



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

**THURSDAY 12 OCTOBER 2023
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

Councillor C McGinn (Convener)
Councillor C Cassini
Councillor J Findlay
Councillor C McFarlane
Councillor J McMillan
Councillor T Trotter

Other Councillors Present:

None

Council Officials Present:

Mr I Forrest, Senior Solicitor
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Ms C Aitken, Licensing Officer
Ms K Harling, Licensing Standards Officer

Others Present:

Sgt G Wood, Police Scotland

Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

Declarations of Interest:

Item 3a: Councillor Findlay lived in a neighbouring property.

1. MINUTES FOR APPROVAL – LICENSING SUB-COMMITTEE, 14 SEPTEMBER 2023

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

2. REGULATION OF SHORT-TERM LETS: AMENDMENT OF EXISTING ADDITIONAL CONDITIONS AND UPDATE OF POLICY STATEMENT

A report had been submitted by the Head of Corporate Support to ask the Licensing Sub-Committee to amend the existing Additional Conditions of Licence for Short-Term Lets, and to update the Short-Term Let Policy Statement, both of which had been agreed at the Licensing Sub-Committee meeting on 9 June 2022.

Ms Fitzpatrick presented the report and highlighted the salient points. Following agreement of the current conditions in June 2022, questions had come from applicants, and officers wished to make the licensing process as simple as possible. The same conditions relating to property safety and the landlord being a fit and proper person would remain, and she said the proposed changes were designed to make the process simpler for STL hosts. She read the proposed condition relating to the use and storage of liquid petroleum gas (LPG), noted below, which she said would ensure properties not connected to mains gas could continue operation. She explained that updates to floor plan conditions would mean the same ask was being made across both documents. The updates would allow hosts to provide their own site plan if it was a legible, accurate, and measurable plan of the premises, preferably at a scale of 1:100; this would hopefully negate the need for architect's plans. She explained that the third recommendation was a change to local policy so that the licensing authority may not require a further application in relation to applications considered to breach planning control and refused to be considered by the licensing authority, provided an application to the planning authority be made within three months of the date the applicant is notified of the licensing authority refusing to consider the application. She explained that this would mean further fees would not be required if evidence could be provided that an application to the planning authority had been made.

Responding to a question from Councillor McMillan, Ian Forrest, Senior Solicitor, said that there was a list of delegated powers which allowed officers to make decisions on matters without recourse to the Licensing Sub-Committee, however, STLs were not included under the current delegated powers list. He said that this could be amended in the future.

Councillor McMillan thanked officers for the very full briefings they had provided as the legislation was coming in. He understood that such matters would arise following the introduction of new legislation and a new licensing regimen.

Councillor Trotter felt it made sense to regularly review matters based on the variety of applications coming in. He said this would make sure that East Lothian remained ahead of the game and welcomed the changes.

The Convener then moved to a roll call vote, and Members unanimously agreed the recommended changes.

DECISION

The Sub-Committee agreed to:

1. Expand the current Additional Condition (6) from the current wording to:

“The licence holder shall not permit the use or storage, on the premises, of LPG room-heaters or, unless in an external store designed and approved for such storage, the storage of any liquefied petroleum gas (LPG) or any highly inflammable liquid, gas, or substance. This condition shall not apply to small amounts of liquids or gas sold in small non-refillable retail packs (e.g., lighter fuel or cosmetic appliance cartridges) kept by guests for their own use. Nor shall it apply to the external storage of LPG in cylinders or tanks which are provided by the licence holder for the provision of gas for cooking or for water or space heating or other domestic use, provided the storage complies fully with LPGA Codes of Practice and Building Regulation Technical Standards and that any installation connected to such cylinders or tanks complies with The Gas Safety (Installation and Use) Regulations 1998 or any amendment thereto.”

2. Amend the Short-Term Lets Guidance and Policy in relation to floor plans (which are to be lodged along with an application) to:

A legible, accurate and measurable plan of the premises (preferably to a scale of 1:100) is required, indicating the following:

- *Room sizes*
- *Sanitary ware*
- *Cooking facilities*
- *Power outlets*
- *Lighting points and switches*
- *Accommodation intended for guests with mobility impairment*
- *Number of guests occupying each bedroom*

3. Approve the updating of the Short-Term Let Policy on license refusals (Section 9.2) so that the Licensing Authority may not require a further application in relation to applications received after 1 October 2023 which are considered to breach planning control and are refused to be considered by the licensing authority, provided application to the planning authority is made within three months of the date the applicant is notified of the Licensing Authority refusing to consider such application. The authority may require a new application is submitted should applications to the planning authority be made outwith the abovementioned three-month period.

Sederunt: *Councillor Findlay left the meeting.*

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

a. Seaview, Goose Green Road, North Berwick

An application had been received from Nicky Cadzow 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 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.

Ian Forrest, Senior Solicitor, introduced the application. He highlighted the number and terms of the one public objection 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.

Nicky and James Cadzow were present to speak to their application. Mr Cadzow acknowledged the representation by the objector relating to parking and the potential for guests making noise. He explained that the property had been purchased in December 2022 and the family planned to move to Gullane and use it as their family home. However, due to Mrs Cadzow having been diagnosed with a serious health condition, the move had not yet gone ahead; thus, they wished to use the property flexibly as they had only been able to live there for two months out of the previous nine. It was hoped that an STL licence would enable flexible use of the property and for costs to be covered. He said that up to seven people had stayed in the property and there had been no complaints from neighbours.

Responding to a question from Councillor Cassini, Mr Cadzow confirmed that the current arrangement was expected to be in the short term and was only due to his wife's medical diagnosis; they had family in the area and still planned to move into the property.

Councillor McMillan asked how the property would be managed from a distance. Mr Cadzow explained that their property was separated from the objector's house by a garden and hedge. He advised that the property was managed by North Berwick Holiday Homes, and could be let to up to 8 people. He explained that private parking for up to four cars was available on the premises, but any bookings to date had not brought more than one or two cars. North Berwick Holiday Homes had their own conditions, including no excessive noise and no parties, and these conditions were reiterated in the Seaview house rules. He reassured Members that any issues with noise would be brought to the attention of guests. He said that he had communicated with the immediate neighbours in the adjoining house and asked them to raise any problems.

Responding to questions from Councillor Trotter, Mr Cadzow said that North Berwick Holiday Homes would enter the property every week for cleaning and would also be present to make sure guests had arrived safely. He said his brother would also visit periodically, as he lived locally. He said there had been no issues letting the property so far. Immediate neighbours had reported that guests had not caused issue.

It was established that when the property was being used as a family home and no longer in use as an STL, Mr and Mrs Cadzow would have to make the licensing authority aware so that the register of STLs could be updated.

Responding to questions from the Convener, Mr Cadzow said the property had been used as an STL only since July. The Convener also noted that there had been no concerns raised by statutory consultees.

The Convener then moved to a roll call vote and Members unanimously voted to grant the licence.

DECISION

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

Sederunt: Councillor Findlay re-joined the meeting.

b. Bay Cottage, Sea Wynd, Aberlady

An application had been received from Alexander Mihulka for a licence to operate Bay Cottage, Sea Wynd, Aberlady, 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 introduced the application. He highlighted the terms of the one public objection and confirmed that no objections had been received from any of the statutory consultees. He advised that the application was in the same terms of as that which had been previously heard, and he reminded Members 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 Mihulka spoke to his application. He had purchased the property about a year previously and had visited five times this year. It was used mainly as a secondary home for family holidays. He had initially considered letting the property, but there had been a good deal of renovation to carry out before this could begin. Since this time, the family had enjoyed staying there so much that they were unsure whether they wanted to let the property, but still thought it would be helpful to apply for the licence. He responded to the objector's assertion that the property had been purchased only as an investment; Mr Mihulka said that his family had found friends in the village and taken part in community events, and had not bought the property only as an investment. He said the plan in the future was to let the property when the family were not using it.

Responding to a question from Councillor Trotter, Mr Mihulka said that East Lothian Property Management carried out an inspection every two weeks. When letting the property, he would use Coast Properties, who had visited the property when it was first purchased and awaited Mr Mihulka's decision as to whether he wished to let the property. Coast Property would take care of all arrangements relating to the property letting.

Responding to questions from Councillors Trotter and McMillan, Ms Fitzpatrick said that if Mr Mihulka would have to notify the licensing authority if he decided not to let the property. She suggested that the property remain on the register until a final decision was made. She added that Coast Properties should be formally added as an agent/day-to-day manager for the property. Mr Mihulka had indicated there would be no day-to-day manager on the application form, but Ms Fitzpatrick said it was useful to have a local contact for inclusion on the STL register. She confirmed that it was acceptable to make a decision on the application when this information was still outstanding, but it would be possible to impose conditions to require appointment of

a local agent to manage the property; she acknowledged that 'local' was a subjective term. Mr Mihulka added that a language problem had caused him to neglect to list Coast Properties as day-to-day managers on the application; he advised that the company had been on board throughout the process.

Responding to a question from Councillor McMillan, Mr Mihulka advised that the property had not been used for letting in the past. Coast Properties had visited the property before and after renovation, and he felt it had not made sense to let the property prior to completion of renovations.

The Convener then moved to a roll call vote and Members unanimously voted to grant the licence.

DECISION

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

***Sederunt:** Councillors Findlay, McMillan, and Trotter left the meeting. They would not take part in Item 3c due to this being a continued application first heard at a meeting for which they had submitted their apologies.*

c. 1 Ivory Court, Langriggs, Haddington (Continued application)

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 had been heard by the Licensing Sub-Committee on 14 September 2023 on the basis of objections received. Having heard from the applicant and several objectors, the Sub-Committee had agreed to continue the application to allow them to undertake a site visit to familiarise themselves with the area around the property. The site visit had taken place on Friday 6 October.

Mr Forrest introduced the continued application. He advised that the applicant, Ms Doig, was unavailable until later in the day; the Sub-Committee had determined to proceed since all submissions had been heard at the previous meeting. He reported that all three Members had viewed the front of the property at the site visit, and one Member had viewed the rear of the property. He reminded Members that only those who had been present when the application was first heard could vote on the application, although any Councillor could ask questions.

The Convener asked Councillors Cassini and McFarlane whether they now felt in a position to determine the application, having heard the submissions at the previous meeting and undertaken a site visit. Councillors Cassini and McFarlane confirmed they felt able to give a view.

Councillor McFarlane said she had walked around the back of the property and observed that the houses of Carlyle Court retirement village appeared to be quite close to the property. She noted that there had been several representations from these residents.

Councillor Cassini said she had looked at the garden, which was only accessible by a gate by the side of 1 Ivory Court. She suggested that if the gate was kept locked when visitors were staying then people could not access this area. She said that the

area at the back of 1 Ivory Court was very small and there was a very high and thick wall between this area and Carlyle Court. She noted that close neighbours had business operations from their home and used the shared access and parking, and this was considered acceptable. She felt that if customers could not access the shared spaces for the short-term let business then it should not be acceptable for anyone to access the area for business purposes. She said that there did not appear to be evidence that noise would cause a problem.

The Convener had been keen to find out more about the parking situation, and felt there would need to be manoeuvrability and accommodation of other neighbours. He had found the site visit helpful and was content to make a decision based on the representations from the previous meeting and the site visit.

The Convener asked whether it would be acceptable to grant the application for a shorter timeframe than the standard three years. He suggested 18 months would give time to ascertain whether arrangements were working. Mr Forrest responded that three years was the default position unless there was reason for granting a lesser period. He advised there would need to be clear reasoning as to why a shorter timeframe was being granted. Councillor McGinn said that, based on the site visit, he could see that some negotiation around parking was required in the immediate area. He was minded to grant the application, but was concerned that parking could become an issue. He felt that a grant of 18 months would allow the applicant and objectors to establish what would work, and representations could be made sooner upon renewal. Mr Forrest confirmed that this would be competent as it was within the Licensing Sub-Committee's gift to grant for any period. He felt the Convener had explained his reasons for suggesting a shorter timeframe and Mr Forrest had no legal concerns about this proposed course of action.

Councillor McFarlane seconded the Convener's proposal to grant the licence for a period of 18 months.

The Convener then moved to a roll call vote and Members unanimously voted to grant the licence for a period of 18 months in order to monitor and assess any parking concerns. Ms Fitzpatrick confirmed that when a renewal application was required, a site notice which invited public representations would have to be displayed once more.

DECISION

The Sub-Committee agreed to grant the short-term let licence for a period of 18 months.

Signed

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Councillor C McGinn
Convener of the Licensing Sub-Committee