



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

**THURSDAY 14 MARCH 2024
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

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

Other Councillors Present:

None

Council Officials Present:

Mr I Forrest, Senior Solicitor
Ms S Fitzpatrick, Team Manager – Licensing and Landlord Registration
Alison Rafferty, Licensing Officer
Christine Aitken, Licensing Officer
Gary Robinson, Service Development and Support Officer

Others Present:

PC Lee Wilson, Police Scotland

Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor J Findlay
Councillor T Trotter

Declarations of Interest:

None

1. MINUTES FOR APPROVAL

a. Licensing Sub-Committee, 18 January 2024

Members approved the minutes as an accurate record of the meeting.

b. Special Meeting of the Licensing Sub-Committee, 5 March 2024

Members approved the minutes as an accurate record of the meeting.

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

15a Balfour Street, North Berwick

An application had been received from James Miller-Stirling for a licence to operate 15a Balfour Street, North Berwick, as a short-term let (STL). The application would be heard by the Licensing Sub-Committee on the basis that public 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, 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 a Certificate of Lawfulness from planning had been refused in January 2024. He highlighted two submitted letters which were in support of the application. He advised of the impact of a recent court decision in Edinburgh which, in summary, said that in determining an STL licence application, the 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.

Responding to a question from the Convener, Mr Forrest confirmed that although planning permission was not in place for use of the property as an STL, the Sub-Committee could still make a determination on the licence application. He noted that an applicant operating an STL without planning permission would leave themselves open to enforcement action.

Mr Miller-Stirling provided background information on the purchase and use of the property. He noted that it was particularly important to maintain relationships with neighbours in a tenement flat, and said he had contributed towards central bills and the good running of the building. He advised that the lettings agent monitored who stayed at the property, and issues around noise, disturbance to neighbours, and pets were all covered by policies. He reported that it was written into the contractual agreement that the property was not suitable for young children or dogs, and such bookings had been refused. He said that objector comments had been taken on board, and he highlighted the letters of support from those living above and below the property. He said that no one had realised that shared tenement staircases would cause a property to be deemed unsuitable for use as an STL, and asked the Sub-Committee to consider his views.

Responding to questions from Members, Mr Miller-Stirling advised that cleaning staff could come in to deal with waste, and advised that a booklet given to guests contained

the agency phone number. He said that he did not use the recycling service but could do so, and Councillor McFarlane encouraged all STL owners to make use of the recycling service. Mr Miller-Stirling said he visited the area three or four times each year and generally let the property out for three months over the summer season. He reported that he kept in regular contact with the agency and cleaners provided him with regular updates. He said he took seriously all issues with doors, roofs, and the central building, and said he paid council tax in full. He advised that the property had been used as an STL since 2019. He advised that 70% of bookings came through bookings websites, while other bookings came through Lettings of Distinction and Coast Properties; he said these agencies could also be called in to make repairs.

Neil McIlwraith spoke against the application. He advised that he was the only permanent resident in the stair, and the delegated function of the day-to-day management of the property had never been adequately carried out by the agencies. He noted that the 24-hour helpline was provided to guests but not to the residents in the other properties, and he could not remember a time when an agent had visited to remedy a problem. He highlighted issues with noise and cigarette fumes, and the unfair burden put on permanent residents regarding property maintenance. He described waste as being dumped carelessly and anonymously in the back green, and said the lack of recycling effort undermined the efforts of residents. He reported that overstuffed bins attracted local wildlife and maggots. He also reported issue with dog mess in the communal green. He advised that one of the letters of support had come from someone who was not a regular resident.

Responding to questions from Members, Mr McIlwraith said that it was not always clear by which properties' guests the issues were being caused since there was more than one letting property in the stair. He said that it could also cause tension for the remainder of a guests' stay if he made a report about them. He referred to the cumulative effect on residents of the STL properties, particularly in the summer. He advised that he had made reports to lettings agents, sometimes the next day, by which time it was too late to deal with the issue. The Convener encouraged residents to contact East Lothian Council and Police Scotland to report issues, as they kept records and were the consulted on such applications. PC Wilson confirmed that Police Scotland held no record of any complaints relating to the property.

Councillor McMillan felt that Members were faced with a difficult situation following the introduction of STL legislation, because such properties were important to tourism, but communities also had to be considered. He felt that clear points had been made and there was a need for all involved to be considerate neighbours. He proposed that the licence be granted for a period of 18 months, until September 2025, to allow the situation to be monitored now that neighbours were aware of where best to report their concerns. The Convener seconded this proposal.

Mr Forrest confirmed that it was within the Sub-Committee's gift to grant a licence for 18 months to allow the licence to run and ascertain whether there may be any issues prior to renewal.

Responding to a question from the Convener, Mr Forrest advised that planning and licensing were separate issues. He reiterated that if STL tenants used the property without planning permission, the applicant would leave himself open to enforcement action. He advised that Mr Miller-Stirling ensure this was resolved and to have planning permission in place before proceeding with his business. The Convener reiterated earlier comments about reporting issues.

The Convener moved to a roll call vote on the proposal to grant the STL licence for a period of 18 months, and Members unanimously voted to grant the application on this basis.

Decision

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

3. TAXI AND PRIVATE HIRE CAR LICENSING

A report had been submitted by the Executive Director for Council Resources to advise the Sub-Committee of proposed alterations to the Taxi and Private Hire Care Driver and Operator Conditions.

Mr Forrest spoke to the report. He highlighted the recommended changes, which were outlined at paragraph 3.4 and 3.5. He advised that members of the taxi trade had expressed concerns after investing in new vehicles which would not have complied with the updated conditions. The changes related to Condition 1 (side loading), Conditions 13.4-13.6 (age of vehicles), and Condition 14.2 (number of passenger seats); it was proposed that for vehicles licensed prior to the conditions becoming live on 1 April 2025, these conditions would not apply and the licence for such vehicles would be renewable on the terms of the previous conditions. The intention was to allow presently licensed vehicles seating six passengers, and/or which were rear-loading as opposed to side-loading, to continue to be licensed until such time as they met the upper age limits provided for in the guidance. Mr Forrest explained that transportation colleagues had highlighted that only 15 months of notice had been given to the taxi trade, rather than the intended three years, and it was felt that it was unfair to penalise members of the trade who may have invested in a new vehicle which did not meet the new requirements. He confirmed that this would apply only to new applications for a new licence and not to existing taxi licences.

Councillor McMillan asked about communication of the changes to the taxi trade. Sheila Fitzpatrick, Team Manager – Licensing and Landlord Registration, advised that transport colleagues had been in favour of the paper's recommendations. She advised that all licensed drivers would be made aware of the changes by email. She suggested that corporate communications could also assist in making the public aware of the changes.

The Convener commented that being able to consult a local taxi drivers' association would make such decisions more of a shared process, but said attempts to set up such a group had been unsuccessful.

The Convener then moved to a roll call vote, and Members unanimously voted in support of the report recommendations.

Decision

The Sub-Committee agreed:

The undernoted sections of Schedule A will, from and after their coming into effect on 1 April 2025, apply only to new grants of a licence:

Condition 1 - regarding side loading

Conditions 13.4-13.6 - regarding age of vehicles

Condition 14.2 - regarding number of passenger seats

For vehicles licenced prior to these conditions becoming live on 1 April 2025, these conditions would not apply and the licence for such vehicles would be renewable on the terms of the previous conditions and applying prior to the new terms coming into effect on 1 April 2025. This would allow presently licenced vehicles that seat six passengers, and/or were rear-loading as opposed to side-loading, to continue to be able to be licenced until such time as they meet the upper age-limits provided for in the Guidance.

Note: Summary of information

The Licensing Sub-Committee agreed to exclude the public from the following item in terms of paragraph 2 (information relating to tenants) of Schedule 7A to the Local Government (Scotland) Act 1973.

4. REMOVAL OF REQUIREMENT FOR DISPLAY OF PUBLIC NOTICE FOR AN HMO APPLICATION

The Licensing Sub-Committee agreed to disapply the requirement for a notice of licence application under the specific circumstances outlined in the report.