

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING  
COMMITTEE held BY MICROSOFT TEAMS on WEDNESDAY, 19 FEBRUARY 2025**

**Present:** Councillor Kieron Green (Chair)

|                          |                         |
|--------------------------|-------------------------|
| Councillor John Armour   | Councillor Fiona Howard |
| Councillor Jan Brown     | Councillor Andrew Kain  |
| Councillor Graham Hardie | Councillor Liz McCabe   |

**Attending:** Shona Barton, Governance Manager  
Alison MacLeod, Licensing Standards Officer  
David Walker, Solicitor  
Malwina Kolodziejczyk, Applicant  
Joanna Millar, Applicant's Solicitor  
Claire Treasurer, Objector  
Hugh MacLean, Objector

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Gordon Blair, Audrey Forrest, Amanda Hampsey, Daniel Hampsey, Mark Irvine, Paul Kennedy and Peter Wallace.

**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 (M AND P KOLODZIEJCZYK, FLAT 1, 10 STEVENSON STREET, 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 Applicant opted to proceed by way of video call and Malwina Kolodziejczyk joined the meeting by MS Teams along with her Solicitor, Joanna Millar.

Claire Treasurer and Hugh MacLean, Objectors, also opted to proceed by way of video call and joined the meeting by MS Teams.

This short-term let hearing was continued from 14 January 2025 to allow Members time to seek advice on a competent Motion to refuse the application. Only those Members present at the hearing on 14 January 2025 could take part in the proceedings today.

The Chair explained that the hearing would continue from point 4j of the short-term let hearing procedure – the Committee will debate and determine the application in the presence of Applicant/Objector, and he invited Members to present a Motion.

**DEBATE**

Councillor Kain, who had seconded the Motion to continue consideration of the application, confirmed that he did not have a competent Motion to refuse the application.

He advised that his mind had not changed in this regard and asked for more time to draft a Motion for consideration.

The Chair ruled, and the Committee agreed to adjourn the meeting for 10 minutes at 10.10 am to allow Councillor Kain to consider wording for a competent Motion to refuse the application.

The Committee reconvened at 10.20 am with all those Members present as per the sederunt.

Councillor Kain read out his Motion, which was deemed not to be competent by Officers. The Council's Solicitor, Mr Walker, advised that the view of Legal Services remained unchanged from the previous meeting. He referred to the recommended conditions in the report and said that the Committee had agreed that these were reasonable, proportionate and enforceable. He advised that the Motion put forward by Councillor Kain to refuse the application could be challengeable.

Councillor Green sought a further explanation why Councillor Kain's Motion was not competent. Mr Walker explained that there was no evidence of wrongdoing. He advised that some of the concerns raised were out with the scope of the licensing regime. He said that planning matters were dealt with by a separate regime and that it would not be competent for the Committee to base their decision on these as they were not licensing matters. He advised that on that basis the Motion would not be legally competent.

Councillor McCabe questioned why this application was coming to the Committee if they could not make a different decision from that recommended in the Officer's report. She referred to the small space between neighbours' doors and she advised of being aware of parties being held at other Airbnb establishments. She said she felt sorry for the neighbours who would not know who was coming into their close.

Councillor Kain said it was his view there was a mismatch within the Council structures and that there could be foreseeable consequences.

Councillor Hardie expressed his concern about the remit of this Committee. He said that as it stood they had approved every short-term licence application that had come before them. He questioned the point of these hearings.

Councillor Green advised that he was minded to take a poll of Members in attendance as to whether they would be minded to support Councillor Kain's Motion, notwithstanding the advice about its competency, or would they be minded to approve the application. He explained that on the basis of what had happened at the previous meeting, he believed he may be the only Member that would support a Motion to approve the application and he advised that he would not be willing to do that.

It was noted that it was the view of Legal that there was no basis for a competent Motion to refuse.

It was also noted that if Members did not take a decision today there would be a deemed grant of the licence.

Councillor Howard referred to the title deeds, which had been topic of conversation at the previous meeting. She stated that she would not want to grant this application.

Mr Walker explained that a private action would have to be taken forward by parties with regard to the title deeds.

Councillor Howard suggested that a decision was taken at some point by planning when the building was built which stipulated what the accommodation could be used for and this was detailed in the title deeds. Mr Walker advised that title deeds could be very complex and were considered under separate legislation. He said it would be ultra vires for the Committee to take the title deeds into consideration when making their decision.

The Council's Licensing Standards Officer, Ms MacLeod advised that planning matters were entirely separate from title conditions and that they were not made nor worded by planning and that these were written by legal representatives. She also advised that planning matters could not be considered as part of the licensing regime. She said that if a planning condition was breached planning could take enforcement action. She confirmed that planning had been consulted on this application. She stressed that title deeds and planning matters could not influence the Committee's decision.

Councillor Brown said she felt the onus should be on the applicant to ensure due diligence in respect of making sure title deeds supported the proposal.

Councillor McCabe referred to page 13 of the Agenda pack where it said "The Title Deeds state categorically that Burdens were placed on all of the 6 units by the local authority at the time of planning consent when the building was extended upwards and converted into flats or units". The burden stated "each unit should be used as a private dwelling house and for no other purpose."

Councillor Armour said that there did not seem to be anything that could be done to go against the recommendation. He advised that he did not think this property was suitable for a short-term let. He advised that as much as he would like to refuse the application, if there was any way of doing that, he did not think the Committee had any option but to approve the application. He said that he felt the whole issue needed to be looked at and that the concerns of the Committee had been highlighted well at this meeting.

Councillor Green advised that as the Chair of this Committee, he was quite clear about how the short-term let policy was working and he had noted that the Committee were not minded to support this application. He advised that if he moved the recommendation and the application was approved it would give the appearance that the Committee were happy with the situation.

Councillor Howard said she would like to move that the Committee not grant this application just now and seek clarification on all the issues raised regarding the short-term let policy. She said that could not see the point of the application coming to the Committee for consideration if there was no Motion to be found to refuse the application.

Councillor Armour sought clarification on what was meant by a deemed grant. Ms MacLeod explained that the application was made on 23 May 2024 and as a new operator, the local authority had 9 months to process the application. She advised that if the application was not processed within that timescale it would be a deemed grant, with the licence being granted for 12 months subject to the Scottish Government mandatory conditions, but with no other additional conditions recommended by the local authority.

Councillor Armour said that he could not agree to doing nothing if that meant the licence was granted with only the Scottish Government mandatory conditions.

Councillor Armour said that he would be minded to support the application very reluctantly as he did not think it should be granted without the additional conditions recommended by the local authority.

Councillor Green advised that he supported the comments made by Councillor Armour.

Councillor Hardie said that he also supported Councillor Armour and Councillor Green. He said that Officers needed to look at the whole process in respect of the issue with planning and title deeds and to clarify this to the Committee.

Councillor Howard said it was ridiculous that it had taken 9 months to bring the application to Committee. She commented that if the Committee did not grant the application today and it became a deemed grant with no additional conditions attached, this would mean in a year's time it would come back to the Committee for consideration. She said it would be very foolish of the Applicant if they did not put these additional conditions into effect, knowing that the application would come back to the Committee in 12 months time.

Councillor Kain said he would reluctantly go along with the view to grant the application. He stressed that the whole issue needed to be sorted. He said it was ridiculous that the onus was on others to take civil action regarding title deeds.

Councillor Green asked if the Committee could include in their decision a request that the Committee's concerns regarding the policy be taken on board and that it be reviewed to ensure that they did not find themselves in this situation again. He said there was no point as a Committee, meeting to discuss these applications if the Committee could not have regard to the wider impact of an application on a building or neighbour.

Mr Walker advised that he would be happy to follow this up out with the meeting. He advised that this request could not be included in the Motion as only a decision on the application could be taken today.

Councillor McCabe said she was not happy to have to agree the recommendation and that she would like this noted. She understood that the Committee were having to approve the application as, if not, it would be a deemed grant without the additional conditions. She said that if this was the way it was going she would not want to be involved in these meetings in the future.

The Governance Manager, Shona Barton, advised that it would be competent to note the concerns of the Committee regarding the policy but it would not be competent to ask for a review of the policy. She advised that Officers could arrange a session, setting out for Members the relevant provisions and legislation.

Councillor Green advised that a discussion needed to be had around how these hearings could have a genuine debate and possibly a different outcome, the session should not be about how Members need to be satisfied with approving every application.

Councillor Armour advised that he had previously expressed his concern around the policy in place for short-term lets. He asked that the Applicant to seriously consider looking at a longer term let rather than a short-term let for this property.

Councillor Kain advised that the contradictions between policies of the Council needed to be looked at and not a patronising review on how the Council should react to policy.

Councillor Green advised that he would continue to raise with Officers that the Committee would like more than a training session.

Councillor McCabe said she would not be attending a training session to tell her how to say yes.

## **DECISION**

The Committee:-

1. agreed to grant a short-term let licence to Mr and Mrs Kolodziejczyk subject to the additional conditions detailed in the supplementary report in respect of anti-social behaviour, privacy and security, littering and waste disposal, and damage to property and it was noted that they would receive written notification of this within 7 days; and
2. noted that their concerns raised regarding the short-term let policy would be taken on board by Officers.

(Reference: Report by Regulatory Services and Building Standards Manager and supplementary report number 1, submitted)