

ANGUS COUNCIL

ENVIRONMENTAL AND CONSUMER PROTECTION COMMITTEE – 7 AUGUST 2001

CIVIC LICENSING COMMITTEE – 7 AUGUST 2001

REPORT BY THE DIRECTOR OF LAW AND ADMINISTRATION

LOCAL AUTHORITY LICENCE CONDITIONS FOR GAS SAFETY ON CARAVAN SITES

Abstract

This report recommends that, following representations made to the Council, the existing licence conditions for gas safety at caravan sites within Angus be amended.

1. RECOMMENDATION

It is recommended that the Committee agrees to amend, in terms of Section 8 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"), the existing licence conditions for caravan sites (reports 27/99 and 466/99 refer).

2. BACKGROUND

In April 1998, a young boy died following his exposure to carbon monoxide fumes in a holiday caravan in Arbroath. The source of the fumes was a faulty gas heater situated in the caravan.

A Fatal Accident Inquiry subsequently took place, at which a senior officer of the Environmental and Consumer Protection Department gave evidence. The report from the Fatal Accident Inquiry highlighted several steps which would lead to increased safety in caravans, including local authority caravan site licences being made conditional in respect of safety.

As a result, following consultation, the Civic Licensing Committee used its powers under section 8 of the 1960 Act to introduce additional special site conditions to new and existing caravan site licences. A list of the existing conditions is appended hereto at Appendix A. Part III of these conditions details the Special Site Conditions.

3. RECENT REPRESENTATIONS MADE TO THE COUNCIL

In March of this year, a letter was received from solicitors acting on behalf of Loch Earn Caravan Parks Limited, who own the Red Lion Caravan Park in Arbroath. This letter queried the legality of the Council's decision to impose conditions (3) and (8) (see Appendix A Part III) in caravan site licences, and quoted the 1964 case of Mixman's Properties Limited v Chertsey Urban District Council.

This case has since been looked at by the Department of Law and Administration, who agree with the interpretation of the case of the solicitor acting for the Loch Earn Caravan Parks Limited. The Mixman's Properties judgement comes from the House of Lords, and makes it clear that the 1960 Act deals with the licensing of land for use as a caravan site. The judgement also states that conditions cannot be validly attached to a licence for a use that has no relation to the physical use to be made of that land.

As a result, local authorities are unable to use their powers under section 8 of the 1960 Act to impose conditions which do not relate to the use of land in such licences, however desirable those conditions may seem to them in the public interest.

By imposing conditions (3) and (8), the Council is in effect obliging the licence holder to comply with certain matters outwith his direct control and for which only a landlord has a statutory responsibility under the Gas Safety (Installation and Use) Regulations 1998 (the 1998 Regulations). Regulation 36 of the 1998 Regulations places important duties on most landlords of domestic property to ensure that gas appliances and flues are maintained in a safe condition, annual safety checks are carried out, and records are kept and issued (or, in certain circumstances, displayed) to tenants. Caravans are included in the definition of "domestic property." These duties are placed on the landlord, however in many instances the licence holder is not the owner of the caravan. Stances within the caravan site are frequently leased by the site owner and it is in these cases that it is illegal to impose the obligations contained in the Regulations on the site owner. The existing Special Site Conditions purport to do this, however in terms of the Regulations these obligations rest with the owner of the caravan in question.

It is therefore recommended that the Committee delete conditions (3) and (8) from the Council's caravan site licence. The effect of this is not to diminish the responsibility landlords have for ensuring compliance with the regulations but merely removes that duty from the caravan site owner for caravans for which he is not the owner.

4. SAFEGUARDS

Although it is recommended that conditions (3) and (8) be deleted from the standard caravan site licence conditions, it is recognised that there is a need to ensure gas safety so far as possible. It is therefore recommended that a warning letter be issued to caravan occupants and that an information letter be sent to all site owners. Copies of the warning notice and the information letter are attached at Appendices B and C respectively.

It is also the case, of course, that the duty on the landlord contained in the 1998 Regulations will remain.

5. FINANCIAL IMPLICATIONS

There are no financial implications arising as a result of the recommendation contained in this report.

6. HUMAN RIGHTS OBLIGATIONS

There are no human rights issues arising as a result of the recommendations contained in this report.

7. CONSULTATION

The Chief Executive, the Director of Finance and the Director of Environmental and Consumer Protection have been consulted on the contents of this Report.

8. CONCLUSION

As a result of the 1964 House of Lords case, it is clear that Council does not have the power under the 1960 Act to impose conditions (3) and (8) in the caravan site licence, regardless of the fact that the conditions were imposed with public safety in mind.

However, it is hoped that the continuing use of the warning notice to caravan users and the letter to site owners advising them of the dangers of gas will help to raise the awareness of the issue of gas safety and, in turn, keep caravan users safe.

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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.