

REPORT TO: Licensing Sub-committee

MEETING DATE: 13 May 2021

BY: Executive Director for Council Resources

SUBJECT: Application for Renewal of a Licence to operate a House in Multiple Occupation at 8E Beach Lane, Musselburgh, EH21 6LA

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1 PURPOSE

- 1.1 A licence application for renewal of an HMO licence has been received from Ann Guthrie, to allow them to operate the property at 8E Beach Lane, Musselburgh, EH21 6LA as a House in Multiple Occupation (HMO) (appendix 1).
- 1.2 A letter of objection has been received from a local resident. Relevant representations and 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.
- 1.3 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 objection, and to determine whether the HMO licence application for 8E Beach Lane, Musselburgh, EH21 6LA is to be renewed; renewed subject to conditions; or refused.
- 2.2 If the HMO licence is renewed, 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 renewed, the sub-committee is asked to agree that this be renewed subject to the conditions and standards outlined in appendix 2.

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 26 August 2020, and was dated 26 August 2020. Notices, under Section 2 of Schedule 24 of the Housing (Scotland) Act 2006, were displayed at and around the property on 26 August 2020, 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.

Representations/Objections Received

- 3.3 The Council has received one objection which objects to the renewal of the application. The objection is competent as it was received in the correct format, and within the 21 day time period as set out in the above legislation. The objection was in writing and were received on 1 September 2020. The objection can therefore be considered by the sub-committee. A redacted copy of the objection is attached to this report (appendix 3).
- 3.4 The concerns raised relate to a number of issues. In summary these are:
- Degradation of the community spirit, of the block of flats housing the property
 - Communal cleaning is not carried out by the tenants of the property
 - Claims that tenants' behaviour has resulted in anti-social incidents

Matters to be considered by the sub-sub-committee.

- 3.5 In determining the application, the sub-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.
 - 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.

- 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 8E Beach Lane, Musselburgh, EH21 6LA.
- 3.10 The Anti-social Behaviour Team have reported that they have no objection to the renewal of this HMO licence.

Grant of Licence and Conditions

- 3.11 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 This report is not applicable to the wellbeing of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

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

7 BACKGROUND PAPERS

- 7.1 None

Appendix 1: Application Form

Appendix 2: Recommended conditions and standards

Appendix 3: Redacted letter of objection

AUTHOR'S NAME	Sheila Fitzpatrick
DESIGNATION	Team Leader – Licensing and Landlord Registration
CONTACT INFO	01620 820623
DATE	20 April 2021

HOUSE OF MULTIPLE OCCUPANCY APPLICATION FORM

- Please note that the applicant(s) must be the owner(s) of the property.
- Please include all joint owners.
- Please read the attached notes at Section 13 and reference is made to the Council's Guidance Notes and Standards for Shared Accommodation, available at: **www.eastlothian.gov.uk** where the detail of the relevant fees can be obtained.

Section 1 – Application Type

This application form can be used to apply for a New **Licence, Renewal** of an existing licence or a **Variation** of an existing licence. Please indicate which type of application you are making by checking the appropriate box below.

New HMO Licence Renewal of Existing Licence Variation of Existing/ Pending Licence

Existing Licence Number HMO/ 2017/004
(in the case of a Renewal or Variation):

If a **Variation Application** please check each appropriate box

Change of ownership prior to a Licensing Committee (New and Pending Applications Only)

Change of day to day manager

Change of occupancy numbers

Change of physical layout

If the Variation is for a change to the physical layout of the property, please

describe the change below _____

Section 2 – Property Details

This section refers to the property for which the application is being made.

Name of Premises (if applicable) _____

Address 8E BEACH LANE, MUSSELBURGH

Postcode EH21 6LA

Flat No and/or Location 2nd floor flat

No. of storeys (floors) within this dwelling (flat or house) 2 Occupancy capacity of the property 3

Number of bedrooms 3 Number of living rooms 1

Number of bedrooms to be occupied by one person 3 Number of bedrooms to be occupied by two or more people —

Number of bathrooms 1 Number of separate toilets —

Other rooms (specify below) _____ Number of kitchens 1

Do you intend to provide meals for the residents? YES NO

Will the residents be self catering? YES NO

Will there be employees working in the premises? YES NO

Section 3 – Previous Licence Applications

If this property was previously licensed as an HMO by a previous owner, what date did you conclude the purchase? _____

Please confirm the name of the previous owner _____

Previous HMO licence number **HMO/** _____

Have any of the current owners of this property been refused a similar licence in the last 2 years? YES NO

If the answer to the question above is YES, please give details below:

Section 4 – Applicant Details (Individual Persons)

4.1 Main Applicant (to be completed if an individual person)

Title MRS Surname GUTHRIE First Name ANN

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____
_____ Postcode _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) 338523/210/29111

Will this applicant be carrying out day to day management of the HMO? YES NO



4.2 Joint Owner(s) (to be completed if an individual person)

Please provide details for all Joint Owners, other than the main applicant above (all those listed on the Title Deeds). The address provided for an individual owner should be their permanent residential address.
(If more than 2 joint owners, please use separate sheet.)

Number of Joint Owners (including Main Applicant) _____

Title _____ Surname _____ First Name _____

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____

_____ Postcode _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out day to day management of the HMO? YES NO

Section 5 – Applicant Details (Company/Charity/Trust/Partnership)

5.1 Please indicate whether the applicant is a Company, Charity, Trust or Partnership

Company

Charity

Trust

Partnership

5.2 Please provide the details of the Company, Charity, Trust or Partnership

Full name of Company, Charity, Trust or Partnership (including postcode)

Name of Secretary or responsible person _____

Address of principal office _____

Telephone number _____ E-mail address _____

Landlord Registration Number _____

5.3 Please provide details of all Director(s), Trustees or Partners.

If more than three, please use separate sheet.

Applicant 1

Title _____ Surname _____ First Name _____

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____

_____ Postcode _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out
day to day management of the HMO? YES NO

Applicant 2

Title _____ Surname _____ First Name _____

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____

_____ Postcode _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out day to day management of the HMO? YES NO

Applicant 3

Title _____ Surname _____ First Name _____

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____

_____ Postcode _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out day to day management of the HMO? YES NO

6.2 Please provide the details of all Directors or Partners where an organisation or company is carrying out the day to day management

If more than three, please use separate sheet.

NOTE: The first named individual below will be considered as the nominated person for the organisation or company. Any change to the nominated person will require a Variation to the Licence and the appropriate fee.

Applicant 1

Title MR Surname ALEXANDER First Name JOHN

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth [REDACTED] Place of Birth [REDACTED]

Male Female

Home Address [REDACTED] Postcode [REDACTED]

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. 0131 558 3000 Email address johnalexander@djalexander.co.uk

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out day to day management of the HMO? YES NO

6.3 Will any of the applicants for this licence be carrying out the day to day management?

YES NO

If the answer to the above question is YES, please provide the name of the applicant below. (The named individual below must appear in Section 4 or Section 5). If the answer is NO, please go to 6.4.

Title _____ Surname _____ First Name _____

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____

_____ Postcode _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out day to day management of the HMO? YES NO

6.4 If the day to day Manager is an individual other than an applicant, named in Section 4 or Section 5, please complete the details below

Title MR Surname DRYAN First Name JAMES

Middle Name(s) _____ Maiden Name (if applicable) _____

Date of Birth _____ Place of Birth _____

Male Female

Home Address _____

Home Tel. No. _____ Mobile Tel. No. _____

Work Tel. No. _____ Email address _____

Landlord Registration Number (if applicable) _____

Will this applicant be carrying out day to day management of the HMO? YES NO

Section 7 – Appointed Agent

An Agent is an individual, organisation or company appointed to submit and process an application on behalf of the owners of the property but who will not be acting as day to day managers once a licence has been granted.

This section need not be completed if the applicant(s) or appointed day to day manager are submitting the application.

Name of Organisation or Company _____

Address of Organisation or Company _____

Postcode _____

Landlord Registration Number of Organisation or Company _____



Section 8 – Contacts

The contact details below can be the applicant, day to day manager or agent as required.

8.1 Contact for access and queries during the application process

Name of Contact Jimmy DRYNAN

Address [REDACTED]

Postcode [REDACTED]

Telephone Number [REDACTED] Email address [REDACTED]

8.2 Contact for access and queries during the life of the licence

Applicant or Day to Day Manager's representative

Name of Contact _____

Address _____

Postcode _____

Telephone Number _____ Email address _____

Section 9 – Details of Convictions and Fixed Penalty Notices

Has any person listed in Sections 4, 5, 6 or 8 been convicted of any offences or been issued with any fixed penalty notices?

YES NO

If the answer to the question above is YES, please provide the details below

NOTE: Details of ALL convictions and FIXED PENALTIES (CRIMINAL and ROAD TRAFFIC) including spent convictions must be given below, even if they have been previously disclosed on a prior application form.

NAME	DATE	COURT	CRIME/ OFFENCE	PENALTY

Section 10 – Checklist of Required Enclosures and Actions

An application will only be deemed competent where all necessary information is submitted together with the relevant fee.

NEW APPLICATION CHECKLIST

Document	Guidance Note	Comment	Enclosed (please tick)
Floor plan	3 (a) (i) and (ii)		✓
Style copy of Tenancy Agreement	3 (b)		
Copy of Property Insurance	45		✓
Copy of Landlords Owners/ Public Liability Insurance	45		
Current NICEIC or SELECT Electrical Installation Condition Report	3 (d) and 37 to 40		✓
Current Portable Appliance Test (PAT) Certificate	3 (d) and 37 to 40		✓
Gas Safety Certificate (if applicable)	3 (e) and 41 & 42		✓
Building Standards Warrant and Completion Certificate (if applicable)	10		
Planning Change of Use Consent (if applicable)	7 and 11		
Application Fee	2		PAID ONLINE
Public Notice displayed	4 and 5		✓
Energy Performance Certificate	22		✓
Legionella Risk Assessment	23		RECEIPT

The guidance notes referred to above and below form part of East Lothian Council's "Guidance Notes and Standards for Shared Accommodation" which is available from the Licensing, John Muir House, Haddington, EH41 3HA 3BA or from the Council's website.

RENEWAL APPLICATION CHECKLIST – As above

Section 11 – Public Notice Declaration

Where declaration (A) is made a Certificate of Compliance with paragraph 2(5) of Schedule 4 to the Housing (Scotland) Act 2006 must be produced in due course (see notes).

A	I / we declare that I / we shall, for a period of 21 days commencing with the date hereof, display at or near the premises so that it can conveniently be read by the public, a note complying with the requirements of Paragraph 2(1), (2) and (3) of Schedule 4 of the Housing (Scotland) Act 2006 (see note 2).
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OR

B	I / we declare that 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 to do so, but that I / we have taken the following steps to acquire the necessary rights, namely: <i>(specify steps taken here)</i> but have been unable to acquire those rights.
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OR

C	I am / we are not required to display a notice as the application is in respect of premises used as a Womens Refuge.
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Section 12 – Application Declaration

I DECLARE THAT THE PARTICULARS GIVEN BY ME ON THIS FORM ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I HAVE READ THE GUIDANCE NOTES REFERRED TO AND I FURTHER ACKNOWLEDGE THAT I UNDERSTAND IT IS A CRIMINAL OFFENCE TO OPERATE AN HMO PRIOR TO A LICENCE BEING GRANTED.

Signature of ~~Applicant~~ or Agent* _____
(**delete as necessary*)



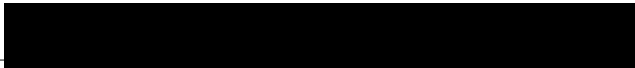
Date 26/8/2020

The individual signing this application should be an applicant or alternatively the agent or day to day manager identified in this application.

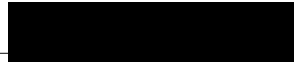
Name (BLOCK CAPITALS) JAMES DRYWAN

Position (if signing on behalf of applicant) HMO COORDINATOR

Address _____



Postcode _____



HOUSES IN MULTIPLE OCCUPATION LICENSING CONDITIONS

1. The Licensee shall make the Licence and these conditions, available to occupiers within the premises where it can be conveniently read by residents.
2. If there is a material change of circumstance affecting the Licensee or the operation of the HMO, the Licensee must inform the licensing authority as soon as possible. No alteration must be made to the property without the prior written consent of the authority.
3. The granting of a licence requires that notice in writing be given to every occupier of premises in the same building and the occupiers of adjoining premises which share a common boundary with the land upon which the licensed premises are situated, advising them of the name of the Licensee or managing agent, a contact address, daytime telephone number and emergency telephone contact number. For the purposes of this condition, "common boundary" means any land or buildings which share a boundary with the land on which the licensed premises are situated or are on the opposite side from the licensed premises of any road, pathway or common area less than 20 metres in width. Where the licensed premises are in a sub-divided building, notification requires to be made to all other parts of that building, in addition to any land or buildings falling within the terms of the preceding sentence. Where any such adjoining buildings are themselves part of a sub-divided building, all parts of that building require to be notified.
4. 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.
5. Where appropriate, the Licensee shall comply with the Food Safety Act 1990, and any regulations thereunder. The Food Hygiene Regulations, The Health and Safety at Work Act 1974, and any regulations thereunder and The Furniture and Furnishings (Fire) Safety Regulations 1988.

HOUSES IN MULTIPLE OCCUPATION – LICENSING CONDITIONS (continued)

- 6.** All licensed premises shall comply with the requirements of the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 and will be provided with:
 - Adequate means of escape in case of fire.
 - Adequate means of ensuring that the means of escape can be safely and effectively used at all times.
 - Adequate and suitable fire-fighting equipment.
 - An adequate fire alarm system.
 - An adequate number of smoke detectors.
 - An adequate number of Notices detailing procedures in the event of fire.
- 7.** The equipment required to comply with these conditions shall be adequately maintained at all times, and it shall be the responsibility of the Licensee to ensure sufficient instructions are given to the residents of the licensed premises regarding the procedures to be followed in the event of a fire.
- 8.** To ensure an adequate electricity supply is maintained to the installed Fire Detection system, where credit card meters are in use, the Licensee will be responsible for ensuring that the meters remain in credit when the premises are unoccupied for any period exceeding 48 consecutive hours.
- 9.** 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.
- 10.** 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.
- 11.** The number of persons residing in the premises shall not exceed the maximum number stated on the licence. The use and occupancy levels of each room shall not be changed without the approval of East Lothian Council. Any change may be subject to a variation fee.

HOUSES IN MULTIPLE OCCUPATION – LICENSING CONDITIONS (continued)

- 12.** The Licensee shall allow access to the premises at any reasonable time to the following officials for licensing purposes:
 - Any officer of East Lothian Council.
 - Any officer of the Scottish Fire & Rescue Service
 - Any officer of Police Scotland
- 13.** The Licensee shall comply with all relevant legislation affecting private sector residential tenancies.
- 14.** Written occupancy agreements must be provided, and must meet with the approval of East Lothian Council. Once approved, the occupancy agreement must not be altered unless the Licensee obtains further approval from the Council.
- 15.** The Licensee will be responsible for the day to day running of the premises, and for ensuring that residents comply with the terms of their Lease and in particular to deal effectively with any anti-social behaviour by tenants to anyone else in the HMO or in the locality of the HMO.
- 16.** Actions to secure repossession must be only by lawful means.
- 17.** The Licensee shall be responsible for ensuring that all electrical installations are in accordance with the current IEE Wiring Regulations, and gas installations comply with the Gas Safety (Installation and Use) Regulations 1998.
- 18.** Gas and electrical appliances provided by the Licensee must be maintained in a safe and satisfactory condition. Continuity of certification must be maintained. Tenants' appliances should be in good repair, used for the intended purpose, and suitable for the intended purpose.
- 19.** Liquefied Petroleum Gas (LPG) shall not be used or stored on the premises.
- 20.** The licence holder shall comply with the current regulations regarding maximum re-sale prices of gas and electricity supplied, as appropriate.

HOUSES IN MULTIPLE OCCUPATION – LICENSING CONDITIONS (continued)

- 21.** 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.
- 22.** The building should be maintained in a reasonable state of repair, having regard to its age, type and location. Garden and environmental areas should also be adequately maintained. Where an HMO is in a shared building the Landlord must co-operate and participate in the general repair and maintenance of the building and the cleaning of common parts. Where the tenants fail to participate in the cleaning and maintenance of common areas or environmental areas, the landlord will be expected to carry out the work.
- 23.** Adequate and suitable facilities must be provided for the storage and disposal of refuse. Where bins are provided to terraced and tenemental property they must be clearly identified by flat or property address. The landlord must ensure that the tenants utilise the bins provided and ensure that refuse or bins are placed out on collection day and that bins are returned to the bin storage area following collection (where applicable).
- 24.** The Licensee will ensure that residents' mail is made available to residents on a daily basis.
- 25.** The Licensee shall maintain comprehensive Building Insurance and Property Owner/Public Liability Insurance in accordance with the approved Standards.

26th August 2018

East Lothian Council
Licensing

-1 SEP 2020

Received

Dear East Lothian Council,

I would like to object to the proposed HMO licence for 8E Beach Lane. It has taken a considerable amount of effort from the community to tidy up this block of flats, create a sense of community and now a functioning residents association. I believe a HMO, which is likely to be used as student accommodation will degrade the community spirit that has been built. I believe that it is possible that unrelated students may already live in the flat and they do not complete any community cleaning of the common areas as the rest of our section do. There have also been instances of parties on the balcony which have disrupted the sleep of children next door. Although it has been possible to deal with each instance at a time, it would be much better to have a stable family or couple renting the flat who are willing to contribute to the community.

Many thanks,