

**Housing (Scotland) Act 2006
Procedure for Disposal of Applications for Licences**

Report by Director, Corporate 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 must refuse to grant an HMO licence if (a) the applicant, any agent specified in the application, and where the applicant or agent is not an individual, any director, partner or other person concerned in the management of the applicant or agent is disqualified by an order made under section 157(2) of the Act, or (b) the authority considers that any of those persons is not a fit and proper person to be authorised to permit persons to occupy any living accommodation as an HMO. Section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004 applies to a local authority in deciding whether a person is a fit and proper person for the purposes of Agents as it applies to the authority when it is deciding whether a person is a fit and proper person for the purposes of section 84(3) or (4) of that Act.

The Committee may grant an HMO licence only if it considers that the living accommodation concerned—

- (a) is suitable for occupation as an HMO, or
- (b) can be made so suitable by including conditions in the HMO licence.

In determining whether any living accommodation is, or can be made to be, suitable for occupation as an HMO the local authority must consider (a) its location, (b) its condition, (c) any amenities it contains, (d) the type and number of persons likely to occupy it, (e) the safety and security of persons likely to occupy it, and (f) the possibility of undue public nuisance.

The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.

In considering whether to refuse to grant an HMO licence, the local authority must have regard to—

- (a) whether there is an existing HMO licence in effect in respect of the living accommodation, and
- (b) the views (if known) of—
 - (i) the applicant, and
 - (ii) if applicable, any occupant of the living accommodation.

It is for the local authority to determine the localities within its area. In considering whether there is or would be overprovision in any locality, the local authority must have regard to—

- (a) the number and capacity of licensed HMOs in the locality, and
- (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.

An HMO licence may include such conditions as the Committee thinks fit. Standard conditions are generally applied. Where an HMO licence includes, or is varied to include, a condition which requires work to be carried out in any living accommodation, the condition must also specify the date by which that work must be completed. No date may be specified which would (a) cause a condition of an HMO licence to have effect, or (b) require the work required by such a condition to be completed, before the date by which the local authority reasonably considers that the licence holder can secure compliance with the condition or, as the case may be, complete the work.

4 Appeals

Any decision may be appealed by summary application to the Sheriff.

An appeal may be made only by a person on whom notice of the decision requires to be served.

An appeal is not competent unless the person making it has followed every procedure made available for stating a case to the local authority in relation to the decision being appealed that it would be reasonable to have expected the person to follow.

An appeal must be made within 28 days of the person receiving notice of the decision.

But the Sheriff may on cause shown hear an appeal made after the deadline.

5 Recommendations

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

6 Report Background and Appendices

6.1 Background

Housing (Scotland) Act 2006.

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Background Papers:	File CG 10.7 (RGA)	