

EAST RENFREWSHIRE COUNCILLICENSING COMMITTEE21 November 2017Report by Director of EnvironmentHOUSE IN MULTIPLE OCCUPATION LICENSING**PURPOSE OF REPORT:**

1. To request the Licensing Committee consider an application for a House in Multiple Occupation License under the terms of the Civic Government (Scotland) Act 1982, as amended.

BACKGROUND:

2. In 1991, local authorities in Scotland were given discretionary powers to introduce licensing of Houses in Multiple Occupation (HMOs) under the Civic Government (Scotland) Act 1982. In 2000, a new Order under that Act was made, making it mandatory for all authorities to introduce an HMO licensing regime.

3. The Housing (Scotland) Act 2006 (2006 Act) moved the regulation of HMOs into mainstream housing legislation as of 2011-12 with additional enforcement powers for authorities and increased penalties for criminal offences.

4. Living accommodation is an HMO within the meaning of the 2006 Act if it is:

- Occupied by three or more persons from three or more families, and;
- Occupied by them as their only or main residence, and;
- Either a house, premises or a group of premises owned by the same person with shared basic amenities.

5. The legislation covers not only ordinary houses, flats and bedsits, but also other types of residential accommodation including hostels, student halls of residence, and staff accommodation in hotels or hospitals. Accommodation within a building which, although otherwise separate, shares use of a toilet, personal washing facilities or cooking facilities is taken to form part of a single HMO.

6. The stated purpose of this is to achieve and maintain high standards of service in this part of the private rented sector by ensuring that the HMO owner, and their agent, is a fit and proper person, and to ensure the suitability of accommodation.

7. The factors which the local authority must have regard to in determining whether the applicant or agent are fit and proper are set out in section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004, as amended, which also applies to Landlord Registration. Where an applicant or agent is not an individual, these tests apply to any director, partner or other person involved in the management of the company, trust or organisation.

8. In assessing whether an applicant is “fit and proper”, local authorities must take account of the following information prescribed in Part 8, Section 85 of the 2004 Act and updated in Part 1, Section 1 of the 2011 Act:

- a) Any material that shows that the individual has:
 - Committed any offence involving fraud, dishonesty, violence, drugs, firearms, or sexual crimes.
 - Practised unlawful discrimination in any business activity
 - Contravened any provision of the law relating to housing or landlord and tenant relations.
- b) Any material relating to any action, or failure to act, in relation to anti-social behaviour affecting a house which the person lets or manages.
- c) Any material relating to an arrangement for an agent to act for the landlord in relation to the lease or occupancy arrangement.
- d) Any other information relevant to the question of whether the person is fit and proper.

9. The legislation does not provide automatic grounds for a refusal to register. Ultimately, it is for the local authority, in its capacity as licensing authority, to decide whether the applicant is a fit and proper person to act as an HMO owner or agent based on all the information available

10. The owner must display a notice outside the property (or arrange for such a notice to be displayed) for 21 days, informing the public of the application and how to submit objections to the local authority. Where valid objections in response to the site notice have been received the license application will be passed to the Licensing Committee.

11. Enforcement decisions must be consistent, balanced, and fair, with due regard to the seriousness of the offence, the consequence of not taking action, the likely effectiveness of the action, and be proportionate to risks to health, safety and welfare.

REPORT

12. Cube Housing Association (Cube HA) submitted an application for a House in Multiple Occupation License on 5th June 2017 for 3 Luckiesfauld, Neilston, G78 3HQ.

13. The McFarlane Trust has been declared as an agent, on this application.

14. This property was previously granted an HMO license in 2002 and Cube HA renewed this license every 3 years up until 7th March 2017 when their license expired.

15. The property has been unoccupied since February 2015.

16. The applicant complied with the legislation and displayed a notice outside the property informing the public of the application between 25th May 2017 and 16th June 2017. This was checked by Housing Services on the 5th and 12th June 2017.

17. During this period the Council received 3 objections from neighbouring residents, one of which was subsequently withdrawn. The remaining objections consisted of the following:

Objection 1

- i. Objector is unhappy that Cube HA did not write to all the residents of Luckiesfauld about their intention to make a an application for the property to be used as House of Multiple Occupation again and they only noticed due to the 21 day Public Notice that was displayed on a lamp post at the property.
- ii. The objector would also like more information on the type of tenant proposed and their support needs.
- iii. The condition of the property inside and out and specifically the garden areas, ivy growth, driveway, garage door, overgrown trees and its general state over the last two years it has been left empty has been a concern to residents.
- iv. The previous care provider did not park in the driveway and this resulted in cars being parked on the street and congestion issues.

Objection 2

- i. Lack of communication from East Renfrewshire Council and Cube HA towards the residents of Luckiesfauld concerning operating an HMO Licenced property.
- ii. Placement of Public Notice without written confirmation to householders and lack of compliance with Scottish Housing Act for communication and consultation with householders.
- iii. The current internal/external condition of the property and the neglect by Cube HA over the last two years.
- iv. During the previous period of multiple occupancy there were problems with parking and access issues caused by care workers, patient visitors, delivery and maintenance vehicles. Damage was inflicted on their vehicle by a care worker and the incident was reported to the police. The work patterns and 24/7 shift work have caused disruption to the local residents in the past.
- v. Also raised concerns that Cube HA is no longer responsible for who resides at this property and that no consultation or discussions have taken place with existing householders about this.
- vi. The objector states that the lack of consultation and communication and proposed changes will result in significant impact and disruption to local residents and its use as a care home and place of work by others is not compatible with a normal living life for this area.

18. Housing Services spoke to all parties and facilitated a meeting between the residents, Cube HA and The MacFarlane Trust on the 28th June 2017.

19. At this meeting all parties had the opportunity to discuss the objections raised and it was highlighted that if the objections were not satisfied and subsequently withdrawn a referral would be made to East Renfrewshire Council's Licensing Committee for determination of the license application.

20. At the meeting, Cube HA and The MacFarlane Trust responded to the following issues raised within the objections:

- i. Writing to neighbours prior to application – Cube HA advised that they had legally complied with what required of them, by displaying a notice required in a prominent position for all neighbours to see. They provided contact details at the meeting for future reference.
- ii. Internal & External condition of property – Cube HA acknowledged that there has been a bit of dampness due to no tenants being in the property for the last 2 years and as a result of the heating not being on in the property regularly. Cube have fitted a new kitchen and painted the whole house. Landscapers have attended the property and the ivy was cut back, the trees were pruned and the garden was tidied up. Cube HA agreed to meet the landscaper and arrange for further works to be done to the garden including weeding and for the outside tap to be removed. The MacFarlane Trust have committed to contacting Cube HA if they felt the garden or property wasn't being maintained.
- iii. Parking – The MacFarlane Trust advised that their staff would be utilising the driveway fully and they will take on board the comments in relation to parking being particularly busy during handover / team meeting times and will speak to the carers that would be working in the property should the license be granted. The MacFarlane Trust informed the meeting that they had sent a carer to the property the week before, and the carer advised that she was not at all happy at how she was spoken to. They wish to form a good relationship with the neighbours at Luckiesfauld. The MacFarlane Trust confirmed there would be no special collections or materials needing removed on a daily basis as was previously done, reducing the amount of potential traffic at the property.
- iv. Tenants and support needs – The MacFarlane Trust advised that no tenants had been identified for the property but that it would be an all-female home and that it would be older ladies that would be staying in the property. As a result there should be no behavioural issues. They also advised that while they couldn't confirm this wouldn't change they would put in a compatible group of tenants. The MacFarlane Trust also advised that they are happy to visit all owners about any concerns they may have (including speaking to other MacFarlane Trust neighbours and see if they were willing to speak to the Luckiesfauld neighbours for re-assurance).

CONCLUSIONS

21. Our investigations have raised no major concerns with regards to antisocial behaviour of potential tenants. Historically we have received 4 complaints in relation to licensed HMO properties owned by Cube HA in East Renfrewshire. All of these were addressed and resolved.

CONSULTATION

22. As part of the consultation process, Housing Services consulted with East Renfrewshire Council's Legal Services, Luckiesfauld residents, Cube HA, and The MacFarlane Trust.

RECOMMENDATIONS

23. It is recommended the Licensing Committee:

- i) Notes the content of this report;
- ii) Agrees to assess the applicant's 'fit and proper' status and take the decision on whether the license for a House in Multiple Occupation should be granted;
- iii) Authorises Council officers to draw up a Rent Suspension Order and cause this to be served on the Applicant in the event the Applicant is refused and proceeds in operating an unlicensed HMO;
- iv) Authorises Council officers to report the applicant to the Procurator Fiscal, in the event that the license is refused and the applicant proceeds in operating an unlicensed HMO and to cooperate with the Procurator Fiscal and police in any criminal investigation and prosecution relating to this matter; and
- v) Authorises Council officers to defend any litigation instituted by the applicant in respect of their license being refused or against the service of a Rent Suspension Order.

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