

REPORT TO BUSINESS SERVICES' LICENSING SUB-COMMITTEE – 19th April 2024

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982
CIVIC GOVERNMENT (SCOTLAND) ACT 1982 LICENSING OF SHORT-TERM LETS ORDER 2022
APPLICATION FOR GRANT OF SHORT-TERM LET LICENCE
7 BALNACOIL APARTMENTS, RHU-NA-HAVEN ROAD, AB34 5JD**

1 Executive Summary/Recommendations

1.1 An application for the grant of a Short-Term Let Licence in respect of a home let has been received which has attracted objections from Members of the Public and so requires the Sub-Committee to determine the application.

1.2 **It is recommended that the Sub-Committee considers the materials before them and –**

1.2.1 As a preliminary matter, determines whether the objections to the application are competent and/or relevant to the application to be determined as outlined at Section 3.9 of the report below;

1.2.1.1 If all of the objections are found to be neither competent or relevant they cannot be taken into account when determining the application. Therefore, there is no requirement to proceed further with the hearing and the application can be granted.

1.2.1.2 If any or all of the objections are found to be competent or relevant then the Sub-Committee should proceed to conduct the hearing as per the procedure set out at Appendix 5 to this Report.

Thereafter the Sub-Committee should –

1.2.2 Determine whether there is enough evidence before the Sub-Committee to allow a determination to be made, or whether the Sub-Committee needs to defer consideration of the matter to the next available meeting; and

1.2.3 Where the Sub-Committee has concluded that there is sufficient evidence before them to allow a determination to be made, to consider whether the application should be granted or refused.

2 Decision-Making Route

2.1 This application has not been presented to the Sub-Committee previously.

3. Discussion

Application

- 3.1 Bruce Booth of 7 Balnacoil Apartments, Rhu-na-haven Road, Aboyne, AB34 5JD, submitted an application for the grant of a short-term let licence in respect of premises known as 7 Balnacoil Apartments, Rhu-na-haven Road, AB34 5JD, on 27th September 2023.
- 3.2 A copy of the summary application form is attached as **Appendix 1** to this Report.

Consultations

- 3.3 The Chief Constable, the Fire Service, Planning Services, Building Standards, were consulted on the application.
- 3.4 None of the consultees had comments to make in respect of the application.
- 3.5 The application and supporting documents have been verified by Environmental Health. An inspection of the premises has been carried out and no issues were identified. Officers will be happy to answer any questions Members may have during the hearing.
- 3.6 At the same time the applicant was required to display a site notice at the premises advising members of the public that an application had been made.
- 3.7 The following objections have been lodged in response to the display of the site notice:
- (a) Nigel Dyer, by letter dated 11th October 2023 (amended objection letter received on 26th December 2023)
 - (b) Jonathan Machin, by letter dated 12th October 2023 (amended objection letter received on 27th December 2023)
 - (c) Neil Fraser, by letter dated 15th October 2023 (amended objection letter received on 24th December 2023)
- 3.8 Copies of the objections are attached as **Appendix 2** to this report.
- 3.9 As a Preliminary matter, Members should consider and determine whether the objection is competent and/or relevant. Officers offer the following advice:

a. Objection from Nigel Dyer

1. Issues relating to the location, character or condition of the premises are potentially relevant to the legal test.
2. Issues relating to nuisance are potentially relevant to the legal test.
3. Issues relating to the date the property was marketed are not relevant as the deadline for submission of applications for existing operators was 1st October 2023. Existing operators are permitted to trade until the licence is issued with the Licensing Authority having 12 months in which to issue the licence.
4. Issues relating to parking are not relevant to the legal test and cannot be considered by the Licensing Authority.

5. Issues relating to safety are potentially relevant to the legal test.

b. Objection from Jonathon Machin

1. Issues relating to common ground and amenity are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.
2. Issues relating to the date the property was marketed are not relevant as the deadline for submission of applications was 1st October 2023. Operators are permitted to trade until the licence is issued with the Licensing Authority having 12 months in which to issue the licence.
3. Issues relating to safety are potentially relevant to the legal test.
4. Issues relating to nuisance are potentially relevant to the legal test.
5. Issues relating to the application running contrary to other legal or contractual requirements are a separate legal matter and cannot be considered by the Licensing Authority.

c. Objection from Neil Fraser

1. Issues relating to nuisance are potentially relevant to the legal test.
2. Issues relating to safety are potentially relevant to the legal test.
3. Issues relating to the location, character or condition of the premises are potentially relevant to the legal test.
4. Issues relating to the common grounds of the property are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.

3.10 The objections were intimated to the Applicant by letter dated 13th December 2023.

3.11 The Applicant and Objectors were requested to attend the meeting on 4th April 2024. All parties were given copies of this Report, the legal background, procedures for remote licensing hearings and the Guidance Document for Applicants and Objectors on procedures for licensing hearings.

3.12 All parties have been given the option of participating in the hearing by way of written submission and/or by telephone. Any written submissions will be circulated to Sub-Committee Members and all parties prior to the meeting taking place, where it is possible to do so. Such written submissions will form **Appendix 3** to this report.

Procedure

3.13 Each application should be considered on its own merits.

3.14 The legal test to be applied is attached as **Appendix 4** to this Report.

3.15 Members should follow the procedures set out at **Appendix 5** to this Report.

Options for Disposal

3.16 The Sub-Committee's options in disposing of the Application are:

- (a) To defer consideration of the application to allow further evidence to be provided to the Sub-Committee
- (b) To grant the licence as applied for subject to standard conditions
- (c) To grant the licence subject to specific conditions in addition to standard conditions
- (d) To refuse to grant the licence

3.17 When coming to a decision, the Sub-Committee must consider the contents of this report, the evidence heard, and the grounds of refusal outlined in the Legal Test attached at **Appendix 4**. Supplementary advice and information can be requested, if required.

3.18 If the Sub-Committee refuses the application, the same applicant cannot apply again for a period of one year, unless there are material changes in circumstances.

Date by which application must be determined

3.19 Section 3 of the Civic Government (Scotland) Act 1982 requires a licensing authority to determine an application within 12 months of the date of receipt of the application.

3.20 This application must be determined by **26th September 2023**

Duration of Licence

3.21 Where the Committee determines that the application should be granted, Paragraph 8(2) of Schedule 1 to the 1982 Act provides that a licence shall have effect –

- (a) For a period of three years from the date the licence comes into force; or
- (b) for such shorter period as the licensing authority may decide at the time they grant or renew the licence.

4 Council Priorities, Implications and Risk

4.1 There are no Council Priorities identified in respect of this matter as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

4.2 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

4.3 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial		X	

Staffing		X	
Equalities and Fairer Scotland Duty		X	
Children and Young Peoples' Rights and Wellbeing		X	
Climate Change and Sustainability		X	
Health and Wellbeing		X	
Town Centre First		X	

4.4 There are no staffing or financial implications relevant to the content of this report.

4.5 An Integrated Impact Assessment (IIA) is not needed in this case as the Committee is considering this application as licensing authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation. This application does not engage any of the areas included as part of the IIA.

5 Scheme of Governance

5.1 The Monitoring Officer within Business Services has been consulted in the preparation of this report and any comments have been incorporated into this report.

5.2 The Business Services Committee is able to consider and take a decision on this item in terms of Section C – Business Services: 1 – Committee Functions: 1.1 (a) of the List of Committee Powers in Part 2A of the Scheme of Governance which enables the Committee to decide on all policy issues and resources matters relating to the Civic Government (Scotland) Act 1982 matters with implications across Area boundaries where objections or observations are received. The Committee determined that the licensing function should be delegated to the Business Services Licensing Sub-Committee.

Alan Wood
Director of Environment and Infrastructure Services

Report prepared by:- Lucas Duncan, Civic Licensing Standards Officer (Protective Services)

Date: 4th April 2024

IDOX Reference: STL/00863/23

Appendix 1 – Copy Application Form and Related Paperwork

Appendix 2 – Copy Representation

Appendix 3 – Written Submissions

Appendix 4 – Legal Test

Appendix 5 – Procedure for Remote Licensing Hearings