

# MEMO

Private Sector Housing Unit  
**Communities, Housing & Infrastructure**  
Second Floor West, Marischal College



**ABERDEEN**  
CITY COUNCIL

To	Eric Anderson, Team Leader, Corporate Governance		
From	Ally Thain, Private Sector Housing Manager, Communities, Housing & Infrastructure		
Email	<a href="mailto:allyt@aberdeencity.gov.uk">allyt@aberdeencity.gov.uk</a>	Date	30 April 2015
Tel.	522870	Our Ref.	
Fax.		Your Ref.	

## **Part 5 of Housing (Scotland) Act 2006**

**Application for a Licence to operate a House in Multiple Occupation (HMO) at No.8 St.Machar Place, Aberdeen**

**Applicant/s: Derek Watt & Aileen Watt**

**Agent: None stated**

I refer to the above HMO licence application, which is on the agenda of the Licensing Committee at its meeting on 12 May 2015 for the reason that 3 letters of representation/objection were 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, as amended. 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, and
- 2) The property is unsuitable for occupation as an HMO for one, some or all of the following reasons:
  - 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 & security of persons likely to occupy it
  - viii) The possibility of undue public nuisance
  - ix) There is, or would be, an overprovision of HMOs in the locality (see Other Considerations below)

### **The premises:**

The property at No.8 St.Machar Place, is a 2-storey, semi-detached house with accommodation comprising of 5 letting bedrooms, one public room, one bathroom & one kitchen. The plan attached as Appendix 'A' shows the position of the premises.

**The HMO licence application:**

The HMO licence application is dated 4 February 2015 and was received by the HMO Unit on 9 February 2015.

**Certificate of Compliance – Notice of HMO Application:**

The Certificate of Compliance submitted by the applicant declares that the public Notice of HMO Application was on display outside the property for the statutory 21-day period between 4 February 2015 – 25 February 2015.

**Letter of Representation/Objection:**

3 letters of representation/objection were received by the HMO Unit, all within the statutory 21-day Notice period, and must therefore be considered by the Committee. All objectors have been invited to attend the Committee meeting. Details of the letters are as follows;

- A letter dated 23 February 2015 from Mrs B.McPetrie, Planning Secretary, Old Aberdeen Heritage Society. (attached as Appendix 'B')
- A letter dated 24 February 2015 from Dewi Morgan on behalf of the Old Aberdeen Community Council. (Attached as Appendix 'C')
- A letter dated 24 February 2015 from Christine Burgess. (attached as Appendix 'D')

**Letter from Licence-Applicant**

The licence-applicant submitted a letter in support of his application (attached as Appendix 'E'). The licence-applicant has been invited to attend the Committee meeting.

**Other Considerations:**

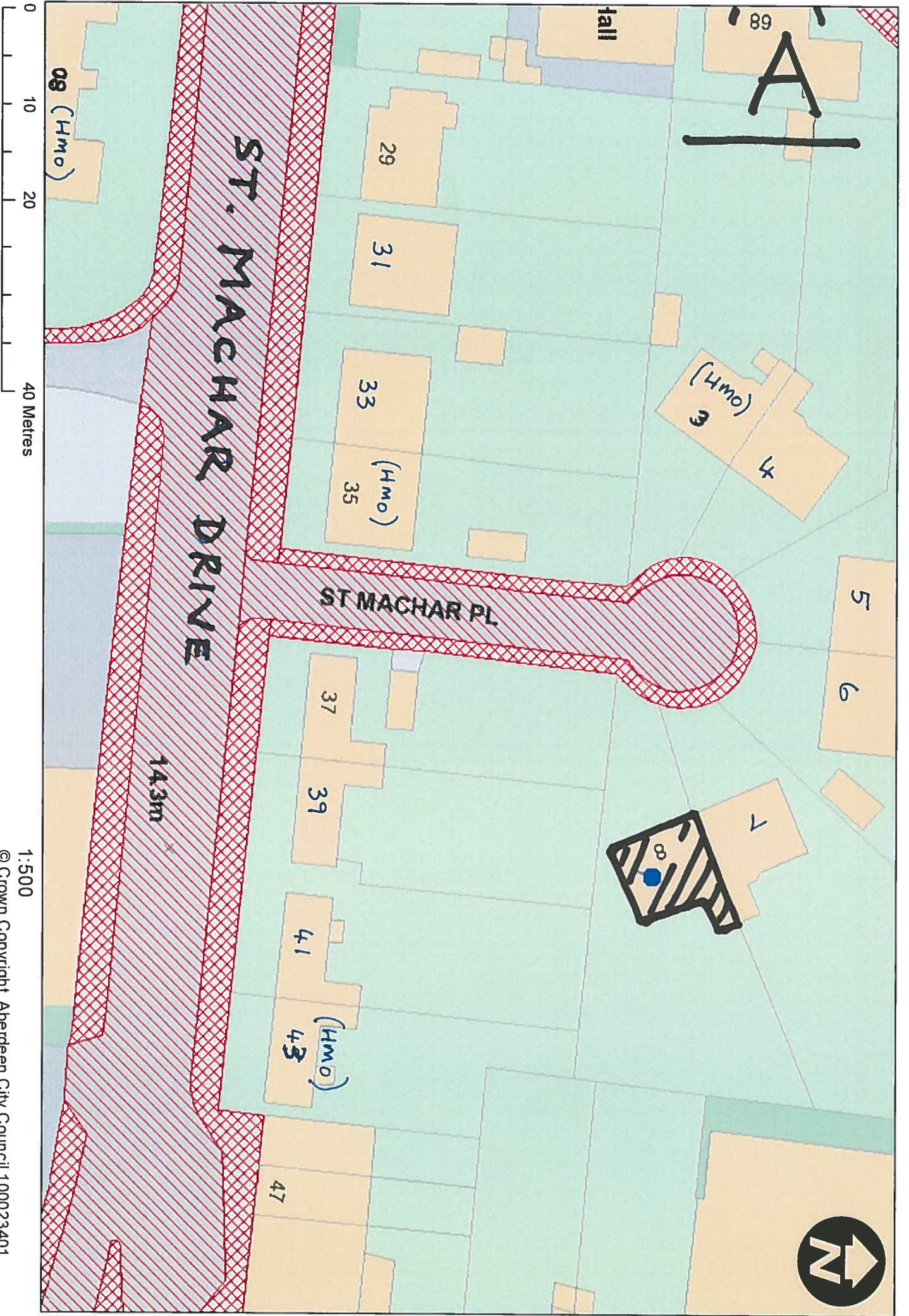
- Police Scotland has been consulted in respect of the applicants' suitability as 'fit & proper' persons, and has made no comment or objection.
- The Scottish Fire & Rescue Service has been consulted in respect of the suitability of the premises as an HMO, and has made no comment or objection.
- At the date of this report, the Council's Anti-Social Behaviour Investigation Team (ASBIT) has no record of any complaints of anti-social behaviour at No.8 St.Machar Place, Aberdeen.
- The applicants are currently registered with the Council and have registered 2 other rental properties, (one of which being a licensed HMO), however the property which is the subject of this report has not been registered therefore it will be necessary for the applicants to do so before letting it.
- The applicants have requested an occupancy of 5 tenants, which is acceptable to the HMO Unit in terms of space and layout.

- The previous owners of No.8 St.Machar Place were first granted an HMO licence in 2006, then they renewed it in 2009, and again in 2012. The property changed hands on 30 January 2015, when it was purchased by the licence-applicants. Under Section 136 of the HMO legislation, the licence-applicants are legally entitled to operate the property as an HMO until their licence application has been determined, because they satisfy the Section 136 criteria, ie. they were registered landlords on the date of sale, and they submitted their own HMO licence application within one month of the date of sale.
- The landlords of Nos.3 St. Machar Place, 35 St. Machar Drive, 43 St. Machar Drive & 80 St.Machar Drive all hold current HMO licences. I am also dealing with a pending HMO licence application for No.7 St. Machar Place. The position of these properties is shown on the plan attached as Appendix 'A'.
- All 3 letters of representation/objection mention 'overprovision' of HMOs in the area, which is a ground of refusal available to local authorities when considering HMO licence applications. However, the Housing & Environment Committee of this Council, at its meeting on 27 August 2013, agreed that no policy on HMO overprovision be introduced, and that remains the position at the date of this report.
- The houses at Nos.3 – 8 St.Machar Place, were added to the Old Aberdeen Conservation Area on 23 April 2015.
- St.Machar Place is a Controlled Parking Zone, and every household in St.Machar Place is entitled to a maximum of 2 parking permits, regardless of the size of the household.
- All HMO upgrading work & fire safety work has been satisfactorily completed therefore the Committee may grant the HMO licence if they are so minded to do so.

I trust the above explains the position. Please contact me on x2870 should you have any queries regarding the above.

**Ally Thain**  
Private Sector Housing Manager









## OLD ABERDEEN HERITAGE SOCIETY

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HMO Unit,  
Housing and Environment,  
Business Hub 11  
Second Floor West  
Marischal College

Aberdeen City Council Housing & Environment
DATE RECEIVED 25 FEB 2015
Private Sector Housing Unit

23rd February 2015

Dear Sirs,

### 8 St Machar Place, Old Aberdeen – Application for HMO Licence

Old Aberdeen Heritage Society wishes to register an objection in the strongest terms to the application for an HMO Licence in relation to this property.

We wish to state first of all that we are aware that the previous owner operated this property as an HMO.

We also wish to state that until recently the Society had been under the impression that the only grounds for refusal of an HMO licence (and therefore the only grounds for objection) was either the unsuitability of the applicant or some physical aspect of the property concerned. This was the understanding conveyed to us by officials in the HMO Dept. when we first enquired about these matters. We therefore have missed the opportunity of registering our objection to a number of HMO licences in recent years, and we have seen their proliferation across Old Aberdeen.

We have recently, however, been made aware of the fact that, since the 2011 legislation (Private Rented Housing (Scotland) Act), a local authority has been able, for the first time, to refuse a HMO licence on the grounds of overprovision.

The 2011 Act amends the 2006 Housing (Scotland) Act to allow this. This has been put into effect by the insertion into the 2006 Act of a new Section 131A – “Overprovision”. The legislation is crystal clear on the powers now afforded to the local authority:-

“The local authority may refuse to grant an HMO licence if it considers that there is (or, as a result of granting the licence, would be) overprovision of HMOs in the locality in which the living accommodation concerned is situated.”

This power is reiterated in the Government’s Guidance later that year (August 2011, updated January 2012) (Section 2.2.7.A)

No 8 St Machar Place is one of six period cottages situated in an attractive cul-de-sac, all of which were built as family homes, and which until recently, have remained so. It is one of two cottages in the cul-de-sac which have been operating as HMOs, along with the adjoining property at No 35 St Machar Drive, No 43 St Machar Drive, No 80 St Machar Drive, and Nos. 605 and 609 King Street, properties which adjoin those in St Machar Place.

It is our view that there is a clear overprovision of HMOs in this small area, and that this is particularly evident when one considers St Machar Place on its own. In this semi-circle of six cottages, two have been HMOs, and at the entrance to the cul-de-sac, adjoining it, is a third. If you consider the top of the cul-de-sac alone, that represents one third of the houses being operated as HMOs; if you include the two houses at the entrance, the number of HMOs which have been operating becomes three, and the proportion of HMOs becomes 3/8ths, or nearly one half.

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These figures are a long way above any of the limits suggested by various local authorities, in recent consultations, as a maximum acceptable percentage of HMOs in any locality.

Government Advice published in 2012 has highlighted the “potential problems associated with high concentrations of HMOs”, and this must of course also be taken into account when considering HMO licence applications.

To summarise so far, then, the City Council clearly has the power in law to refuse an HMO licence on the grounds of overprovision in the locality. This is the unambiguous message of the 2011 legislation.

It is extremely important to note, in this regard, that there is no legal requirement for a local authority to have in place an Overprovision Policy in order for Councillors to refuse an HMO licence on grounds of overprovision. On the contrary, the law gives them the power to make an individual judgement on an individual application in the particular circumstances relating to that application. They are free to refuse that application if they judge that there is, or would be, an overprovision. However helpful a general policy might be in the big scheme of things, it is not a prerequisite for a refusal.

Old Aberdeen Heritage Society considers that there has already been a substantial overprovision of HMOs in St Machar Place, and, indeed in the immediately adjoining area, and it is our view that the granting of this new application for No 8 St Machar Place would allow the concentration in this particular locality to return to a completely unacceptable level.

It is our view that there has been much too high a concentration in this area for some years, and this has been exacerbated by the granting of an HMO licence to No 35 St Machar Drive, adjacent to St Machar Place, a year or so ago.

It is our considered view that the only way to prevent further increases in overprovision here is to refuse all new applications for HMO licences, as being well beyond an acceptable limit.

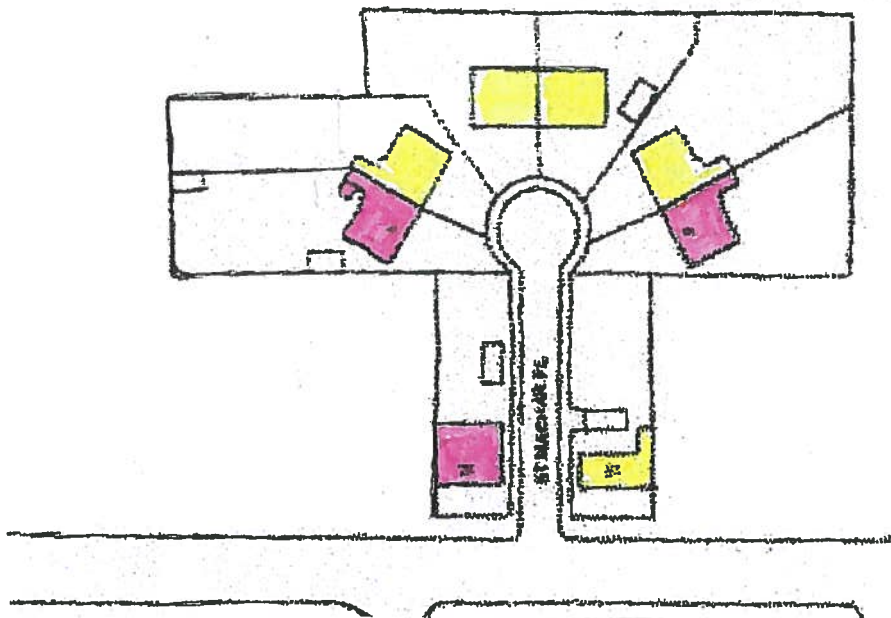
No 8 St Machar Place is a new application in an area already over-provided in terms of concentration of HMOs.

The Society accordingly reiterates its strong objection to this HMO application, and would urge Councillors to refuse to grant a licence.

Yours faithfully,

Mrs B McPetrie  
Planning Secretary

Enc. Plan of HMOs in the locality



ST. MACHAR PLACE, WITH THE HOUSES WHICH  
LINE THIS CUL DE SAC.

THOSE SHADED IN PINK ARE THE ONES WHICH  
WOULD ALL BE HMOs IF A LICENCE WERE TO  
BE GRANTED FOR NUMBER EIGHT

24<sup>th</sup> February 2015.



HMO Unit, Private Sector Housing Unit  
Housing and Environment  
Business Hub 11, Second Floor West,  
Aberdeen City Council,  
Marischal College,  
Aberdeen

Dear Sirs

**Application for HMO Licence at 8 St Machar Place**

Old Aberdeen Community Council understands that 8 St Machar Place has recently been sold and has learned that the current owner has applied for a new HMO licence.

You will be well aware that the Community Council has been increasingly concerned at the ever increasing numbers of HMO properties in the Old Aberdeen area and the resultant loss of family housing and community cohesion. This is an issue we have raised on several occasions with our local councillors and the Chief Executive and a meeting with all interested parties is pending as a result of the review of HMOs throughout Old Aberdeen.

We recognise the need for student accommodation but would like to state once again that our area in several parts is at saturation point with HMO properties and we would like to object to this application on the grounds of over-provision.

We understand that the City Council has the power to refuse an HMO licence on these grounds even though it does not yet have an official overprovision policy. (Private Rented Housing (Scotland) Act 2011, Section 131 A). It was notable that the Reporter for the Scottish Government singled out the impact of HMO occupation upon the area as one of his reasons for upholding ACC's refusal of the HMO application for 39 King's Crescent. Please support the community by refusing this application.

Yours faithfully,

Dewi Morgan  
On behalf of the Old Aberdeen Community Council

Cc: Cllrs Milne, Noble, Grant

<b>Aberdeen City Council</b>
<b>Housing &amp; Environment</b>
<b>DATE RECEIVED</b> 24 FEB 2015
<b>Private Sector Housing Unit</b>



D

24 February 2015.

HMO Unit,  
Housing and Environment,  
Business Hub 11, 2nd floor West,  
Marischal College,  
Aberdeen.

Dear Sirs,

**Application for an HMO Licence at no 8 St Machar Place**

I wish to object to the application for a new HMO licence at no 8 St Machar Place on the grounds of overprovision and parking.

St Machar Place is a quiet circle and no 8 was a lovely family home. I believe this property was first granted an HMO licence in 2006 when there were far fewer family houses nearby registered as Houses of Multiple Occupation. Since then, however, no 3 St Machar Place, 35 St Machar Drive, 43 St Machar Drive and 80 St Machar Drive have all been granted licences and this has meant a substantial loss to the neighbourhood of three, four and five bedroomed family houses.

Should this new application, on account of the sale of the property, be granted, this would mean that two out of the six houses in St Machar Place would be HMOs which, in conjunction with the recent new licence at no 35 St Machar Drive at the entrance to St Machar Place, I would argue, is an unacceptable concentration.

The property lies within the Old Aberdeen Controlled Parking Zone with double yellow lines on one side of the entrance to the circle and with the only parking available for residents at nos 3, 4 and 7 St Machar Place and those houses on St Machar Drive which do not have parking provision in the front gardens, on the other side. Moreover, the assumption can not be made that students, if indeed students are the target market here, will not have cars. There are currently three cars parked in the driveway at the HMO at no 3 St Machar Place and this is let out to students.

I am aware that the Council has no parking standards for HMOs, an issue which most certainly needs to be addressed. However, in this instance I would like to point out that there is insufficient parking for residents as it is and this will be exacerbated, particularly if no 8 with its five bedrooms, is to be let out to five unrelated individuals.

So, both on the grounds of overprovision in the area and the lack of parking space, I would like to make a formal objection to this application.

Yours faithfully,

Christine Burgess

Aberdeen City Council
Housing & Environment
DATE RECEIVED
25 FEB 2015
Private Sector Housing Unit

HMO Unit,  
Housing And Environment,  
Business Hub 11,  
Second Floor West  
Marischal College

Aberdeen City Council
Housing & Environment
DATE RECEIVED - 9 MAR 2015
Private Sector Housing Unit

6<sup>th</sup> March 2015

Dear Sirs,

**Application For A Licence For A House In Multiple Occupancy  
At 8, St. Machar Place Aberdeen**

**Background Information**

I recently made a House In Multiple Occupancy application for 8, St Machar Place. I understand that previously the former owner held a licence continuously for approximately ten years. In addition, I believe the property was the first on St Machar Place to be granted an HMO. Prior to my ownership, the licence was "live", and, Aberdeen City Council has, at intervals undertaken periodic inspections and renewals of the licence. Accordingly, the property has been upgraded regularly in order to comply with changing requirements in terms of fire safety, electrical installations etc. In short, 8, St Machar Place is an established HMO and remains compliant to function as such.

In this submission I will highlight the case for the retention of HMO provision at my property by drawing attention to the measures I have taken so far to communicate with neighbours as well as to explain how I will address their concerns.

I have been a landlord for ten years and was instrumental in establishing a residents' association for a community of twenty four properties where I own a flat - from its inception I have been chairperson of the association. I take my responsibilities as a landlord seriously and can provide references from tenants and others, if required.

**Communication With Neighbours**

I have, as a matter of courtesy, visited all properties on St Machar Place in order to provide residents with information regarding my proposed application and given assurances regarding my commitment to tenants and the community (see further information). Furthermore, I offered to provide local residents with my contact details, prior to the commencement of any future tenancy (this will enable direct communication with me). My visits were well received and I was thanked for taking time to provide information about my application.

## The Tenancy

I intend to exercise care in the selection of suitable tenants and in this regard will take the following measures:

I will only interview applicants who indicate their suitability in terms of their commitment to respect the quiet, residential nature of the neighbourhood. At the interview stage I will stress the importance of the conditions set out in the contract, drawing particular attention to the anti-social clause. I will provide an opportunity to prospective tenants to consider the terms of the tenancy and to respond only when they are satisfied that they will be able to honour those terms. The tenants will be selected only after I have scrutinised and approved their references.

## Addressing Concerns

I am happy to address all concerns as I see them as central to the consideration of my application:

- With regard to maintenance and works at my property, I will be mindful to avoid detracting from the characterful cottage appearance whilst undertaking home improvements. I will, for example, only use materials which are suitable in terms of colour and design. Furthermore, I will refrain from extending or modifying the property so as to alter its distinctive appearance and form.
- When the house was originally prepared for rental I understand that plants were removed from the front garden and, for ease of maintenance, gravel was spread over this area. I agree with a neighbour when she suggested that this choice of landscaping does little to create a cottage ambiance. To remedy this situation, I will undertake planting within the area during the summer months.
- I am aware (from reading Community Council minutes) that there are concerns relating to the issue of property dilapidation and overgrown gardens within the area. I will personally carry out any repairs and redecoration, as required and will undertake all gardening maintenance on a regular basis.
- I will draw prospective tenants' attention to on-street parking limitations and will insist that as a condition of the tenancy available spaces shall not be occupied by the household or their visitors but should be left for the use of long standing residents. This, of course, might have the undesired consequence (to me) of deterring prospective car owning tenants; this is a price I am willing to pay in order to make a positive contribution to car parking concerns.
- I will visit the property regularly, particularly during the growing season, to undertake garden maintenance; this will also afford me opportunities to oversee tenancy matters generally. Furthermore, I will, as prescribed in my tenancy agreement, visit the property on a regular basis in order to conduct property inspections.

## Overprovision

I don't believe that a simple statistical presentation of HMO property numbers in the area necessarily provides a persuasive argument for the existence of a problem of overprovision in St Machar Place. St Machar Place is a cul-de-sac, with an identity of its own, which is removed physically from the much busier thoroughfares of St Machar Drive and King Street. If it is the case that there is minimal social disturbance or negative impact on St Machar Place from HMOs on nearby streets, then, to an extent, I would suggest that perhaps the issue has been overstated. However, that aside, should it be deemed that a genuine issue of overprovision does exist, I would contend that to "prune" carelessly by objecting to every change of ownership, or routine licence renewal, regardless of previous good record, is to do a disservice to residents, tenants and good landlords alike.

In light of the foregoing submission, I trust you will appreciate that HMO letting at 8, St Machar Place will be undertaken in a way which is sensitive to the community and the character of the neighbourhood itself. I understand that tenants of this property have, for years, co-existed harmoniously with the other residents and I trust I have demonstrated that it is my intention for this to continue. Moreover, I hope to, "raise the bar", by building on this record by reaching out positively to the community in order to address its concerns and to deal promptly with any issues as they arise.

I hope you will appreciate the merits of my application and grant a license for 8, St Machar Place on the basis that, whilst this long established and compliant HMO property has undergone a change of ownership, it remains in responsible hands.

Yours faithfully,