



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

**THURSDAY 14 SEPTEMBER 2023
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

Councillor C McGinn (Convener)
Councillor C Cassini
Councillor C McFarlane

Other Councillors Present:

None

Council Officials Present:

Mr C Grilli, Service Manager – Governance
Mr I Forrest, Senior Solicitor
Ms C Aitken, Licensing Officer
Ms K Harling, Licensing Standards Officer

Others Present:

PC I Anderson, Police Scotland

Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor J Findlay
Councillor J McMillan
Councillor T Trotter

Declarations of Interest:

None

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Sub-Committee agreed to exclude the public from items 1 and 2 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.

1. CONSIDERATION OF THE FITNESS AND PROPRIETY OF AN EXISTING LANDLORD

The Sub-Committee agreed that no further action would be taken and the registered landlord could continue in their role.

2. APPLICATION FOR THE GRANT OF A TAXI DRIVER LICENCE

The Sub-Committee granted the taxi driver licence.

PRIVATE

[REDACTED]

[REDACTED]

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The webcast was resumed and the Licensing Sub-Committee moved back into public business.

PUBLIC BUSINESS

3A. MINUTES FOR APPROVAL – LICENSING SUB-COMMITTEE, 8 JUNE 2023

The minutes were agreed as an accurate record of the meeting.

3B. MINUTES FOR APPROVAL – SPECIAL MEETING OF THE LICENSING SUB-COMMITTEE, 6 JULY 2023

The minutes were agreed as an accurate record of the meeting. The Convener noted that of the Members present today, only Councillor Cassini had been present at the special meeting of 6 July, but that none of the other Members had raised issue with the minutes in advance of this meeting.

3C. MINUTES FOR APPROVAL – SPECIAL MEETING OF THE LICENSING SUB-COMMITTEE, 10 AUGUST 2023

The minutes were agreed as an accurate record of the meeting.

4. APPLICATION FOR THE GRANT OF A LICENCE TO OPERATE A SHORT-TERM LET

a. 25 Balfour Street, North Berwick

An application had been received from Lisa Hall-Baillie for a licence to operate 25 Balfour Street, North Berwick, as a short-term let (STL). The application would be heard by the Licensing Sub-Committee on the basis that eight objections had been received. The Sub-Committee was required to focus on the suitability of the property to operate as an STL, and on the applicant to hold an STL licence.

Ian Forrest, Senior Solicitor, presented the report. He highlighted the number and terms of the public objections, and confirmed that no objections had been received from any of the statutory consultees. He highlighted the impact of a recent court decision in Edinburgh which, in summary, said that in determining a short-term let licence application, the Licensing Sub-Committee should not look at matters already addressed as part of the planning process. He advised that Members were entitled to include conditions they thought fit and that were within the remit of the Sub-Committee. He also advised that a licence period of three years was usual, unless the Sub-Committee determined a lesser period to be appropriate.

Ms Hall-Baillie spoke to her application. She responded to the terms of the various public objections. Regarding waste management and recycling, she had spoken with council officers and said she was well aware of requirements. She advised that waste would be managed by contractors, but her experience in the industry was that short-term lets did not generate a great deal of commercial waste because guests regularly

ate out. She had never seen the discarded barbecues described in some of the objections, and suggested that there may be some misplaced rubbish from East Beach. She highlighted objections which referred to short-term lets which operated in properties with shared stairwells and front doors, but her property had its own front door. She advised that a property referred to in objections where noisy guests had stood drinking on a balcony into the night was no longer taking bookings. She said that her listing described the property as being an ideal retreat for individuals, couples, and families in a quiet area of North Berwick, and should therefore not attract noisy guests. She also met guests when they arrived and made them aware of the property rules. She said that the property had been upgraded to a high standard and was suitable for guests with mobility issues. She noted that the majority of holiday lets on the street would close since properties with shared stairwells could no longer operate as short-term lets. She also highlighted that none of the objections had complained about guest behaviour in ground floor flats.

Responding to a question from the Convener, Ms Hall-Baillie confirmed that the property had not been used previously as a short-term let.

Stephen Colvin spoke against the application. He said he appreciated the position of the applicant, but disagreed with her position because of the problems residents had experienced with short-term lets. Disposable barbecues had been left on walls, including at self-contained flats, and residents had to pick them up when the wind blew them onto the street. He said that people often had windows open or stood outside, and when in a holiday spirit they caused a good deal of noise. He said that a property next door which had a balcony was still being let to guests, causing a lot of noise. He said that people had been welcoming to his family in the two years they had lived on Balfour Street, and residents met up regularly. He was keen that there be no loss of community spirit, but felt that it was already being lost with less than 50% of the properties housing permanent residents. He said to have another holiday let on the street would amplify an already painful situation.

Alison Clark spoke against the application as a representative of North Berwick Environment and Heritage Trust and on behalf of residents at Melbourne Road and Balfour Street. She said that residents had been overwhelmed by the impact of short-term lets. She noted that Ms Hall-Baillie had not identified a day-to-day manager in the planning application, and it caused concern to neighbours when there was no one for them to contact. She said the experience of short-term lets had been very negative for the only remaining owner-occupier of 16 Melbourne Road, with short term lets at 27 Balfour Street using the bins for the neighbouring property. She said that guests requested neighbour assistance with refuse from STLs on a daily basis, and residents were obliged to sort waste and recycling regularly. She said that cleaners of STLs would clean the flats but not the shared areas. She advised that the application stated that refuse and recycling would be situated in the shared garden area, but that the other owners expressly withheld their permission for use of the shared area for commercial purposes. She said that there was no way to guarantee that paying guests from 25 Balfour Street would not access the shared garden. She noted incidents with other STLs, including nuisance caused by smoking and dog fouling in shared gardens. She said that the new owner of 25 Balfour Street had made no contribution to the shared cost of having and gardener. She summarised that, based on previous experience of STLs in the area, there was a certainty of issues of noise, refuse, and environmental health, and she felt the area should be retained as a residential area.

Natalie Pereira spoke against the application. She sympathised with the applicant since there were a significant number of objections which were not necessarily raised

due to experiences of her property, but were due to the residents dealing with holiday lets on a daily basis. She supported the comments of other objectors, and said that she had submitted an objection because of the antisocial behaviour on the street. She said that marketing a quiet seaside retreat could not guarantee that guests would not disrupt the quiet residential street. She said that there was a strong sense of community amongst the small number of permanent residents on Balfour Street, and she objected when properties that had been long-term residences were converted into STLs. She acknowledged the contribution of STLs to the economy of the town, but said that permanent residents invested on a daily basis. She highlighted the lack of housing available to long-term residents, and argued that long-term residents contributed more positively to the community. She asked the Sub-Committee to be mindful of the community that made North Berwick special. She was concerned that there would be a loss of more permanent housing, for which there was real need.

Responding to a question from the Convener, Ms Pereira was not aware of the instances of antisocial behaviour as having been reported to Police Scotland or East Lothian Council.

The Convener asked Ms Hall-Baillie to elaborate on issues of waste management raised by objectors. She responded that the property had an area to the front which was not a shared garden, and she was happy for recycling to be kept in this area if neighbours felt strongly about the issue. She reported she had spoken with a council officer in April 2023 and was aware of how to organise a commercial waste agreement and would pay for a commercial licence. She reiterated that storing the bins and recycling containers at the front of the property would not require access to shared areas if this was of concern to neighbours.

Responding to a question from the Convener, Mr Forrest advised that a condition requiring commercial waste management could be raised.

The Convener asked about meeting and greeting guests, and about how neighbours would contact her. Ms Hall-Baillie said that she would manage the property and had worked in the industry previously. She said she had invested in the property, wanted people to visit and enjoy it, and did not want neighbours to be upset. She said that the house rules were very strict and the property manual listed the quiet times within the property. She would give her mobile number to the nearest neighbours.

The Convener was minded to grant the application, but proposed that a condition requiring a commercial waste contract. Mr Forrest summarised that the Sub-Committee were requesting that the licensee would obtain and hold a commercial waste management agreement or licence from the council, and the final wording of the condition would appear in the licence as granted. The Convener formally proposed this condition, and Councillor Cassini seconded.

The Convener then moved to a roll call vote and Members unanimously voted to grant the licence, subject to the waste management condition.

DECISION

The Sub-Committee agreed to grant the short-term let licence, subject to the following condition:

- The licensee must obtain and hold a commercial waste management agreement or licence from the council.

b. Papple Steading, Haddington

An application had been received from George Mackintosh for a licence to operate four properties within Papple Steading, Haddington, as short-term lets. The application would be heard by the Licensing Sub-Committee on the basis that two objections had been received. The Sub-Committee was required to focus on the suitability of the property to operate as an STL and on the applicant to hold an STL licence.

Mr Forrest presented the report. He highlighted the number and terms of the public objections, and confirmed that no objections had been received from any of the statutory consultees. He advised that the report was made in similar terms to the previous STL licence report, and reiterated the impact of the recent court decision in Edinburgh which, in summary, said that in determining a short-term let licence application, the Licensing Sub-Committee should not look at matters already addressed as part of the planning process.

Mr Mackintosh was present to speak to the application, accompanied by Verity Sinclair, manager. He advised that the previous owner of objector Emma Waddle's property had left on good terms with the venture and had returned as a guest to Papple Steading. He had obtained quotes from two of three of objector Fiona Constable's previous tenants to indicate they were also happy neighbours who had been pleased to see the building restored and had not been disturbed by Papple Steading's guests. He said the self-catered accommodation had opened in 2021; the purpose had been to explain the history of farming and to save the steading, and the accommodation was marketed as a retreat. He said that the objections allowed him to look at the bigger picture. He said that the Airbnb phenomenon had created unpleasant neighbourhood environments, but said this did not apply in this rural area. He said that Papple Steading would play its role in hosting responsible tourism, green tourism, and agritourism.

Fiona Constable spoke against the application. She explained she was one of the joint owners of five Papple cottages, and had owned her property for 11 years. She said this was a large scale commercial venture, currently under Phase 1. She advised that Phase 2 would include another nine lets, a café, and auditorium, and felt this constituted a significant commercial development on the residents' doorstep. She said that the residents all loved nature and the countryside, and were keen to preserve and enhance it. She hoped conditions could be raised to mitigate some of the real concerns residents had. She said that Mr Mackintosh did not communicate with neighbours, despite their boundary being only 20m from his own, and had not warned them of the upcoming short-term let licence application; she asked that he improve communication with residents. She said that the area attracted rich wildlife, including breeding bats and owls, and was not suitable for barbeques and fireworks. There had also been a significant amount of roadkill. She asked that fireworks, barbeques, and fire pits be banned as part of the licence. She asked how noise would be limited when corporate groups were staying, and pointed out that hard surfaces could cause noise to travel in the very quiet area. She said that residents did not want a bar on their doorstep, and said that Papple was entirely the wrong place for such a venture. She urged the council to protect the community in Papple.

Responding to a question from Councillor Cassini, Ms Constable said she had owned the property since 2012 and had bought it to retire to, but was currently not resident there.

The Convener reiterated that the Sub-Committee could not rule on planning matters. He asked about further information relating to the breeding areas of bats. Ms Constable advised that there had been a planning condition designed to protect the breeding owls. She said the roof where barn owls were breeding had been removed in August, and this was under investigation.

Responding to questions from the Convener, Mr Mackintosh said that there was a small barbeque for each property, and one small fire pit on the edge of the wood. He said the premises was compliant in terms of their obligations to bats, owls, and badgers. He said that the fireworks had taken place on bonfire night, and there had been no fireworks other than sparklers since 2020. He reported that trees had been felled by an approved contractor due to ash dieback, and had been clearly displaying the disease. He said that this was a grey area, and the letter had been taken as a warning from Forestry Scotland.

The Convener asked about communication with neighbours, and Mr Mackintosh responded that he had communicated with all three of Ms Constable's tenants.

The Convener commented that while conditions could be imposed relating to communication with neighbours, the issues raised were communications concerns about wider issues relating to planning and not relevant to the STL application.

The Convener then moved to a roll call vote on the application, and votes were cast as follows:

For:	2	(Councillors McGinn and McFarlane)
Against:	1	(Councillor Cassini)
Abstain:	0	

DECISION

The Sub-Committee agreed to grant the short-term let licence.

c. 1 Ivory Court, Langriggs, Haddington

An application had been received from Elizabeth Doig for a licence to operate 1 Ivory Court, Langriggs, Haddington, as a short-term let. The application would be heard by the Licensing Sub-Committee on the basis of objections received, and the Sub-Committee was required to focus on the suitability of the property to operate as an STL and on the applicant to hold an STL licence.

Mr Forrest presented the report. He highlighted the number and terms of the public objections, and confirmed that no objections had been received from any of the statutory consultees. He advised that the report was made in similar terms to the previous STL licence reports, and reiterated the impact of the recent court decision in Edinburgh which, in summary, said that in determining a short-term let licence application, the Licensing Sub-Committee should not look at matters already addressed as part of the planning process.

Ms Doig spoke to the application, and addressed some of the concerns raised within the objections. She understood the area to be residential and quiet, but did not think the addition of this STL would add to noise. She planned to use analytical factors to block certain bookings, and her rules would include a maximum number of guests,

and that there could be no parties or smoking. It was important to her that guests be respectful, and she expected the property to be used by families wishing to holiday in East Lothian who would be out for most of the day. She said that as the property was her main residence and it would be let only when she was away, there would not be increased footfall when there were guests. She gave an account of the distance between her property and neighbouring properties, and highlighted the presence of an 8ft wall which would provide privacy. She said that her property was within a courtyard, but guests would not have to pass any neighbouring properties to gain access. She said that her neighbours had clients viewing their work at their home and moved large items past her doorway, and therefore she did not see a problem with operation of a business from her own home. She said that someone would meet her guests on arrival to direct them on the community, waste issues, and parking. She said that her property had one space and her own car would not be there. She noted the good public transport links in Haddington, and the economic benefits of bringing people to the area to access restaurants and shops.

Responding to questions from the Convener, Ms Doig advised that her property had four bedrooms, so could accommodate a maximum of 7-8 guests. She confirmed that all the properties had a garage and a parking space each.

Patricia Oliver spoke against the application on behalf of the residents of Carlyle Court. She said that Carlyle Court had been built with the elderly in mind and residents were aged 70 to mid-90s. She said some residents were undergoing hospital visits for long term illnesses or had received end of life care, and neighbours were respectful of their need for peace at this time. She said Carlyle Court was close to the back of Ivory Court, and felt the STL could bring the possibility of loud noise as visitors arrived and left, and loud music and barbeques late into the evenings. She noted that there may be times when visitor activity could not be controlled. She said that from a security perspective, the STL could make more people aware of the vulnerability of the community and residents, and asked that the Sub-Committee be mindful of their concerns which were causing residents a great deal of worry.

Pascale and Darren Woodhead spoke against the application. Mr Woodhead said the STL would have a significant impact on their family, home, and lives. They enjoyed a very private and secluded entrance yard, and walking past the applicant's property was their only entrance and exit. Their children and their friends regularly used the yard, and they could not feel secure because visitors could never be fully vetted. The yard was also used for loading of artwork, and the privacy and security of the yard was of utmost importance to the family. He said that the parking situation required constant communication, and with up to 7 guests, it would be likely that two vehicles would be there at a time. They did not give permission for a commercial licence for waste management. He said that windows and doors being open could cause disturbance, but antisocial behaviour was already a problem in Langriggs, with an assault recently having taken place outside the gates. He had also called the police in the previous week to report antisocial behaviour. Mrs Woodhead highlighted the shared courtyard access, and that 1 Ivory Court had to be passed to get to their property. She felt that 1 Ivory Court operating as a business would change the whole dynamic of living there. She was worried about exposing her children to an unsettled and ever-changing set up with people coming and going at all hours. She said that the location was not right for an STL, and noted that the property could later be sold with an STL licence and turned into a full-time business. She said they had communicated their worries to Ms Doig, and asked Members to consider their concerns in making their decision.

Sheena Richardson spoke against the application. She said that her main objections were around parking, and said that residents had fought hard to make access to Langriggs restricted. She was concerned whether having casual visitors would affect the security of the fobs used at the gate to the High Street. She asked whether transportation had been consulted, because there was scarcely room for one car per household. Ms Richardson reported that she had found herself unable to park anywhere near the front of her house without risking a parking ticket, and did not think there was sufficient space for two cars visiting a new business. She asked whether a site visit had been undertaken; she felt that Members needed to understand the limitations of the site, which was on a corner and had tight access. She reiterated that the site was not suitable for several people coming and going at tourist season.

Lorna Will spoke against the application. She said she lived obliquely opposite the entrance to the property and was very familiar with the restricted setup there. She said her major concerns were traffic and antisocial behaviour. She reported there were a lot of problems with youths, and her car had been vandalised. She was concerned over there being more strangers coming into the area, and did not appreciate the thought of further traffic difficulties.

Councillor McFarlane asked Ms Doig how she would ensure the elderly residents at Carlyle Court were not disrupted. Ms Doig responded that she would vet applications. She noted that the property had a very small back yard and no barbeque. She advised that there was a garden area with at least 8m of space between her 8ft wall and the residents' area of Carlyle Court. She assured Members that the antisocial behaviour in the area had not come from holiday lets. She said she would make guests aware of local residents when checking them in, and would mitigate against any issues. She thought that guests would not spend a great deal of their time in the property.

The Convener raised the idea of undertaking a site visit, because he felt he did not have a thorough understanding of the layout of the parking situation, or the proximity of the property to neighbouring bedrooms, walls, and gardens. Mr Forrest advised that if Members felt the information they had was insufficient on the basis of unfamiliarity with the property, then they could consider whether an in-person visit would assist. He highlighted that how the property looked would have been addressed in the planning process, but confirmed it was within the Members' power to defer the application if they currently felt unable to make an informed decision and a site visit would provide further information.

The Convener acknowledged the arguments of objectors, but still felt confused regarding the layout of the site, the access to the shared yard, and over the parking situation. He proposed that a decision be deferred to the following meeting so that a site visit could be arranged. Councillor Cassini seconded this proposal.

The Convener then moved to a roll call vote, and Members unanimously agreed to defer making a decision so that a site visit could be arranged.

DECISION

The Sub-Committee agreed to defer making a decision on the application so that a site visit could be arranged.

d. 68 Craighall Drive, Musselburgh

An application had been received from Dagmawi Debench for a licence to operate 68 Craighall Drive, Musselburgh, as a short-term let. The application would be heard by the Licensing Sub-Committee on the basis that six objections had been received. The Sub-Committee was required to focus on the suitability of the property to operate as an STL and on the applicant to hold an STL licence.

Ian Forrest, Senior Solicitor, presented the report. He highlighted the number and terms of the public objections, and confirmed that no objections had been received from any of the statutory consultees. He advised that the report was made in similar terms to the previous STL licence reports, and reiterated the impact of the recent court decision in Edinburgh which, in summary, said that in determining a short-term let licence application, the Licensing Sub-Committee should not look at matters already addressed as part of the planning process.

Mr Debench's solicitor, Lynn Simpson, spoke to the application for home sharing and home letting. She advised that the application was not for secondary letting, and the property was Mr Debench's main residence. The property had three bedrooms and a large driveway that could accommodate up to three small cars. She explained that Mr Debench was a healthcare professional who opened his home to other healthcare professionals who may be visiting the area to work, and would charge a small fee. Home sharing offered a more affordable option than a hotel room for those travelling to the area for work, and was common practice within the healthcare sector. She advised that home letting had been included in the application to cover arrangements when Mr Debench might be away on holiday or visiting family, to give him the option to rent out his home. She felt that there was misconception among the objectors as to what Mr Debench was seeking to do. She said that Mr Debench wanted to have a good relationship with his neighbours and would take all necessary steps to ensure his guests respected the neighbourhood.

The Convener highlighted that home letting appeared to be in contravention to the property's title deeds. Ms Simpson responded that the suggestion of a breach in title deeds by secondary letting was not relevant to the hearing, and the law surrounding this was outwith the scope of the Sub-Committee. She also advised that loss or detriment from a breach of title deeds would have to be shown in court for these to be enforced.

Responding to a question from the Convener, Mr Forrest said that conditions which specified a number of weeks per year the property could be let may become unfairly restrictive.

The Convener thought the application was very worthwhile for the people coming to stay in the property. He felt unsure about the change of use for a new build property, and wondered whether a shorter licence may be appropriate. Mr Forrest responded that the justification for granting a licence for less than the standard three years would have to be clear. The Convener said that he was concerned that granting an STL licence over a new build property could set a precedent within communities that had not properly been established. Mr Forrest advised that there were currently no planning short-term let control areas or matters of overprovision in East Lothian, and he was not therefore persuaded that there was justification for the licence being granted for a shorter period of time.

The Convener then moved to a roll vote, and Members unanimously agreed to grant the application.

DECISION

The Sub-Committee agreed to grant the short-term let licence.

e. Marine Lodge, 21A Westgate, North Berwick

An application had been received from Andrew Hinds for a licence to operate Marine Lodge, 21A Westgate, North Berwick as a short-term let. The application would be heard by the Licensing Sub-Committee on the basis that one objection had been received. The Sub-Committee was required to focus on the suitability of the property to operate as an STL and on the applicant to hold an STL licence.

Mr Forrest spoke to the report, and highlighted the terms of the objection. He confirmed there were no objections from any statutory consultees. He advised that the report was made in similar terms to the previous STL licence reports, and reiterated the impact of the recent court decision in Edinburgh which, in summary, said that in determining a short-term let licence application, the Licensing Sub-Committee should not look at matters already addressed as part of the planning process.

Mr Hinds was unable to attend the meeting and had submitted a response to the objection, which was contained within the meeting papers.

The Convener noted that the submitted objection had been brief and not specific to the operation of this property as a short-term let. He also noted the lengthy statement from the applicant addressing the points raised in the objection, and that the property had been in use as a short-term let for 11 years. He felt that consultees would have raised the matter had there been issue with the property over its period of operation.

The Convener moved to a roll call vote, and Members unanimously indicated their support for the application.

DECISION

The Sub-Committee agreed to grant the short-term let licence.

5. TAXI AND PRIVATE HIRE CAR LICENSING

A report had been submitted by the Head of Corporate Support to allow the Licensing Sub-Committee to note the updated conditions attached to taxi and private hire car (PHC) drivers and operators licences and the driver application guidance. These documents had been updated with statutory requirements relating to HMRC checks. The Sub-Committee would also be asked to make a decision on amending the age at which taxi and private hire vehicles could be licensed.

Mr Forrest presented the report and highlighted the salient points. He said the changes were being made in large part due to the upcoming statutory changes for HMRC checks relating to income and tax; similar requirements were also being made of metal dealers as well as other trades. The opportunity had been taken to propose general updates to the conditions. There were also proposed amendments to the age at which taxi and PHC vehicles could be licenced; this would make life easier for the trade as it could be difficult to afford and trace newer vehicles, and the proposed

system would allow more leeway. He advised that consultation had not been undertaken with the trade due to the bulk of the proposals being statutory changes, and the proposals relating to the age of vehicles being of benefit to the trade. He acknowledged that Members may prefer to have opportunity to consult with the trade on the proposals.

The Convener acknowledged that the HMRC checks were statutory changes and the changes with regards to vehicle checks were in response to the trade's request. However, he wished to gain a clearer understanding of any other changes within the documents, and for the trade to be notified and have the opportunity to comment. He suggested that the report could be continued to allow officers to notify and consult with the trade.

Mr Forrest summarised that the Convener was proposing to defer making a decision on the terms of the report to enable licensing officers to undertake a consultation with the trade, which would include communication outlining the proposals and seeking comments. The results of this consultation would be reported back to Members, ideally at the October meeting of the Licensing Sub-Committee, and would allow Members to make an informed decision. The Convener agreed with these terms; he formally proposed that a decision be deferred, and Councillor McFarlane seconded the proposal.

The Convener added that it would be helpful if specific changes to the policy could be highlighted, ideally with some kind of comparison document.

The Convener then moved to a roll call vote, and Members unanimously agreed to defer making a decision until a consultation could be undertaken.

DECISION

The Sub-Committee agreed to defer making a decision on the terms of the report to enable licensing officers to undertake a consultation with the trade, which would include communication outlining the proposals and seeking comments. The results of this consultation would be reported back to Members, ideally at the October meeting of the Licensing Sub-Committee, and would allow Members to make an informed decision.

Signed

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Councillor C McGinn
Convener of the Licensing Sub-Committee