

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held BY MICROSOFT TEAMS on WEDNESDAY, 22 NOVEMBER 2023**

Present: Councillor Kieron Green (Chair)

Councillor John Armour
Councillor Jan Brown
Councillor Graham Hardie

Councillor Dougie Philand
Councillor Peter Wallace

Attending: Shona Barton, Governance Manager
Fiona Macdonald, Solicitor
Ann Zurn, Applicant
John Hemmerlee, Applicant
Jamie Yule, Applicant's Solicitor
Natalie Welsh, Manager of Property (for Applicants)
Clifford Maughan, Objector
Darren Painter, Objector

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Gordon Blair, Audrey Forrest, Amanda Hampsey, Daniel Hampsey, Mark Irvine, Andrew Kain, Paul Kennedy and Liz McCabe.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CIVIC GOVERNMENT (SCOTLAND) ACT 1982, THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SHORT-TERM LETS) ORDER 2022: APPLICATION FOR GRANT OF A SHORT-TERM LET LICENCE (A ZURN AND J HEMMERLEE, OBAN)

The Chair welcomed everyone to the meeting. In line with recent legislation for Civic Government Hearings, the parties (and any representatives) were given the options for participating in the meeting today. The options available were by video call, by audio call or by written submission. For this hearing the Applicants opted to proceed by way of video call and Ann Zurn and John Hemmerlee joined the meeting by MS Teams. They were joined by the Manager of the Property, Natalie Welsh, and their Solicitor, Jamie Yule, also by video call.

Clifford Maughan and Darren Painter, Objectors, also opted to proceed by way of video call and they joined the meeting by MS Teams.

One other Objector, Nicola Whittleton, was unable to attend.

The Chair invited the Licensing Standards Officer to speak to the terms of the report.

Thereafter he outlined the procedure that would be followed and invited the Applicant to speak in support of her application.

APPLICANT

The Committee heard from Mr Yule on behalf of the Applicants. He advised that the property in question had been let in the last financial year for 231 days out of a total of 365 days. He also noted the objections which had been submitted by Mr Maughan and Mr Painter, but contended that the objection which had been submitted by Ms Whittleton should not be taken into consideration as there was no address supplied and in terms of the legislation anonymous objectors could not be considered.

Mr Yule provided detail in terms of the Police attendance at the property and advised that this could not be attributed to the short term let premises. He advised that there had been minor issues in regard to the wearing of the carpet in the communal areas and although this wearing could not be attributed to one property it was hoped that there could be resolution to this through dialogue. He noted that the Applicants had advised that they would be willing to pay towards the costs of a replacement carpet if this was shared by all of the residents.

It was noted that issues which had been raised around noise and cleaning had been responsibly responded to and he advised that the Applicants had engaged with their neighbours.

He advised that the Applicants had demonstrated that they were fit and proper persons to hold a short-term let licence and that the property was also suitable with no evidence of public disorder or public nuisance. He advised that the Applicants had confirmed that they would be keen to work with neighbours to put systems in place to resolve issues. He submitted to the Committee that this application should be granted.

QUESTIONS FROM OBJECTORS

Mr Maughan referred to the cleanliness of the close and said that it had not been cleaned since the owners of the property left 3 months ago. He noted that they had advised that they had cleaners who cleaned it and he said this was not true. He sought comment on this. Ms Zurn advised that they had a cleaner that would clean the close when requested to do so. She advised that the close had been cleaned about 6 weeks ago and the cleaner had been asked to clean it again at the end of the month when the current guests left. She advised that she and John had personally washed the walls and vacuumed the stairs when they were last there.

Ms Welsh advised that during the regular change overs the close would not be left in a condition that was not tidy or unclean. She commented that there was not a formal cleaning agreement in place in respect of the close but it was not in their interest for the close to be dirty. She said they would not want that impression for their guests and that if the close was dirty the cleaners would fix that.

Mr Painter advised that he had no questions and thanked Mr Yule for reading out the email he had circulated before the meeting.

Mr Maughan asked where the key box was. Ms Welsh advised that she was not comfortable with providing this information to Mr Maughan. She said it was not marked up. Ms Zurn said that guests were advised of the location of the key box and how to access it upon arrival. She added that the address was not marked on the key safe.

OBJECTORS

Clifford Maughan

Mr Maughan said that the close was not kept clean and that there was no agreement in place of any kind to say who would clean what and when. He advised that there was a lot of disturbance and that they heard every noise and footstep. He pointed out that the building was not built to modern standards with the soundproofing between floors being old asphalt. He advised that this was a residential building with 4 flats and was over 100 years old.

He advised that he and his wife were pensioners over 71 years old and that they had moved here to get peace and quiet. He commented that his wife was quite ill and could not walk. He referred to complaints made to the Police. He advised that 2 Police vans came out but they could not locate the person he had complained about. He also referred to one of the other neighbours being prevented from putting a complaint in about this application. He referred to contacting Councillor Amanda Hampsey to try and find out who they could complain to in the Council.

He advised that the current tenants were workmen and he commented that the owners had previously indicated that they would not let the property to workmen. He said that the workmen made a lot of noise in the close and that one of them had been sick and had dropped a sick cloth out of the window. He also advised that the workmen had urinated against their window. He said that the close had never been cleaned by the owners since the day they bought it.

He commented that the owners had said they stayed in the flat for 3 months last year. He said this was not true. He said it was only 42 or 47 days. He said they were using the flat as a cash cow to make money. He asked how many Airbnbs were currently licensed and how many applications were lodged by the deadline of 1 October 2023. He referred to the number of visitors to the close and the wear and tear of the carpet. He said everyone involved in this was making money out of it. He said they didn't live here and didn't have to put up with it. He advised that he did not have a direct number for Natalie Welsh to let her know what was going on. He said that they had lied on a number of occasions. He commented that he assumed the Committee had read the detail of his objection and the owners' response to it. He also advised of people trying to find the Airbnb coming to his door and trying to get in and that the same thing had happened to the other neighbours.

Darren Painter

Mr Painter advised that Nicola Whittleton lived with him in Flat 3 which was on the top floor above Flat 2 which was being used for short-term lets. He acknowledged that she had omitted to include her address on her objection.

He advised that his primary concern was that this property was a residential property with a shared, communal access. He said that a residential property was very different from a commercial property and stated that a short-term let was commercial. He advised that it was his view that it was inappropriate to be using a tenement building, with shared communal access, for business purposes. He said this was the primary basis of his objection. He added that all the reasons that Cliff had talked about in respect to the potential for anti-social behaviour, the potential for noise, and all the rest of it, would be caused by a business being run from a tenement residential property with shared communal access.

Clifford Maughan

Mr Maughan added that the people owned the flat above him and that it had since been devalued along with all the other flats in the building. He commented that Darren Painter would not have bought his flat if he knew of the Airbnb and advised that the couple downstairs had said the same. He advised that he had nothing against tourism but said that it should be in self-contained buildings.

QUESTIONS FROM APPLICANTS

Ms Zern asked Ms Welsh if she had received any complaints about the current guests in the flat. Ms Welsh confirmed that Cliff had contacted her about towels being thrown out of the window and the mess in the close. She advised that she had asked for photographs of the close to be provided so that arrangements could be made for it to be cleaned. She advised that he had said that the dirt had since been swept out onto the street and was no longer there in the close. She confirmed that there were workmen in the property for 4 months. She advised that when the booking came through she had spoken to them personally. She said that they were working on the site at Dunstaffnage from 9.00 am to 5.30 pm, Monday to Friday and parked their vehicles nearby on the street. She said that they had previously had good reviews on Airbnb and that they seemed credible. She had also spoke with their employers and that she had been more than happy that they would be respectable guests.

Mr Yule referred to cleaning of the close and asked how often anyone in the other properties in the building cleaned the close. Mr Maughan said that he used to clean it every few weeks but he was not doing it just now due to so much dirt being brought in by the workers. He said that his wife was not well and that he was her carer. He advised that when he emailed Ms Welsh it was not about the towel it was about the noise. Ms Welsh advised that she had spoken to the guests about that at the time and that she had advised Mr Maughan of that. She commented that whether it was residents of the other properties or the Airbnb, there would always be a chance of people coming in and making a small amount of noise. Mr Maughan replied that it was not a small amount of noise, it was shouting and clumping up and down the stairs. He said he had received no reply or remonstrations from anyone. He said that at the time when he had called the Police, Ms Welsh had ignored this and the owners had ignored this. He said he did not think that was reasonable.

Mr Painter said that he had cleaned the close 3 or 4 times. He advised that when the residents who worked on a muddy site had left the stairs in a terrible state 2 or 3 times, he had personally hoovered the stairs. He said he did not think any resident would leave the stairs in that state.

Mr Maughan said his wife was disabled and that he went out 1 or 2 times a week which was one person coming up and down the stairs as opposed to 4,000 odd.

MEMBERS' QUESTIONS

Councillor Brown asked the Objectors if, prior to the people who owned the flat applying for a short-term let licence, they had complained previously, or if the complaints had only started since the application was lodged. Mr Maughan said that he had made complaints before the licence was applied for. He said that he had been in touch with Councillor Amanda Hampsey and the Citizens Advice Bureau. He said he had contacted Councillor

Hampsey 4 or 5 times about what was going on. He said that he had complained to the people who owned the flat before they applied about 3 times but received no response.

Mr Painter advised that he had not complained before. He said that he and Nicola had been fortunate to purchase the flat in August 2022 which was a similar time to when the Applicants purchased their property and which was now being used for business purposes.

Councillor Armour asked the Objectors how quickly any complaints about issues with the flat and the close were responded to. Mr Maughan said not very quickly.

Councillor Armour asked how quickly Mr Maughan received a response about the cloth thrown out the window. Mr Maughan said he complained on 3 November and received a response late on 4 November.

Councillor Armour asked Mr Maughan if he thought that was a reasonable time to receive a response. Mr Maughan said no. He said he should have had a phone number to ask someone to come out and see it at the time.

Councillor Armour asked the Applicants why there was not a more robust way of getting in touch with them. He asked why there was not a phone number available for emergencies rather than sending emails or letters. Ms Welsh said she would be happy to provide her phone number. She commented that Mr Maughan had sent his email on 3 November at midnight about a door being slammed by people coming into the close. She said that she had responded to this email at 10 am the next day after talking to the guests. She said that it was not true that she did not respond to other complaints for days. She said that one other email had been sent and that this had been replied to the same day or the next day. She confirmed that she would be happy to give her phone number to Mr Maughan and Mr Painter.

Councillor Armour asked Mr Maughan if he would be satisfied with receiving a phone number. He said yes if someone came straightaway to see what was happening straightaway. Ms Welsh commented that it was always best if photographs could be provided. She said that would be really helpful to her. She commented that she knew that Mr Maughan had taken photographs before as he had sent them on.

Councillor Armour commented that he appreciated that photographs would be helpful but, at the end of the day, said that a timely response to a phone call would be far more advantageous to everyone.

Mr Painter commented that Ms Welsh had been very clear about the email she received from Mr Maughan at midnight and her response the next day at 10.00 am, but she was less clear when questioned by Mr Maughan, and had said she could not remember 2 or 3 weeks ago. He said he was concerned that she was clear with some responses but not others. Mr Painter also expressed his concern about taking photographs. He said he would be uncomfortable confronting someone about noise and taking their photograph. He said this may lead to confrontation and not end well.

Councillor Philand asked the Applicant if there were any ground rules for living in the tenement. He asked if all the neighbours had sat down together to confront the differing views and to organise a rota for cleaning. He suggested that this would go some way to helping the situation. Mr Painter said that this was a valid point. He said that he and Mr Maughan had spoken as residents. He said that he expected when moving into the

property to be able to build relationships with neighbours and have these types of conversations. He said he would not be able to do that with different people living there for days, weeks or months.

Councillor Philand suggested that contact could be made with Ms Welsh regarding ground rules for the building. Ms Welsh advised that she managed other properties in the town and they had ground rules which worked well.

Ms Zurn advised that when they were there in August they had left written letters for all the others in the building with their contact details and Ms Welsh's contact details. She said that they wanted to be available and involved. She advised that Ms Welsh was a professional short-term let person and that this was what she did for a living and that she was highly available.

Councillor Green sought and received confirmation from Ms Zurn that the contact information left was email addresses. Mr Hemmerlee said they would not mind providing their cell phone number but pointed out that they lived in the US so this would be an overseas call and there would be a 6 hour time difference. He said that he had received a couple of contacts from Mr Maughan over the last 18 months or so which, he said, he had tried to respond to straightaway. He advised that he was always in contact with Ms Welsh and that they heard a lot of things. He said that a schedule for cleaning the close would be great and they would not mind their cleaners being part of this schedule. Ms Zurn advised that they were always available on WhatsApp for instant communication.

Councillor Philand asked all parties if they had received a copy of the paperwork for today's meeting and, if so, if they were satisfied or had any concerns about the additional conditions suggested to be applied to this licence if granted.

The Applicants confirmed that they were satisfied with the suggested conditions. They commented that they seemed reasonable and that they would try to follow these even if they were not spelt out. Ms Zurn referred to talk about not allowing workmen into the flat and that they would certainly see about not allowing that. She said it was kind of hard to discriminate against them as they knew of housing shortages for workmen. She commented that their son worked on construction sites that that he much preferred to stay in Airbnbs where there was a kitchen and a space to relax in.

Councillor Armour referred to one of the complaints being about 10 people staying in the flat. He asked the Applicant if 10 people had stayed in the flat. Ms Welsh said that she would not accept a booking for 10 people and advised that this would only happen if 10 people came without them knowing about it. She said that they had not seen 10 people leave and as far as she was aware this had not happened. She said if there was a slight risk of this happening, they could install a ring doorbell with a small discreet camera fitted to see who was coming and going. She said she would not accept a booking for more than 6 people. She advised that in her experience of Airbnbs for many years in Oban and elsewhere, she had rarely seen this happen. Ms Zurn said they had received one complaint about more than 6 people being in the flat.

Councillor Armour asked Ms Zurn what steps were taken to address that complaint. Ms Zurn said they had not heard about it until they seen the list of objections. Mr Hemmerlee advised that in a perfect world they would ban the guests from ever using the flat again and also post a bad review about them on the Airbnb site. He said that they wanted their place taken care of as they lived there when they came to Oban. He said they did not want more than 6 people living there and that there would be consequences if there were

doing more than just visiting those that were staying there. Ms Welsh advised that they would be able to report such instances to Airbnb. She said she would report it and the guests would be asked to leave and that they would be blocked. She acknowledged that this would not help after the event or to find out after the event, but said that a camera would be able to pick this up quicker.

Councillor Armour asked the Objectors if they felt there had been more than one occasion when more than 6 people have stayed in the flat. Mr Painter advised that it was difficult to say as he was not there 100% of the time. He said that it was sometimes clear when multiple people were there as there was a lot more noise compared to other times. He said to talk about security cameras in a residential property was ridiculous.

Mr Maughan advised that there had been a number of occasions which he had not reported.

Councillor Green commented that he understood that management of the property had been handed over to Ms Welsh and that she no longer lived in Oban so there would be a need to get other people to respond to specific events or to arrange for work to be done. He asked Ms Welsh if she received a phone call, how quickly she would be able to take action to deal with any issues. Ms Welsh said that it could be fairly quickly depending on the issue. She advised that she had family based in town and had a similar set up for the other properties she managed in the town since 2017 and that it had always worked well.

Councillor Brown sought and received confirmation from the Applicants that they would be happy and content with the proposed conditions imposed on the licence if granted.

SUMMING Up

Objectors

Mr Maughan said that the Applicants and their Agents did not live in Oban even if they had a phone number. He referred to emails not being responded to quickly. He advised that they had a safety issue if they went out and confronted the people causing the problems. He said he did not know how many times he had gone up and knocked on the door to ask them to be quiet. He referred to Ms Welsh saying that she vetted people and asked why she did not know about the 10 people that had come. He said there was no one on the ground to sort things out.

Mr Painter said this was a residential property, not a commercial property. He said there had been, and would continue to be, issues with a residential property's communal area being used for business. He said that if anyone else was in that situation they would understand that, and have the same concerns and fears about going outside to ask someone, who was a complete stranger, to be quiet. He said this was not fair.

Applicants

Mr Yule advised that the matters before the Committee were whether the property used as a short-term let was within the policy and if the proprietors were fit and proper persons. He advised that it was his understanding that to have a residential property as a short-term let did not go against the policy. Referring to the discussions today, he said that it had been demonstrated that the parties could enter into a dialogue to discuss issues with his clients to address any concerns. He said that his clients had Ms Welsh to answer any questions by email or phone.

He thanked the Committee and submitted that it would be appropriate for this licence to be granted with the additional conditions recommended by the Licensing Standards Officer to address any concerns.

Ms Welsh referred to group sizes and explained that when someone made a booking on Airbnb there was always a conversation with her about who would be coming and why. She said that she could be more proactive in finding out more about group bookings to help with any concerns in this respect.

The Chair asked all parties to confirm if they had received a fair hearing.

The Applicants and their Agents confirmed that they had received a fair hearing.

Mr Maughan said that he had not received a fair hearing. He said he felt that credence had not been given to his objection and this was noted.

Mr Painter advised that the process was as expected and the only point he would make was that as residents they had not invested any money in employing a solicitor to support their case. He said that they did not have the resources for that but he understood that the hearing process had been followed.

DEBATE

Councillor Hardie said he appreciated the comments made by Mr Painter about a business being in a residential area and that he could see his point. He advised that the summary given by Mr Yule made him think that he should accept and grant the licence.

Councillor Armour advised that despite what Mr Painter had said about not having a solicitor, he thought that both Objectors had put over their cases really well. He said he would not criticise the way they had put over their cases and he said that they had made their points very well. Councillor Armour advised that he did have concerns about this. He had concerns that when complaints were made there was no one close at hand directly involved in the running of this Airbnb. He acknowledged that the people that cleaned it lived nearby, but said there was no one to deal with issues and that worried him because of the complaints that have been received. He asked whether a condition could be added that there needed to be a person in the area that residents could go to and contact immediately if there were any issues.

Ms Macdonald advised that an additional condition in relation to that point could be added if required by the Members of the Committee.

Councillor Armour asked if it would be possible to grant a temporary licence. Ms Macdonald said she did not believe so, as Mr Yule had pointed out, in relation to assessing applications in terms of the fit and proper test, a person was either fit and proper or not. She advised that if Members were minded to grant the licence then the complaints mechanism would be in place should any issues occur in relation to the flat, the property owners or breaches to any conditions, and the licence could be brought back to the Committee as was the case for other types of civic licences.

Councillor Brown said that she also had concerns as this was a residential area. She said she did not feel there were mechanisms in place to address complaints as they happened. She added that she believed there were a number of vulnerable people living in this

property who would not want to speak to strangers. She said that she did not think enough weight had been given to their complaints and that she would like a more robust system in place to look at their complaints when they happened and for action to be taken at the time to help the residents that lived there 24/7.

Councillor Philand said he would be reassured if there was a condition that required that someone living locally be a point of contact. He referred to the other conditions and questioned whether everyone in the block of flats would know what they could and could not do. He referred to the Police being called out once. He advised that if a complaint was made to the Police again the licence could be recalled and discussed. He referred to the Airbnb policy and the safeguards in place around that. He also advised that clear communication with all the residents in the building may help to 'nip things in the bud' and, if not taken on board the evidence would be there.

Councillor Armour said that Councillor Philand had summed up very well. He acknowledged that the application could not be objected to because the short-term let was in a residential property. He advised that if the Committee were to approve this, he would feel very strongly that there should be someone on the ground that could be there almost immediately if any issues were to arise.

Councillor Brown agreed with the comments made by Councillor Philand that there needed to be close rules with every member within the close abiding by these, not just those in the Airbnb. Moving forward, she advised that everyone should try to keep the doors of communication open so there was dialogue when needed.

Councillor Hardie advised that he would support Councillor Armour with his suggestion of an additional condition.

Councillor Green commented that for the benefit of today's hearing, other Councils had tried to bring in rules preventing short-term lets in residential buildings and that they had been the subject of legal challenge.

Councillor Green referred to all that had been said and commented that his own flat in Oban had a communal close. He advised that there was an Airbnb property within that building and that he had experienced problems in the past, not with those staying in the Airbnb, but with a permanent resident in another flat. He agreed that better communication with all the residents would be a welcome step in respect of this situation to try and resolve some of the conflicts.

Ms Macdonald advised that an additional condition could be added as long as it was reasonable. She asked if the Committee were looking for someone to be contactable 24/7 in case emergencies arose.

Councillor Green advised that he recognised from the concerns raised by the other residents that they were looking for someone that was contactable locally who could respond immediately. Ms Macdonald advised that this could be stipulated in the condition.

Councillor Wallace questioned where the boundaries would be drawn in terms of someone being local.

Councillor Armour proposed that someone should live in fairly close proximity of the property, that could be there on the ground to deal with any issues. He said that a contact

number and someone that could be there within 1 hour or even shorter if possible would be best. He said that Ms Welsh, living in Manchester, would not be acceptable. He advised that there needed to be someone on the ground a lot closer than that.

Further discussion took place on the wording of an additional condition to address this issue.

DECISION

The Committee unanimously agreed to grant a short-let licence to Ann Zurn and John Hemmerlee subject to the mandatory conditions and additional conditions detailed at paragraph 6 of the report, and subject to the following additional condition:

The Licence Holder must provide a contact name and number that could be used to report any issues or complaints and which would be accessible on a 24/7 basis with the assurance that someone living within 10 miles of the property would be able to attend at the property or respond appropriately when required.

It was noted that the Applicants would receive written communication of this within 7 days.

(Reference: Report by Regulatory Services and Building Standards Manager, submitted)