

Licensing Sub-Committee of the Regulatory Committee

2.30pm, Monday, 16 September 2019

Report on House in Multiple Occupation Licence - Application for 3f2, 44 Montpelier Park

Item number

Report number

Executive/routine

Wards

Executive Summary

The House in Multiple Occupation (HMO) Licence application for 3f2, 44 Montpelier Park was referred to Committee due to public representations. The application was heard by Committee on 19 August 2019 and the matter was continued to the meeting of 16 September 2019 to allow the Executive Director of Place to carry out further investigations as directed by the committee. This report details the findings following the Executive Director of Place's investigations.

Report on the House in Multiple Occupation Licence - Application for 3f2, 44 Montpelier Park

1. Recommendations

- 1.1 That Committee has regard to this report in determining the HMO licence application for 3f2, 44 Montpelier Park and either grant the licence with any additional conditions they see fit to impose or refuse the licence.
- 1.2 If the Committee is minded to grant the application, it is recommended that the committee add a condition stating that:
 - 1.2.1 maintenance be carried out on the timber staircase to the upper level to reduce excessive creaking and movement noise when using the staircase;
 - 1.2.2 carpet and good quality underlay should be fitted in the lower hallway and the connecting staircase to the upper level;
 - 1.2.3 and cushioned vinyl be fitted in the kitchen and bathroom to address concerns that the property is not suitable as an HMO; and
 - 1.2.4 this should be completed within a three month time period.
- 1.3 If the Committee is minded to refuse the application due to having found the applicant to be not fit and proper to be a landlord (under section 130 of the Housing (Scotland) Act 2006) consideration should be given to:
 - 1.3.1 calling for a report on revoking the existing HMO Licences for the properties listed in appendix 1 for which the applicant holds an existing HMO licence for; and
 - 1.3.2 that report should also include consideration of removing the applicant from the Council's register of landlords under entry 02830/230/12110, as detailed in Appendix 2.

2. Background

- 2.1 The applicant applied for an HMO Licence on 25 September 2018 for 3f2, 44 Montpelier Park. The application attracted public representations objecting to the grant of the HMO Licence as well as an adverse report from the Council's inspection team and was referred to Committee to be determined. The Committee heard the case on 19 August 2019 and asked the Executive Director of Place for a report to include "clarification on the building completion certificate, floor coverings and ownership of the roof".
- 2.2 In determining an HMO Licence Committee must be satisfied that the applicant, and any agent, are fit and proper to hold the licence and the property is suitable for

occupation as an HMO or can be made suitable by including conditions in the HMO licence.

- 2.3 The matters to which the local authority must have regard in considering whether a landlord is a fit and proper person are laid out in the Antisocial Behaviour etc. (Scotland) Act 2004.
- 2.4 The 2004 Act provides that the Licensing Sub Committee must have regard to certain material including whether the landlord has contravened any provision of the law relating to housing, or landlord and tenant law.
- 2.5 The actions of the landlord in relation to any antisocial behaviour affecting a house which they let or manage must also be considered.
- 2.6 Additionally, consideration must be given to any material that shows that the applicant has committed any offence involving: fraud or other dishonesty, violence, drugs, discrimination, firearms (within the meaning of section 57(1) of the Firearms Act 1968); or that the applicant has committed a sexual offence (within the meaning of section 210A (10) of the Criminal Procedure (Scotland) Act 1995.
- 2.7 The Committee can also consider any additional material if it appears that the material is relevant to the question of whether the applicant, or agent, is a fit and proper person.

3. Main report

- 3.1 The Licensing Sub Committee heard representations from the applicant, objectors, and officers on 19 August 2019 and after consideration requested a further report on the property including clarification on the “building completion certificate, floor coverings and ownership of the roof”. This report details the findings of these investigations.

Building Warrants and Completion Certificates

- 3.2 There were two building warrant related issues at 3F2, 44 Montpelier Park raised at Committee relating to:
 - 3.2.1 07/05567/AOW1: Installing a misting system; and
 - 3.2.2 07/05567/ALTCON: Alter and convert attic space.
- 3.3 The building warrant for the misting system, applied for under building warrant 07/05567/AOW1, had been refused. It has since been established that the misting system warrant was later incorporated into the building warrant 07/05567/ALTCON for which there is a completion certificate.
- 3.4 The building warrant under reference 07/05567/ALTCON for the alteration and the conversion of the attic space has been completed and a building warrant completion certificate has been issued. However, concerns have been raised by the objectors that the conversion extends beyond the footprint of flat 3F2 to cover some space over flat 3F1.
- 3.5 Officers from the Licensing and Public Safety teams attended the property on Thursday 29 August 2019 and gained access to both the property at 3F2 and the attic space via a maintenance hatch in the common stair. Measurements were taken on

both the lower and upper floors and the position of the extent of the conversion assessed in relation to the existing wall head in the attic space.

- 3.6 Having accessed the attic space to the front of the property it appeared that the framed separating wall construction marginally encroaches beyond the line of the existing wall head below. Following discussion with the applicants they explained that their framed wall line does encroach marginally (some 100mm to the front and between 200 and 300mm at the rear). Officers were given to understand that this had been agreed with the previous owner of the neighbouring property and that this framed separating wall had been previously moved in order to minimise the encroachment into the neighbouring attic.
- 3.7 It was noted at the inspection that, while encroachment of this type could allow a route for flanking transmission of sound, this would not necessary be the only or even the most significant factor.
- 3.8 There are a number of constructional contributing factors relating to the wall that could be improved to increase the acoustic separation properties of this wall. Please note that further investigation, by a suitable qualified engineer, would be necessary to give specific guidance:
- 3.8.1 the timber flooring from the bedroom floor passes through the wall construction, projecting into the roof-space beyond;
 - 3.8.2 there are large gaps beneath the separating wall construction;
 - 3.8.3 there are gaps where the plasterboard has been cut around the existing roof timbers and wall;
 - 3.8.4 there are roof timbers projecting through the framed wall construction; and
 - 3.8.5 it should be clarified whether there is isolation of the new floor construction from the existing, neighbouring, ceiling construction.
- 3.9 All of these issues could reduce the acoustic insulation properties of this framed wall construction. There should not be obvious gaps and routes through which sound can bypass the separating wall construction.

Floor Coverings and the Impact Noise Standard

- 3.10 In 2012 the Council adopted the Scottish Government's statutory guidance that HMOs should have adequate measures to prevent and mitigate the transfer of impact (footfall) noise, including a requirement that carpet and good quality underlay (or cushioned vinyl where carpet is not suitable) should be fitted in properties above other residential accommodation, as part of the HMO standards.
- 3.11 The guidance was based on "The Development and Production of a Guide for Noise Control from Laminated and Wooden Flooring" commissioned by the then Scottish Executive, and others, that found that "It can be seen that even with an underlay installed under the laminate or wood flooring that there is still significant shortfall in performance when compared to carpets or carpets and underlay".
- 3.12 In 2013 and again in 2014 the Council amended its position to allow a landlord to have this provision set aside, provided there is no history of noise complaints and they can obtain a signed declaration from the occupiers of the property below stating that they satisfied with the current measures in place to reduce noise.

- 3.13 On 19 October 2018 the applicant received a copy of the public representations made to the committee, which included complaints about noise arising from the property.
- 3.14 On 8 November 2018 an officer from the PRS team contacted the applicant following a complaint from the current occupier of the flat below, stating they didn't give consent for a carpet exemption for this property and they have issues with noise transfer from the property. The occupier stated that they had made several complaints directly to the applicant without resolution and wished carpet to be fitted in the property. The officer informed the applicant that they would need to have carpet installed and this would be assessed at the scheduled inspection in December 2018. The officer's case notes state "I was very clear to Mrs Fieldman (and she seemed ok with fitting carpets, and indeed advised that they would probably be done prior to the HMO inspection)".
- 3.15 At the inspection on 20 December 2018 carpets were not fitted and this was detailed in the inspection report issued to the applicant (Appendix 4). A reinspection was arranged for 14 February 2019 and the carpets and underlay had still not been installed. Due to lack of progress the application was recommended for refusal on 20 May 2019.
- 3.16 Correspondence was entered into as the applicant contested that the requirement for carpets and underlay to be fitted had not been made clear. Notwithstanding the Council position that the requirement had been communicated to the applicant it was agreed to extend the date for the fitting of carpets to 19 July 2019. Further correspondence explained that they could make representations to Committee for an extension or to set aside the requirements for carpet and underlay to be fitted.
- 3.17 Officers from the Licensing and Public Safety services attended the property on Thursday 29 August 2019 to inspect the existing floor coverings.
- 3.18 The lower floor consists of 2 bedrooms, living room, kitchen with dining area, bathroom, and stair access to the upper floor all of which is accessed from a common hall. Previously both bedrooms and the living room have been fitted with carpet and underlay since the inspections. The kitchen, with a dining alcove containing a table and six chairs, is tiled along with the bathroom.
- 3.19 The common hall has a hard wood system installed over the original flooring and the staircase is unfinished. There are two large rugs in the hallway.
- 3.20 In line with the Council's existing policy it is recommended that the committee should attach a condition to the licence such that hall and the stair to the upper level is fitted with good quality carpet and underlay, and the kitchen and bathroom are fitted with cushioned vinyl.
- 3.21 Prior to fitting of carpet and underlay, maintenance should be carried out on the timber staircase to the upper level to reduce the excessive creaking and movement noise that arises when the stair is used.

Ownership of Roof and Attic Spaces in Scottish Tenements

- 3.22 The ownership of an attic space and roofs in a tenement can be complex. Ideally the ownership of the common parts of the tenement can be determined by consulting the title deeds of all the flats in the block. However title deeds of the late 19th century can often be silent on ownership of the attic space and/or the roof. If this is the case, the

position in common law is that the top floor owners will own the attic space and the roof above their respective properties.

- 3.23 It is common for the title deeds, or a Tenement Management Scheme under the Tenements (Scotland) Act 2004, to specify that the maintenance of the roof is a common burden placed on all owners even when the roof is owned by a single person.
- 3.24 The information available on the Land Register for Scotland (Appendix 4) shows that the maintenance of the roof is shared at 44 Montpelier Park between all owners but is silent on the ownership of the roof space or the roof. The owners of the properties at 44 Montpelier Park may have additional documentation, not available to the Council, that may more fully detail ownership rights.

4 Measures of success

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

5 Financial impact

- 5.1 The Council's costs are contained within the fees charged for licences.

6 Risk, policy, compliance and governance impact

- 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 Sheriff Court.

7 Equalities impact

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

8 Sustainability impact

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

9 Consultation and engagement

- 9.1 None.

10 Background reading/external references

- 10.1 [Licencing of HMOs](#) [Licensing multiple occupied housing: statutory guidance for Scottish local authorities](#)

- 10.2 [Regulatory Committee Report – 3 May 2013 - Proactive Impact Noise Standard in Houses in Multiple Occupation Properties \(page 58\)](#)
- 10.3 [Regulatory Committee Report – 4 April 2014 – Proactive Impact Noise Standard \(page 64\)](#)
- 10.4 [The Development and Production of a Guide for Noise Control from Laminated and Wooden Flooring](#)

Andrew Mitchell

Regulatory Services Manager

Contact: Andrew Mitchell, Regulatory Services Manager

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Contact: Catherine Scanlin, Licensing Manager

E-mail: catherine.scanlin@edinburgh.gov.uk | Tel: 0131 529 4201

11 Appendices

- 11.1 Appendix 1 – List of HMO licences held by Elizabeth Fieldman
- 11.2 Appendix 2 – Landlord Registration entry for Elizabeth Fieldman, ref 02830/230/12110
- 11.3 Appendix 3 – Inspection report issued to applicant on site 20 December 2018.
- 11.4 Appendix 4 – Title Information and Plan for 3f2, 44 Montpelier Park