

REPORT TO: Licensing Sub-Committee

MEETING DATE: 14 November 2019

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Housing (Scotland) Act 2006, Part 5, Application for Grant of a Licence to operate a House in Multiple Occupation at 17 Edenhall Bank, Musselburgh, EH21 7JQ

2a

1 PURPOSE

- 1.1 A licence application for grant of an HMO licence has been received from East Lothian Council, to allow them to operate the property at 17 Edenhall Bank, Musselburgh, EH21 7JQ as a House in Multiple Occupation (HMO) (Appendix 1).
- 1.2 This is a new application which is required to be determined by the Licensing Sub-Committee and not through delegated powers.
- 1.3 Letters of objections have been received from local residents. Relevant objections require to be considered prior to the Council taking a decision on the licence application, and it is therefore a requirement that this application is determined by the Licensing Sub-Committee and not through delegated powers.
- 1.4 The Sub-Committee is required to focus on the suitability of the property as an HMO and to establish that the applicant is a fit and proper person to hold an HMO licence.

2 RECOMMENDATIONS

- 2.1 The Licensing Sub-Committee is asked to consider the application and objections, and to determine whether the HMO licence application for 17 Edenhall Bank, Musselburgh, EH21 7JQ is to be granted; granted subject to conditions; or refused.
- 2.2 If the HMO licence is granted, the Sub-Committee is asked to decide the period of the licence; this can range from six months to three years.

- 2.3 If the HMO licence is granted, the Sub-Committee is asked to agree that this be granted subject to the standard conditions outlined in Appendix 2. The Sub-Committee is also asked to consider if additional conditions are required.

3 BACKGROUND

- 3.1 The Housing (Scotland) Act 2006, Part 5 requires that where a property is to be occupied by three or more persons from three or more families, who share use of a sanitary convenience, personal washing facilities and cooking facilities, the owner must apply to the Local Authority for a licence to operate an HMO. The property must also be their main or principal residence in the UK.
- 3.2 The HMO Application was received on 1 August 2019. Notices, under Section 2 of Schedule 24 of the Housing (Scotland) Act 2006, were displayed at and around the property on 6 August 2019, and remained in place for the statutory minimum 21 days. These notices inform local residents of the licence application and give information regarding their right to submit objections and/or make representations in relation to the application.

Objections Received

- 3.3 The Council has received three objections which object to the granting of the application. These are from neighbours at numbers 15, 34 and 37 Edenhall Bank, Musselburgh, EH21 7JQ. The representations are competent as they were received in the correct format, and within the 21 day time period as set out in the above legislation. All representations were in writing and were received between 12 and 19 August 2019. All three representations can therefore be considered by the Sub-Committee. Redacted copies of the representations are attached to this report (Appendix 3).
- 3.4 The representations raise objections to the granting of an HMO Licence at 17 Edenhall Bank, Musselburgh, EH21 7JQ. The concerns raised relate to several issues. In summary these are:
- it will adversely affect the future sale/value of neighbouring property;
 - feelings of vulnerability;
 - the majority of local residents are retired and elderly people; and
 - previous tenants of this property have engaged in antisocial behaviour.

Matters to be considered by the Sub-Committee

3.5 In determining the application, the Sub-Committee must restrict itself to grounds of refusal specified in Part 5 of the Housing (Scotland) Act 2006. This states that an application shall be refused if:

- The applicant and/or any agent specified by the applicant are, in the opinion of the Sub-Committee, not fit and proper to be authorised to permit persons to occupy any living accommodation as an HMO (Section 130)
- The applicant and/or any agent specified by the applicant are disqualified by an order of a Court from holding an HMO Licence. (Section 130)
- The Sub-Committee determines that the property is not suitable for occupation as an HMO, or cannot be made suitable by including conditions on the HMO Licence (Section 131). In determining whether any property is, or can be made to be suitable for occupation as an HMO the Sub-Committee must consider:
 - its location;
 - its condition;
 - any amenities it contains;
 - the type and number of persons likely to occupy it;
 - whether any rooms within it have been subdivided;
 - whether any rooms within it have been adapted resulting in an alteration to the situation of the water and drainage pipes within it;
 - the safety and security of persons likely to occupy it; and
 - the possibility of undue public nuisance.
- The Sub-Committee considers that there is (or, as a result of granting the licence, would be) an overprovision of HMOs in the locality (as determined by Sub-Committee) in which the property concerned is situated (Section 131A). In determining whether to refuse to grant an HMO Licence as a result of overprovision, the Sub-Committee must have regard to:
 - whether there is an existing HMO Licence in effect in respect of the property;
 - the views (if known) of the applicant, and if applicable, any occupant of the living accommodation;
 - the number and capacity of licensed HMOs in the locality; and

- the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.

Terms of an HMO Licence

3.6 An HMO licence may include such conditions as the Sub-Committee thinks fit.

3.7 Any condition included in an HMO licence may specify a date from which that condition is to have effect. The following issues have been identified from required documentation submitted by the applicant:

- Electrical Installation Condition Report (EICR) (dated 1 August 2019) states that the next inspection is recommended to be carried out in 10 years or the next tenancy change. Scottish Government statutory guidance states:

Frequency of Inspection

30. Landlords should ensure that electrical safety inspections are carried out –

- *Before a tenancy starts, and*
- *During the tenancy, at intervals of no more than 5 years from the date of the previous inspection.*
- Fire Risk Assessment (dated 25 September 2019) has recommended a number of measures to be implemented (Appendix 4)
- Legionella Risk Assessment (dated 3 October 2019) has included a Summary of Recommendations (Appendix 5)

3.8 An HMO licence will have a valid period of between six months (minimum) and three years (maximum), to be determined by the Sub-Committee and declared on the licence.

Consultation Responses

3.9 Police Scotland have been consulted and have indicated that nothing is known to the detriment of the applicants, and that they have no issues with the application for an HMO Licence at 17 Edenhall Bank, Musselburgh, EH21 7JQ.

3.10 The property has yet to be inspected by East Lothian Council's Public Health & Environmental Protection Officer.

3.11 As this is a new application, the Scottish Fire and Rescue Service (SFRS), will complete their own inspection. At present, this is due to be undertaken jointly with East Lothian Council's Public Health & Environmental Protection Officer.

- 3.12 The Anti-Social Behaviour Team have reported that they have received one complaint of anti-social behaviour made against the property on 2 June 2018.
- 3.13 Complaints from neighbours have also been received via East Lothian Council's Homeless Team although no details of these have been disclosed.

Grant of Licence and Conditions

- 3.14 An HMO Licence can be granted for a minimum of six months and a maximum of three years.

4 POLICY IMPLICATIONS

- 4.1 Licensing of Houses in Multiple Occupation is a statutory obligation for East Lothian Council. This report is based upon Legislation and Scottish Government guidance for licensing HMOs.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none.
- 6.2 Personnel – none.
- 6.3 Other – none.

7 BACKGROUND PAPERS

- 7.1 Scottish Government Guidance published in January 2012 - Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities

Appendix 1: Application Form

Appendix 2: Standard conditions

Appendix 3: Redacted letters of objection

Appendix 4: Fire Risk Control Plan

Appendix 5: Legionella Risk Assessment Summary of Recommendations

AUTHOR'S NAME	Sheila Fitzpatrick
DESIGNATION	Team Leader – Licensing and Landlord Registration
CONTACT INFO	01620 820623
DATE	30 October 2019

**EAST LoTHIAN COUNCIL
HOUSING (SCOTLAND) ACT 2006**

APPLICATION FOR THE GRANT OR RENEWAL OF A LICENCE FOR A HOUSE IN MULTIPLE OCCUPATION

To be completed in **BLOCK CAPITALS**

Delete where appropriate

<p>NAME AND ADDRESS OF PREMISES (inc postcode)</p> <p>for which the Licence is required (hereinafter referred to as 'the premises')</p> <p>(If premises are in a flatted or sub-divided building, please give flat number and location eg 1st floor left)</p>	<p>17 EDENHALL BANK MUSSELBURGH MIDLOTHIAN EH21 7JQ</p>
<p>1. To be completed by the owner if a natural person</p> <p>(a) Full name</p>	<p>First Name</p> <p>Surname</p>
<p>(b) Home Address</p> <p>Business hours telephone number</p> <p>Home telephone number</p>	
<p>(c) Age, date and place of birth</p>	
<p>(d) Is the applicant to carry out the day to day management of the activity?</p> <p>If not, give the full name, address and date of birth of the employee or agent so engaged.</p>	<p>* YES/NO</p>
<p>2. To be completed by the owners if a company or partnership</p> <p>(a) Full Name</p>	<p>EAST LoTHIAN COUNCIL COMMUNITY HOUSING</p>

<p>(b) Address of Registered/Principal Office</p> <p>Business hours telephone number</p>	<p>JOHN MUIR HOUSE BREWERY PARK HADDINGTON EH41 3HA</p> <p>01620 827827</p>			
<p>(b) Full names, private addresses and dates of birth of all directors, partners or other persons responsible for the management of the business</p>	<p>MONICA PATTERSON (DEPUTE CHIEF EXECUTIVE – PARTNERSHIPS & COMMUNITY SERVICES)</p>			
<p>(c) Full name, address and date of birth of employee or agent to carry on the day to day management of the activity</p> <p>Business hours telephone number of the employee or agent</p> <p>Home telephone number of the employee or agent</p>	<p>JAMES COUTTS (SERVICE MANAGER – COMMUNITY HOUSING & HOMELESSNESS)</p> <div style="background-color: black; width: 150px; height: 20px; margin-top: 10px;"></div>			
<p>3. Subject to the provisions of the Rehabilitation of Offenders Act 1974, state below particulars of any convictions, conditional offers and/or fixed penalties, spent or otherwise, recorded against any person named in 1 and 2 above including any recorded against the company.</p>				
Name	Date	Court	Offence	Sentence

<p>4.</p> <p>(a) Has any person named in 1 and 2 above previously held or do they currently hold a House in Multiple Occupation Licence?</p> <p>If yes, which Authority gave the Licence?</p> <p>When was it granted?</p> <p>When did/does it expire?</p> <p>(b) Has any person named in 1 and 2 above ever applied for and been refused a House in Multiple Occupation Licence?</p> <p>If YES, which Authority refused the Licence?</p> <p>When was it refused?</p>	<p>YES</p> <p>East Lothian Council</p> <p>2019</p> <p>2022</p> <p>NO</p>
<p>5.</p> <p>(a) Does the landlord/agent/manager live on the premises?</p> <p>(b) If YES, what is the number of people in the landlord/agent/manager's family (including the landlord) living on the premises?</p> <p>(c) Does the landlord/agent/manager and/or his/her family share any facilities with the other residents of the premises?</p> <p>If YES, please specify what facilities are shared</p>	<p>No</p>
<p>6.</p> <p>(a) Specify the number of storeys in the premises</p> <p>(b) Total number of bedrooms</p> <ul style="list-style-type: none"> • single • double • other <p>(c) Occupant capacity of premises</p>	<p>Number - Two</p> <p>TOTAL =Three</p> <p>No of single BRs =Two</p> <p>No of double BRs =One</p> <p>No of other BRs= 0</p> <p>Three</p>

<p>7. Is a standard lease or other form of tenancy agreement used at the premises?</p> <p>If YES, please provide a copy with the application</p>	<p>YES</p> <p>SCOTTISH SECURE TENANCY AGREEMENT</p>
<p>8. Is gas used for cooking or heating purposes in the premises?</p> <p>If YES, include a copy of the current gas safety certificate with the application</p>	<p>YES</p>

DECLARATION – DELETE AS APPROPRIATE

We declare

(A) that we shall, for a period of 21 days commencing with the date hereof, display at or near the premises so that it can be conveniently read by the public, a notice containing such information required by the Housing (Scotland) Act 2006

OR

~~*(B) I am/we are unable to display a notice of this application at or near the premises because I/we have no rights of access or other rights enabling me/us to do so, but that I/we have taken the following steps to acquire the necessary rights, namely-~~

OR

~~*(C) that I am/we are not required to display a notice as the application is in respect of premises to be used as a women's refuge.~~

(D) that the particulars given by me/us on this form are correct to the best of my/our knowledge and belief.

(E) that we have read the attached guidance notes.

we enclose £452 in payment of the appropriate fee and hereby make application to East Lothian Council for the grant of the licence applied for.

Date

Signature of applicant or agent

Agent's address

.....

.....

Position of applicant in Company/
Partnership if not otherwise stated

STANDARDS AND CONDITIONS

- LC1** The licence holder must take steps to ensure that the property, fittings and furniture, including fire precautions, plumbing, gas and electrical installations, are maintained throughout the period of the licence to the standard required. The HMO owner should hold all necessary certificates.
- LC2** The licence holder must ensure that advice to occupiers on action to be taken in the event of an emergency is clearly and prominently displayed within the living accommodation.
- LC3** The licence holder must ensure that the physical standards for HMO living accommodation assessed as suitable by the local authority when approving the licence application are met at all times.
- LC4** The licence holder must ensure that the number of persons residing in the premises shall not exceed XXXX.
- LC5** The licence holder must make the Licence, including any conditions, available to occupiers, within the premises where it can be conveniently read by residents.
- LC6** The licence holder must ensure that actions to secure repossession must be only by lawful means.
- LC7** The licence holder must ensure that Liquefied Petroleum Gas (LPG) shall not be used or stored on the premises.
- LC8** The licence holder shall comply with the current regulations regarding maximum re-sale prices of gas and electricity supplied, as appropriate.
- LC9** The licence holder should ensure that let rooms are fitted with a lever latch and secured with a suitable lock and thumb turn mechanism or other appropriate locking mechanism.

East Lothian Council
Licensing

12 AUG 2019

Received

10th August 2019

East Lothian Council (Licensing)
John Muir House
Haddington
EH41 3HA

PROPOSED MULTIPLE OCCUPANCY OF
17 EDENHALL BANK
MUSSELBURGH

Dear Sir, I object to the above proposal on

the grounds that:

- 1 It will adversely affect the future sale of my property.
- 2 I am a 72 yr. old widow living alone and will feel vulnerable in my own home.
- 3 All but a few of the houses in the street are under home ownership
- 4 The majority of residents are retired people and elderly.

2

I trust that these objections will be considered and viewed favourably.

Yours sincerely



East Lothian Council
Licensing
19 AUG 2019
Received



15th AUGUST 2019

EAST LoTHIAN COUNCIL LICENSING (DEMOCRATIC
SERVICES)
JOHN MUIR HOUSE
HADDINGTON
EH41 3HA

PROPOSED HMO OF
17 EDENHALL BANK
MUSSELBURGH
EH21 7SQ

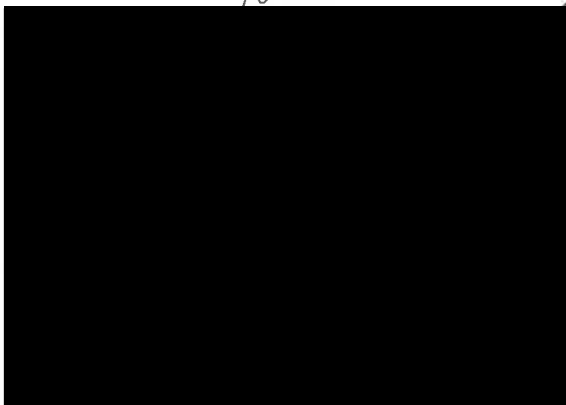
Dear Sir, I object to the above
proposal on the following grounds.
I am a single mother with 4
daughters aged between 6yrs + 12yrs old.
and feel that the type of people in
that property would put them at risk

2

2 - this is a quiet area with many elderly residents

I hope you will consider my objections.

Yours sincerely



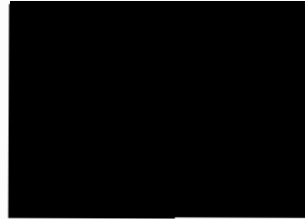
East Lothian Council
Licensing

12 AUG 2019

Received

F.A.O:- Mr Patterson

East Lothian Council
Democratic Services (Licensing)
John Muir House
Haddington
EH41 3HA



11th August 2019

Dear Mr Patterson

I wish for our objections to be taken into consideration before a decision is made to allow the above MULTIPLE OCCUPANCY at the afore said address.

Our objections to our area of Edenhall Bank/Crescent are as follows:-

- 1) The surrounding area to 17 Edenhall Bank mainly consists of ELDERLY Ownership.
- 2) This house has over the years been used for homeless or DSS Tennants which has created many a sleepless night and tested many a patience.
The last occupants partied all night, smoked illegal drugs in and out of the house.
The police were called upon on several occassions.
Their language was disgusting and you were scared to look at them when passing incase our look was taken wrongly.
- 3) There is also another young family housed within the area, where shouting and swearing is 2nd nature to them.

With all the above taken into consideration, we feel that apart from depreciation off our houses, we would really like our housing area to be back to the quiet residential area that it was.

Whilst we appreciate the fact that you have to house people, surely it would be better if you housed a more suitable family for the area we live in.

We would just like to add, that on speaking to the residents in the area, they all feel the same. They may not have contacted you, but many off us were actually unaware of your proposals as the notice you hung on a surrounding plant hanger, is not in an area where passerby's would be aware off, or be able to read, unless you actually walked up the path, which we believe was inteded so there was no objections would be made.

We would ask that you keep us up-dated as this matter is obviously very important to all of us.

Yours sincerely



FIRE RISK CONTROL PLAN

It is considered that the following recommendations should be implemented in order to reduce fire risk to, or maintain it at, the following level:

Trivial

Tolerable *

Definition of priorities (where applicable):

1. One 6l foam type fire extinguisher to be hung in the main hallway.
2. Fire Blanket required in kitchen.
3. A log book must be provided and maintained contemporaneously.
4. Fire warning system to be tested weekly and recorded.
5. Emergency lighting to be tested weekly and monthly and recorded.
6. Fire doors to be inspected and a maintenance record of repairs kept.
7. Provide destructive test certificates for the fire doors and essential hardware fitted.
8. The Living room door is not self closing.
9. Detail arrangements for smokers in these premises.
10. Provide design installation and commissioning certification to BS 5839 Part 6 for fire warning/automatic smoke detection system.
11. Provide Certification for Emergency lighting system to BS 5266 Current edition.

**Priority
(where
applicable)**

Summary of Recommendations

System	Deviation	Risk Score	Recommendation	Date Completed	Signed By
Management Structure and Written Scheme		High 9	Management structure and written scheme should be put in place for ELC Housing		
Hot Water	TMV	High 6	Hot water feeding to the bath and WHB in bathroom was not regulated and temperatures were reaching 62 Degrees, although a separate scald assessment could carried out TMV units should be fitted as the tenants in the building could be susceptible to scalding. X2 Ausimix reliance TMV units should be fitted x1 22mm at bath and x1 15mm at WHB.		
Hot and Cold	Flexi Hoses	High 6	Flexi hoses were identified in bathroom WHB and possibly bath, Flexi hoses contain a natural rubber that when gets old and starts breaking down can harbour bacteria which can cause bacteria issues in the water system.		
Shower	Disinfection	High 6	Although shower could be used all the time it is extremely hard to tell, due to susceptibility of tenants and ELC having a duty of care to tenants the shower should be cleaned and disinfected at least quarterly and recorded in site log book.		
Shower	Water By Laws	High 9	Safety clip for shower hose should be fitted as it is comply with water by laws, shower should not be able to lie in bath incase bath has been filled with water and there is a back pressure that can		

			draw water from bath (Category 3) and pull this cat 3 water into mains water system		
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