

ANGUS COUNCIL

CIVIC LICENSING COMMITTEE – 29 MAY 2012

APPLICATION TO LICENCE A HOUSE IN MULTIPLE OCCUPATION

REPORT BY THE DIRECTOR OF CORPORATE SERVICES

ABSTRACT

The purpose of this report is to present a new application to licence a House in Multiple Occupation under the Civic Government (Scotland) Act 1982 by Oxford Hotels and Inns Management Ltd, 30 City Road, London, EC1Y 2AB, in respect of property at Selcourt, 57 Carlogie Road, Carnoustie, DD7 6EW which requires to be determined by the Committee.

1. RECOMMENDATION

It is recommended that the Committee consider and determine the application for a new licence in terms of one of the following options:-

- (i) to grant the application subject to standard conditions;
- (ii) to grant the application subject to additional conditions;
- (iii) to refuse the application on one or more of the grounds referred to in Paragraph 3.

2. BACKGROUND

2.1 The Council has received an application to licence a House in Multiple Occupation under the Civic Government (Scotland) Act 1982, by Oxford Hotels and Inns Management Ltd, 30 City Road, London, in respect of property at Selcourt, 57 Carlogie Road, Carnoustie, DD7 6EW.

2.2 Applications for new licence(s) under the Civic Government (Scotland) Act 2006 require to be determined by the Committee because one or more of the following apply:-

- (i) there has been an objection or a representation received in respect of the application; or
- (ii) the application does not comply with the policy adopted by Angus Council; or
- (iii) the function is not delegated to Officers; or
- (iv) the applicant has a conviction(s), a spent conviction(s) or a pending case.

2.3 Issues in relation to this property were raised by Tayside Fire and Rescue. However, these issues have been resolved to the satisfaction of Tayside Fire and Rescue.

2.4 Further issues have been raised by the Building Standards Service of the Council. Whilst a number of these issues have been resolved to the satisfaction of the Building Standards Service, a small number of matters remain outstanding. It is considered that these issues can be resolved by the date of the meeting of this Committee and the Building Standards Service will provide a verbal update at the meeting of this Committee in respect of these outstanding issues.

2.5 The Housing Division of the Council have raised issues in relation to the Accommodation Agreement for Employees that the Applicant proposes to use in respect of occupants of this property (copy attached as [Appendix 1](#)). A copy of the Memorandum dated 27 July 2012 from the Housing Division is attached as [Appendix 2](#).

- 2.6 The Applicants consider that the accommodation provided to their employees at the property, does not constitute or create a tenancy for their employees as their accommodation is available to them only as part of their employment. The Applicants also consider that they would not require to raise Court Action for Recovery of Possession to remove an employee from their accommodation should there be reason to, or should their employment came to an end.
- 2.7 There has been no direct correspondence between Council Officers and the Applicants in respect of this particular issue. However, the Council did receive correspondence from the Applicants in connection with a previous application. This is attached as [Appendix 3](#).
- 2.8 The Housing Division are of the view that the arrangements in place to accommodate the Applicant's employees at the property are, in effect, "Service Tenancies". Therefore, staff would have tenancy rights contrary to what is stated within the Employment Accommodation Agreement for Employees. Accordingly, in law, any occupier could not be lawfully removed from the property without a Court Order for Eviction. The Housing Division are also of the view that the Accommodation Agreement for Employees does not take sufficient account of the requirement to provide a reasonable period of notice.
- 2.9 Scottish Executive Guidance issued in respect of HMO Licensing recommends elements of tenancy/occupancy agreements and recommended licensing conditions. It also includes suggested Benchmark Standards for local authorities. One of the recommended licensing conditions is that "Actions to secure repossession must be by lawful means".
- 2.10 In addition to the above Guidance, the Council has developed and applied standard conditions in respect of licences for Houses in Multiple Occupation. Two of these standard conditions are:-
- (i) The licence holder shall comply with all relevant legislation affecting private sector residential tenancies, including any regulations made thereunder; and
 - (ii) Occupancy agreements must meet with the written approval of Angus Council, and once approved must not be altered without the prior approval of Angus Council.
- 2.11 It is submitted that it is for the Applicant to persuade the Committee that there is and should be, no requirement to obtain a Court Order to evict an employee from the accommodation should there be reason to, or should their employment come to an end.
- 2.12 It is for the Committee to determine whether or not to accept the Applicant's reasoning in determining whether to grant or refuse the application.
- 2.13 If an application to licence a House in Multiple Occupation is not determined within one year then it shall be deemed to have been granted or, as the case may be, renewed unconditionally on the date of such expiry and shall remain in force for one year. This application was received on 6 July 2011 and, accordingly, requires to be determined by 5 July 2012. Failing which, it will be deemed to have been granted unconditionally for a period of one year.
- 2.14 The Committee should note that on 31 August 2011, Part 5 of the Housing (Scotland) Act 2006 was brought into effect by the Scottish Government. From that date, all Houses in Multiple Occupation (HMO) Licenses considered as operating under said Act. However, all existing or pending Applications submitted prior to that date are to be considered under the Civic Government (Scotland) Act 1982 in order to allow any appeal rights to continue in accordance with the Housing (Scotland) Act 2006 (Commencement No.8, Transitional Provisions and Savings) Order 2010/159 (Scottish SI) This application was submitted on 6 July 2011. Any licence issued becomes a licence under the 2006 Act.

3. LEGAL IMPLICATIONS

The Committee may only refuse the application if, in their opinion:-

- (a) the applicant, or any person responsible for the management of the activity, is either:-
 - (i) for the time being disqualified by a Court from holding a licence under the Civic Government (Scotland) Act 1982 or the Housing (Scotland) Act 2006; or

- (ii) is not a fit and proper person to be the holder of the licence;
- (b) the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he/she made the application;
- (c) where the licence applied for relates to an activity using premises, a vehicle or a vessel, which are not suitable or convenient for the conduct of the activity having regard to:-
 - (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
 - (ii) the nature and extent of the proposed activity;
 - (iii) the kind of persons likely to be in the premises, vehicle or vessel;
 - (iv) the possibility of undue public nuisance; or
 - (v) public order or public safety; or
- (d) there is other good reason for refusing the application.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

5. HUMAN RIGHTS IMPLICATIONS

In dealing with the applications as set out in this report, the Council will have regard to any human rights issues in relation to the applicants.

6. EQUALITIES IMPLICATIONS

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

7. CONSULTATION

The Chief Executive, the Head of Law and Administration, the Head of Finance and the Chief Constable have been consulted on the content of this report.

8. NOTIFICATION

The applicant (s) has been notified of the terms of this report. They have also been advised of their entitlement to attend this meeting.

**COLIN MCMAHON
DIRECTOR OF CORPORATE SERVICES**

NOTE: No background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this report.