



NORTH AYRSHIRE
COUNCIL

Cunninghame House,
Irvine.

24 April 2014

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 30 APRIL 2014** 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 (i) the ordinary meeting of the Committee held on 5 March 2014 and (ii) the special meeting held on 31 March 2014 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copies enclosed).

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

Submit 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 (copies enclosed).

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

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

Licensing Committee

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

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
5 March 2014

IRVINE, 5 March 2014 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 am.

Present

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

In Attendance

S. McKenzie, Senior Manager Building Standards (Development and Environment); 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 Jones and Sergeant McIntosh (Police Scotland).

Chair

Councillor McNicol in the Chair.

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 Committee held on 20 November 2013 were 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 Market Operator's Licence MOL/044 - Continental Market Ltd

The Committee, at its meeting on 22 January 2014, 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 present and accompanied by the Company Director of Continental Market Ltd. 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 from Police Scotland then addressed the Committee on the terms of a letter dated 26 February 2014 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant, the Company Director of Continental Market Ltd. and representatives of Police Scotland then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

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 Public Entertainment Licence PEL/199 - Michael Stirling

Michael Stirling has applied for a Public Entertainment Licence for an event on 10-21 March 2014.

The applicant, having been duly cited to attend, was present and accompanied by Mrs Stirling. Representatives from Police Scotland and Building Standards were also in attendance.

The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representative from Building Standards addressed the Committee in relation to the Building Standards issues in terms of the suitability of the ground for the proposed use as a funfair in relation to vehicular or pedestrian access and public safety. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

The applicant advised of a change to the date of the proposed event to 10-27 April 2014 and this was noted.

The applicant, Mrs Stirling and representatives of Police Scotland and Building Standards then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

After discussion, Councillor Barr, seconded by Councillor McMillan moved that the application should be granted subject to (i) agreement with Building Control; and (ii) the removal of the rubbish from the operating site which is generated by the applicant during the event.

As an amendment, Councillor Bruce, seconded by Councillor Steel, moved that the application should be refused.

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 subject to the Council's standard conditions in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

3.3 Taxi Driver's Licence TDL/01384 (New) - Andrew Gillespie

The Committee, at its meeting on 22 January 2014, 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 present and accompanied by his legal representative. 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 from Police Scotland then addressed the Committee on the terms of a letter dated 7 January 2014 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant and his representative addressed the Committee on the issues raised and responded to questions.

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

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.

3.4 Taxi Driver's Licence TDL/01773 (New) - Colin Bennett

The Committee, at its meeting on 22 January 2014, 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 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 from Police Scotland then addressed the Committee on the terms of a letter dated 28 January 2014 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

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

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.

3.5 Taxi Driver's Licence TDL/00901 - William Simson

The Committee, at its meeting on 22 January 2014 agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

The Committee was advised that this Hearing would be considered at its next meeting.

Noted.

3.6 Taxi Driver's Licence TDL/01889 (New) - David Clarkson

The Committee, at its meeting on 22 January 2014, 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 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 from Police Scotland then addressed the Committee on the terms of a letter dated 3 February 2014 setting out the observations of the Chief Constable of Police Scotland on the applicant. Thereafter the applicant addressed the Committee on the issues raised and responded to questions.

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

After discussion, Councillor Barr, seconded by Councillor Steel moved that the application should be refused.

As an amendment, Councillor Reid, seconded by Councillor Munro, moved that the application should be granted.

On a division, there voted for the amendment 7 and for the motion 2 and the amendment was declared carried.

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.

3.7 Public Charitable Collection - Renalda Ruginiene

The Committee, at its meeting on 22 January 2014, agreed to continue consideration of an application for permission for a Public Charitable Collection made under Section 119 of the Civic Government (Scotland) Act, 1982 in order to obtain further information from the applicant.

The applicant, having been duly cited to attend, was not in attendance due to ill health. A representative from Appco, together with representatives from Erskine Hospital were in attendance. The Solicitor (Licensing) set out the background to the Hearing as previously intimated in writing to the applicant. The representatives from Erskine Hospital and Appco provided additional information in relation to the application hours being outwith agreed Council policy, cold calling and cost donation ratios.

After discussion, Councillor Munro, seconded by Councillor Reid moved that the application should be granted with an extension to the house-to-house collection hours from 9.00 a.m. to 7.30 p.m.

As an amendment, Councillor Clarkson, seconded by Councillor Barr, moved that the application be granted with house-to-house collection hours of 9.00 a.m. to 6.00 p.m., in line with agreed Council policy.

On a division, there voted for the amendment 7 and for the motion 2 and the amendment was declared carried.

Decision

Accordingly, the Committee agreed to grant permission under Section 119(5) of the Civic Government (Scotland) Act 1982 for a house-to-house collection (Monday to Friday) from 9am to 6pm on the 10-14 March 2014, subject to the Council's usual conditions.

Following the announcement of the Committee decision, the Appco representative advised that the application for a house-to-house collection on the 10-14 March 2014 was withdrawn and that the Company would apply again in the future if it was considered that they could carry out fundraising in line with the Council's agreed policy.

4. Chair's Remarks

The Chair, in terms of Standing Order 9.1, agreed to vary the order of business to allow earlier consideration of Agenda Item 6 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8).

5. Exclusion of the Public

The Committee resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for the agenda item 6 only (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) on the grounds indicated in terms of Paragraph 14 of Part 1 of Schedule 7A of the Act.

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

Submitted report by the Chief Executive on circumstances relating to 3 applications for landlord registration.

6.1 Application 1

The applicant was not present but was represented.

The Committee unanimously agreed to grant the application for landlord registration.

6.2 Application 2

The applicant was neither present nor represented. The Committee was satisfied that the applicant had been duly cited and proceeded to determine the case in his absence.

The Committee unanimously agreed to grant the application for landlord registration.

6.3 Application 3

The applicant was neither present nor represented. The Committee was satisfied that the applicant had been duly cited and proceeded to determine the case in his absence.

The Committee unanimously agreed to grant the application for landlord registration.

The Committee thereafter resumed consideration of item 3.

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

Part B: Applications for Licences and Renewal of Licences

3.8 LHCL/084 (New) Nasir Gulem

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.

3.9 MDL/048 (New) (Itinerant) Joseph Quinn

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.

3.10 PCC (Temporary) Breast Way Round Scotland

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.

3.11 SPTL/020 (New) Stacey Galbraith

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.

3.12 TDL/000821 (Renewal) James McDowall

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.

3.13 TDL/01513 (New) Steven Robb

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.

3.14 TDL/01649 (New) Paul Williams

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.

3.15 TDL/01819 (Renewal) David Hebenton

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.

3.16 TDL/01893 (New) James Carroll

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.

3.17 TDL/01895 (New) David Konthuruthy

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.

Part C: Issues in Respect of Existing Licences

3.18 TDL/00539 George Dickson

The Committee unanimously agreed to take no further action in connection with this application.

3.19 LHCL/108 Malthurst Petroleum

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.

7. Urgent Items

The Chair agreed that the following items be considered as a matter of urgency to allow the matters to be actioned without delay.

7.1 Public Charitable Collection for Yorkhill Children's Hospital

The Committee was advised of an application for a Public Charitable Collection for Yorkhill Children's Hospital to be held on 4 April 2014. The street collection day requested is a Friday.

The Committee unanimously agreed to delegate to the Solicitor (Licensing) to grant the application for a Public Charitable Collection for Yorkhill Children's Hospital on the conditions that (a) there were no statutory grounds of refusal; and (b) that the application was in accordance with Council policy.

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

The Solicitor (Licensing) advised of a complaint received against a registered landlord.

The Committee agreed to proceed to a Hearing in connection with this matter.

The meeting ended at 1.20 p.m.

Licensing Committee
31 March 2014

IRVINE, 31 March 2014 - At a Special Meeting of the Licensing Committee of North Ayrshire Council at 2.00 p.m.

Present

Tom Marshall, John Bruce, Ian Clarkson, Catherine McMillan, Alan Munro and Robert Steel.

In Attendance

Robert McGilvery, Interim Divisional Manager HQ, Niall Gallacher, Development Officer (Private Sector), C. Bateman, Development Officer and Burt Garrick, Investigation Officer (Irvine) (Social Services and Health); Paul Brennan, Specialist Environmental Health Officer (Noise) (Development and Environment); C. Andrew, Senior Manager Legal Services, W. O'Brien, Solicitor (Licensing), K. Sharkey, Trainee Solicitor, A. Toal, Administrative Assistant, K. Dyson, Communications Officer and D. McCaw, Committee Services Officer (Chief Executive's Service).

Chair

Councillor Clarkson in the Chair.

Apologies for Absence

Ronnie McNicol, Robert Barr and Donald Reid.

1. Appointment of Chair

In the absence of the Chair, the Vice-Chair declined to Chair the meeting due to his involvement in the case as Local Member for Largs. Nominations were invited for the position of Chair.

Councillor McMillan, seconded by Councillor Bruce, moved that Councillor Clarkson be appointed as Chair. There being no amendment, the motion was declared carried.

Councillor Clarkson duly assumed the Chair.

2. 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.

3. Exclusion of the Public

The Committee resolved in terms of Section 50(A)4 of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public for agenda item 4 (Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8) on the grounds indicated in terms of Paragraphs 14 and 15 of Part 1 of Schedule 7A of the Act.

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

Submitted report by the Chief Executive on the circumstances relating to an application for landlord registration.

Neil Ingram, 7 Irvine Road, Largs, applied for Landlord Registration under the 2004 Act. The Committee considered the application and information from Council Officers, persons with information which the Committee considered relevant and the applicant.

The Committee unanimously agreed (a) under Section 84(2)(b) to refuse to enter the applicant in the Register; and (b) to serve a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of the house included in the application at 75 Nelson Street (1/R), Largs.

The meeting ended at 4.05 p.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

30 April 2014

Licensing Committee

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

Purpose: To advise the Committee of (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.

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;

Appendix B:

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

Appendix C:

Issues in respect of existing licences

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	Civil Marriage Approval	CMORO/057
Applicant and Address	David Boyle Manager Kelburn Country Centre Kelburn Castle Country Centre and Estate Fairlie KA29 0BE	
Hearing 2	Public Entertainment Licence	PEL/207
Applicant and Address	Kelburn Production Ltd Kelburn Country Centre Kelburn Castle Country Centre and Estate Fairlie KA29 0BE	
Suspension Hearing 3	Late Hours Catering Licence	LHCL/108
Licenceholder and Address	Malthurst Petroleum Ltd 4 Grove Lane Epping CM16 4LP	
Premises	Mayfield Service Station High Road Saltcoats KA21 6JX	
Hearing 4	Metal Dealer's Licence (Itinerant)	MDL/048
Applicant and Address	Joseph Quinn 77a Beechwood Drive Bonhill Vale of Leven G83 9LR	

Hearing 5	Skin Piercing and Tattoo Licence	SPTL/020
Applicant and Address	Stacey Galbraith 20 Phillips Avenue Largs KA30 9EP	
Premises	The Studio Largs	
Hearing 6	Second Hand Motor Vehicle Dealer's Licence	SHDL/176
Applicant and Address	Duskview Sales Ltd Dunlop Road Barrmill Beith KA15 1HN	
Premises	Duskview Sales Ltd Dunlop Road Barrmill	
Hearing 7	Taxi Driver's Licence	TDL/00821
Applicant and Address	James McDowall 62 Links Road Saltcoats KA21 6BH	
Hearing 8	Taxi Driver's Licence	TDL/01513
Applicant and Address	Steven Robb 2 Sersley Drive Kilbirnie KA25 6EZ	
Hearing 9	Taxi Driver's Licence	TDL/01649
Applicant and Address	Paul Williams 1 Green Avenue Irvine KA12 0UQ	

Hearing 10	Taxi Driver's Licence	TDL/01893
Applicant and Address	James Carroll 8E South Crescent Road Ardrossan KA22 8DU	
Hearing 11	Taxi Driver's Licence	TDL/01895
Applicant and Address	Davis Konthuruthy 26 Morven Avenue Paisley PA2 8DR	
Suspension Hearing 12	Taxi Driver's Licence	TDL/00901
Licenceholder and Address	William Simson 25 Reids Avenue Stevenston KA20 4BD	
Hearing 13	Public Charitable Collection	PCC
Applicant and Address	Breast Way Round Kate Anderson 55 Broom Crescent Ochiltree Cumnock KA18 2PS	

Applications for Licences/Renewal of Licences

Type of Licence/Reference Number	Details of Applicant	Comments
MDL/050 (New)	MLD Zambonini Ltd T/A Cash Generator 110 Crauford Street Motherwell ML7 3BN	Police Observation received
Premises	Cash Generator 30 Bridgegate Irvine KA12 8BQ	
PCC (New)	Guide Dogs for the Blind David Payne PO Box 1015 Aylesbury Bucks HP22 9LU	Outwith Council Policy
PCC (New)	Help for Heroes Trevor Gray 54 Larch Terrace Beith KA15 1EN	Police Observation received
PCC (New)	Kilwinning Friends of Ayrshire Hospice Patricia McNeill 9 Atholl Gardens Kilwinning KA13 7DQ	Outwith Council Policy
STL/E/168 (New)	Neil David McIntyre 18 Dalgarn Wynd Kilwinning KA13 6DD	Police Objection received

TDL/01878 (New)	David Brown 9 Broughton Green Lawthorn Irvine KA11 2EJ	Police Observation received
TDL/01900 (New)	George MacKintosh 85 Dickson Drive Irvine KA12 9AG	Police Observation received
TDL/01901 (New)	John William Bruce 30 Churchill Avenue Kilwinning KA13 7JN	Police Observation received

Issues in Respect of Existing Licences

Case 1	Taxi Operator's Licence	TL/189
Licenceholders and Addresses	<p>Gerald Mclver 33 Dalry Road Saltcoats KA21 6JZ</p> <p>and</p> <p>Charlene Mclver 7 Hawkhill Place Stevenston KA20 4HN</p>	
Case 2	Taxi Driver's Licence	TDL/01479
Licenceholder and Address	<p>Bradley McGrath 162 Campbell Avenue Stevenston KA20 4BS</p>	
Case 3	Taxi Driver's Licence	TDL/01854
Licenceholder and Address	<p>David Walsh 11 Shaw Place Saltcoats KA21 6LQ</p>	

NORTH AYRSHIRE COUNCIL

Agenda Item 4

30 April 2014

Licensing Committee

Subject:	Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8
Purpose:	To inform the Committee of the circumstances relating to Applications for Landlord Registration.
Recommendation:	<ol style="list-style-type: none">1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which this Report is to be considered;2. That the Committee should consider the Review Proposal described in the Schedule, and:<ol style="list-style-type: none">(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;(c) or, failing (b), 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 Applications for Registration have been made by the Applicants listed in the attached Schedules (each Applicant has one Schedule). These Applications relate to the rented houses listed in the Schedules.

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

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

- 1.4 The Committee is entitled, but not obliged, to make a Resolution excluding the public from a meeting during consideration of an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during consideration of that item of business there would be disclosure to them of "Exempt Information" (Section 50A(4)).

- 1.5 Accordingly, if a Resolution is made:

- (a) the Minutes must exclude so much of the proceedings during which the public were excluded (Section 50C);
- (b) the proper officer shall make a written summary of the proceedings without disclosing the 'Exempt Information' (Section 50C(2)), and that summary shall be included with the publicly-accessible Minutes (Sections 50C(2) & 50C(1)(b)).

- 1.6 In Landlord Registration cases, the summary will record:

- (a) applicant name,
- (b) addresses of any house for which Registration was sought,
- (c) the Committee decision to grant or refuse the application,
- (d) the Committee decision whether or not to make a Rent Penalty Notice in relation to that house or houses.

- 1.7 Although the Committee's Agenda and connected Reports are generally to be made public information has been withheld under Section 50B(2), as the proper officer has the opinion that they relate to items during consideration of which the Meeting is likely not to be open to the public, i.e. that the Committee is likely to make a Resolution under Section 50A(4) to exclude the public during consideration of that item of business.

- 1.8 Accordingly the Schedules to this Report (which give details of such information in relation to a number of Applicants) are not part of the publicly-available Agenda, although in each case the individual Applicants have been given notice of the information and of the Committee Meeting.

The Landlord Registration Scheme

- 1.9 The general rule is that a person wishing to let out a house must be Registered with the Council. Registration lasts 3 years. A person must re-apply within that time to remain Registered. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 1.10 The Act specifies conditions which prospective Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.11 The Applicant's convictions are relevant to the consideration of whether or not he is 'fit and proper' to be Registered. Section 85(2) lists material which is relevant, including material which shows that the Landlord, Agent or other person applying for registration has:
- (a) committed any offence involving fraud or other dishonesty, firearms, violence or drugs or has committed a sexual offence;
 - (b) practised unlawful discrimination in, or in connection with, the carrying on of any business; or
 - (c) contravened any provision of any Letting Code, the law relating to housing, or landlord and tenant law.
- 1.12 In any case, the Council may take into account any material (even if not expressly listed in the statute) if it considers that the material is relevant to the 'fit and proper' question (Section 85(4)).
- 1.13 Where the Council is not satisfied that the conditions for Registration are met, the Council is obliged to refuse Registration (Section 84(2)(b)).

Rent Penalty Notice

- 1.14 If a Landlord rents a house without being Registered, or if Registration is revoked, then two things can happen:

- (a) the Council may issue a Notice under Section 94 (often called a 'Rent Penalty Notice' or 'RPN'), meaning:
 - (i) the Tenant ceases to be liable for rent (but otherwise the Lease continues, so the Tenant remains in occupation and cannot be evicted for non-payment, and the Landlord remains responsible for repairs); and
 - (ii) any Housing Benefit stops being paid.
- (b) the Landlord can be prosecuted for a criminal offence under Section 93(1). The penalty is a fine up to £50,000.

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

2. Current Position

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

3. Proposals

- 3.1. The Committee should consider each Application and decide whether or not to grant it.

- 3.2. If the Committee decides to refuse, and if it is satisfied that the house is presently occupied by a Tenant, it should decide whether or not to make an order under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house referred to in the Application.
- 3.3. If it is not so satisfied, it may delegate authority to the Solicitor (Licensing) to make a RPN if and when the Solicitor (Licensing) is so satisfied. Given that there would be nothing to stop the Landlord receiving Housing Benefit even if he was unregistered, the Committee may wish to delegate authority to the Solicitor (Licensing) to issue a RPN if the Solicitor (Licensing) later receives information that the house is occupied by a Tenant.

4. Implications

Financial Implications

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

Human Resource Implications

- 4.2 None

Legal Implications

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

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

For example:

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

Equality Implications

4.4 None

Environmental Implications

4.5 None

Implications for Key Priorities

4.6 None

Community Benefit Implications

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

5. Consultations

5.1 No consultations are appropriate. The Schedules contain information supplied by the Police or other agencies.

6. Conclusion

6.1 The Committee is invited to take the actions recommended.



ELMA MURRAY
Chief Executive

Reference : WO'B/PAT

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

Background Papers

None