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**REPORT TO: LICENSING COMMITTEE ON 19 JUNE 2024**

**SUBJECT: CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022 – APPLICATION FOR GRANT OF A SHORT-TERM LET LICENCE (CASE NO. STL/24/001)**

**BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND ORGANISATIONAL DEVELOPMENT)**

**1. REASON FOR REPORT**

- 1.1 To consider an application for the grant of a short-term let licence received on 4 August 2023 which is subject to objections received from the public.
- 1.2 This report is submitted to Committee in terms of Section III (H) (1) and (2) of the Council's Scheme of Administration relating to exercising the function of the Council as licensing authority for the Moray Council area and issuing and suspending, revoking and refusing applications for all licences in terms of the Civic Government (Scotland) Act 1982.

**2. RECOMMENDATION**

**2.1 The Committee is invited to consider the application in light of the matters referred to in this report and the provisions of the Civic Government (Scotland) Act 1982 and Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 and thereafter:-**

- (i) Grant the licence; or
- (ii) Grant the licence and (either or both):
  - (a) Disapply or vary any standard conditions applicable to the licence; and/or
  - (b) Impose conditions in addition to any mandatory or standard conditions to which the licence is subject; or
- (iii) Refuse to grant the licence.

### **3. BACKGROUND**

- 3.1 The licensing authority must reach a final decision on each application from “new hosts” within 9 months of it having been made. “New hosts” are those operators who were not using their premises for short-term letting before 1 October 2022. The application was deemed valid on 13 November 2023 therefore, as an application from a “new host” it must be decided by 13 August 2024.
- 3.2 Powers are delegated to the Head of Governance, Strategy and Performance to grant or where appropriate, renew licences only if there are no objections or adverse representations received from a consultee or the general public. In light of circumstances detailed within this report, it is appropriate that this matter be dealt with by the Licensing Committee.
- 3.3 A copy of the application is provided at **Appendix 1**.
- 3.4 A letter of objection was received on 8 December 2023 and is provided at **Appendix 2**. The objection was received within the statutory consultation period.
- 3.5 An email of objection was received on 18 December 2023 and is provided at **Appendix 3**. The objection was received within the statutory consultation period.
- 3.6 Licensing Standards Officer, Joanne Larsen, carried out mediation among the parties. Proposed additional licence conditions aimed to resolve issues raised by the objectors have been accepted by the applicant however the objections have not subsequently been withdrawn. A copy of the view expressed by the Licensing Standards Officer is provided at **Appendix 4**.
- 3.7 The applicant has been provided with a copy of the objections lodged against the application and all parties have been invited to attend the meeting.

### **4. SUMMARY OF IMPLICATIONS**

#### **(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

The provisions of licensing directly relate to the priorities within the 10 Year Plan (Moray 2026) in relation to a growing and diverse economy and safer and healthier communities. The various licensable activities within industry all aid a growing economy in terms of production, retail and the positive effects on tourism. Regulation of the licensed activities contributes to a safer community by ensuring those providing licensable goods and services are fit to do so.

#### **(b) Policy and Legal**

Under the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (“2022 Order”) and the Civic Government (Scotland) Act

1982 (“1982 Act”) where an application for the grant or renewal of a licence is received, a licensing authority can:-

- grant (or renew) the licence; or
- grant (or renew) a licence and in doing so disapply or vary any standard conditions applicable to the licence; or (failing which)
- grant (or renew) a licence and impose additional conditions to the licence; or (failing which)
- refuse to grant (or renew) the licence.

### **Considerations to which the Committee may have regard**

In considering whether or not to grant a licensing application, the Committee may have regard to any misconduct on the part of the applicant which in its opinion has a bearing on his fitness to hold a licence. This includes, but is not limited to, previous and spent convictions.

### **Granting the Application**

The licensing authority is **obliged** to grant the licence unconditionally unless it considers that any of the criteria below apply to justify granting it with conditions or refusing it altogether. In granting the application the Committee may choose to grant a licence and disapply or vary any of the standard conditions (i.e. local conditions agreed by the licensing authority) which ordinarily apply to the licence, if there is a justifiable reason for doing so.

Where the Committee is not minded to grant the application unconditionally, it should first move to consider whether the application should be granted with additional conditions. Additional conditions may include conditions restricting the licensable activity, for example restricting the activity to certain times or areas. Where the Committee chooses to impose additional conditions to a licence, the additional conditions must be reasonable, must not impose any limit on the number of nights for which premises may be used for secondary letting (Paragraph 5 (2) and 5(2B) Schedule 1, 1982 Act respectively) and they must not relate to fire safety or any other matter dealt with under the Fire (Scotland) Act 2005 (Paragraph 5 (2A) Schedule 1, 1982 Act).

In addition, it is important that the removal, variation or addition of conditions is not inconsistent with any of the mandatory licence conditions. (Paragraph 5 (2ZA) Schedule 1, 1982 Act).

### **Refusal of an Application**

There are certain circumstances under which the Committee is obliged to refuse an application to grant or renew a licence. These are provided at paragraph 5(3) of Schedule 1 to the 1982 Act as amended by the 2022 Order and are:-

- (a) The applicant or, where the applicant is not a natural person, any director of it or a partner in it or any other persons responsible for its management is either:-
- (i) for the time being disqualified from holding a licence under section 7(6) of the 1982 Act; or
  - (ii) not a fit and proper person to be the holder of the licence;
- (b) 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 or renewal of such a licence if he made the application himself;
- (c) where the licence applied for relates to an activity consisting of or including the use of the premises or a vehicle or a vessel, those premises are not or, as the case may be that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to:-
- (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
  - (ii) the nature and the extent of the proposed activities;
  - (iii) the kind of person likely to be in the premises, vehicle or vessel;
  - (iv) the possibility of undue public nuisance; or
  - (v) public order or public safety; or
- (ca) the applicant would not be able to secure compliance with:-
- (i) the mandatory licence conditions, and
  - (ii) the standard conditions and any further conditions under sub-paragraph 1(A)(b) to which the licence is to be subject,
- (cb) the application does not contain the information required under paragraph 1(2)(da), or (db) (the consent of the owners of the premises), or
- (d) there is other good reason for refusing the application.

Where none of these conditions apply, the licensing authority is **obliged** to grant the application.

**(c) Financial implications**

None.

**(d) Risk Implications**

None.

**(e) Staffing Implications**

None.

**(f) Property**

None.

**(g) Equalities/Socio Economic Impact**

In considering this matter the Committee should have regard to the subject's rights under the European Convention on Human Rights (and the Human Rights Act 1998).

In particular:

Article 8 - access to private and sensitive information about the person could give rise to interference with the subject's right to respect for private and family life.

Article 1 of Protocol 1 - the decision may also interfere with the right to property, in that, depending on the outcome, the decision may deprive the subject of income.

Article 6 - the right to a fair trial means the proceedings must be conducted fairly to arrive at a reasoned decision.

Article 8 and Article 1 of Protocol 1 are qualified rights, meaning these can be restricted in order to protect the rights of another or the wider public interest. This will require an objective justification. To be able to objectively justify a decision, the Committee has to demonstrate that any decision is a proportionate means to achieve a legitimate aim.

A legitimate aim must be a real consideration that is legal and not discriminatory.

Examples of legitimate aims include: Public health; Public safety; Efficiency; Enabling elderly people to live at home longer. Saving cost may be relevant but is not an aim in itself.

Any measure taken to achieve the legitimate aim must also be proportionate i.e. necessary and the least intrusive/discriminatory way of achieving the aim.

Lastly, when any of the Articles are engaged, it will also mean Article 14 should be considered. That is the right not to be discriminated against in relation to the convention rights. The definition of discrimination under this Article covers a much wider spectrum than the protected characteristics under the Equality Act 2010. The Committee should therefore have regard to all the applicant's circumstances.

**(h) Climate Change and Biodiversity Impacts**

None identified.

**(i) Consultations**

The Chief Constable and the Scottish Fire and Rescue Service have been consulted in terms of the Act. Moray Council's Planning, Environmental Health and Building Standards Services have also been consulted. Objections have been received from the public as detailed above. No other adverse representations or objections regarding the application were received from consultees.

**5. CONCLUSION**

**5.1 That the Committee considers the recommendations set out in section 2 of the report.**

Author of Report:	Jennifer Smith, Solicitor
Background Papers:	There are no background papers
Ref:	JS/SAH