

# Licensing Sub-Committee of the Regulatory Committee

**1.00pm, Monday, 6 February 2023**

## **Applications for House in Multiple Occupation Licences – 145 (3f2) and 193 (1f2) Bruntsfield Place**

**Item number**

**Report number**

**Executive/routine**

**Wards**

All

### **Executive Summary**

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This is a request for the Licensing Sub Committee to consider two applications for new House in Multiple Occupation Licences.

This report outlines the procedures that the Licensing Sub Committee should adopt when considering the applications and sets out the various options that are open to the Committee.

## Applications for House in Multiple Occupation Licences – 145 (3f2) and 193 (1f2) Bruntsfield Place

### 1. Recommendations

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- 1.1 After hearing from Council Officers and the applicants, it is recommended that the Licensing Sub-Committee determines the applications, considering whether the agent is fit and proper and secondly whether the premises are suitable to be licensed as an HMO.

### 2. Background

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- 2.1 The requirement to hold a House in Multiple Occupation ('HMO') Licence is set out in the Housing (Scotland) Act 2006 ('the Act'). The procedures for processing such applications and considering objections etc. are set out in the Act and the associated statutory guidance issued by the Scottish Government.
- 2.2 In considering an application for HMO licence, the Committee is required to assess whether the applicant and any agent appointed by them are fit and proper in terms of section 130 of the Act. This report sets out officer concerns about the conduct of the agent appointed by the applicant.
- 2.3 The Committee is also required to assess whether the property for which the licence is sought is suitable for occupation as an HMO, or can be made suitable, in terms of section 131 of the Act. This report sets out officer concerns about the suitability of the property for occupation as an HMO.

### 3. Main report

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- 3.1 The Committee asked to determine these applications made on behalf of Catherine Macneal by her agent Peter Lorn Macneal (Appendices 1a and 1b).
- 3.2 Scottish Government statutory guidance 'Fire Safety Guidance For Existing Premises With Sleeping Accommodation' directs 'dutyholders' (defined as 'persons with fire safety responsibilities') to refer to BS 5306 for the provisioning of firefighting equipment. Further, fire extinguishers must be checked annually by a competent person. Scottish Fire and Rescue Service recommends that contractors employed for this purpose are 'British Approvals for Fire-fighting Equipment' registered. The application for 1f2 193 Bruntsfield Place (Appendix 1a) was reviewed by officers and found to have omitted evidence confirming that these checks had been carried out.

- 3.3 On 4 October 2022 Council officers contacted the applicant's agent (Mr Macneal) to provide an update on the progress of the applications. This included a reminder with respect to the required certification on fire extinguisher checks by a 'competent person' for the property at 1f2 193 Bruntsfield Place. A follow-up message was sent on 18 October 2022 (Appendix 2). Mr Macneal responded on 25 October that he considered himself suitably competent to carry out the necessary checks. An officer from the Scottish Fire and Rescue Service was asked to comment on this and responded that in this context Mr Macneal would not be considered a 'competent person', and as such the applicant would be required to engage a contractor to certify the safety of the fire extinguishers. Mr Macneal replied to dispute this (Appendix 3).
- 3.4 Further correspondence on this matter (Appendix 4) failed to reach a satisfactory conclusion. The required safety certification remains outstanding, and as a result officers do not consider the property at 1f2 193 Bruntsfield Place suitable to be licensed as an HMO. In these circumstances officers would normally consider refusing under delegated powers.
- 3.5 A further issue arose during this correspondence. The Team Leader dealing with these applications as a result of the issue above has expressed concern about the tone of some of the language used by Mr Macneal (Appendix 4), which she found to be upsetting. In particular the agent used the following language in an email dated 14 December 2022: *"I think a monkey at Edinburgh zoo could tell you if a seal had been tampered with"*. Members are asked to consider whether the correspondence received from Mr Macneal (Appendix 4) may be considered to breach the Council's [Policy on Unacceptable Behaviour Towards Licensing Staff](#).
- 3.6 Furthermore, members are asked to consider the overall correspondence with both Council officers and Scottish Fire and Rescue officers and determine whether it has any impact on the fitness of the agent to be named on the licence. The agent has been asked to resolve a relatively minor issue but is apparently declining to follow advice. The email exchanges include the following examples:
- 'The matter is in your hands. If I do not have early and satisfactory resolution. I will invite press and social media intervention'*
- 'Please appreciate I have no intention of investing in consulting with a "defined expert person" to charge me probably in excess of £100 fee to check the tamper proof seal of a fire appliance costing £25 from Screwfix'*
- 'I think it is patronising, indeed offensive to suggest that checking a tamper proof seal must inspected and certified by arrangement through an independent and qualified party'*
- 'I am sorry theses a smoke screen of archaic nonsense applicable to traditional water based extinguishers that could be refilled and regularly serviced at what last time was an annual cost of £120.'*
- 'Please can we get real and amend your HMO policies to reflect the time we live in'*
- The Directorate contends that by taking such an approach this could suggest that the agent has little regard for the HMO licensing system.
- 3.6 The applicant has been invited to attend.

## 4 Measures of success

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

## 5 Financial impact

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- 5.1 The Council's costs are contained within the licence application fees charged.

## 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 applicant has a right of appeal against any decision made. The appeal lies to the First-Tier Tribunal.

## 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 None.

## 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 1a: HMO Licence applications for 1f2 193 Bruntsfield Place
- 11.2 Appendix 1b: HMO Licence applications for 3f2 145 Bruntsfield Place
- 11.3 Appendix 2: Emails dated 4 and 18 October with respect to application for HMO Licence at 1f2 193 Bruntsfield Place
- 11.4 Appendix 3: Email dated 1 November 2022 from Scottish Fire and Rescue Service and response from Lorn Macneal dated 1 November 2022
- 11.5 Appendix 4: Email correspondence between Eileen McHale (Licensing Team Leader) and Lorn Macneal between 14 and 15 December 2022