

Notice of meeting and agenda



General Purposes Committee

Venue: Council Chambers, Midlothian House, Dalkeith, EH22 1DN

Date: Tuesday, 24 May 2016

Time: 14:00

John Blair
Director, Resources

Contact:

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Further Information:

This is a meeting which is open to members of the public.

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1 Welcome, Introductions and Apologies

2 Order of Business

3 Declarations of Interest

4 Minutes of Previous Meeting

- 4.1** Minutes of Meeting of 23 February 2016 **3 - 10**

5 Public Reports

- 5.1** Civic Government (Scotland) Act 1982 - Procedure for Disposal of Applications for Licences - Report by Director, Resources **11 - 14**

- 5.2** Private Hire Car Licence - Request for Advertising - Report by Director Resources (to follow)

THE COUNCIL IS INVITED (A) TO CONSIDER RESOLVING TO DEAL WITH THE UNDERNOTED BUSINESS IN PRIVATE IN TERMS OF PARAGRAPHS 3 AND 14 OF PART 1 OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 - THE RELEVANT REPORTS ARE THEREFORE NOT FOR PUBLICATION; AND (B) TO NOTE THAT NOTWITHSTANDING ANY SUCH RESOLUTION, INFORMATION MAY STILL REQUIRE TO BE RELEASED UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

6 Private Reports

- 6.1** Application for a Private Hire Car Driver's Licence

- 6.2** Application for a Licence for Premises Used for the Booking of Hire Cars

MINUTES of MEETING of the MIDLOTHIAN COUNCIL GENERAL PURPOSES COMMITTEE held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 23 February 2016 at 2.00pm.

Present:- Councillors Coventry (Chair), Baxter, Bryant, Imrie, Milligan, Montgomery, Muirhead, Parry, Pottinger, Rosie, Russell, Wallace and Young.

Apologies for Absence:- Councillors Bennett, Johnstone and de Vink.

1. Minutes

The Minutes of Meeting of 5 January 2015 were approved as a correct record, on the motion of Councillor Muirhead, seconded by Councillor Parry.

2. Housing (Scotland) Act 2006 -

(a) Procedure for Disposal of Applications for Houses in Multiple Occupation (HMO) Licences

There was submitted report, dated 15 February 2016, by the Director, Resources, concerning the procedure for disposing of applications for HMO licences, in terms of the Housing (Scotland) Act 2006.

Decision

To note the report.

(b) Application – Pentland House, Edinburgh Road, Penicuik

There were submitted reports, dated 9 and 15 February 2016, by the Director, Resources, concerning, respectively, an application by Midlothian Council and Alex Marks 1 White Hart Street, Dalkeith for an HMO licence in respect of Pentland House, Edinburgh Road, Penicuik for a maximum of 49 occupants; and the background to the selection of the property for possible use as an HMO.

Appended to the former were (i) excerpt from Minutes of Cabinet of 18 November 2014; (ii) a location plan; (iii) letter from Mr A Robertson, 43 Dykes Road Penicuik; and response, dated 18 December 2014; and (iv) report, dated 14 August 2015, by the Environmental Health Officer; and appended to the latter was report, dated 24 October 2014, by the Joint Director, Health and Social Care, which had been considered by Cabinet on 18 November 2014.

In his reports, the Director, Resources confirmed, *inter alia*, that:-

- (1) the Space Heating Certificate, the Risk Assessment, the Electrical Safety Certificate and Building and Public Liability Insurance Policies had not been submitted;
- (2) the Applicant had posted Notice at or near the site to confirm that application had been made and that representations could be made; and on 15 February 2016, and had confirmed that it had been posted from 17 June to 10 July 2015;
- (3) the Fire and Rescue Service and Building Standards Officer had reported that the property had not been made ready for use as an HMO; and they would not be able to confirm their position until after the completion certificate had been issued;
- (4) it was intended that Planning Permission for change of use would be sought; and
- (5) the proposal did not constitute Overprovision.

There was tabled replacement report, dated 22 February 2016, by the Environmental Health Officer, confirming that several health and safety matters required attention.

With reference to the report by the Joint Director, Health and Social Care, the Head of Housing and Customer Services confirmed the background to the selection of the property for use as an HMO and; and that the recommendations which had been made during the public consultation exercise had been adopted.

The Applicant, the Building Standards Manager and the Principal Environmental Health Officer were heard.

Decision

(a) To note that the Applicant had agreed to adopt recommendations made that :-

- (i) there be appropriate management and supervision of the accommodation by a team of experienced staff;
- (ii) accommodation be provided to households with no history of criminal behaviour or substance dependency;
- (iii) the building and surrounding neighbourhood be supervised to avoid concerns about the safety of local residents and to address anti social behaviour currently occurring in the area; and
- (iv) appropriate consultation take place with neighbours about the ongoing use of paths around the building and plans for adequate boundary fencing.

(b) To agree that an HMO licence be granted for 44 occupants ie excluding the tenants of two self contained flats within the premises, subject to the standard; any other conditions which may be identified following completion of the works; and those recommended by the Environmental Health Officer, as follows:-

- (i) All bedrooms, kitchens and lounge areas shall be provided with a minimum of six electrical sockets;
- (ii) All communal kitchen, bathroom and toilet facilities shall be completed in accordance with the Building Warrant drawing;
- (iii) Various windows and fire exits which were restricted from opening shall be cleared of obstruction ; and all shrubbery shall be cut back and / or removed;
- (iv) All windows which were currently in disrepair and boarded over shall be repaired and boarding removed;
- (v) The exposed electric fittings in bedroom 3 on the ground floor shall be removed or repaired;
- (vi) Appropriate mechanical ventilation shall be provided in the bathroom (numbered SF 09) on the second floor; and
- (vii) Before the building was occupied, up to date electrical safety and PAT reports shall be submitted confirming that the electrical system and all appliances provided have been inspected and were safe; and

(c) To remit consideration of reports by the Building Standards Officer and Fire and Rescue Service, after satisfactory completion of the alterations; and the imposition of any additional conditions to the Director, Resources, in consultation with the Chair.

(b) Application – Polton Centre, Lasswade

There were submitted reports, dated 9 and 15 February 2016, by the Director, Resources, concerning, respectively, an application by Midlothian Council and Alex Marks 1 White Hart Street, Dalkeith for an HMO licence in respect of Polton Centre, Lasswade, for a maximum of 17 occupants; and the background to the selection of the property for possible use as an HMO.

Appended to the report were (i) excerpt from Minutes of Cabinet of 18 November 2014; (ii) location plan; (iii) letter from Mrs A Broadhurst, 2 Midfield Lodges, Lasswade; and (iv) Memorandum, dated 6 November 2016, from the Environmental Health Officer ; and appended to the latter was report, dated 24 October 2014, by the Joint Director, Health and Social Care, which had been considered by Cabinet on 18 November 2014.

In his reports, the Director confirmed, *inter alia*, that

- (1) the Space Heating Certificate, the Risk Assessment, the Electrical Safety Certificate and Building and Public Liability Insurance Policies had not been submitted;
- (2) the Applicant had posted Notice at or near the site to confirm that application had been made and that representations could be made; and on 15 February 2016, had confirmed that it had been posted from 17 June to 10 July 2015;
- (3) the Fire and Rescue Service and Building Standards Officer had reported that the property had not been made ready for use as an HMO; and they would not be able to confirm their position until after the completion certificate had been issued;
- (4) it was intended that Planning Permission for change of use would be sought; and
- (5) the proposal did not constitute Overprovision.

There was tabled further letter, dated 21 February, 2016, from Mrs Broadhurst, intimating that she was unable to attend and providing further information about her objections.

With reference to the report by the Joint Director, Health and Social Care, the Head of Housing and Customer Services confirmed the background to the selection of the property for use as an HMO and; and that the recommendations which had been made during the public consultation exercise had been adopted.

Concerns were expressed about the road safety for pedestrians in the vicinity, where either the pavements were extremely narrow or non-existent.

The Applicant, Building Standards Manager and Principal Environmental Health Officer were heard in amplification of their reports.

After discussion, Councillor Muirhead, seconded by Councillor Parry moved that the application be granted subject to the safeguards which had been identified.

As an amendment, Councillor Imrie, seconded by Councillor Russell, moved that as the location was remote, the application be refused.

On a vote being taken, there voted four for the amendment and eight for the motion which was declared carried and became the finding of the meeting.

Decision

(a) To note that the objector had been invited to attend but had declined;

(b) To note that the Applicant had agreed to adopt the recommendations made during the consultation exercise that :-

- (i) appropriate management and supervision of the accommodation be delivered by a team of experienced staff members;

- (ii) accommodation be provided to households assessed as having either no low support needs, or no history of criminal behaviour or substance dependency;
- (iii) CCTV and lighting be provided to ensure the safety of the households living in the proposed HMO property and the surrounding neighbourhood;
- (iv) Consideration be given to traffic calming measures around the entrance eg extension of 30mph speed limit and re-location of the existing bus stop (or preferably the provision of an additional bus stop); and
- (v) additional boundary fencing be provided to avoid residents crossing through other owner's property.

(c) To agree that an HMO licence be granted for 17 occupants, subject to the standard; any other conditions, which may be identified following completion of the works and those recommended by the Environmental Health Officer, as follows:-

- (i) the decoration of the premises generally throughout the premises shall be improved;
- (ii) the ceiling near to the common room on the ground floor shall be repaired and re-decorated as necessary;
- (iii) each bedroom shall be provided with a minimum of six electrical sockets; and
- (iv). the ceiling of the shower room on the first floor shall be redecorated and the extract fan to this shower room shall be repaired.

(d) To remit consideration of reports by the Building Standards Officer and Fire and Rescue Service, after satisfactory completion of the alterations; and the imposition of any additional conditions to the Director, Resources, in consultation with the Chair.

3. Civic Government (Scotland) Act 1982 –

(a) Procedure for Disposal of Applications for Licences

There was submitted report, dated 15 February 2016, by the Director, Resources, concerning the procedure for disposing of applications for licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

(b) Application for Street Trader's Licence

There was submitted report, dated 3 February 2016, by the Director, Resources, concerning an application by Mrs Scott, Rosewell, for a Street Trader's Licence in respect of a site at the Bryans Industrial Estate.

In his report, the Director confirmed, *inter alia*, that the applicant had been asked to provide information in support of her application and had failed to do so; had been invited to attend but was not present; and had not submitted a Food Safety Certificate.

Decision

Having noted that the Applicant had been invited to attend and was not present; and had not produced a Food Safety Certificate, to refuse to grant the licence.

(c) Public Processions

There was submitted report, dated 3 February 2016, by the Director, Resources, concerning the regulation of Public Processions.

In his report, the Director confirmed, *inter alia*,:-

(i) the background, whereby organisers had to provide advance notification of the intention to arrange public processions; consultation had to take place with the Chief Constable, all on the presumption that approval would be given; or if otherwise, the procession could be prohibited or conditions could be imposed on the holding of it ie as to the date, time and duration of the procession, as to the route to be taken by it, prohibiting its entry into any public place, etc; and

(ii) consultations had taken place with Police Scotland who had recommended a list of conditions to replace those which had existed previously.

Appended to the report were sample current conditions; and conditions which had been recommended by Police Scotland from which conditions could be selected when authorising processions.

During discussion:-

(1) reservations were expressed that some kind of detriment or unintended consequences may arise if the new conditions were implemented; and

(2) comments were made in respect of the switch on of Christmas lights at Bonnyrigg, where Police Scotland had advised that traffic management consultants be engaged; and this had presented the Organiser with financial difficulty.

Decision

- (a) Rather than adopt the recommended list of conditions, to continue consideration of the matter for more detailed information as to how they would be applied; and
- (b) To note the comments concerning traffic management.

4. Amplification of Sound in the Chambers

Councillor Muirhead drew attention to the fact that some of the microphones had been inoperable for much of the meeting.

Decision

To request that the problem be resolved.

The Meeting terminated at 3.17pm.

**Civic Government (Scotland) Act 1982
Procedure for Disposal of Applications for Licences**

Report by Director, Resources

1 Purpose of Report

This report outlines the procedure to be adopted for a Hearing; and this report should be considered along with each application.

2 Procedure for Considering Applications at Hearings

The Procedure for considering applications is as follows:-

- 1 The objectors are given the opportunity to explain the basis of their objection (copies of the representations have been previously circulated to the applicant).
- 2 The applicant and the Members are given the opportunity to question the objectors.
- 3 The applicant is given the opportunity to speak in support of the application; and respond to the comments which have been made.
- 4 The objectors and the Members are given the opportunity to question the applicant.
- 5 The objectors and then the applicant are given the opportunity to sum up.
- 6 The Committee take a decision on the matter in the presence of the applicant and the objectors. The Committee may first adjourn but only for the expressly stated purpose of seeking procedural or legal advice (normally from the Clerk or Legal Adviser) and not for the purpose of taking the decision in private. The reasons for making the decision should be explained when conveying the decision.

3 Disposal of Applications for Licences

In disposing of an application for the grant of a licence the Committee may:-

- (a) grant the licence unconditionally;

- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence.

The Committee may refuse an application for a licence if, in their opinion –

- (i) the applicant or any other person responsible for the management of the activity is not a fit and proper person to be the holder of the licence;
- (ii) the activity to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would be refused the grant of such a licence if he made application himself;
- (iii) where the application relates to premises, those premises are not suitable or convenient for the activity having regard to –
 - (i) the location, character or condition of the premises;
 - (ii) the nature and extent of the proposed activity;
 - (iii) the kind of persons likely to be in the premises;
 - (iv) the possibility of undue public nuisance;
 - (v) public order or public safety; or
- (iv) there is other good reason for refusing the application.

Otherwise the Committee must grant the application.

If the Committee grant conditionally or refuse the application, the applicant has the right of appeal to the Sheriff. The Sheriff may uphold an appeal only if he considers that the Licensing Authority in arriving at their decision:-

- (a) erred in law;
- (b) based their decision on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

There is no right of appeal against the Council's decision in relation to applications for Temporary Licences.

4 Spent Convictions

Where the Chief Constable intends to libel convictions which are 'spent', if the Committee agree that justice could not be done without disclosure of these, the spent convictions shall be heard and details will be circulated if so agreed together with the report.

5 Treatment of Fixed Penalties, Police Warnings and other Alternatives to Prosecution

In terms of the Rehabilitation of Offenders Act 1974 certain convictions become "spent" after several years and cannot be considered by Committee ie with the exception of taxi and private hire car drivers, which Licensing Authorities were permitted to consider;

Representations by the Chief Constable either objecting to applications or seeking suspension may also contain details of conduct of the applicant which are not convictions, classed as ATPs, the main types of which included (1) warnings given by the Police or Procurator Fiscal; (2) Conditional Offers and Compensation Offers made by the Procurator Fiscal under Section 302 of the Criminal Procedure (Scotland) Act 1995; (3) a Fixed Penalty offered by the Police under Section 129 of the Antisocial Behaviour etc (Scotland) Act 2004; and (4) certain foreign warnings or fixed penalties;

ATPs are "spent"; warnings become "spent" as soon as they are issued; and the remainder are regarded as "spent" within three months of issue;

Most ATPs appearing on such objections will be "spent"; offences that resulted in ATPs which are "spent" cannot be considered by the Committee; and the exemption allowing the Committee to consider "spent" convictions did not apply to ATPs;

The Chief Constable can ask the Committee to consider "spent" ATPs, by exercising discretion under Section 7(3) of the Rehabilitation of Offenders Act 1974, which permits the Committee to consider them if it is satisfied that justice cannot be done except by considering them ie subject to the driver being asked for a view as to whether the information should be submitted (and before the Committee decide whether or not to consider any ATPs);

Many road traffic offences are dealt with through the issue of Conditional Offers of Fixed Penalties under the Road Traffic Offenders Act 1988 which are not ATPs and therefore can be considered by the Committee.

Letters from the Chief Constable objecting to applications may also contain details of complaints and allegations against the driver which have not resulted in conviction or ATPs and details of pending criminal court cases; and as these are not convictions or ATPs, can be considered by the Committee.

6 Recommendations

The Committee is recommended to note the terms of the report.

J BLAIR
Director

10 May 2016

Contact Person:	A Turpie	Tel No: 0131 271 3667
Background Papers:	File 2330 (2016/0234/PHCD) (AT)	