

Cunninghame House,
Irvine.

27 October 2016

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 2 NOVEMBER 2016** at **10.00 a.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

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 (Page))

The accuracy of the Minutes of the meeting held on 28 September 2016 will be confirmed and the Minutes signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973 (copy enclosed).

3. **Civic Government (Scotland) Act 1982: Licensing Matters (Page %)**
Submit 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 (copy enclosed).
4. **Landlord Registration under the Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 (Page %)**
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: Ronnie McNicol (Chair)
Tom Marshall (Vice Chair)
Robert Barr
John Bruce
John Easdale
Grace McLean
Catherine McMillan
Alan Munro
Donald Reid
Robert Steel

Chair:

Attending:

Apologies:

Meeting Ended:

Licensing Committee
28 September 2016

Irvine, 28 September 2016 - At a Meeting of the Licensing Committee of North Ayrshire Council at 10.00 a.m.

Present

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

In Attendance

K. Sharkey, Solicitor (Contracts and Licensing), W. O'Brien, Solicitor (Licensing), A. Toal, Administrative Assistant and M Anderson, Committee Services Team Leader (Chief Executive's Service).

Also In Attendance

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

Chair

Councillor McNicol in the Chair.

Apologies for Absence

Alan Munro and Robert Steel.

1. Chair's Remarks

The Chair, in terms of Standing Order 9.3, agreed to vary the order of business to allow consideration of two Urgent Matters immediately following Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters).

2. Declarations of Interest

In terms of Standing Order 10 and Section 5 of the Code of Conduct for Councillors, Councillor Barr, due to the applicant's family being personally known to him, declared an interest in Hearing 1 under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) and took no part in the decision.

3. Minutes

The accuracy of the Minutes of the meeting of the Committee held on 7 September 2016 was confirmed, and the Minutes were signed in accordance with Paragraph 7 (1) of Schedule 7 of the Local Government (Scotland) Act 1973.

4. Exclusion of 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 the duration of the Committee's deliberations relating to hearings 1, 2 and 4 under Agenda Item 3 (Civic Government (Scotland) Act: Licensing Matters) and the first Urgent Item, 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 that described in Section 7A, Paragraph 6 ("Information relating to the financial business affairs of any particular person (other than the authority)") and Paragraph 14 ("Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime").

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

Part A: Hearings

5.1 Taxi Driver's Licence: Douglas Wraith TDL/00187 (New)

The applicant, having been duly cited to attend, was not present or represented. The Chair referred to a letter submitted by the applicant to advise that he was unable to attend the hearing. Representatives from Police Scotland were in attendance.

The representatives from Police Scotland addressed the Committee on the terms of a letter setting out a representation in relation to the application, as previously intimated in writing to the applicant.

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

Decision

Councillor Marshall, seconded by Councillor McLean, moved that the application be granted for a period of one year. There being no amendment, the motion was declared carried.

Accordingly, the Committee 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 for a period of one year.

5.2 Taxi Driver's Licence: David McBlain TDL/00189 (New)

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

The representatives from Police Scotland addressed the Committee on the terms of a letter setting out an objection in relation to the application, as previously intimated in writing to 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

Councillor Reid, seconded by Councillor McLean, moved that the application be granted for a period of one year. There being no amendment, the motion was declared carried.

Accordingly, the Committee 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 for a period of one year.

5.3 Taxi Driver's Licence: Ravinder Singh TDL/02003 (New)

The Committee, at its meeting held on 17 August 2016, agreed to continue consideration of this application to allow the applicant to attend a hearing.

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

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

Decision

Councillor Barr, seconded by Councillor McMillan, moved that the application be granted for a period of one year. There being no amendment, the motion was declared carried.

Accordingly, the Committee 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 for a period of one year.

5.4 Taxi Driver's Licence: Carolyn Ann Wright TDL/00937 (New)

The applicant, having been duly cited to attend, was present and accompanied by a relative.

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

The applicant then withdrew to allow the Committee to deliberate, returning to hear the Committee's decision.

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 for a period of one year.

5.5 Public Charitable Collection: Hansel

The applicant, having been duly cited to attend, was present. The applicant has applied for a Charitable Collection on 12-16 December 2016, which is outwith the Council's policy.

Members asked questions and received clarification from the applicant in respect of the application.

Decision

The Committee unanimously agreed (a) that there were sufficient grounds to treat the case as an exception to the Council's policy on street collections; (b) to grant the application in terms of Section 119 of the Civic Government (Scotland) Act 1982, subject to the Council's standard conditions.

5.6 Public Charitable Collections: Be Child Cancer Aware

The Solicitor (Contacts and Licensing) advised the Committee that these applications had been withdrawn by the applicant.

Noted.

5.7 Public Charitable Collection: Ivy Fundraising Limited

The Solicitor (Contracts and Licensing) advised that correspondence issued to the applicant in connection with the application had been returned as undelivered as it appeared the applicant no longer resided at the address provided.

The Committee agreed to consider the application in the applicant's absence.

Decision

The Committee unanimously agreed (a) that there were insufficient grounds to treat the case as an exception to the Council's policy on street collections; and (b) to refuse the application under Section 119 of the Civic Government (Scotland) Act 1982.

Part B: Applications for Licences/Renewal of Licences

5.8 Gordon McGregor: TDL/00456 (Renewal)

Councillor Marshall, seconded by Councillor Reid, moved that the application be granted for a period of one year. There being no amendment, the motion was declared carried.

Accordingly, the Committee agreed, Councillor McMillan dissenting, to grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

6. Urgent Items

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

6.1 Paul Cumming: TDL/01295 (Renewal)

The Solicitor (Contracts and Licensing) provided background information in relation to the application and invited the Committee to consider whether it would wish to proceed to a hearing.

Decision

The Committee agreed, Councillor McMillan dissenting, to (a) note the information presented; and (b) grant the application in terms of Paragraph 5(1)(a) of Schedule 1 of the Civic Government (Scotland) Act 1982 for a period of one year.

6.2 Vehicle Specification

The Solicitor (Licensing) advised the Committee of a request from a local taxi operator, that consideration be given to a reduction in the minimum engine size within the Vehicle Specification, from a 1.6L model to a 1.4L model. The Committee was advised that the Enforcement Officer (i) had no objection to the proposed reduction, subject to the inclusion of an age restriction for the 1.4L model given advancements/improvements in vehicle manufacturing in recent years, subject to the inclusion of an age restriction for the 1.4L model and (ii) suggested that a date of first be specified within the amended Specification.

The Committee unanimously agreed to amend the Vehicle Specification to provide for a reduction in the minimum engine size from a 1.6L model to a 1.4L model, applicable to vehicles first registered on 1 September 2012.

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

The Solicitor (Licensing) advised the Committee that this report had been withdrawn in the absence of any Landlord Registration matters to be considered.

Noted.

The meeting ended at 11.00 a.m.

NORTH AYRSHIRE COUNCIL

Agenda Item 3

2 November 2016

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;

Appendix B:

Applications for the grant or renewal of licences and permits

3. Proposals

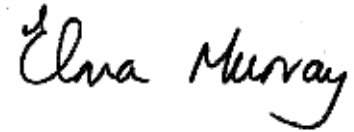
- 3.1 It is proposed that the Committee considers and determines each of the listed cases in accordance with the required procedures.

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:	An "Equality Impact Assessment" is not necessary as the Equality Act 2010 is not a consideration in making a Licensing decision.
Environmental & Sustainability:	None
Key Priorities:	An effective licensing system, e.g. monitoring the 'fit and proper' status of hire-car drivers and the safety of their cars, helps achieve one of the "High Level Outcomes" of the "NAC Community Planning Partnership Single Outcome Agreement 2013-17": "A Safe and Secure North Ayrshire".
Community Benefits:	Not applicable, as the Report does not relate to tendering or procurement exercises.

5. Consultation

- 5.1 Consultations have been undertaken with Police Scotland, Scottish 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 01294 324305

Background Papers

None

Hearings

Hearing 1	Public Charitable Collection	
Applicant and Address	North Ayrshire Citizens Advice Service James Robson 17 Vernon Street Saltcoats KA21 5HE	
Hearing 2	Public Charitable Collection	
Applicant and Address	Promoting Kilwinning Joe Broussard Eglinton House Kilwinning KA13 7QA	
Hearing 3	Public Charitable Collection	
Applicant and Address	Saltcoats Community Action Group Martha McNicol 35 Caledonia Road Saltcoats KA21 5AJ	
Suspension Hearing 4	Street Trader Operator's Licence	STL/O/261 (Renewal Pending)
Licenceholder and Address	David Duncan McIntyre 18 Dalgarven Wynd Kilwinning KA13 6DD	
Vehicle	Ford Transit CKZ 6237	
Suspension Hearing 5	Taxi Driver's Licence	TDL/01274
Licenceholder and Address	Cameron Phillips 49 Caledonia Road Saltcoats KA21 5AJ	
Hearing 6	Taxi Operator's Licence	TL/400 (New)
Applicant and Address	Thomas Coombe 4 Muirside Court Kilwinning KA13 6HR	

Application for grant of a licence

TDL/02006 (New)

Anthony **Healy**
1/L 97 Nelson Street
Largs
KA30 9JF

NORTH AYRSHIRE COUNCIL

Agenda Item 4

2 November 2016

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>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;</p> <p>For each Application or Review Proposal described in the Schedules: That the Committee should consider each case and:</p> <ul style="list-style-type: none">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.

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 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".

Exempt Information

- 1.3 Landlord Registration cases are referred to the Committee using two documents:
 - (a) this Report, and
 - (b) one or more Schedules.
- 1.4 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)).
- 1.5 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.

- 1.6. 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.
- 1.7. 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).
- 1.8. The information is covered by one or other or both of the following categories of "Exempt Information" under Schedule 7A:
- Paragraph 14: "Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime."
- Paragraph 15: "The identity of a Protected Informant."
- 1.9. "Protected informant" is defined in Part III of the Schedule and means:
- "a person giving the Local Authority information which tends to show that—
- (a) a criminal offence,
 - (b) a breach of statutory duty,
 - (c) a breach of planning control, within the meaning of section 123(1) of the Town and Country Planning (Scotland) Act 1997, or
 - (d) a nuisance,
- has been, is being or is about to be committed".

- 1.10. For example, Paragraph 15 would apply where it was alleged:
- (a) that there was anti-social behaviour committed by the Tenant of a rented house, involving crime or nuisance, or
 - (b) that the state of repair of the rented house indicated that the Landlord had defaulted in his legal obligations, or
 - (c) that the Landlord had defaulted in another obligation applying to Landlords, or
 - (d) that any person had committed a criminal offence (whether or not there had been concluded Court proceedings).
- 1.11. 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)).
- 1.12. Although the Schedules have not been published, in each case the individual Landlords have been given appropriate copies and notice of the Committee Meeting.

The Landlord Registration Scheme

- 1.13. 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.
- 1.14. The Act specifies conditions which Landlords must meet. One of these conditions is that the Landlord is a 'fit and proper person' (Section 84(3)(c)). The considerations which are relevant to this question are set out by the Act.
- 1.15. Once a Landlord has been Registered, the Council is entitled to review the Registration. If not satisfied that the 'fit and proper' condition for Registration is met, the Council is obliged to remove Registration (Section 89).

1.16. If a Landlord rents a house without being Registered, or if Registration is removed, two things can happen:

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

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

2. Background

2.1 The Clerk has received information set out in the Schedules. This information suggests that there may be a basis for the Committee concluding that the Landlord is not 'fit and proper', and that either the Application should be refused or the Registration already granted should be removed.

3. Proposals

- 3.1. The Committee should consider each case and decide whether or not to grant the Application, or remove the Registration.
- 3.2. If the Committee 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> <ul style="list-style-type: none"> (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); (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. <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:	None
Community Benefits:	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. Consultation

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



ELMA MURRAY
Chief Executive

Reference : PAT

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

Background Papers

Schedules (not to be published - Local Government (Scotland) Act 1973,
Section 50B(2))