any expenditure by the Council. Alteration to signs or road markings might involve expenditure. The Clerk will advise the Committee.

4.2 Human Resource Implications

None.

4.3 Legal Implications

There are no legal implications for the Council, since Section 19 does not authorise anyone to appeal against the decision to revoke a Stance.

There are legal implications if the Stance is revoked, since people parking there will no longer be liable to prosecution under Section 21(7).

4.4 Equality Implications

None.

4.5 Environmental Implications

None.

4.6 Implications for Key Priorities

None.

4.7 Community Benefit Implications

The presence of a Stance prevents other drivers parking there, which may limit access to shops and services.

5. Consultations

- 5.1 No consultations are appropriate at this stage, but if the Committee instructs the Clerk to proceed then appropriate intimation will take place before the Committee resumes consideration of the proposal.

6. Conclusion

6.1 The Committee is invited to take the action recommended.

A handwritten signature in black ink, reading "Elma Murray". The signature is written in a cursive style with a large initial 'E'.

ELMA MURRAY
Chief Executive

Reference : GEN04

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 5

4 March 2015

Licensing Committee

Subject: **Review and Fixing of Taxi Scales (Civic Government (Scotland) Act 1982, Sections 17 to 18A)**

Purpose: To advise Committee of procedure.

Recommendation: That the Committee agrees:

(a) to approve the proposed timetable for the Review and Fixing Process, as set out in the Appendix to this Report;

(b) to set a date and time for the Trade Consultation meeting with Taxi Operators.

1. Introduction

- 1.1 Taxi fares and other charges are limited to the scale fixed by the licensing authority. The scale applies to:
 - (a) The fares for the hire of Taxis in any area;
 - (b) all other charges in connection with the hire of a Taxi;
 - (c) all other charges in connection the arrangements for its hire.
- 1.2. The scale sets out the maximum amounts which may be charged. It is open to Operators to discount these rates if they so wish.
- 1.3. The licensing authority must fix scales for those fares and other charges within 18 months beginning with the date on which the scales came into effect. Before fixing scales the licensing authority must review the scales in accordance with Section 17(4A).
- 1.4. The procedure for Reviewing and Fixing is set by statute, and involves 3 Committee meetings and 2 newspaper advertisements, here set out as stages (a) to (f):

- (a) First Committee Meeting - Trade Consultation - The Licensing Authority must consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area, (Section 17(4A)(a)).
- (b) Second Committee Meeting - Preliminary Review and draft of Proposal - Following such consultation the Licensing Authority must review the existing scales, and propose new scales, whether at altered rates or the same rates (Section 17(4A)(b)).
- (c) First Advertisement - Following such Review the Licensing Authority must publish the proposed scales in a newspaper circulating in its area, stating that any person may make representations in writing until a specified date falling at least one month after the first publication (Section 17(4A)(c)).
- (d) Third Committee Meeting - Fixing the Scale - The Licensing Authority must consider such representations, and fix the scale (Section 17(2)).
- (e) Notification to Trade - The Licensing Authority informs both individual operators and trade organisations within 7 days of the scale being 'fixed' (Section 17(4D)..(5)). Any of them may appeal to the Traffic Commissioner within 14 days of receiving Notice: (Section 18). Appeal suspends the decision to fix new scales.
- (f) Second Advertisement - If there is no appeal, or once it is determined, the Council publishes the new scale in a local newspaper (Section 18A). The date of publication depends on whether or not there is an appeal. If there has been no appeal, publication occurs as soon as practicable after the expiry of the 14 day appeal period. If there is an appeal, publication occurs as soon as practicable after the determination of the appeal. Publication is not a 'consultation', but is simply informing the public that the new scale has been fixed and will shortly come into effect.

1.5. The Appendix to this Report sets out a proposed timetable.

2. Current Position

- 2.1. The previous process of review of Taxi fares was concluded on 10 March 2014, when a new scale was fixed. Given that the eighteen month deadline for concluding a further review is approaching, it now falls on the Committee to commence the review process. The attached appendix sets out a proposed timetable for the review.

- 2.2 It has been the Committee's view in the past that although Taxi Operators' Associations exist within North Ayrshire, these may not be wholly representative. Accordingly it has always been the practice to notify each individual operator of the review and invite them to attend a meeting with the Committee to discuss any proposals.
- 2.3. It has been the previous practice of the Committee to undertake a comparison with other Licensing Authorities as part of the review process. Information about the fares charged by those authorities showing charging rates are currently being compiled. The Committee should treat this information with caution as each authority has its own set of charges, and comparison may not always be possible. As in previous years, operators will be provided with tariff information from other local authorities and details of the current rate of inflation.

3. Proposals

- 3.1. It is proposed that the Committee agrees to
- (a) approve the proposed timetable for the review process as set out in the appendix to the report; and
 - (b) set a date and time to meet with the taxi operators to carry out Trade Consultation.

4. Implications

Financial Implications

- 4.1 The Taxi fare structure has substantial implications for both the trade and the community. In addition, legal costs to the Licensing Authority may arise if the fare review becomes subject to an appeal to the Traffic Commissioner.

Human Resource Implications

- 4.2 None

Legal Implications

- 4.3 Possible appeal to the Traffic Commissioner.

Equality Implications

- 4.4 None

Environmental and Sustainability Implications

4.5 None

Implications for Key Priorities

4.6 None

5. Consultations

5.1. Information is being obtained from other Licensing Authorities and from the Price Indices.

6. Conclusion

6.1. The proposals in this report are a way in which the Licensing Authority can fulfil its statutory duties.



ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

None

North Ayrshire Council

Taxi Fare Review 2015

Licensing Committee meeting to confirm how the review will be carried out.	Wednesday 4th March 2015
(a) Meeting with taxi trade representatives/taxi operators to discuss proposals, consider revisions and finalise draft tariff.	To be arranged
(b) Licensing Committee meeting to approve finalised draft tariff and seek authority to advertise proposed tariff in local press.	Wednesday 20th May 2015
(c) Advertise proposals and invite representation	As soon as possible thereafter
(d) Licensing Committee meeting to consider the representations and to fix the new scale.	Wednesday 12th August 2015
(f) Advertise New Tariff	As soon as possible thereafter
Bring new tariff into effect	Proposed date Monday 2nd November 2015

NORTH AYRSHIRE COUNCIL

Agenda Item 6

4 March 2015

Licensing Committee

Subject: **Caravan Sites and Control of Development Act 1960**

Purpose: To advise the Committee of a request for the Variation of Conditions of two Site Licences at (i) Crosbie Towers CS, West Kilbride; and (ii) Seaview CS, Ardrossan Road, Seamill.

Recommendation: That the Committee hear the Licence Holder and determine the Applications.

1. Introduction

- 1.1. The Council as Local Authority regulates Caravan Sites under the Caravan Sites and Control of Development Act 1960 (as amended). At present a Site Licence is perpetual, there is no 'fit and proper' test, and the Licence is free of charge. The system will be substantially changed by the Housing (Scotland) Act 2014, which has not yet been commenced by Order. The 2014 Act introduces a new type of Licence, which will last three years and be renewable. The 2014 Act applies a 'fit and proper' test to the Applicant, and the Licence will have a fee.
- 1.2. Under the 1960 Act, the Local Authority is entitled to attach conditions to Site Licences (Section 5). The Council has power to alter conditions attached to Site Licences (Section 8). Breach of conditions is a criminal offence (Section 9).
- 1.3. In making and varying Conditions, the Council is obliged to have regard to any standards set by the Minister (Section 5(6) and 8(4)). Such standards are contained in Scottish Development Department Circular 17-1990, which describes "Model Standards". The Circular states separate Model Standards for:
 - (a) Residential Sites
 - (b) Holiday Sites
 - (c) Touring Caravan Sites

1.4. This distinction is reflected in the Licences granted:

- (a) Residential Sites: "sites in regular, year-round use and occupied by caravans permanently placed on the site throughout the year."
- (b) Holiday Sites: "(a) sites open only for the summer months and perhaps also for part of the spring and autumn seasons; and (b) those sites open during the winter for holiday purposes; on which (in either case) caravans are, for the most part, permanently placed throughout the season."
- (c) Touring Caravan Sites: "caravans which are not permanently placed on the site throughout the year or the holiday season."

2. Current Position

2.1. Iain and Lesley McClain of Lanes End, Crosbie, West Kilbride hold Site Licences for three separate sites:

- (a) Mill Glen CS, Dalry Road, Ardrossan (NAC ref. C04)
- (b) Seaview CS, Ardrossan Road, Seamill (C27).
- (c) Crosbie Towers CS, West Kilbride (C18).

2.2. They have requested Variations of the Site Licences for (b) and (c). They are not requesting any change to Site (a).

2.3. Site (a) - Mill Glen CS, Ardrossan (C04)

This is a 'residential site'.

2.4. Site (b) - Seaview CS, Seamill (C27)

This Licence authorises "static holiday caravans" (i.e. it is not a residential site). It was granted by Cunninghame District Council subject to the usual Conditions, including a limitation on human habitation. The CDC/NAC Condition divides the year into four, and continuous human habitation is only permitted over 8 months (1 Mar to 31 Oct). The four parts are:

- (a) 7 January and the last day of February (human habitation is prohibited between noon on Friday and noon on Monday, i.e. there is no weekend use);
- (b) 1 March to 31 October (continuous human habitation is permitted, and the weekend prohibition does not apply);
- (c) 1 November and 22 December (with the weekend prohibition);
- (d) 23 December and 6 January (continuous human habitation is permitted, and the weekend prohibition does not apply).

2.5. Site (c) - Crosbie Towers CS, West Kilbride (C18)

There are two Licences, as different parts of the Site are a "residential site" and a "holiday site". The two licences for this site were granted by Ayr County Council, and have separate conditions based on the three-part division in the Circular:

- (i) A.C.C. ref. CSL 8(R) (contains the wording "this licence relates to the residential part of the caravan site only")
- (ii) A.C.C. ref. CSL 8(H & T) (contains the wording "this licence relates to the holiday and touring part of the caravan site only")

The "H & T" Licence has the same four-part division of the year, and the same occupation restrictions, as Seaview CS.

2.6. The Licence Holders ask that the Licences be Varied so as to allow occupancy for 11 months of the year.

2.7. Unlike other licensing systems, with a proposal to vary a Site Licence there is no publication or requirement for third-party consultation.

2.8. Section 8(1) of the 1960 Act is:

"The conditions attached to a Site Licence may be altered at any time (whether by the variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods) by the local authority, but before exercising their powers under this subsection the local authority shall afford to the holder of the licence an opportunity of making representations."

3. Proposals

3.1. The Committee should consider any representations made by the Licence Holder and determine the Applications.

- 3.2. The Committee is obliged to have regard to the Model Standards set by the S.D.D.. The effect of the variation would be to extend the occupation of the land. Whichever Local Authority originally granted the Licences thought that some limitation was appropriate.
- 3.3. If the Licence Variations are granted, the Licence Holder can only use them so far as consistent with the conditions of Planning Permission, so the Licence Holder may require to apply also for Variation to the Planning Authority.

4. Implications

4.1 Financial Implications

None as far as the Council is concerned.

4.2 Human Resource Implications

None.

4.3 Legal Implications

When the Council makes a decision about a proposal to alter the conditions, the Licence Holder may appeal to the Sheriff within 28 days.

4.4 Equality Implications

None.

4.5 Environmental Implications

None.

4.6 Implications for Key Priorities

None.

5. Consultations

5.1 No consultations are appropriate.

6. Conclusion

6.1 The Committee is invited to take the action recommended.

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

ELMA MURRAY
Chief Executive

Reference : WOB/GEN45

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

Agenda Item 7

4 March 2015

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:

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.

In this Report, both Applicants and Registered Persons are called "Landlords".

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 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 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 issue a Notice 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 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

4.1. Financial Implications

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

4.2. Human Resource Implications

None.

4.3. Legal Implications

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.

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.

4.4. Equality Implications

None.

4.5. Environmental Implications

None.

4.6. Implications for Key Priorities

None.

4.7. Community Benefit Implications

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 : GEN09

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

Background Papers

None