

# Licensing Sub-Committee of the Regulatory Committee

## Request for Variation of HMO Licence - Flat 4, 24 Learmonth Gardens, Edinburgh

Item number	6.1
Report number	
Executive/routine	
Wards	
Council Commitments	

### Executive Summary

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The Directorate of Place requests that the Licensing Sub Committee considers varying the HMO licence of Clive Scott Culkin for the property at Flat 4, 24 Learmonth Gardens, Edinburgh.

Following a complaint from the owners of the flat below the property, it has been established that the property in question has insufficient deafening under the floorboards to prevent noise disturbance. Sound transmission from Flat 4, 24 Learmonth Gardens into the property below is excessive, and exceeds levels normally expected in tenement living.

This report suggests the procedures that the Committee should adopt when considering this request, and sets out the options available to the Committee.

## Request for Variation of HMO Licence - Flat 4, 24 Learmonth Gardens, Edinburgh

### 1. Recommendations

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- 1.1 After hearing from Council officers and the licence holder, it is recommended that the committee:
  - 1.1.1 Varies the licence to add a condition stating that deafening must be laid under all the floors of the property to address concerns that the property is not suitable as an HMO.

### 2. Background

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- 2.1 The Housing (Scotland) Act 2006 provides that a local authority may grant a House in Multiple Occupation (HMO) Licence only if it considers that the living accommodation concerned -
  - a. Is suitable for occupation as an HMO or
  - b. Can be made suitable by including conditions in the HMO licence.
- 2.2 When determining if a living accommodation is, or can be suitable for occupation as an HMO, the Committee shall take into account amongst other things the possibility of undue public nuisance. This can include such things as unacceptable levels of noise and disruption to neighbours caused by anti-social behaviour and/or defective physical standards.
- 2.3 The local authority may vary an HMO licence at any time, either on the application of the licence holder or of its own accord as per the Housing (Scotland) Act 2006 Section 138 variation of HMO Licence (Appendix 1).
- 2.4 The local authority may revoke an HMO licence if at any time it considers that the living accommodation concerned is no longer suitable for occupation as a HMO and cannot be made suitable by varying the conditions included in the HMO licence.

### 3. Main report

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- 3.1 A HMO licence for the property at Flat 4, 24 Learmonth Gardens, Edinburgh EH4 1HA was granted by the City of Edinburgh Council on 26 October 2017. This licence is valid until 31 July 2020.

- 3.2 The owner of the property resides in Australia. The property is managed on his behalf by the agents Rettie & Co.
- 3.3 On 21 November 2018 a complaint was received by the Private Rented Services (PRS) Enforcement team from the owners of the property at Flat 2, 24 Learmonth Gardens, Edinburgh. This complaint concerned excessive sound transmission into their property from the property above at Flat 4, 24 Learmonth Gardens. The complainers had moved into the property on 1 November 2018.
- 3.4 As part of the investigation the agents for the licence holder were contacted. Officers were permitted access to the property so that tests could be carried out. An inspection was carried out by the Public Safety team on 20 December 2018. This inspection established that there was a lack of deafening mass, normally provided in the form of pulverised fuel ash, under the floorboards in the living room of the property. Instead of the normal ash deafening, there was only glass wool providing thermal insulation. The contractor employed by the agent to lift the floorboards during this visit, stated they had previously lifted boards in the hall and had again found glass wool only with no ash deafening. The lack of deafening is likely to be a contributory factor of the excessive sound transmission from the property into the property below. A copy of this report is included at Appendix 2.
- 3.5 A noise test was also carried out by officers from the PRS Enforcement team on 12 February 2019. As a result, officers concluded that the sound transmission from Flat 4, 24 Learmonth Gardens, into the complainers' property below was excessive and exceeded levels normally found in tenement buildings. This finding is consistent with the officers' belief that the normal ash deafening has been removed throughout the property. A copy of the officers' report is included at Appendix 3.
- 3.6 The agents for the licence holder were informed of these findings. As a result of the investigation the agents for the licence holder were advised that in the view of the Directorate of Place the property no longer met the standards required for a HMO. A letter was sent to the agents of the licence holder detailing the findings of the investigation and asking the agents to contact the licence holder to discuss the action that could be taken to bring the property up to required HMO standards. A copy of this letter is included at Appendix 4
- 3.7 In response to this letter the agents obtained an estimate for the cost of this work. The estimated cost to have all the deafening replaced in the property was £13,056.
- 3.8 Due to the projected cost of replacing the deafening throughout the whole property and the inconvenience that this would cause to the current occupants, the landlord offered to carry out the work on one room as soon as possible, as an experiment to find out what the effect would be on the tenants of his property and the subsequent benefits to complainers below.
- 3.9 It is understood that the licence holder's position is that the programme of work would probably be spread over several years and that further work would depend on the financial position.

- 3.10 In response to this offer the agents were advised that it was the intention of the Directorate of Place to refer the matter to the Committee for its consideration, as the proposals put forward by the agent do not adequately address the issue raised.
- 3.11 Due to the ongoing issues with excessive sound transmission from the property at Flat 4, 24 Learmonth Gardens, the complainers have now engaged a contractor to carry work in their own property to try to alleviate some of the noise issues.
- 3.12 Having heard from all parties, the Committee should decide what, if any, action it wishes to take. It can decide to take no further action or to vary the licence by adding a condition.
- 3.13 The committee can decide to add a condition to the licence to ensure that, if the property is to continue to be used as a HMO, the living accommodation is suitable for occupation as a HMO.
- 3.14 If the Committee is minded varying the licence, the Directorate of Place requests that a condition is attached to the licence stating “The licence holder will reinstate the traditional floor construction of 75mm of ash deafening, supported on deafening boards, throughout the property. The reinstatement to be completed within a period of three months unless an alternative timescale is agreed in writing with the Executive Director of Place”.
- 3.15 If the committee is of the view that the living accommodation is no longer suitable for occupation and cannot be made so suitable by varying the licence conditions, or if the licence holder fails to satisfactorily complete the works, a further report will be prepared for the committee giving all relevant details and may include a request for revocation of the HMO Licence.

#### **4. Measures of success**

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- 4.1 Not relevant, as decisions on individual licences have to be considered on their own merits.

#### **5. Financial impact**

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- 5.1 None, as the costs of these matters are recovered from licence application fees

#### **6. Risk, policy, compliance and governance impact**

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- 6.1 The process outlined takes account of the relevant statutory provisions.
- 6.2 The licence holder has a right of appeal against any decision made. The appeal lies to the Sheriff Court.

#### **7. Equalities impact**

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- 7.1 There is no equalities impact arising from the contents of this report.

## 8. Sustainability impact

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8.1 There is no environmental impact arising from the contents of this report.

## 9. Consultation and engagement

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9.1 Not relevant, as decisions on individual licences have to be considered on their own merits.

## 10. Background reading/external references

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10.1 None

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## 11. Appendices

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11.1 Appendix 1 – Housing (Scotland) Act 2006. Section 138 Variation of HMO Licence.

11.2 Appendix 2 – Report from Public Safety

11.3 Appendix 3 – Details of noise test

11.4 Appendix 4 - Copy of letter to licence holder's agent Rettie & Co.

**11.5 Appendix 5 – Copy of response from licence holder's agent Rettie & Co.**