

Licensing Committee

Wednesday, 16th June, 2021

MEETING OF THE MEMBERS OF THE LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Donnelly (Chairperson);
Aldermen Rodgers, and Sandford; and
Councillors Bradley, Bunting, Howard, Hutchinson,
M. Kelly, T. Kelly, Magee, Magennis, McAteer,
McCabe, McCullough, McCusker, McKeown,
Mulholland and Smyth.

In attendance: Ms. N. Largey, Divisional Solicitor;
Mr. S. Hewitt, Building Control Manager;
Mr. K. Bloomfield, HMO Unit Manager;
Ms. C. Donnelly, Democratic Services Officer; and
Ms. K. McCrum, Democratic Services Officer.

Apologies

An apology for inability to attend was received for Councillor Michael Collins.

Minutes

The minutes of the meeting of 19th May were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st June, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor McCusker declared an interest in Item 3d, Application for the Grant of a 14-Day Occasional Outdoor Entertainments Licence for Holy Cross Boys Pitch, Flax Street, in that he was the applicant and was involved with the Ardoyne Association, the group organising the festival. He left the meeting for the duration of the item.

Councillor McCabe declared an interest in Item 3e, Application to provide outdoor musical entertainment beyond 11.00 p.m. at Falls Park, in that she was an employee of the applicant, Féile an Phobail. She left the meeting for the duration of the item.

Delegated Matters

**THE MEMBERS OF THE LICENSING COMMITTEE CONSIDERED THE
FOLLOWING ITEMS IN ORDER TO MAKE RECOMMENDATIONS TO THE CHIEF
EXECUTIVE IN PURSUANCE OF THE POWERS DELEGATED TO HER BY THE
COUNCIL ON 4TH MAY, 2021**

Houses in Multiple Occupation (HMO)
Licenses Issued Under Delegated Authority

The Members of the Committee recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority to note the applications that had been issued under the Scheme of Delegation.

Non-Delegated Matters

**Application for Licence to operate
an HMO for Flat 2, 26 Lawrence Street**

The Members of the Committee considered the following application:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).**

Premises	Application No.	Applicant(s)	Managing Agents
Flat 2, 26 Lawrence Street Belfast BT7 1LF	8248	Mr Jonathan Murray	CPS Property

- 1.2 Members are reminded that licences are issued for a 5-year period with standard conditions. Where it is considered necessary to do so, the Committee can also impose special conditions.**

Background

- 1.3 The property had the benefit of an HMO license in the name of the previous owner.**
- 1.4 The previous licence pursuant to Section 28(2) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ‘2016 Act’ ceased to have effect on the 31st May 2019 when the property was purchased by Mr Jonathan Murray. If Mr Murray had applied for a new HMO licence before purchasing the property the existing licence would have been in place until his new licence application was determined. However he failed to do so.**
- 1.5 On the 12th February 2021 an HMO licence application was received from the owners of the accommodation. As this was a new application the HMO Unit consulted with the Council’s**

- 1.6 Planning Service who on the 19 March 2021 confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/0636/LDE
- 1.7 The applicant applied for a Temporary Exemption Notice 'TEN' pursuant to Section 15 of the 2016 Act which was granted on 23 February 2021.
- 1.8 Officer propose the refusal of the application on the grounds of overprovision and the applicant was advised accordingly. As the proposal is to refuse the licence application, such a determination falls outside of the scheme of delegation.

2.0 Recommendations

- 2.1 The Members of the Committee are asked to recommend that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority to either:
- (i) Grant the application, with or without any special conditions; or
 - (ii) Refuse the application.
- 2.2 If the application is refused, the applicant has a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision. The licence will remain in place pending the appeal.

3.0 Main report

Key Issues

- 3.1 Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:
- a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;
 - b) the owner, and any managing agent of it, are fit and proper persons;
 - c) the proposed management arrangements are satisfactory;
 - d) the granting of the licence will not result in overprovision of HMOs in the locality;
 - e) the living accommodation is fit for human habitation and —
 - (i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or
 - (ii) can be made so suitable by including conditions in the licence.

- 3.2 As this is a new application the HMO Unit consulted with the Council's Planning Service who on the 18 February 2021 confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/0636/LDE
- 3.3 For the purpose of determining whether or not the granting of a licence would result in an overprovision of HMOs in the locality of the accommodation, and in order to ensure consistency as both a planning and licensing authority the locality was defined as being HMO Policy Area 'HMO 2/22 Botanic, Holylands and Rugby' as defined in the document 'Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
- 3.4 Legal Services has advised that there is a clear requirement in Section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision.
- 3.5 On the date of assessment, 30 April 2021 there were a total of 1120 licensed HMOs out of 2400 dwelling units in HMO policy area 'HMO 2/22 Botanic, Holylands and Rugby' which equates to 47% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1120 licensed HMOs have a capacity of 5227 persons.
- 3.6 The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
- 3.7 The Council must also consider the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.
- 3.8 In September 2017 The Housing Executive published the document 'Housing Market Analysis Update – Belfast City Council Area' which states 'HMOs form an important element of the PRS, particularly for younger people on low incomes and for single people, under the age of 35, affected by the limitation of housing benefit to the shared room rate. Anecdotal evidence also indicates that this has been a popular sector with migrant workers.'
- 3.9 At the time of writing this report there were 66 properties advertised for let with 3 or more bedrooms on the website Property News in BT7 with a capacity of 260 bed spaces. It would therefore appear that there is sufficient supply of HMO accommodation in the area.
- 3.10 The fact the use of the property as an HMO is permitted for planning purposes is a relevant consideration in determining whether the grant of this licence will result in overprovision. There is an argument that it may not do so as the premises are already being used as an HMO.

- 3.11 However it should be borne in mind that planning permission was granted on the basis that the use had been established for 5 or more years and was therefore immune to enforcement. No assessment of overprovision was made at that time. Given the level of licensed HMO properties in this locality as set out above it would be highly unlikely that a planning application for a new HMO in the area would be successful as the thresholds in the 2015 Plan have been significantly exceeded.
- 3.12 When considering the fitness of an applicant the Council must have regard to any offences concerning fraud/dishonesty, violence, drugs, human trafficking, firearms, sexual offences, unlawful discrimination in, or in connection with, the carrying on of any business; or any provision of the law relating to housing or of landlord and tenant law. It also permits the Council to take into account any other matter which the council considers to be relevant.
- 3.13 The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department –
- (a) Environmental Protection Unit ('EPU') - who have confirmed that in relation to night-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years,
 - (b) Environmental Protection Unit ('EPU') - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years,
 - (c) Public Health and Housing Unit ('PHHU') - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years,
 - (d) Cleansing Enforcement ('CE') - who have confirmed that in relation to litter and waste, there has been no relevant enforcement action required in respect of the HMO in the last 5 years,

Fitness

- 3.14 The applicants and managing agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.4 of this report.

3.15 The applicant or managing agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and CE, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the applicant, managing agent or occupants. Due to data protection issues which have recently arisen, PSNI have not been accepting or responding to notification of these applications. Officers are continuing to engage with PSNI to find a resolution to this issue.

3.16 Officers are not aware of any other issue relevant to the Applicant's fitness.

Attendance

3.17 The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting.

Suitability of the premises

3.18 An inspection of the premises was carried out by Officers from the Service on 7 April 2021 at which time it was established that the property meets the physical standards for an HMO.

Notice of proposed decision

3.19 On the 21 May 2021, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, Officers issued a notice of proposed decision to the applicant setting out the terms of the proposed licence.

3.20 The notice of proposed decision stated that the council proposed to refuse the licence.

3.21 A statement of reasons for the proposal was included in the notice of proposed decision.

The statement of reasons outlined the following as the Council's basis for refusal:-

Pursuant to section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 '2016 Act' the Council is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

For the purpose of section 12(2) of the Act the Council has determined the locality as being HMO Policy Area 'HMO 2/22 Botanic, Holylands and Rugby' as defined in the document 'Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 (the '2015 Plan')

In making this decision the Council has had regard to –

- (a) the number and capacity of licensed HMOs in the locality
- (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need

To inform the Council in its consideration of the above provisions, the Council has taken account of the 2015 Plan and in particular, Policy HMO 1 and Policy HMO 2.

On the date of assessment, 30 April 2021 there were a total of 1120 licensed HMOs in HMO policy area ‘HMO 2/22 Botanic, Holylands and Rugby’ which equates to 47% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1.

The 1120 licensed HMOs have a capacity of 5227 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey’s Pointer database.

Consequently, Officers believe that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

Financial and Resource Implications

- 3.22 None. The cost of assessing the application and officer inspections are provided for within existing budgets.

Equality and Good Relations Implications

- 3.23 There are no equality or good relations issues associated with this report.”

The Chairperson then welcomed Mr. Hagan, agent, to the meeting. Mr. Hagan thanked the Members of the Committee for allowing him to speak in support of the application, and raised the following points in that regard:

- Of the approximately 220 HMOs managed by CPS in Belfast, only 1 was currently available for rent in the area, demonstrating a lack of supply;

- As stated within the paper, the HMO licence application was received on the 12th February 2021, and so, pursuant to Schedule 2, Paragraph 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, *'the council must decide whether to grant or refuse an application for an HMO licence before the end of the period of 3 months beginning with the date on which the council received it. If the council does not determine an application for an HMO licence before the end of the period mentioned in sub-paragraph (1) (or that period as extended), the applicant is to be treated as having been granted a licence in the terms applied for.'* As the Council neither determined the application within this time, nor applied for an extension, as of the 12th May, 2021, the applicant was entitled to be treated as having been granted the licence;
- The basis of the proposed refusal, that granting of the HMO licence would result in overprovision of HMO accommodation in the locality, failed to take into consideration that the property first operated as an HMO before 2000, and up until 2019 continued to do so without any issue. In addition, the property was recorded in the 2015 subject plan and therefore was included within the number of licensed HMOs in the policy area, "HMO 2/22 Botanic, Holylands and Rugby". As such, granting this licence could not be considered an increase in the number of existing HMOs. Also, section 8(2)(d) of the 2016 Act was not intended to have any effect in areas where overprovision already existed, and where the property had been operating as an HMO previously;
- Whilst the existing licence ceased to have effect when the property was sold on 31st May, 2019, the purchaser was not advised by his solicitor that an application was required at this time as the property had an existing HMO registration that did not expire until July, 2021. He added that a barrister had been instructed to further pursue this matter;
- The Council agreed, in January, 2021, that all new applications received up to, and including, 1st March 2021, where the premises had previously operated as an HMO and had the benefit of planning permission and/or a certificate of lawful use or development (CLUD), would not be considered to result in overprovision. The application in this case was submitted prior to 1st March, 2021, and was therefore eligible for consideration under this policy.

On the basis of these arguments, Mr. Hagan submitted that the proposed refusal was flawed, and requested that the application for a Licence permitting the use of Flat 2, 26 Lawrence Street as a House in Multiple Occupation (HMO) should be granted. He added that if the licence was refused, the applicant would appeal the decision to the County Court.

In response to queries from a number of the Members, the HMO Unit Manager clarified that the application in question was deemed to be a new application, rather than a renewal, as the previous HMO licence ceased to have effect when the property was purchased by the current owner and, for that reason, the Council was obliged to have regard to overprovision. He also confirmed that the 3-month decision period referred to by the agent came into effect when the application was deemed valid, meaning that all relevant documentation had been received, which in this case, was 16th April, 2021.

The Divisional Solicitor advised the Members of the Committee that everything they had heard were material considerations in reaching their decision. She also advised that, prior to making a decision, it was important to refer to the legislation which required that, when looking at the issue of provision, it was necessary to consider both the number of HMOs in an area, as well as need, therefore providing a two part test. She also added that the Council's decision of 20th January, 2021, '*that all new applications due to expire 1st March 2021, where the premises have previously operated as a HMO and have the benefit of planning permission and/or a certificate of lawful use or development (CLUD), would not be considered to result in overprovision.*' related to a limited number of renewal applications, and that the application in question was deemed to be a new application.

Having taken into account the information presented, the Members of the Committee recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority to refuse the application.

Entertainments Licences

The Building Control Manager advised the Members that, given the current restrictions under the Health Protection (Coronavirus, Restrictions) Regulations, there remained significant uncertainty as to when live outdoor music events would be permitted and, if they were, whether mitigation measures would be such that they would render the provision of the event unviable. As a result, event organisers were reluctant to make a financial commitment for application costs or preparing event management information that would normally be provided to the Service prior to a report being brought to the Committee.

He explained that, for those reasons, the following applications were being presented to Members for their consideration at this time in order to allow businesses to react to the changing circumstances, should restrictions be relaxed in the weeks ahead.

Application for the Provisional Grant of a 7-Day Annual Outdoor Entertainments Licence for Folktown, Castle Court Shopping Centre.

The Building Control Manager explained that a provisional entertainments licence could be applied for and granted for premises which are to be, or are in the course of being, constructed, extended or altered if the Council was satisfied that the premises would, if completed in accordance with plans deposited, be such that it would grant the licence, subject to a Condition that it would be of no effect until confirmed by the Council.

The Members were advised that the applicant proposed to provide entertainment within a new outdoor area in the rear service yard of Castle Court Shopping Centre, which would have direct access from Bank Square, from Monday to Saturday between 12.00pm and 1.00am the following morning, and on Sundays from 12.30pm to midnight.

The Building Control Manager advised that no objections had been received to the public notice for the application, nor from the PSNI. He also confirmed that a response from the NIFRS was yet to be received, however, there was time to address any technical issues with them prior to the licence being issued, should they be forthcoming.

He added that the applicant had produced proposals to mitigate the spread of Covid-19 which had in turn been provided to the Council's Health and Safety Team for consideration, and that an acoustic report had been provided to the Environmental Protection Unit for evaluation.

In response to a query regarding the impact on two nearby churches, the applicant, Mr. Langsford, confirmed that consultation had taken place with the churches, one of which had indicated that the building had been sold. He also confirmed that ongoing engagement would ensure that when services were running, the venue would not have entertainment available. The Building Control Manager added that the acoustic report had made mention of a number of noise sensitive buildings in the area, and so staff would work with the applicant to ensure that sufficient engagement would take place.

Taking into account the information presented, the Members of the Committee recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority, subject to a satisfactory response from the NIFRS and all technical requirements being met, to:

- approve the application for the provisional grant of the 7-Day Annual Outdoor Entertainments Licence.
- provide delegated authority to the Director of Planning and Building Control, in consultation with the City Solicitor, to issue the licence once all necessary technical requirements relating to health, safety, welfare and amenity had been completed to the satisfaction of the Building Control Service.

**Application for the Grant of a 7-Day
Annual Outdoor Entertainments Licence
for Cargo by Vertigo, 9 Queens Road**

Members of the Committee were asked to consider an application to provide outdoor entertainment to the side of Spud Murphy's building at 9 Queens Road from Monday to Sunday between 11.30am and 11.00pm.

The Building Control Manager confirmed that a public notice of the application had been placed, and, whilst no written representation had been lodged to date, the 28-day statutory period had not yet expired. He added that the Harbour Police had no objections to the application, however, a response from the PSNI was still to be received, as was an assessment from the NIFRS pending fire safety information being provided to them. He confirmed that an acoustic report and proposals to mitigate the spread of Covid-19 had been requested from the applicant.

Taking into account the information presented, the Members of the Committee recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority, subject to no written representations being received, a satisfactory response from the PSNI and NIFRS, and all technical requirements being met, to approve the application for the grant of the 7-Day Annual Outdoor Entertainments Licence.

**Application for the Grant of a 14-Day
Occasional Outdoor Entertainments Licence
for Holy Cross Boys Pitch, Flax Street**

The Members of the Committee were asked to consider an application for the grant of a 14-Day Occasional Outdoor Entertainments Licence and for permission to provide entertainment after 11.00 pm in respect of Holy Cross Boys Pitch on Friday, 20th August and Saturday, 21st August until 12 midnight, as part of a festival running from Tuesday, 10th August to Saturday, 21st August, 2021.

The Building Control Manager confirmed that, as this was the only Committee that could consider the matter prior to the event taking place, the application was being brought in advance of a number of technical matters being resolved.

He confirmed that a public notice had not yet been placed in the press, however, both the PSNI and NIFRS had been consulted and neither had submitted any objections, and both would be consulted again closer to the time of the event.

The Members were advised that Building Control staff would engage with the group in the lead up to the event to ensure that all documentation and technical information was in place, and an acoustic report would be requested to ensure that noise would not cause unreasonable disturbance to premises in the area. It was also confirmed that the group would be required to produce a residents notification letter.

Taking into account the information presented, the Members of the Committee recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority, subject to no representations being received and all technical requirements being met, to approve the application for the grant of the 14-Day Occasional Outdoor Entertainments Licence and for permission to provide entertainment to the hours after 11.00 p.m. as requested.

**Application to provide outdoor musical
entertainment beyond 11.00 pm at Falls Park**

The Members of the Committee were asked to consider a request from the organisers of Féile an Phobail to hold a festival event within Falls Park, running from Friday, 6th August to Sunday, 15th August, 2021, and to permit the entertainment which was planned to run beyond 11pm on up to four occasions reported to be 8th August, 13th August, 14th August and 15th August, up to 1.00 a.m.

The Building Control Manager confirmed that the organisers had not finalised the artists taking part in this year's event, and that consultation with the PSNI had also not yet taken place. He added that, should an easing of coronavirus restrictions permit events of this nature to take place, and once a revised event management plan was submitted, the Service would engage with the PSNI regarding the event.

He also confirmed that an acoustic report would be requested and consulted upon with the Environmental Protection Unit.

The Members were made aware of 12 noise complaints that were received regarding the festival in 2019, the majority of which related to the volume of music and the finishing time of the dance event on 8th August. The Building Control Manager confirmed that these complaints were brought to the attention of the event organisers at the time, and would be discussed further as part of their acoustic report in preparation for this year's festival. He added that the organisers would be required to produce a suitable resident's notification letter for distribution in the local area.

Taking into account the information presented, the Members of the Committee recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority, subject to a satisfactory response from the PSNI and all technical requirements being met, to agree that all four of the events should be permitted to take place beyond the standard hours of licence to 1.00 a.m.

Consideration of Designating Resolutions for Street Trading Sites

The Building Control Manger reminded the Committee that, at its meeting on 18th November, 2020, approval had been granted to initiate the statutory process for the designation of seven new street trading sites across the City, which had been identified as a result of internal application or expressions of interest received from individuals wishing to trade from new sites.

He reported that three of those sites were presented in March, 2021, and the remaining four sites were now before the Committee for consideration. He advised the Members that, in making any designating resolution, they may record any reasonable conditions that should be applied to any subsequent Street Trading Licence on any of the sites.

He advised that the designation process had involved seeking comments from interested parties and relevant statutory bodies, through public advertisement and consultation and that officers had consulted with the PSNI, Department for Infrastructure (Roads), Belfast City Centre Management Company for city centre sites, and local residents and businesses.

The Building Control Manager outlined the proposals, and highlighted comments which had been received from interested parties, for the following four sites:

- (a) 565 Upper Newtownards Road, on a private forecourt.
- (b) corner of North Road and Upper Newtownards Road, on land adjacent to Cyprus Avenue restaurant.
- (c) 65-69 Dublin Road, on private forecourt.
- (d) Comber Greenway at North Road bridge.

The Members of the Committee considered each proposal in turn and recommended that, in accordance with the Council decision of 4th May 2021, the Chief Executive exercise her delegated authority to:

- (a) Refuse the proposal for a site to trade in hot and cold non-alcoholic beverages, confectionery, ice cream and cold food or similar commodities at 565 Upper Newtownards Road, on a private forecourt, on the basis of the PSNI and residents' concerns regarding parking and access issues.
- (b) Approve the proposal for a site to trade in hot and cold food and non-alcoholic beverages at night-time at the corner of North Road and Upper Newtownards Road, on land adjacent to Cyprus Avenue restaurant.
- (c) Approve the proposal for a site to trade in hot and cold non-alcoholic beverages, confectionery, ice cream and cold food or similar commodities at 65-69 Dublin Road, on private forecourt.
- (d) Refuse the proposal for a site to trade in hot and cold non-alcoholic beverages, confectionery, ice cream and cold food or similar commodities on the Comber Greenway at North Road bridge, due to a number of concerns, including the noise associated with the use of a generator and the related impact on the environment/wildlife, and trading sites detracting from the purpose of the greenway which should be a quiet space, free from noise and litter.

Proposal

Moved by Councillor Smyth,
Seconded by Councillor M. Kelly,

That officers consider a policy framework to assess the suitability of street trading designation requests on Greenway sites.

Chairperson