

MEMO

Shelter & Environment

Housing & Environment

Lower Ground Floor West, Marischal College



ABERDEEN
CITY COUNCIL

To	Eric Anderson, Senior Solicitor, Corporate Governance, Town House		
From	Ally Thain, Private Sector Housing Manager, Housing & Environment		
Email	allyt@aberdeencity.gov.uk	Date	23 August 2012
Tel.	522870	Our Ref.	
Fax.		Your Ref.	

Part 5 of the Housing (Scotland) Act 2006

Application for a Licence to Operate a House in Multiple Occupation (HMO) at No.17 Westbank, Fonthill Road, Aberdeen

Applicant/s: Craig Durward & David Souden

Agent: Parkhill Properties

I refer to the above HMO Licence application, which is due to be considered by the Licensing Committee at its meeting on 4 September 2012, for the reason that 2 letters of objection have been received by the HMO Unit.

I can advise you as follows:-

The HMO legislation:-

This application is being dealt with under the provisions of Part 5 of the Housing (Scotland) Act 2006, which came into effect on 31 August 2011. Available grounds of refusal are as follows:

- 1) The applicant and/or agent is not considered to be a 'fit & proper' person to hold an HMO Licence.
- 2) Having taken account of the following, the property is unsuitable for occupation as an HMO as a result of:
 - i) Its location
 - ii) Its condition
 - iii) Any amenities it contains
 - iv) The type & number of persons likely to occupy it
 - v) Whether any rooms within it have been subdivided
 - vi) Whether any rooms within it have been adapted, resulting in an alteration to the water & drainage pipes within it
 - vii) The safety and security of persons likely to occupy it
 - viii) The possibility of undue public nuisance, and,
 - ix) There is, or would be, overprovision of HMOs in the locality

The premises:-

The premises to which this HMO Licence application relates is an end-terraced, three-storey house with accommodation comprising of three letting bedrooms (two en-suite), one study/bedroom, one lounge, one kitchen, one bathroom, one cloakroom, one utility room and an integral garage. The location of the premises is shown on the plan attached as Appendix 'A'.

The HMO application:-

The HMO Licence application is dated 29 June 2012, and was received by the Council on 2 July 2012.

Works / Certification Requirements:-

The HMO Officer carried out an initial inspection of the property on 9 July 2012, identifying upgrading work and certification requirements to bring the property up to the current HMO standard. At the date of this memo, all requirements have not been completed although this is not the reason for referral to Committee.

Letters of objection:-

One letter of objection was received by the HMO Unit on 5 July 2012, followed by an e-mail from the same objector on 15 July 2012. Both the letter and e-mail were received within the statutory time period and are therefore competent. The letter and e-mail are attached as Appendix 'B'.

A second letter from a different objector was received by the HMO Unit on 16 July 2012, within the statutory time period and is therefore competent. The letter is attached as Appendix 'C'.

A third letter of objection from a different objector was received by the HMO Unit within the statutory time-period, but was subsequently withdrawn by the objector.

A fourth letter of objection from a different objector was received by the HMO Unit within the statutory time period, but was unsigned and is therefore not competent.

Other considerations:-

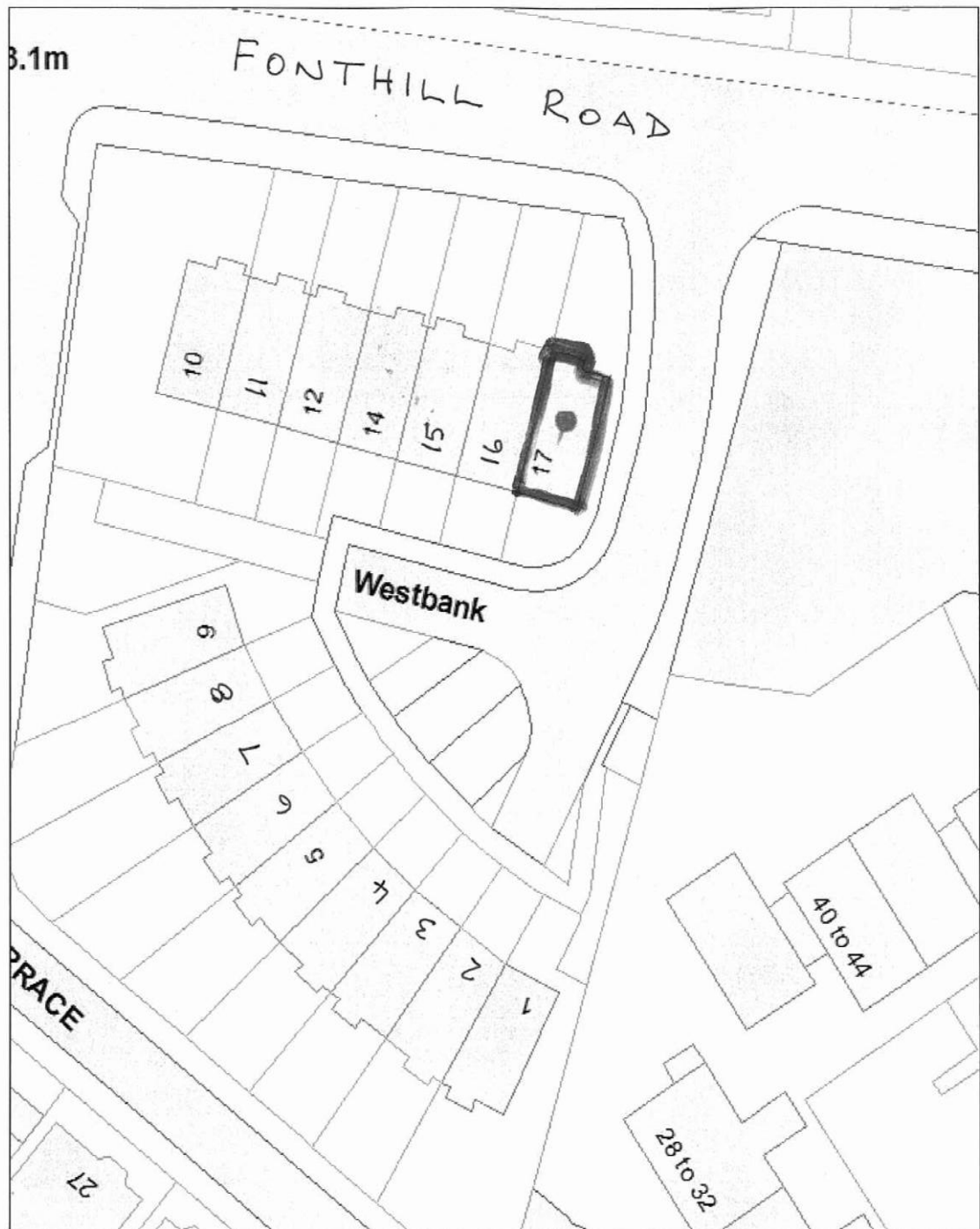
- The Chief Constable, Grampian Police, has been consulted in respect of the applicants' suitability as "fit and proper persons", and has made no comments or objections
- Grampian Fire & Rescue Service has been consulted in respect of the suitability of the property, and has made no comments or objections.
- At the date of this memo, the Council's Antisocial Behaviour Investigation Team (ASBIT) has no record of any complaint in respect of No.17 Westbank, Fonthill Road, Aberdeen.
- The applicants and their property were registered with the Landlord Registration database, however the registration expired in November 2011. It will therefore be necessary for the applicants to re-register immediately.
- The applicant has requested an occupancy of 4 persons, which is acceptable to the HMO Unit in terms of space and layout.
- The HMO licence application under consideration today was submitted prior to the expiry of the previous HMO licence. The applicant may therefore legally continue the operation of the HMO until the application has been determined.

- Both letters of objections refer to the use of the property in accordance with “legally binding missives”. This is not a ground of refusal under the provisions of Part 5 of the Housing (Scotland) Act 2006

I trust the above explains the position. Please contact me on x2870 if you wish to discuss any of the above.

Ally Thain
Private Sector Housing Manager

APPENDIX A



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1: 500

APPLICATION FOR HMO LICENCE
PREMISES: 17 WESTBANK, FONTHILL ROAD, ABERDEEN

APPENDIX 'B'

Aberdeen City Council
Housing & Environment
DATE RECEIVED
- 5 JUL 2012
Private Sector Housing Unit

Westbank Residents Association

Fonthill Road

Aberdeen

AB11 6TH

Dear Sir,

This letter is written on behalf of myself, Shirley Henderson, Chairperson of the Westbank Residents Association, and the objectors to the original application. Westbank Residents Association is a recognised body, with a formal constitution, which meets annually with our factors, Trinity Factoring Services Limited, and, have represented ourselves at two previous Council Committees. As you will be aware, the original application received 12 letters of objection from the 16 properties and Westbank representatives attended the original HMO Licensing Committee (5 residents and the factor, Trinity Factoring), with our local Councillor Cormack, now retired, who also spoke on our behalf. We are now writing to object to the re-licensing of No 17 Westbank as a House of Multiple Occupancy.

Our objections are based around legal arguments and breach of conditions.

The objections are as follows:

- Legally binding missives clearly state the purpose of the properties when purchased i.e. ***The said houses shall be used solely as private dwelling houses and for no other purpose whatsoever and none of the said houses shall ever in any way be subdivided or occupied by more than one family at a time.*** These houses were sold as one family townhouses, not subdivided serviced apartments to transient and random individuals.
- Legal definition of an HMO is ***"a house is an HMO if it is the only or main residence of three or more qualifying persons from three or more families"***. This point is also relevant for the breach of conditions, as the house quite quickly moved from the original three named tenants, to use by at least two different "company houses" where transient individuals come and go, sometimes for one night only, but are not recorded or named on any tenancy agreement. As such, the house is not the only or main residence for these individuals.
- Under the Private Rented Housing (Scotland) Act 2011 we consider the use of No 17 as serviced apartments as a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 and the subdivision of the property.
- The Local Community Plan clearly states the intention to deliver balanced communities and "our ambition to create conditions for Aberdeen to grow and counter the leakage of families and skills to the surrounding areas.....the need to address the issue of town cramming and the over provision of flats". The subdivision of a townhouse into serviced apartments does not comply with this vision.
- As part of the original representation at the Committee that approved the licence, Mr. Durward clearly stated that he had not attended any previous Westbank Residents Association meetings and that he would attend the subsequent meetings. This commitment was never fulfilled and he, nor a representative of his


'B' CONF'D

Parkhill Properties Serviced Apartments, have ever attended, or got in touch to provide apologies, thereby demonstrating no interest in the local area when we have had several key impact issues to deal with in our small community.

- Over the initial duration of the licence, Trinity Factors have had to get in touch with the property to advise on various issues, namely, the tenants who smoked throwing the cigarette packets and cigarette stubs from the balcony and back door to over the hedge, thereby leaving piles of rubbish on the public street that we had to clear i.e. an act of littering, hanging washing to dry over the street-facing balcony, temporary tenants making loud noise with music blaring, and some tenants temporarily parking their cars in No 16 and No 15 driveways.

Finally, the reasons for refusal of a re-licence, are exactly the types of issues and behaviours that we predicted in our original objections, and we hope that these can now be taken as accurate and cause for refusal.

Yours faithfully,

A large, irregular black redaction mark covers the signature area. The name 'Shirley Henderson' is printed below the redaction.

Shirley Henderson

HMOUnit - Objection to Re-Licence of HMO at No 17 Westbank

From: "Shirley Henderson" <shhenderson@btopenworld.com>
To: "HMOUnit HMOUnit" <HMOUnit@aberdeencity.gov.uk>
Date: 15/07/2012 13:45
Subject: Objection to Re-Licence of HMO at No 17 Westbank
Attachments: Camper van 2.JPG; Double parking No 17.JPG; Sheet and Plastic Bag covering window No 17.JPG; Double parking No 17.JPG; Laundry at front window No17.JPG

'B' CONT'D

Ally,

Please find attached the photos that the Factor, Trinity Factoring has re- No17.

We met with the Factors at the end of last week and they will be noting the various proprietors' complaints in their objection letter to yourselves.

I have attached some visual photographic evidence to represent the issues that we are complaining about:

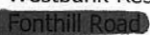
- Bed sheet and plastic bag covering the street facing window
- Laundry hanging up at the front of the property
- Camper van parked in the driveway with sleeping arrangements
- Double parking at the property

I have added my electronic signature to this e-mail.

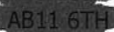
Can you confirm that you accept electronic signatures?

Regards,


Shirley A. Henderson
Chairperson
Westbank Residents Association

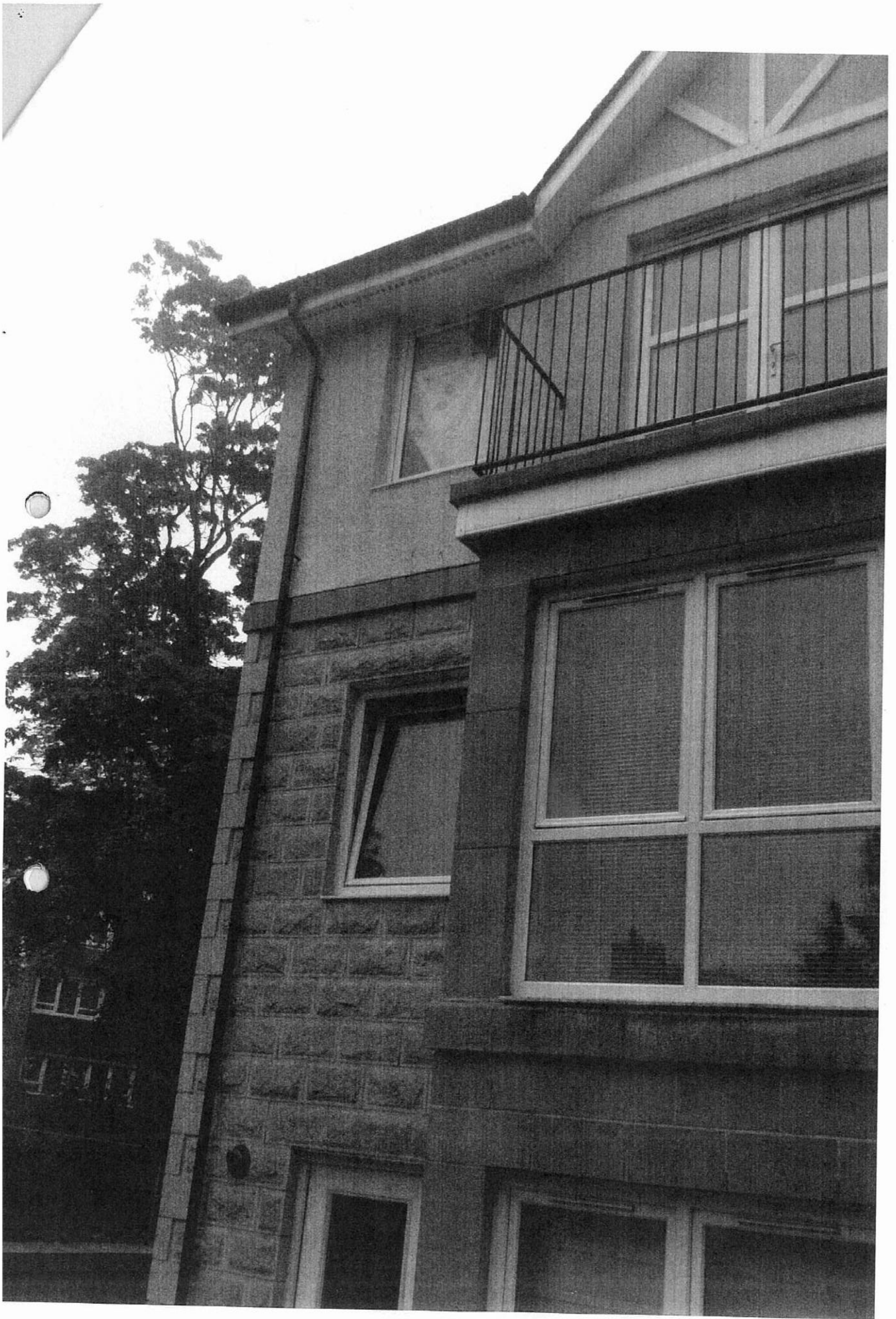




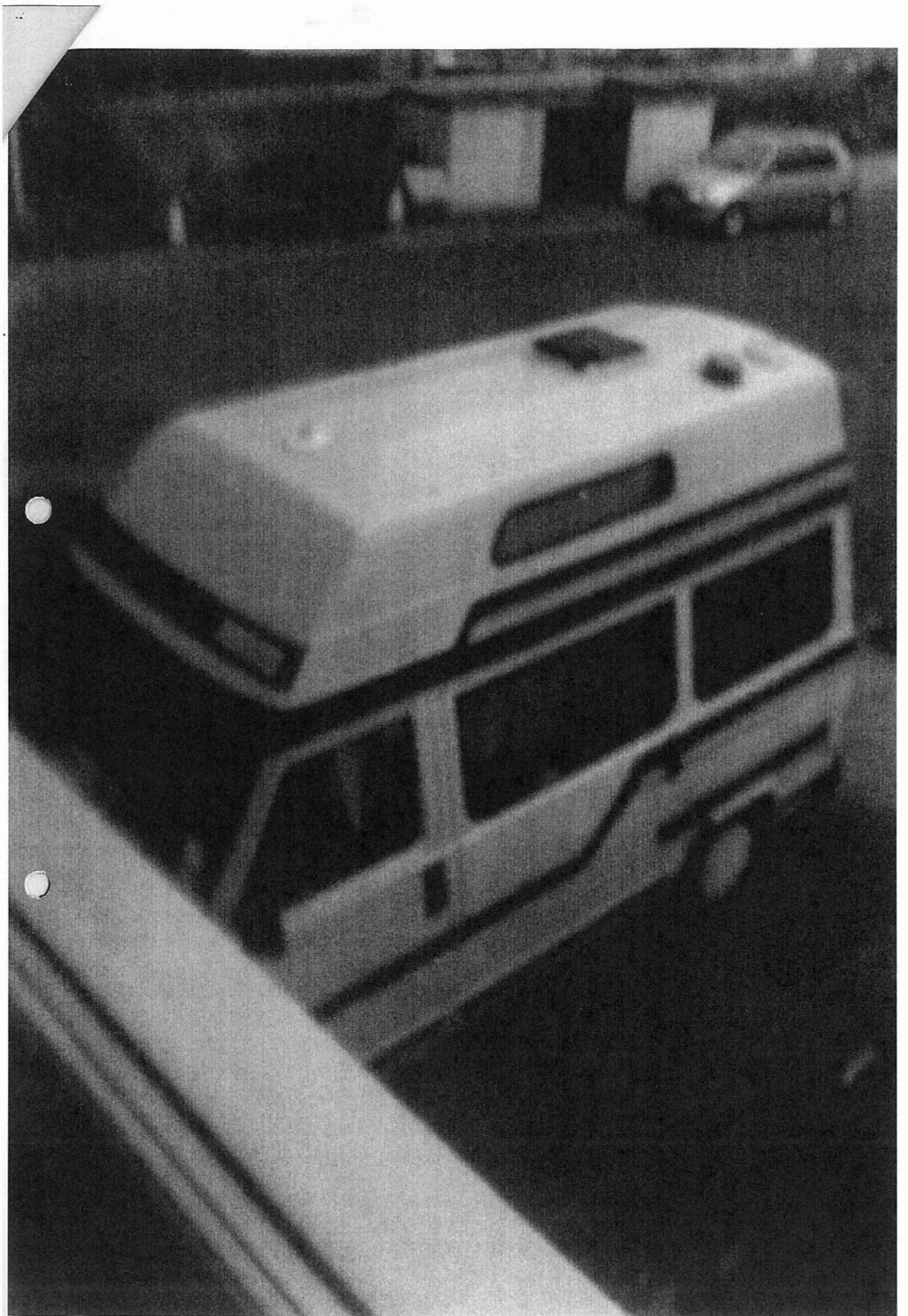


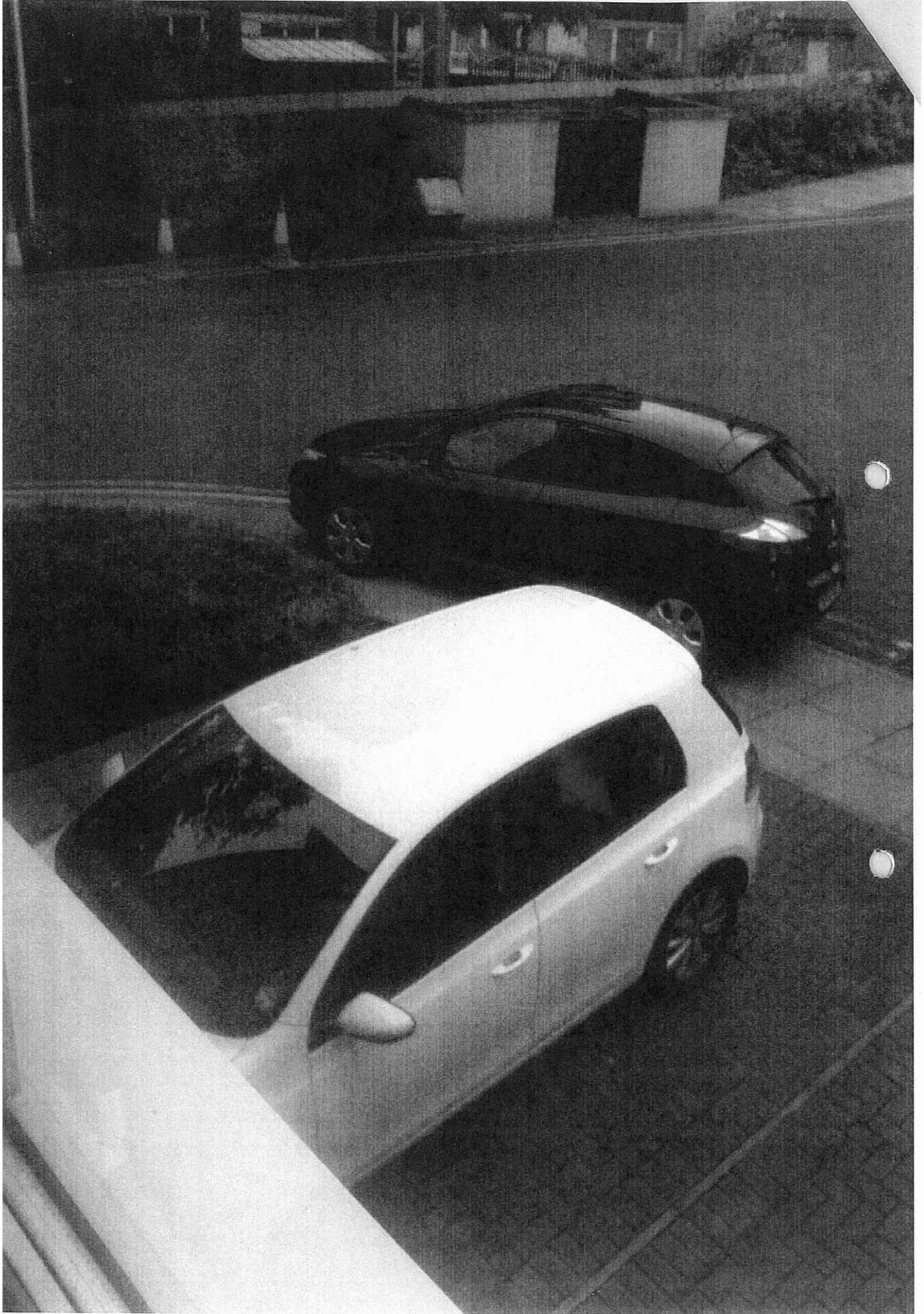
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S. Gosling
17 Westbank
Fonthill Road,
Aberdeen
AB11 6TH

HMO Unit, Private Sector Housing Unit
Housing & Environment
Business Hub 1, Lower Ground Floor West
Marischal College
Broad Street
Aberdeen, AB10 1AB

APPENDIX 'C'

17th July 2012

Dear Sirs,

Subject: 17 Westbank- HMO Re-licencing

I am writing to object to the re-licensing of No 17 Westbank as a House of Multiple Occupancy.

My objections are as follows:

1. These houses were sold as one family townhouses, not subdivided serviced apartments (a breach of planning control?). Legally binding missives clearly stated the purpose of the properties when purchased.
2. Legal definition of an HMO is "**a house is an HMO if it is the only or main residence of three or more qualifying persons from three or more families**". This point is also relevant for the breach of conditions, as the house quite quickly moved from the original three named tenants, to use by at least two different "company houses" where transient individuals come and go, sometimes for one night only, but are not recorded or named on any tenancy agreement. As such, the house is not the only or main residence for these individuals.
3. Over the initial duration of the licence, I believe that Trinity Factors have had to get in touch with the property to advise on various issues, namely, the tenants who smoked throwing the cigarette packets and cigarette stubs from the balcony and back door to over the hedge, thereby leaving piles of rubbish on the public street that we had to clear.

Finally, the reasons for refusal of a re-licence, are exactly the types of issues and behaviours that was predicted in the original objections, and i hope that these can now be taken as accurate and cause for refusal.

Yours faithfully,


Stuart JP Gosling

Aberdeen City Council
Housing & Environment
DATE RECEIVED
19 JUL 2012
Private Sector Housing Unit