



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Licensing Committee

A Meeting of the **Licensing Committee** of North Ayrshire Council will be held in the **Council Chambers, Ground Floor, Cunninghame House, Irvine, KA12 8EE** on **Wednesday, 06 March 2019** at **10:00** to consider the undernoted business.

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

1 Declarations of Interest

Members are requested to give notice of any declarations of interest in respect of items of business on the Agenda.

2 Minutes

The accuracy of the Minutes of the meeting held on 6 February 2019 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 and other Licensing Statutes: Licensing Matters

Submit report by the Head of Democratic Services on hearings to be determined and applications for the grant or renewal of licences and permits, all in terms of the Civic Government (Scotland) Act 1982 (copy enclosed).

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

Submit report by the Head of Democratic Services on Landlord Registration matters (copy enclosed).

5 Caravan Site Licensing

Submit report by the Head of Democratic Services on Caravan Site licensing matters (copy enclosed).

6 Urgent Items

Any other items which the Chair considers to be urgent.

Licensing Committee Sederunt

Ronnie McNicol (Chair)
Todd Ferguson (Vice Chair)
Robert Barr
John Easdale
Scott Gallacher
Jean McClung
Davina McTiernan
Donald L. Reid
Angela Stephen
Vacancy

Chair:

Apologies:

Attending:

IRVINE, 6 February 2019 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ronnie McNicol, Robert Barr, John Easdale, Jean McClung and Donald L. Reid.

Also Present

Timothy Billings (Item 4.6)

In Attendance

W. O'Brien, Solicitor (Licensing), C. Pollock, Licensing Administration Officer and A. Toal, Administrative Assistant (Legal Services); S. Bodys, Enforcement Officer (Economy and Communities) (Items 1-4.3); E. Anderson, Team Manager (Private Sector Housing) and B. Ferry, Policy Officer - Private Sector (Place) (Item 5); and E. Gray, Committee Services Officer (Chief Executive's Service).

Also in Attendance

PC Alan Kerr and Sergeant David Dougan (Police Scotland).

Chair

Councillor McNicol in the Chair.

Apologies

Todd Ferguson, Scott Gallacher, and Davina McTiernan.

1. Declarations of Interest

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

2. Minutes

The Minutes of the ordinary meeting held on 9 and the special meeting held on 30 January 2019 were confirmed and signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

3. Exclusion of the Public

The Committee resolved, under Section 50A(4) of the Local Government (Scotland) Act 1973, to exclude from the Meeting the press and the public, for Agenda Item 3 (Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters) on the grounds that they involved the likely disclosure of Exempt Information as defined in Section 50J of, and Schedule 7A to, the Local Government (Scotland) Act 1973.

The 'Exempt Information' concerned is information of the type described in one or more of Paragraphs 3, 6, 14 and 15 of Part 1 of Schedule 7A to the Act:

- 3. "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."
- 6. "Information relating to the financial or business affairs of any particular person (other than the authority)."
- 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 as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance."

4. Civic Government (Scotland) Act 1982 and other Licensing Statutes: Licensing Matters

Submitted report by the Head of Democratic Services on hearings to be determined and applications for the grant or renewal of licences, consents and permits, on hearings and on other matters, under the Civic Government (Scotland) Act 1982 and other Licensing legislation.

Appendix A: Hearings

4.1 Second Hand Dealer's Licence: SHDL/132 (Renewal)- MLD Zambonini Ltd

The Solicitor (Licensing) advised the Committee that this case would be resolved by officers under delegated powers and that no action was required.

Noted.

4.2 Second Hand Dealer's Licence: SHDL/202 (New) - Dean Nimmo

The applicant, having been duly cited, 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 a letter setting out an objection in respect of the application.

The applicant then addressed the Committee on the issues raised and responded to questions.

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

Decision

Councillor Reid, seconded by Councillor McClung, moved that the application be granted in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of three years. There being no amendment, the motion was declared carried.

4.3 Second Hand Dealer's Licence SHDL/203 (New) - Lyndsey McSkimming

The applicant, having been duly cited, 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 a letter setting out an objection in respect of the application.

The applicant then addressed the Committee on the issues raised and responded to questions.

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

Decision

Councillor Reid, seconded by Councillor McNicol, moved that the application be refused in terms of the following grounds stated in Schedule 1 to the Civic Government (Scotland) Act 1982:

- (a) that the Applicant is not a fit and proper person to be the holder of the Licence (Paragraph 5(3)(a)(ii)); and
- (b) that the activity to which the Licence relates would be managed by or carried on for the benefit of a person, other than the Applicant, who would be refused the Grant or Renewal of such a Licence if he made the Application himself (Paragraph 5(3)).

There being no amendment, the motion was declared carried.

4.4 Taxi Driver's Licence TDL/01168 (New) - Paul McPherson

The applicant, having been duly cited, 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 a letter setting out an objection in respect of the application.

The applicant then addressed the Committee on the issues raised and responded to questions.

Decision

Councillor Easdale, seconded by Councillor Barr, moved that the Committee 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 for a period of one year. There being no amendment, the motion was declared carried.

4.5 Window Cleaner's Licence WCL/015 (New) - George Kearney

The applicant, having been duly cited, was present and was accompanied by his solicitor. 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 a letter setting out an objection in respect of the application.

The applicant's solicitor then addressed the Committee on the issues raised and the applicant responded to questions.

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

Decision

Councillor McClung, seconded by Councillor Easdale, moved that the Committee grant the application in terms of Paragraph 5 (1) (a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of three years. There being no amendment, the motion was declared carried.

The representatives from Police Scotland left the meeting at this point.

4.6 Private Hire Car Licence PHCL/368 (New) - Dean Coulson

The applicant, having been duly cited, was present and was accompanied by his local Elected Member, Councillor Billings.

The Civic Government (Scotland) Act 1982, Section 10(2) prohibits the Licensing Authority from granting or renewing a Licence for the operation of a Taxi or Private Hire Car unless it is satisfied that the proposed vehicle is suitable in type, size and design for use as a Taxi or Private Hire Car, as the case may be. Accordingly, the Council has a Policy, the "Vehicle Approval Specification", which sets out the Council's requirements. These requirements include the use of a "wheelchair-accessible vehicle" (WAV). The Applicant invited the Council to treat his proposed vehicle, Vauxhall Astra Registration Number FJ64 WYY, as an exception to that part of the Policy.

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

The applicant then addressed the Committee on the issues raised and responded to questions. He had provided the Committee with photographs of the vehicle and also letters of support and comment from third parties. Councillor Billings, as the applicant's local Elected Member, also addressed the Committee in support of the application.

Decision

Councillor Reid, seconded by Councillor Easdale, moved that the Committee treat the particular vehicle Vauxhall Astra Registration Number FJ64 WYY as an exception to the "wheelchair-accessible vehicle" (WAV) requirement of the Council's "Vehicle Approval Specification", and that accordingly that vehicle should be accepted as complying in that respect with Civic Government (Scotland) Act 1982, Section 10(2). There being no amendment, the motion was declared carried.

Councillors Easdale and Billings left the meeting at this point.

4.7 Taxi Driver's Licence TDL/01565 - Douglas Howat (Renewal)

The licence holder, having been duly cited, was not present or represented.

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

Decision

The Committee unanimously 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 for a period of one year, subject to the following condition:-

(a) that within 14 days after the Licence-Holder's 70th birthday, and within 14 days of each later birthday, the Licence-Holder must give the Licensing Office evidence that he/she continues to have a driving entitlement under the Road Traffic Acts (for example, by producing to the Licensing Office the current photocard part of the 'ordinary' Driving Licence issued by DVLA).

There being no amendment, the motion was declared carried.

Appendix B: Applications for Licences/Renewal of Licences

4.8 CARAVAN CAR/033 (variation) - Robin Bell

The Committee unanimously agreed that the conditions of the Site Licence applied under Section 5 of the Caravan Sites and Control of Development Act 1960 should be varied as requested, so as to permit occupation of holiday or touring caravans (but not residential caravans) for 12 months of the year.

4.9 STREET TRADER OPERATOR LICENCE STL/O//490 (New) - Tracey Martin

The Solicitor (Licensing) advised the Committee that this case would be resolved by officers under delegated powers and that no action was required.

4.10 TAXI DRIVER'S LICENCE TDL/01615 (Renewal) - Kevin Kyle

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.

4.11 TAXI DRIVER'S LICENCE TDL/01935 (New) - Andrew Watt

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.

5. 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 under the 2004 Act.

5.1 CW

The applicant, having been cited to attend, was present.

The Solicitor (Licensing) addressed the Committee on the background to the hearing and the terms of a letter submitted by the applicant. The applicant addressed the Committee on the issues raised and responded to questions.

The Committee heard from officers of the Private Sector Housing section.

Decision

The Committee unanimously agreed to (a) grant the application for Landlord Registration; and (b) remove the Rent Penalty Notice in force at one of the applicant's properties.

The meeting ended at 12.15 p.m.

NORTH AYRSHIRE COUNCIL

6th March 2019

Licensing Committee

Title: **Civic Government (Scotland) Act 1982 and other Licensing statutes: Licensing Matters**

Purpose: To advise the Committee of
 (a) Hearings to be determined
 (b) Applications for the grant or renewal of licences and permits; under the Civic Government (Scotland) Act 1982 and other statutes within the Committee's remit.

Recommendation:

1. That the Committee should decide whether or not to make a Resolution excluding the public from the meeting at which any of the matters in this Report are to be considered.
2. That the Committee consider and determine the matters before them.

1. Executive Summary

1.1 The Licensing Committee's remit is to exercise the Council's licensing functions. These functions arise under many statutes, mainly the Civic Government (Scotland) Act 1982. Depending on the legislation and the circumstances of each individual case, the Committee is entitled to grant, refuse, renew, vary, suspend and revoke Licences.

2. Background

2.1 The Committee's business under the 1982 Act is as follows:

1. Licences and Permits where Hearings have been convened – Appendix A
2. Applications for the grant or renewal of Licences and Permits – Appendix B

Exempt Information

2.2. The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

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" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3. The details of the cases in the Appendices, with any relevant documents (such as letters from the Police or objectors) are in the background papers given to Committee Members and will be sent to the respective Applicants or Licence-Holders before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4. 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)).

2.5. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment).

Paragraphs 14 or 15 could apply where it was alleged that there was criminal conduct or anti-social behaviour committed by or against a Licence-Holder or Applicant for a Licence, or where the Committee was told that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.6. Accordingly, if a Resolution is made:

(a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);

(b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

3. Proposals

3.1 It is proposed that the Committee consider and determine each of the listed cases in accordance with the required procedure.

4. Implications

Financial:	There are possible financial implications in relation to any Licensing decision.
Human Resources:	None
Legal:	There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.
Equality:	The Clerk has considered the "Public Sector Equality Duty" in preparing the Appendices and any specific equalities impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant equalities impacts to be considered.
Children and Young People:	Licensing does not automatically affect under 18s but in particular cases the Committee will be given relevant information.
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of licence holders; and the safety of hire cars, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active").
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 Consultations have been undertaken where appropriate with Police Scotland, Scottish Fire and Rescue, and Council Directorates



Andrew A Fraser
Head of Democratic Services

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

Background Papers
None

Hearings (Appendix A)		
Case 1	Taxi Driver's Licence	TDL/01615 (Renewal)
Applicant	Kevin Kyle	
Case 2	Taxi Driver's Licence	TDL/01935 (New)
Applicant	Andrew Watt	
Case 3	Window Cleaner's Licence	WCL/042 (New)
Applicant	James Affleck	
Case 4	Window Cleaner's Licence	WCL/043 (New)
Applicant	David Frew	
Case 5	Window Cleaner's Licence	WCL/062 (New)
Applicant	Andrew S McKenna	
Case 6	Public Entertainment Licence	PEL/581 (Temp)
Applicant	William Newsome	
Proposed Site	Central Avenue Ardrossan	
Case 7	Public Entertainment Licences	PEL/579 & PEL/580
Applicant	ANI Leisure Funfairs	
Proposed Sites	Ormidale Park and Lowgreen Brodict Isle of Arant	

Applications for Licences/Renewal of Licences (Appendix B)

Type of Licence/Reference Number	Details of Applicant
TDL/02073 (Renewal)	David Patton
TDL/02156 (New)	James Cantillon
TDL/02159 (New)	Andrew Vost
WCL/038 (New)	Gareth McBride

Note

TDL – Taxi Driver's Licence

WCL – Window Cleaner's Licence

NORTH AYRSHIRE COUNCIL

6th March 2019

Licensing Committee

Title: **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 and its Schedules is to be considered;
 2. For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and
 - (a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;
 - (b) if appropriate, decide whether or not to issue a Notice under Section 94 (commonly known as a 'Rent Penalty Notice') in respect of any house, or to delegate authority to the Clerk to issue such a Notice.
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1. Executive Summary

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.

2. Background

2.1 The persons named in the attached Schedules are Landlords who are either applying for Registration or who are unregistered. The Clerk has information suggesting that there may be a basis for the Committee concluding that the Landlords are not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed (each person has one Schedule). The rented houses concerned are listed in the Schedules. The Schedules are marked "Not for Publication".

2.2 Exempt Information

The Committee will consider "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

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" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

2.3 The Schedules are in the background papers given to Committee Members and will be sent to the respective Landlords before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to the public while those Schedules are being considered, as they contain "Exempt Information".

2.4 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)).

2.5 For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could 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/her 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).

2.6. Accordingly, if a Resolution is made:

(a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (Section 50C);

(b) the Minutes will include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).

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' or 'RPN') in respect of any house referred to in the Application or Registration.

3.3. If it is are 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/she 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

Financial:	There are possible financial implications in relation to any Licensing decision. If a RPN is made, the Benefit Authorities will be informed, so that the Landlord will no longer receive Housing Benefit or Universal Credit, if any is claimed for the house.
Human Resources:	None

Legal:	<p>There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.</p> <p>If the Council makes 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)).</p> <p>For example:</p> <p>(a) the Tenant will continue to have whatever security of tenure he/she already had (and cannot be evicted for non-payment of rent where that non-payment is due to the RPN);</p> <p>(b) the Landlord will only be entitled to evict the Tenant if the First-Tier Tribunal grants an Eviction Order;</p> <p>(c) the Landlord will continue to have repairing obligations.</p> <p>If a RPN is revoked by the Sheriff or Tribunal on appeal by the Landlord, the Tenant only has to pay 'arrears' of rent if, and to the extent, ordered. If a RPN is revoked by the Council then 'arrears' are not due (Section 95(3)).</p>
Equality:	<p>The Clerk has considered the "Public Sector Equality Duty" in preparing the Appendices and any specific equalities impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant equalities impacts to be considered.</p>
Children and Young People:	<p>None - where the Clerk has information about under-18s living in rented houses, this may be set out in the Schedules.</p>
Environmental & Sustainability:	<p>None</p>
Key Priorities:	<p>An effective licensing system, e.g. monitoring the 'fit and proper' status of Landlords and the suitability of rented houses, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active")</p>
Community Benefits:	<p>Not applicable, as the Report does not relate to tendering or procurement exercises.</p>

5. Consultation

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

A handwritten signature in blue ink, appearing to read 'A A Fraser', with a stylized flourish at the end.

Andrew A Fraser
Head of Democratic Services

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

Background Papers

None

NORTH AYRSHIRE COUNCIL

6 March 2019

Licensing Committee

Title: **Caravan Site Licensing under the Caravan Sites and Control of Development Act 1960 and the Housing (Scotland) Act 2014.**

Purpose: To inform the Committee of Caravan Site Licensing 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 and its Schedules is to be considered;
 2. For each matter described in the Schedules: That the Committee should consider each case and:
 - (a) decide what action should be taken;
 - (b) if appropriate, decide whether or not to issue a Penalty Notice under Section 32X of the 1960 Act.
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1. Executive Summary

- 1.1 The Licensing Committee has delegated authority from the Council to administer the Council's functions under the legislation regulating Caravan Site Licensing - the Caravan Sites and Control of Development Act 1960 and the Housing (Scotland) Act 2014.

2. Background

- 2.1 The persons named in the attached Schedules are Site Owners who are either applying for Registration, are Licensed, or are unlicensed. The Schedules are marked "Not for Publication" due to the "Exempt Information" rules (see heading "Exempt Information" below).

Summary of legal position

- 2.2 Caravan Sites in Scotland are regulated by the Caravan Sites and Control of Development Act 1960. This legislation applies to all sites, whether they contain holiday, touring or residential caravans.

On 1 May 2019 amendments made to the 1960 Act by the Housing (Scotland) Act 2014 will commence. There will then be two licensing systems:

"old system" - sites with holiday or touring caravans (regulated by the unamended 1960 Act)

"new system" - sites with residential caravans (regulated by the 1960 Act as amended by the 2014 Act). These caravans are sometimes called "park homes" but the legislation does not use this phrase. Other legislation calls them "Mobile Homes".

From 1 May 2019, sites with a mixture of holiday, touring or residential caravans will need two Licences, one for the holiday or touring part, and another for the residential part.

- 2.3 Under "old system" legislation, the Licence is free and perpetual. The Council has no powers to revoke or suspend the Licence. There is no "fit and proper" test for the Applicant or anyone working on the Site. The sole issue is whether or not the site has Planning Permission or a "Lawful Use Certificate".
- 2.4 Under "new system" legislation, the Licence involves a fee and lasts 5 years. The Licence-Holder must apply to renew the Licence. The Council has power to revoke the Licence. The Council can also issue an "Improvement Notice" and a "Penalty Notice". The latter is like the "Rent Penalty Notice" sometimes made against Landlords under the Landlord Registration legislation, and prevents the Site Owner collecting pitch fees or commissions on the sale of caravans.

As well as requiring Planning Permission or a "Lawful Use Certificate", the Council should apply a "fit and proper person" test to the Applicant or anyone managing the Site.

Exempt Information

- 2.5. The Committee will consider Schedules containing "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A. The information is covered by one or more of the following categories of "Exempt Information" under Schedule 7A:

Paragraph 3: "Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority."

Paragraph 6: "Information relating to the financial or business affairs of any particular person (other than the authority)."

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" - where "Protected Informant" is defined in Part III as a person who informs the Local Authority about a past, present or future crime, breach of statutory duty, breach of planning control, or nuisance.

- 2.6. The Schedules are in the background papers given to Committee Members and will be sent to the respective Site Owners before the Meeting. The Schedules are excluded from the published Agenda under Local Government (Scotland) Act 1973, Section 50B(2) and (5). This has been done as the Clerk considers that the meeting is likely not to be open to

the public while those Schedules are being considered, as they contain "Exempt Information".

2.7. 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)).

2.8. For example:

Paragraph 3 could apply in relation to information or advice requested by a member of the public.

Paragraph 6 could apply to a business activity (such as where an Applicant wants a Licence for business or employment, or where a Landlord lets a house).

Paragraphs 14 or 15 could apply where it was alleged:

- (a) that there was anti-social behaviour committed by the occupier of a caravan, involving crime or nuisance, or
- (b) that the Site Owner has defaulted in obligations which are relevant considerations under Section 32O of the 1960 Act;
- (c) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).

2.9. Accordingly, if a Resolution is made:

- (a) the publicly-accessible Minutes will exclude so much of the proceedings during which the public were excluded (1973 Act, Section 50C);
- (b) the Minutes will include a summary of the proceedings without disclosing the "Exempt Information" (1973 Act, Sections 50C(2) & 50C(1)(b)).

3. Proposals

3.1 The Committee should consider each case and decide what action is appropriate.

3.2 In the "New System" if the Committee decides to refuse a Licence Application, or to remove a Licence:

- (a) The site would still be owned by the Applicant/former Licence-Holder, but
- (b) without a Licence, it would be illegal for that person to operate a Caravan Site; and
- (c) the residents' "Protected Site Agreements" would continue despite the refusal of the Licence, so they could not be evicted (Mobile Homes Act 1983, Schedule 1, Paragraph 1A(1)(b) and (d); and

(d) The Committee can issue a "Penalty Notice". This prevents the Site Owner collecting

- pitch fees (including fees for the use of the common areas of the site and their maintenance, or
- commission on the sale of Mobile Homes (the commission can be up to 10%).

If the Council makes a Penalty Notice, only the residents' liability to pay pitch fees and commissions will cease. The other rights and obligations arising from the "Protected Site Agreement" regulated by the Mobile Homes Act 1983 and Order 2013 No. 219 will remain. Residents continue to be entitled to station their Mobile Home if the Council refuses to issue or renew a "new system" Licence, or revokes it (1983 Act, Schedule 1, Paragraph 1A).

4. Implications

Financial:	There are possible financial implications in relation to any Licensing decision. A Penalty Notice is a substantial penalty against the Site Owner, and gives the occupiers of individual caravans the potential of a benefit.
Human Resources:	None
Legal:	There are possible legal implications in relation to any licensing decision. Depending on the legislation, there may be a right of appeal.
Equality:	The Clerk has considered the "Public Sector Equality Duty" in preparing the Appendices and any specific equalities impacts will be evaluated where appropriate. Unless the Clerk advises the Committee otherwise in a particular case, there are no significant equalities impacts to be considered.
Children and Young People:	None
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, e.g. monitoring the "fit and proper" status of Site Owners and managers, helps achieve Priority 4 of the North Ayrshire Council Plan 2015-2020, ("Supporting all of our people to stay safe, healthy and active")
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 Depending on the circumstances, the Schedules contain information supplied by the Police, other Council officers, or other agencies.

A handwritten signature in blue ink, appearing to read 'A A Fraser', is positioned above the printed name.

Andrew A Fraser
Head of Democratic Services

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

Background Papers

N/A