



**MINUTES OF THE MEETING OF THE
LICENSING SUB-COMMITTEE OF THE CABINET**

**THURSDAY 10 SEPTEMBER 2020
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

Councillor J Findlay
Councillor J Henderson
Councillor C McGinn (Convener)
Councillor J McMillan
Councillor T Trotter
Councillor J Williamson

Other Councillors Present:

None

Council Officials Present:

Mr I Forrest, Senior Solicitor
Ms S Fitzpatrick, Team Manager – Licensing & Landlord Registration
Ms C Shiel, Licensing Officer
Ms R Pringle, Strategy Officer

Others Present:

PC J T White, Police Scotland (Item 6)

Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

Declarations of Interest:

None

1. MINUTES FOR APPROVAL – LICENSING SUB-COMMITTEE, 12 MARCH 2020

The minutes of the meeting of the Licensing Sub-Committee on 12 March 2020 were approved as an accurate record of the meeting.

2. APPLICATION FOR THE GRANT OF A LICENCE FOR A HOUSE IN MULTIPLE OCCUPATION

a. 69 Kennedy Crescent, Tranent, EH33 1DN

The Depute Chief Executive, Resources and People Services, had submitted a report to advise that an application for the grant of a House in Multiple Occupation licence had been received from Mr Cameron Veitch, of Benchmark 4 LLP, to allow him to operate the property at 69 Kennedy Crescent, Tranent as a House in Multiple Occupation (HMO).

Mr Scott Runciman was present to represent the applicant. Mr Michael Brunton, objector, was also present.

The Sub-Committee required to assess the suitability of the property as an HMO and to establish that the applicant was a fit and proper person to hold an HMO licence.

Ian Forrest, Legal Adviser, presented the report. He advised that the Housing (Scotland) Act 2006, Part 5 required that, where a property is to be occupied by three or more persons from three or more families, the owner must apply to the local authority for a licence to operate an HMO. In accordance with legislation, notices were to be displayed at and around the property and remained in place for the statutory minimum period of 21 days. He noted that Police Scotland had made no objection or representations to the application. He advised that that a number of public objections had been received, which focused on the potential for antisocial behaviour, concerns around parking availability, restrictions to title deeds, and concerns with the effectiveness of the display of the public notice.

The Legal Adviser reminded Members that, in determining the application, they were restricted to the grounds of refusal specified in Part 5 of the Housing (Scotland) Act 2006, and noted that concerns around title deeds were a matter for those who had authority to enforce title deeds. He advised Members what they must consider when determining if a property were suitable for occupation as an HMO. He reminded Members that an application had previously been made and refused on the grounds that the property was unsuitable due to a lack of car parking; the applicant had subsequently appealed to the Sheriff Court in light of the material change of circumstances (monoblocking to the front of the property), and this had been remitted back to the Sub-Committee to reconsider.

The Convener invited Mr Runciman to speak in support of the application. Mr Runciman addressed the tests from the Housing (Scotland) Act 2006. He advised that Mr Veitch ran a number of HMO properties without issue; he was an experienced landlord and acted on tenancy issues quickly, which he gave as evidence that the applicant was a fit and proper person to run the property as an HMO. He addressed the suitability of the property, and referenced the up-to-date documentation, such as the fire safety and environmental health reports, and gas certificate.

Mr Runciman went on to address the general concerns of objectors in detail. He advised of modifications made to the front of the house, and stated that the newly monoblocked area would facilitate parking for at least four cars. He reiterated the Legal Adviser's earlier statement that this hearing was not a forum for the discussion of matters relating to title deeds. He stated that the access strip at the front of the house would remain available to the council should access be required. He referenced concerns about antisocial behaviour; he suggested that objectors were averse to change and diversity within the neighbourhood, and felt it unfair to contribute such behaviour to potential tenants. He advised that tenants were selected on the basis that they would fit in to the area. He stated that Mr Veitch had received no complaints of antisocial behaviour at the property, which had been operating as a rental property since 2019.

Mr Runciman went on to address concerns relating to the display of the notice for 21 days. He explained that Mr Veitch had asked to display the notice on a nearby tree but had been refused permission, and said the notice had been moved by the tenants from the front door to the window. Mr Runciman also noted that objections concerning the value of properties in the area were not in the HMO test. He advised that the concerns regarding alterations for additional capacity had been unfounded, as the attic was for storage space only. Finally, in relation to the concern that this property would 'open the floodgates' for further HMO applications, he noted that the local authority could control the issue of overprovision. He summarised that all of the tests for the grant of an HMO licence had been met, and invited the Sub-Committee to impose conditions they saw fit if they had any concerns.

Responding to questions from Councillor Henderson, Mr Runciman confirmed that the house would have a maximum capacity of four occupants. He advised that Mr Veitch had used reputable builders who had not raised any concerns regarding planning permission to carry out the monoblocking work.

Councillor McMillan raised further concerns regarding parking on the residential street and asked about legalities around the COVID 19 pandemic for letting. Mr Runciman suggested that future tenancy agreements could regulate issues around parking, and said that Mr Veitch would be happy to educate his tenants on any conditions imposed. The Legal Adviser said that no specific COVID-related legislation had addressed tenancies and HMOs.

Responding to a question from the Convener, Mr Runciman advised that the access strip did belong to the property, and that although the strip no longer had grass over it, it would still be accessible to the council or emergency services if necessary.

The Convener invited Michael Brunton to speak to his objection. Mr Brunton highlighted various issues raised in the objections lodged by the residents of Kennedy Crescent. He stated that the sign had not been displayed prominently or where neighbours could see it without looking in the front window of the property. He also noted that parking was already an issue on the street, and he asserted that the new driveway would not accommodate as many cars as had been indicated previously.

The Convener questioned whether it would be down to neighbours to police the number of cars parked. Mr Runciman responded that any house on the street could have multiple cars parked or a number of visitors at any time, and noted that the two current tenants at the property could have a similar situation; he suggested that there could be greater restrictions to parking conditions should they be imposed on the HMO licence.

Responding to questions regarding the access strip, Mr Runciman thought there would be space for three cars if no car could be parked over this area. He advised that he

had spoken with Mr Veitch, who had agreed that the access strip could be converted back to grass if necessary. On the issue of parking, Mr Runciman advised that a significant investment had been made to the property, which had a maximum occupancy of four, and felt that a condition of two cars would be too restrictive; he suggested that three cars may be more manageable.

Councillor Trotter commented that work had been undertaken without regard to existing rules, and Mr Runciman assured the Sub-Committee that there had been no contraventions to any rules which were relevant to the HMO application.

Councillor McMillan questioned whether there was a tenants' and residents' association for Kennedy Crescent. He raised issue with roadworks narrowing the road. He was concerned about the movement of additional vehicles at key times, and considered conditions that could be imposed to help with this. The Legal Adviser reminded the Sub-Committee that they could impose any conditions they saw fit, if they felt they were reasonable and appropriate. It was established that there was no tenants' and residents' association.

The Convener asked Mr Brunton whether he could comment on the movement of vehicles. Mr Brunton advised that this had not been an issue in the past.

The Convener then moved to a vote, which was taken by roll call, and invited Members to give further comments.

Councillor Trotter felt that little had changed since the previous decision had been made.

Councillor McMillan commented that he would not be minded to grant due to the potential for issues around parking, potential for public nuisance, and issues around having an HMO in a residential area. He stated that the conditions he would wish to impose to make the arrangement practical for neighbours would be too difficult to enforce.

The Convener remained unconvinced about the suitability of the parking arrangements and did not feel sufficient changes had been made. He also expressed concern about leaving the monitoring of potential conditions to members of the public.

Votes were cast as follows:

Grant:	0	
Grant, but with conditions:	2	(Councillors Williamson and Henderson)
Refuse:	4	(Councillors Trotter, Findlay, McMillan, and McGinn)

Decision

The Licensing Sub-Committee agreed to refuse the application on the basis that insufficient parking spaces had the potential to cause disruption on the street.

3. UPDATE OF DELEGATED POWERS LIST

The Depute Chief Executive – Resources and People Services had submitted a report to advise the Sub-Committee of a proposed update to the list of delegated powers granted to licensing officers.

Ian Forrest, Senior Solicitor, presented the report. He advised that the list of delegated powers appended to the report had been updated for the purposes of streamlining the list to make it easier to follow than previous versions. It also added a list of legislation to which the powers applied. Mr Forrest reassured Members that any applications which attracted objection from the police, public, or from other relevant stakeholders would continue to be decided by the Sub-Committee, and licensing officers would continue to deal with straightforward applications.

Councillor Trotter felt uncomfortable with the powers listed at item 5 (to determine whether exceptional circumstances exist which would justify the return of application fees in cases where the application is not progressed), item 7 (to determine whether “good cause” has been shown by an applicant where the application for renewal of a licence is received late, in terms of Schedule 1, paragraph 8(5A) of the Civic Government (Scotland) Act 1982), item 8 (to determine whether individual conditions are to be included in the grant or renewal of a licence, in addition to standard conditions), and item 9 (to determine whether existing conditions are varied, on a temporary or permanent basis). He felt that such matters should have recourse to the Sub-Committee, and proposed that a decision be delayed until such time as the delegated powers list could be reworded in such a way as to ensure the Sub-Committee felt comfortable with it.

Sheila Fitzpatrick, Team Manager – Licensing and Landlord Registration, advised that items 5 and 7 already appeared in the delegated powers list as it currently stood. In response to a further question from Councillor Trotter, Ms Fitzpatrick provided further information on the proposed list compared to previous versions. She noted that the list of legislation contained was not exhaustive to future-proof the delegated powers list in preparation for incoming legislation.

Mr Forrest reiterated Ms Fitzpatrick’s points and added that the Civic Government (Scotland) Act 1982 made allowance for acceptance of a late application for the renewal of a licence; he noted that this had been part of the delegated powers list for some time.

The Convener requested that the Sub-Committee receive a list of applications that had been determined under delegated powers to allow Members to comment. Ms Fitzpatrick said that if anything came through that the Sub-Committee would previously have had consideration of, she would be happy to provide them with notice; this could be adopted into the practice of the licensing team.

Mr Forrest suggested that, should the Sub-Committee have concerns about specific delegated powers, the item could be continued to a later meeting to allow time to change the wording of the list. Councillors McMillan and Trotter welcomed this suggestion.

Ms Fitzpatrick advised that item 9 had arisen from licensing issues surrounding COVID 19. She referenced caravan parks who sought to vary licence conditions to suit one-off operational changes due to COVID 19. It was anticipated that similar requests may be received going forward.

Councillor Henderson seconded Councillor Trotter’s earlier proposal to continue the item to allow time to rework the delegated powers list, taking on board the Sub-Committee’s comments.

Councillor Williamson asked whether the continuation of the item would affect any applications awaiting determination. Ms Fitzpatrick advised that the licensing team would not have the power to vary the conditions of the caravan parks. Mr Forrest

confirmed that the delegated powers would have to be agreed before the caravan park applications could be dealt with. Councillor Henderson stated that should would not be comfortable with this to be dealt with under delegated powers.

The Convener raised the issue of caravan parks being allowed to remain open, but also noted the wider concern for economic recovery should no decision be made. Ms Fitzpatrick advised that she had been shown evidence that other local authorities had approved the opening of the normal closure period (for 2021 only) simply by issuing a letter. Councillor McGinn questioned whether the Sub-Committee would need to be reconvened to make a decision on this matter. Councillor Henderson raised concern over whether the environmental work could be carried out to enable a caravan park to remain open throughout its usual closure season; she found the precedence set by other local authorities not to be a convincing argument.

Councillor McMillan echoed Councillor Henderson's concerns regarding environmental health issues. He reflected on the balance between economic development and a responsibility to ensure other issues were not being caused by allowing caravan parks to open over their usual closure period.

Mr Forrest suggested that a vote be taken to continue the report, and that issues raised around caravan parks appear on the agenda of the following Licensing Sub-Committee meeting.

Councillor McMillan noted that he would be happy to attend an additional meeting of the Licensing Sub-Committee if this would help the businesses.

The Convener summarised the discussion and noted the potential need to convene a special meeting of the Licensing Sub-Committee to make decisions on matters relating to caravan park licences.

Decision

The Licensing Sub-Committee unanimously agreed to continue this report to the following meeting, pending further information.

***Sederunt:** Councillor McMillan left the meeting.*

4. PROPOSED AMENDMENT OF RESOLUTION ON PUBLIC ENTERTAINMENT LICENSING REGIME

The Depute Chief Executive – Resources and People Services had submitted a report to advise of proposals to amend and streamline the list of activities within the Resolution to licence Public Entertainment Activities.

Ian Forrest presented the report. He advised that public entertainment was a discretionary licensing powers, and it was for the local authority to decide whether to licence such activities. This most recent change was the licensing of theatres; he explained that theatres were currently covered by the Theatres Act 1968, which was due to be repealed in 2021, therefore leaving local authorities to decide whether still wished to licence theatrical performances. If they did, they would be added to the Resolution on Public Entertainment Licensing, as was proposed in the report. Mr Forrest advised of other slight changes contained within the Resolution, including the addition of air shows, escape rooms, outdoor stake parks, and enhancing the definition

of what was meant by a water-based activity. Mr Forrest advised that these changes would be required to go to public consultation, and as such, the Sub-Committee would only authorise officers to carry out the consultation at present. The results of the consultation would come back to the Sub-Committee, who would then consider the amended list along with any public comments. Should the Sub-Committee then agree to adopt the list, this would trigger a nine-month lead-in period before changes would come into effect.

Councillor Williamson raised an issue with the wording at Section 5, where he felt it needed to be made clearer that only small-scale organised fitness activities that were non-profit would be able to run without a public entertainment licence. He wished to clarify that boot camps, even with attendance under 150 persons, would still require a public entertainment licence. Councillor Williamson proposed that the final bullet point be amended to read thus: *Small scale community non-profit festivals, fetes, treasure hunts, duck derbys, galas, and organised exercise and fitness activities.*

Councillor Trotter commented that Section 5 would be welcomed by community groups who had raised issues in the past with being required to obtain public entertainment licences for various events. As many community groups were struggling due to the COVID 19 pandemic, he welcomed this help towards their future activities, and welcomed the paper. Councillor Trotter also seconded Councillor Williamson's amendment to the wording.

The Convener then moved to a roll call vote.

Decision

The Sub-Committee unanimously agreed to:

- i. approve the proposed wording of the amended resolution;
- ii. authorise the Service Manager – People & Governance, and such staff as she may designate, to advertise the proposed wording in the local press and undertake the necessary consultation process; and
- iii. thereafter receive and consider a further report following conclusion of the consultation process.

Sederunt: *Councillor Trotter left the meeting.*

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Sub-Committee agreed to exclude the public from item 5 which contained exempt information by virtue of Paragraph 2 (information relating to individual tenants) and items 6 and 7 by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

5. REMOVAL OF REQUIREMENT FOR DISPLAY OF PUBLIC NOTICE FOR HMO APPLICATION

Decision

The Sub-Committee agreed to disapply the requirement for the display of public notice for two HMO applications.

7. FITNESS AND PROPRIETY OF PRIVATE LANDLORD

Decision

The Sub-Committee agreed that the landlord could remain on the register, pending further review.

6. APPLICATION FOR THE GRANT OF A STREET TRADER LICENCE

Decision

The Sub-Committee agreed to grant the licence for a period of one year.