
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.

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 The Schedules are marked "Not for Publication" due to the "Exempt Information" rules (see heading "Exempt Information" below).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