



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Cunninghame House,
Irvine.

22 October 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 28 OCTOBER 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 Committee held on 23 September 2015 will be 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

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

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

5. Urgent items

Any other items which the Chair considers to be urgent.

Licensing Committee

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

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
23 September 2015

IRVINE, 23 September 2015 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

Ian Clarkson, Robert Barr, Grace McLean, Catherine McMillan, Ronnie McNicol and Donald Reid.

In Attendance

C. Andrew, Senior Manager Legal Services, A. Toal, Administrative Assistant and M. Anderson, Committee Services Team Leader (Chief Executive's Service).

Also In Attendance

Inspector J. McMillan, Sergeant G. Griffiths and L. McGhee (Police Scotland).

Chair

Councillor Clarkson in the Chair.

Apologies for Absence

John Bruce, John Easdale and Tom Marshall.

1. Declarations of Interest

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

2. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 2 September 2015 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 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.

Part A: Hearings

3.1 Caravan Licence: Verdant Leisure 2 Limited

The applicant, having been duly cited to attend, was not present or represented.

The Senior Manager Legal Services set out the background to the Hearing as previously intimated in writing to the applicant.

Decision

The Committee unanimously agreed to grant the application to vary Condition 2 of the licence to allow occupancy of the site at Viewfield Manor Leisure, Torranyard, Lochlibo Road, Kilwinning for 11 months of the year, in terms of the Section 8(1) of the Caravan Sites and Control of Development Act 1960 (as amended).

3.2 Metal Dealer's Licence MDL/038 (Itinerant): Robert Kerr

The Committee, at its meeting on 2 September 2015, 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 of Police Scotland were also in attendance.

The representatives of Police Scotland 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 subject to the 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/01837 (Renewal): Mohamed Asli

The Committee, at its meeting on 2 September 2015, agreed, on the basis of the information presented, to proceed to a Hearing in terms of Paragraph 4(2) of Schedule 1 of the Civic Government (Scotland) Act 1982.

The applicant, having been duly cited to attend, was not present or represented. A written submission was provided by the applicant, requesting that the matter be continued to the next meeting. Representatives of Police Scotland were in attendance.

The Senior Manager (Legal Services) 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 continue consideration of this matter to the next meeting of the Committee.

3.4 Taxi Driver's Licence TDL/01995 (New): John Young

The Committee, at its meeting on 2 September 2015, 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 of Police Scotland were also in attendance.

The representatives of Police Scotland 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 for a period of 1 year, subject to the standard conditions, in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982.

Part B: Application for Licence

3.5 Taxi Driver's Licence TDL/00018 (New): Alexandria Mary Hughes

The Committee unanimously agreed, on the basis of the information presented, to grant the application for a period of 1 year, subject to the standard conditions, 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

3.6 Taxi Driver's Licence TDL/01995: Donald Patrick Newell

The Committee unanimously agreed, on the basis of the information presented, to proceed to a Suspension Hearing in terms of Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

4. Exclusion of the Public

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

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

Submitted report by the Chief Executive which provided information on matters raised in respect of two jointly registered Registered Landlords.

The Senior Manager Legal Services set out the background to the matter and advised of complaints received in respect of tenants of one of the registered properties.

Decision

The Committee unanimously agreed to continue consideration of this matter to the next meeting of the Committee to allow a hearing to take place.

The meeting ended at 10.45 a.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

28 October 2015

Licensing Committee

Title: **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. Executive Summary

- 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. Background

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:	There are possible financial implications in relation to the refusal of any application.
Human Resources:	None
Legal:	There are possible legal implications in relation to the refusal of any application.
Equality:	None
Environmental & Sustainability:	None
Key Priorities:	None
Community Benefits:	None

5. Consultation

- 5.1 Consultations have been undertaken with Police Scotland, Strathclyde Fire and Rescue, and the appropriate Council Services.

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

ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

None

Hearings		
Suspension Hearing 1	Taxi Driver's Licence	TDL/01599
Licenceholder and Address	Donald Newell 37 Dalry Road Saltcoats KA21 6JZ	
Duration of Licence	01/12/2013 - 30/11/2016	
Hearing 2	Taxi Driver's Licence	TDL/01837 (Renewal)
Applicant and Address	Mohammed Asli 27 Irvine Mains Crescent Irvine KA12 0UB	
Hearing 3	Street Trader Operator's Licence	STL/O/413
Applicant and Address	Malgorzata Lipinska 42 St Kilda Bank Irvine KA11 1HS	
Proposed Premises	Rear of Library 168 High Street Irvine	

Applications for Licences/Renewal of Licences		
Type of Licence/Reference Number	Details of Applicant	Comments
MOL/001 (renewal)	Spook Erection Ltd PO Box 219 Penrith Cumbria CA11 1BG	Police observation received
TDL/00110 (new)	James Cairnie 11 Oak Road Ardrossan KA22 7HQ	Police observation and non-disclosure.
TDL/00115 (new)	Matthew Steel 57 Gilmour Wynd Stevenston KA20 4DA	Police observation and non-disclosure.

NORTH AYRSHIRE COUNCIL

Agenda Item 4

28 October 2015

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:	<p>1. That the Committee should decide whether or not to make a Resolution excluding the public from the part of the meeting at which this Report and its Schedules are to be considered;</p> <p>and then for each Application or Review Proposal described in the Schedules:</p> <p>That the Committee should consider each case and:</p> <p>(a) decide whether or not the Application should be granted, or the Relevant Person should be removed from the Register;</p> <p>(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; or</p> <p>(c) decide whether or not a Proposal should be made to review an existing Registration, and to continue the case until a later Hearing.</p>

1. Executive Summary

- 1.1. The Licensing Committee have 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. Before dealing with the individual cases described in the Schedules, the Committee should decide whether or not to make a Resolution excluding the public from the part of the meeting at which this Report and its Schedules are to be considered.

- 1.3. 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.
- 1.4. The persons named in the attached Schedules are either:
- Applicants for Registration, or
 - already Registered under the 2004 Act, or
 - are not Registered.

Each person has one Schedule. The rented houses concerned are listed in the Schedules.

Although the scheme under the Antisocial Behaviour etc. (Scotland) Act 2004 is described as "Landlord Registration", it is the fact that living accommodation is occupied that is important, not the question of whether or not a formal Lease has been entered into or rent paid or the occupier has the formal status of "tenant". The Act applies to both (i) a Lease and (ii) an Occupancy Arrangement, and most of the laws relating to rented housing also apply as much to occupiers as tenants.

For convenience, in this Report:

- (a) Applicants seeking Registration, and
- (b) people who are already Registered ("Registered Persons"), and
- (c) people who own houses occupied as residences,

are called "Landlords" and the occupiers are called "Tenants" regardless of whether or not there is a "lease".

2. Background

- 2.1. This Report summarises the legal position in relation to
- (a) 'Exempt Information' (Paragraphs 2.2 - 2.11)
 - (b) The Landlord Registration Scheme (Paragraphs 2.12 - 2.16)

(a) 'Exempt Information'

2.2. Landlord Registration cases are referred to the Committee using two documents:

- (a) this Report, and
- (b) one or more Schedules.

2.3. This is done because the Committee may consider that the cases involve "Exempt Information" under the Local Government (Scotland) Act 1973, Schedule 7A, so that information about the cases should not be disclosed to the public. The Committee are 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)).

2.4. Since the Committee have frequently made the necessary Resolution in the past, it is permissible for future Schedules to be withheld from publication. Although a 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 are likely to make a Resolution to exclude the public during consideration of the Schedules.

2.5. Accordingly, individual cases do not appear on the public agenda. The Report operates as a 'front page', and only appears once, regardless of how many individual cases are being referred to the Committee. The Report is general and sets out the legal structure. The Schedules detail the alleged facts of the particular cases and how the legislation appears to apply.

2.6. Depending on the circumstances of the individual case, the Schedules contain:

- (a) information about the Landlord'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).

2.7. 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."*

2.8. "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".

2.9. 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).

- 2.10. Accordingly, if a Resolution is made, the publicly-accessible Minutes:
- (a) must exclude so much of the proceedings during which the public were excluded (Section 50C); but
 - (b) shall include a summary of the proceedings without disclosing the 'Exempt Information' (Sections 50C(2) & 50C(1)(b)).
- 2.11. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.
- (b) The Landlord Registration Scheme
- 2.12. 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 - Registration is not automatically renewed. The requirement to be Registered is subject to many exceptions, e.g. lets to family-members do not require Registration.
- 2.13. 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.
- 2.14. 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).
- 2.15. 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.

- 2.16. 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.

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 decide to refuse an Application, or to remove a Registration, and if they are satisfied that the house is presently occupied by a Tenant, they 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 they are not so satisfied, they 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

Financial:	If a RPN is issued, the Housing Benefit Office will be informed, so that the Landlord will no longer receive Housing Benefit.
Human Resources:	None
Legal:	<p>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 or the First Tier Tribunal.</p> <p>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).</p> <p>For example:</p> <p>(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 RPN);</p> <p>(b) the Landlord will only be entitled to evict the Tenant if the Sheriff grants a Decree;</p> <p>(c) the Landlord continues 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:	None
Environmental & Sustainability:	None
Key Priorities:	<p>Preventing unfit Landlords from operating may contribute to the wellbeing of the community: "North Ayrshire residents feel safer and communities are empowered" (North Ayrshire Community Planning Partnership, Single Outcome Agreement 2013-17, High level outcome)</p> <p>Preventing Housing Benefit being paid to unregistered Landlords safeguards public funds.</p>
Community Benefits:	n/a (no tendering or procurement issues arise)

5. Consultation

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

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

ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

None