Democratic Services Section
Chief Executive's Department
Belfast City Council
City Hall
Belfast
BT1 5GS

30th December, 2014

MEETING OF HEALTH AND ENVIRONMENTAL SERVICES COMMITTEE

Dear Alderman/Councillor,

The above-named Committee will meet in the Lavery Room (Room G05), City Hall on Wednesday, 7th January, 2015 at 4.30 pm, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

1. Routine Matters
   - (a) Apologies
   - (b) Minutes
   - (c) Declarations of Interest
2. Presentation on Empty Homes Strategy
3. Tobacco Retailers Register for Northern Ireland (Pages 3 - 6)
4. Food Hygiene Rating Bill - Update (Pages 7 - 24)
5. Tackling Anti-Social Behaviour – Internal Review (Pages 25 - 26)

6. Result of Judicial Review re: Application for a Dual-Language Street Sign at Ballymurphy Drive (Pages 27 - 42)

7. Proposal for Dual Language Street Signs (Pages 43 - 44)

8. Extension of Cleansing Services Litter Bin Tender (Pages 45 - 48)

To: The Chairman and Members of the Health and Environmental Services Committee

Agenda Item 3

Belfast City Council

Report to:	Health and Environmental Services Department
Subject:	Tobacco Retailers Register for NI
Date:	7th January 2015
Reporting Officer:	Siobhan Toland, Head of Environmental Health, Ext 3281
Contact Officer:	Diane Herron, Senior Environmental Health Officer, Ext 3374

1	**Relevant Background Information**
1.1	Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, killing around 2,300 people each year. In addition a strong relationship exists between smoking and health inequalities. It has a greater impact on people living in areas of social or economic deprivation. Overall, almost one in four adults in Northern Ireland is a current smoker, in deprived areas this increases to one in three. Amongst the prison population, and for those with mental ill-health problems, smoking prevalence rates are considerably higher and one in two will die as a result of smoking.
1.2	Since 2007 the NI Assembly has introduced a number of legislative controls to address this serious public health issue. On 30 April 2007 the Smoking (Northern Ireland) Order 2006 came into effect to protect people from second hand smoke by preventing smoking in most workplaces and public places. On 1 September 2009 the minimum age to purchase tobacco products was increased from 16 to 18 years by the introduction of the Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland) 2008; and more recently controls were introduced relating to point of sale display of tobacco products and the use of vending machines. The Council has been funded by the Public Health agency since 2006 to enforce the tobacco control legislation. The level of compliance relating to smoke free workplaces and point of sale display in Belfast and indeed, throughout Northern Ireland, is high.
1.3	The Public Health Agency also funds the Council to provide a smoking cessation service for its employees and this service has been extended over the past few years to include smoking cessation in other workplaces throughout the city.
1.4	In 2013 the Northern Ireland Assembly introduced a Tobacco Retailers Bill, which received Royal Ascent in March 2014. The Tobacco Retailers Act (Northern Ireland) 2014 includes the establishment of a central register of tobacco retailers. It is estimated that the register will contain around 2,500-3,000 entries. Similar retailer registers have already been established in the Republic of Ireland and Scotland.
1.5	Members will recall a report to Committee in October of this year regarding an approach made by the Department of Health, Social Services and Public Safety (DHSSPS) with a proposal that the Council takes on the role of regional registration authority for NI. This would involve setting up and maintaining the retailer registration system. It was agreed that the Environmental Health Service would work with DHSSPS and Digital Services to examine costs and identify resources. DHSSPS has since agreed to fully fund the setting up and running costs associated with the register, including staff time.

2	Key Issues
2.1	The purpose of the register is to provide essential information to Councils to enable the enforcement of tobacco. Recently this Service has discovered through direct complaints/ referrals from the public, of tobacco retailers, that we were not aware of. This requirement and system will help identify all premises where tobacco is sold. The system will allow all tobacco retailers to record their details on an online database by completing a simple online application process. The process will also allow submission on a paper application form. There will be no cost or conditions associated with the registration for the business.
2.2	Local councils must be able to access the information contained in the register to check the registration status of retailers in their area. This information will also be accessible to the public through the internet. In addition, the register should allow for nominated council staff to enter and observe information relating to regulatory action taken with regards to relevant tobacco control legislation. This information will be restricted to nominated persons.
2.3	The system will include procedures for approved administrators to monitor, amend, omit and delete information as appropriate. It should be capable of interrogation to produce management reports e.g. the number of registered tobacco retailers in a particular council area. The use of compulsory fields will be required in order to facilitate accurate searches.
2.4	The registration authority will be responsible for the establishment and maintenance of the tobacco retailers register. It's responsibilities will include: ▪ facilitating public access on line to the register on a 24 hour basis; ▪ ensuring effective operation of the register and the maintenance of accurate records; ▪ storing data securely/ensuring restricted public access; ▪ sharing information with appropriate authorities, e.g. DHSSPS and councils; ▪ providing online guidance on the registration system; and ▪ providing a link in with NI Direct.
2.5	Digital Services has agreed that it can set up and maintain the register for the 11 Councils as requested, on the understanding that all associated costs will be met by DHSSPS. It is recommended therefore that the Committee agrees to the Council becoming the regional registration authority for NI subject to a service level agreement and funding being in place.

3	Resource Implications
3.1	**HR Implications -** none
3.2	**Financial implications:** Establishing and maintaining the register will be cost neutral to the Council as DHSSPS will provide funding to develop the system in 2014/15 and for its maintenance going forward into 2015/16 and beyond. This money will be provided to Digital Services. In addition funding will be provided to cover salary costs of those working on the register development within the Environmental Health Service and for the administration costs associated with businesses actually registering. DHSSPS is currently drafting a service level agreement setting out the necessary arrangements.
3.3	**Equipment Implications** - none

4	Equality and Good Relations Considerations
4.1	There are no particular equality issues associated with this work.

5	Recommendation and decision
5.1	It is recommended that: ▪ Committee agrees to the Council becoming the regional registration authority for NI; and ▪ Committee approve the drawing up of an SLA and funding agreement and delegates responsibility to the Director to undertake this work on behalf of the Council.

6	Decision Tracking
6.1	The Lead Operations Officer and Head of Environmental Health will keep Committee informed of how this area of work progresses

Key to abbreviations
DHSSPS – Department of Health and Social Services and Public Safety PHA – Public Health Agency

Documents attached
None

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Agenda Item 4

Belfast City Council

Report to:	Health and Environmental Services Committee
Subject:	**Update on the introduction of the Food Hygiene Rating Bill to the Northern Ireland Assembly**
Date:	7th January 2015
Reporting Officer:	Siobhan Toland, Head of Environmental Health, Ext 3281
Contact Officer:	Damian Connolly Environmental Health Manager ext. 3361

1	**Relevant Background Information**
1.1	Belfast City Council adopted the voluntary Food Hygiene Rating Scheme (FHRS) in June 2011, shortly after its introduction by the Food Standards Agency (FSA).
1.2	The FHRS is seen by the FSA as being a key public health measure and a driver for businesses to improve and maintain compliance with food hygiene law. It works by Local Authorities publishing on the website the standards of hygiene found by their food officers during inspections. Window stickers are also provided by the council to businesses and they are encouraged to display the result. This aims to allow consumers to make informed choices about where they wish to eat and shop so providing a powerful incentive for businesses to improve and maintain compliance.
1.3	FSA research shows that consumers make decisions about where to eat quickly, and they reported that the best way to influence them is to be able to see the FHRS rating on the premises before they go in or make a decision about eating there. The green and black FHRS sticker, with ratings numbered 0 to 5, is now recognised by 83% of consumers across Northern Ireland. The rating 0 means urgent improvement is necessary whilst 5 means hygiene standards are very good. The ratings are based on a number of criteria including how hygienically food is prepared, cooked, cooled and stored, the condition and cleanliness of the premises and the procedures in place to ensure the production of safe food
1.4	The success of the scheme relies on consumers being able to access the information; however, businesses have not to date been required to display their rating. Research by the FSA has shown that only 50% of businesses in Northern Ireland display the rating and it is visible before entering in only 38% of cases. For the businesses with poorer hygiene ratings only 22% are displaying their rating. The FSA considers that making it mandatory for businesses to display their rating in a prominent position would ensure consumers can access the information easily and make the scheme more effective.
1.5	On 4th November 2014, the Food Hygiene Rating Bill was introduced into the N. I. Assembly. The Bill will, if passed, make it compulsory for Northern Ireland food businesses such as restaurants, takeaways and supermarkets, to prominently display their hygiene ratings under the 'Food Hygiene Rating Scheme' (FHRS). It is anticipated by the FSA that The Food Hygiene Rating Bill will help improve food hygiene standards in eateries across Northern

	Ireland and introduce a simple but effective way of helping consumers to make better choices 'at a glance' when buying food.
1.6	The Bill is currently at the Committee stage for detailed scrutiny. On 20th November 2014 Council received an invitation to submit written evidence on the contents of the Bill to the NI Assembly, Committee for Health, Social Services and Public Safety by 12th December 2014.
1.7	At its meeting on 2nd December this Committee agreed, as the deadline for written evidence did not provide an opportunity for the Committee to consider this in advance, an officer's response would be submitted before 12th December and this would be brought back to the committee for ratification. The response submitted is attached.

2	**Key Issues**
2.1	The response endorses the views of the NI Chief Environmental Health Officers' Group (CEHOG) which represents all 26 District Councils. This response was drafted by a specialist working group, including Belfast City Council's Environmental Health Manager (Food Safety and Port Health) taking on board the views of the district councils. Members of that working group are scheduled to present oral evidence to the Assembly committee on behalf of CEHOG on 14 January 2015.
2.2	The key points within the response are: CEHOG supports the introduction of the Food Hygiene Bill requiring businesses to display food hygiene ratings and recognises this Bill has the potential to better inform consumers whilst encouraging business to comply with the hygiene requirements. Some councils have expressed concerns about the detail of the Bill and particularly: **1.** The scheme may be resource intensive and if, at some stage in the future, councils consider that the scheme is not making the best use of their limited resources to improve the health and wellbeing of their citizens, they would consider it appropriate that an option to opt out is available otherwise funding to support this additional work would need to be considered. Consultation was carried out with the existing 26 councils and the support for a mandatory scheme may need to be re-assessed in line of the forthcoming Local Government Reform and resultant 11 councils. This scheme locks councils in at a time when FSA focus is increasingly on food standards work, food fraud and health improvement. These concerns are within the context of increasing budgetary stress, the aftermath of the horse meat scandal and the Elliot review. The focus is now shifting from Food Hygiene where compliance levels are high towards Food Standards. **2.** The scheme is prescriptive in nature especially in terms of response times for councils and there are detailed requirements around provision of the service. CEHOG recognises the need for agreed standards but is of the opinion that they should not be an absolute legal requirement and are more appropriately dealt with in the form o f statutory guidance rather than in the Bill itself. **3.** Whilst recognising the need for safeguards to protect businesses the appeals and re-rating requirements may be overly protective of businesses awarded poor ratings, and this could be to the detriment of the consumer – the main stakeholder. 4. FSA policy to reduce the inspection burden through introducing flexibilities in the intervention requirements contained within the Food Law Code of Practice (FLCOP)

	and the financial stress councils are facing may result in many food premises not being inspected as often or in the case of lower risk premises being removed from inspection programmes altogether.
2.3	Considering some of these concerns the response welcomes the inclusion of the clause within the Bill requiring the FSA to review the operation of the Act within three years and to prepare a report which will be subsequently published by the Department. CEHOG have commented that this review should estimate the resource burden placed on councils and seek their views as to how successful the scheme has been, considering value for money and where they would like to see the scheme improved. The clause would enable the Department to amend the Act based on the findings of the report. This point will be emphasised in our response in terms of the fact that Councils will have to make their own critical decisions and direct resources to the areas of most risk and need in fulfilling the many other functions over the next number of years.

3	**Resource Implications**
	The Bill will generate some income through administration of fixed penalty notices and charging for re rating inspections, however, these are not expected to cover the total costs of implementation. There is no resource additionality offered by the FSA to help implement this new approach and it will therefore have to be managed within existing budget allocation, in our response we have advised the FSA this will need to be kept under review given the current financial stresses Council is facing under LGR.

4	**Equality Implications**
	None

5	**Recommendations**
5.1	The Committee is requested to: 1. Ratify the officers' response on the Food Hygiene Rating Bill to the NI Assembly's Committee for Health Social Security and Public Safety as contained in Appendix 1. 2. Agree the Environmental Health Manager (Food Safety and Port Heath) to present oral evidence on behalf of CEHOG, including Belfast City Council, to the NI Assembly Committee for Health, Social Security and Public Safety on 14 January 2015.

6	**Decision making**

7	**Key to Abbreviations**
	FHRS: Food Hygiene Rating Scheme FSA: Food Standards Agency CEHOG: Chef Environmental Health Officers group FLCOP: Food Law Code of Practice

8	**Documents Attached**
	Appendix 1: Written response to DHSSP committee on the Food Hygiene Rating Bill Appendix 2: The Food Hygiene Rating Bill is available at http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2014/health/11714.pdf

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Chief Executive's Department

Appendix 1

Your reference

Our reference SW/JB

Date 12 December 2014

The Committee Clerk,
Committee for Health, Social Services & Public Safety
Room 144, Parliament Buildings
Ballymiscaw, Stormont
BELFAST BT4 3XX
Email: committee.hssps@niassembly.gov.uk

Dear Dr Aiken

The Food Hygiene Rating Bill
I welcome this opportunity to make a submission of written evidence to the Committee for Health, Social Services and Public Safety in relation to the Food Hygiene Rating Bill.

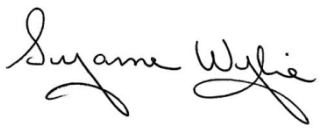
I welcome the Department for Health, Social Services and Public Safety proposals to introduce a statutory food hygiene rating scheme which will require businesses to display food hygiene ratings and I recognise this Bill has the potential to better inform consumers whilst encouraging business to comply with the hygiene requirements.

A specialist working group of the Chef Environmental Health Officers Group (CEHOG), including Belfast City Council's Food Safety Manager, have carefully considered the detail of the Bill and taking on board the views of the district councils drafted the written evidence attached which I fully endorse. The members of that working group, at the Committee's invitation, will present oral evidence on behalf of CEHOG on 14 January 2015.

It is my intention to take this response to Belfast City Council's Health & Environmental Services Committee on the 7 January and subsequently to full Council on 2 February for ratification. Should Council amend the response I shall notify you at the earliest opportunity.

I trust this information will assist the Committee. If however you require any further information or clarification please contact Mr Damian Connolly, Environmental Health Manager, on 028 90320202 Ext 3361 or by email at connollyd@belfastcity.gov.uk

Yours sincerely



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FOOD HYGIENE RATING BILL

CEHOG supports the introduction of the Food Hygiene Bill requiring businesses to display food hygiene ratings and recognises this Bill has the potential to better inform consumers whilst encouraging business to comply with the hygiene requirements.

Some councils have expressed concerns about the detail of the Bill and particularly:

1. The scheme may be resource intensive and if, at some stage in the future, councils consider that the scheme is not making the best use of their limited resources to improve the health and wellbeing of its citizens, they would like an option to opt out. Consultation was carried out with the existing 26 councils and the support for a mandatory scheme may need to be re-assessed in line of the forthcoming Local Government Reform and resultant 11 councils. This scheme locks councils in at a time when FSA focus is increasingly on food standards work, food fraud and health improvement. These concerns are within the context of increasing budgetary stress, the aftermath of the horse meat scandal and the Elliot review. The focus is now shifting from Food Hygiene where compliance levels are high towards Food Standards.

2. Its prescriptive nature in terms of response times for councils and detailed requirements around provision of the service. CEHOG recognises the need for agreed standards but is of the opinion that they should not be absolute legal requirements and are more appropriate in statutory guidance rather than in the Bill itself.

3. Whilst recognising the need for safeguards to protect businesses the appeals and re-rating requirements may be overly protective of businesses awarded poor ratings. This could be to the detriment of the consumer – the main stakeholder.

4. FSA policy to reduce the inspection burden through introducing flexibilities in the intervention requirements contained within the Food Law Code of Practice (FLCOP) and the financial stress councils are facing is likely to result in many food premises not being inspected as often or in the case of lower risk premises being removed from inspection programmes altogether.

CLAUSE 1: FOOD HYGIENE RATING

Clause 1(1)

Where a district council has carried out an inspection of a food business establishment in its district, it must rate the food hygiene standards of the establishment on the basis of that inspection.

Consumers may assume that all premises are subject to a reasonably frequent inspection programme to ensure ratings are periodically updated. This expectation may not be consistent with the FLCOP and FSA policy. The FLCOP encourages the removal of lower risk premises from inspection programmes and alternating between inspections and lighter touch interventions for the majority of other premises in an effort to reduce the regulatory burden on businesses. Therefore significant numbers of premises do not require inspection and most other premises are only required to be inspected every 3 or 4 years. Light touch interventions which may replace inspections would not collect sufficient information to produce a food hygiene rating. Therefore for some premises there is no mechanism to ensure the renewal of their rating and these will, over time, become out dated. Consumers can only expect that most premises have been rated within the previous 3- 4 years.

Clause 1(5)

A reference to carrying out an inspection of a food business establishment is a reference to carrying out an activity in relation to the establishment as part of official controls under Regulation (EC) 882/2004

Comments

What constitutes an *inspection* for rating purposes needs to be more clearly defined and consistent with requirements for an *intervention* rating within the FLCOP which states "The intervention rating(s) of a food business should only be revised at the conclusion of an inspection, partial inspection or audit, and in accordance with Annex 5. An officer must have gathered sufficient information to justify revising the intervention rating".

CLAUSE 2 - Notification & Publication

2(1) Within 14 days of carrying out an inspection of a food business establishment, a district council must, if it has prepared a food hygiene rating for the establishment on the basis of that inspection, notify the rating to the operator of the establishment.

(3) The notification must be in writing and accompanied by -

(relevant information as stipulated in a-h).

CEHOG agree that businesses should be notified of their rating in writing within 14 days as is the case under the voluntary scheme. There may be exceptional circumstances where this may not be possible and therefore an absolute legal requirement is not appropriate. CEHOG would suggest that the timeframe be detailed in (statutory) guidance rather than be prescribed in law. CEHOG are of the view that councils should monitor compliance with this requirement under section 14(1) and report performance to the FSA

Furthermore it may not be appropriate for all the information outlined under Clause 2(3) a-h to be provided at the same time, for example some councils may provide information on compliance in writing at the time of inspection and notify the Food Business Operators (FBOs) of their rating at a later time.

2(6) The Department may by regulations prescribe the form of sticker to be provided under subsection (3)(a).

Comments

2(6) As is the case with the voluntary scheme councils should be permitted to apply their own corporate branding to the stickers in addition to the FSA branding. This will reflect the major role the councils have in delivering the scheme and raise awareness that business and consumers should contact their local council if they have any queries. The FSA should cover the total costs of producing the stickers including the council branding as part of their contribution to the scheme.

CLAUSE 3 - Appeal

3(1) The operator of a food business establishment may appeal against the establishment's food hygiene rating.

Comments

CEHOG believe an appeal mechanism is an essential element of the FHRS, although some councils have expressed concerns about the potential resource implications. CEHOG supports clause 14 (3 b) which requires the FSA to review the operation of this section.

CLAUSE 4 – Request for Re-rating

4(2) Within three months of receiving the request, the district council must -

a) inspect the establishment and review the establishment's food hygiene rating on the basis of that inspection

Comment

CEHOG fully supports the provision that businesses may request additional inspections for the purposes of re-rating.

The term *inspection* is used again in this section without definition although section 16 (2) states it is not to be read in accordance with section 1. The term *inspection* for the purposes of re-rating should be clearly defined and consistent with that in the *brand standard* under the voluntary scheme to be *any official control*.

4(2)(a) Under the proposed scheme the maximum period of time between initial inspection and re-rating is just approximately 4 months as opposed to the voluntary scheme which is just approximately 6 months.

Whilst this might be favourable to FBOs it may encourage temporary improvements which would defeat the purpose of the scheme. CEHOG supports clause 14 (3)(c) which requires the FSA to review the operation of this section. This should evaluate fluctuations in compliance rates.

There is currently no limit on the number of revisits that a business owner can request and the payment of fees may favour the larger businesses due to their ability to pay for multiple visits. CEHOG are of the opinion that businesses should only be able to demand one re-rating inspection in any 6

month period. This will help reduce demand on councils whilst allowing business sufficient opportunities for re-rating.

A flat fee for Northern Ireland has been suggested in previous consultation responses to be set at a level to help prioritise only reasonable requests.

4(3) Within 14 days of carrying out an inspection under subsection (2), the council must notify the operator of the establishment of its determination on reviewing the establishment's food hygiene rating

CEHOG would repeat the comments made under clause 2(1) to the effect that timeframes for notification should be stipulated in (statutory) guidance as opposed to legislation. And performance should be closely scrutinised by councils and reported to the FSA under section 14(1).

CLAUSE 6 - Validity of rating

6(1) A food business establishment's food hygiene rating –

a) becomes valid when it is notified to the operator of the establishment under section 2, 3 or 4 (as the case may be), and

b) unless it ceases to be valid as a result of subsection (2), continues to be valid until, where there is a new food hygiene rating for the establishment, the end of the appeal period in relation to that new rating.

Comments – *Offence*

Clause (10) Concerns have been raised about implications on the potential council resources to monitor the display and accuracy of stickers on premises. Enforcement may prove to be a lower priority within some councils.

Some councils have concerns that the proposals allow a business to display their old rating until the end of the appeal period. Where a business's compliance has significantly fallen, this will mislead the consumer. CEHOG are of the opinion that a business should be required to display the new rating **or**

an awaiting rating sticker until the end of the appeal period. Furthermore, councils should be given the power to remove FHRS stickers immediately should there be a significant drop in standards.

There is the potential for a delay in updating a new rating on the website. This may contrast with a more up-to-date rating on display at the premises.

CLAUSE 7 - Duty to display rating

7(1) The operator of a food business establishment must ensure that a valid sticker showing the establishment's food hygiene rating is displayed in the location and manner specified by the Department in regulations for so long as the rating is valid.

Comments

CEHOG is of the view that the sticker should be visible to consumers before they enter the premises so enabling customers to make an informed choice prior to entering.

It will be essential that the requirements of these regulations are clear and supported by guidance sufficient to ensure consistency of enforcement.

CLAUSE 8 - Duty to provide information about rating

8(1) The operator of a food business establishment or a relevant employee at the establishment must, on being requested to do so, orally inform the person making the request of the establishment's food hygiene rating.

Comments

CEHOG welcome this clause whilst recognising it may be difficult to enforce.

CLAUSE 10 & 11

CLAUSE 10 - Offences

10(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

CLAUSE 11 - Fixed Penalty

11(3) The Schedule (which makes further provision about fixed penalties) has effect.

Comments

CEHOG note the fixed penalty amount under the Welsh scheme is set at £200 and consider this an appropriate penalty. CEHOG are of the view a similar penalty is required in NI to provide a suitable deterrent.

CEHOG believe an additional offence should be considered to prevent an establishment making any misleading claims or false advertising with respect to a valid rating. A catch all clause of this nature could cover claims made other than by way of a FHRS sticker.

CLAUSE 12 - Provision of information for new businesses

12-(1) this section applies if an establishment which is or would be a food business establishment-

(a) is registered under article 6 of Regulation (EC) 852/2004 by a district council, or

(b) applies to a district council for approval under Article 4 of Regulation (EC) 853/2004.

(2) the district council must, within 14 days of making the registration or receiving the application, provide the person who is or would be the operator of the establishment with such information as the Department may specify in regulations.

Comments

A key objective of our enforcement and regulatory policy is to support the local economy and in particular to assist businesses in complying with their legal obligations. Councils adopt a range of techniques to do this including provision of seminars for new businesses, operating business advice centres, identifying and providing information to new business prior to their opening etc. CEHOG would encourage the FSA to engage with councils to agree standards or develop guidance on the

provision of information for the FHRS and CEHOG supports an FSA review of this approach under section 14. However CEHOG is of the opinion that using a legislative instrument to require councils to provide information to all businesses within 14 days of making the registration is not appropriate. Councils should have some flexibility in how they achieve the overall objective, providing information in the most appropriate way.

We agree that councils will want to support businesses particularly new businesses to build compliance and specifying 14 days for information to be forwarded to newly registered businesses should not pose any particular problem for local councils. However it places an additional burden on councils and timeframes should, if required, be contained within guidance.

CLAUSE 13 – Mobile Establishments

13(1) The Department may by regulations make provision for enabling the transfer of the inspection and rating functions of a district council, in so far as they are exercisable in relation to mobile food business establishments registered with the council under Article 6 of Regulation (EC) 852/2004, to another district council.

Comments

Premises would usually be inspected during operating hours rather than at their home address where trading may not take place. It is envisaged that this would require agreements and co-operation between councils.

CLAUSE 14 - Review of operation of Act

14(1) Each district council –

a) must keep the operation of this Act in its district under review, and

b) must provide the Food Standards Agency with such information as it may request for the purpose of carrying out a review under this section.

Comments

This should give some more detailed direction on the type and extent of review that is expected. Information currently required by FSA should be revised to reflect the additional requirements so as to avoid an additional administrative burden.

Under section 14(2) the FSA must carry out a review of the Act. Considering some of the concerns raised by councils CEHOG welcomes the inclusion of this clause.

14(3) The review must include a consideration of the following matters –

- **a) where this Act specifies a period in which something may or must be done, whether that period is adequate for the purpose;**
- **b) whether section 3 is operating satisfactorily;**
- **c) whether section 4 is operating satisfactorily and, in particular, whether there should be a limit on the number of occasions on which the right to make a request for a re-rating under that section may be exercised.**

FSA 14(3) The review should measure the progress of the statutory scheme in achieving the stated aims and objectives, in particular improving compliance (as determined by ratings, not re-ratings) and reducing foodborne illness in NI and providing value for money.

The review should estimate the resource burden placed on councils and seek their views as to how successful the scheme has been, considering value for money and where they would like to see the scheme improved.

The review should include consultation with all relevant stakeholders especially consumers.

CLAUSE 15 – Guidance

15 In exercising a function under this Act, a district council must have regard to –

- **a) guidance issued by the Department, and**
- **b) guidance issued by the Food Standards Agency.**

Comments

CEHOG consider that guidance should be definitive, clear and timely.

CLAUSE 16 – Interpretation

CEHOG believe this should include definition of inspection for rating and inspection for re-rating.

CLAUSE 17 - Transitional Provision

The Bill allows for the Department to make a transitional provision which would allow councils to use historical data to produce ratings.

CEHOG are of the opinion that historical data should be used to produce ratings for all premises within scope, and CEHOG also supports the introduction of transitional provisions to facilitate this.

There must be a widely advertised campaign for food businesses, covering the whole of Northern Ireland, well in advance of the introduction of mandatory display legislation.

CLAUSE 18 - Regulations and Orders

Councils welcome the option for making regulations and orders under the scheme to permit necessary improvements/amendments following consultation with all stakeholders.

CLAUSE 19 - Crown Application

CEHOG agree that the duty to display should apply to Crown premises.

CLAUSE 20 - Short title and commencement

20(2) CEHOG believe that the timing of enactment date is very important to councils as they are preparing for LGR and transition to larger councils and welcome some space for this reform process to be embedded prior to enactment.

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Belfast City Council

Report to:	Health and Environmental Services Department
Subject:	**Tackling Anti-Social Behaviour – Internal Review**
Date:	7 January 2015
Reporting Officer:	Siobhan Toland, Head of Environmental Health, Ext 3281
Contact Officer:	Alison Allen, Safer City Manager, Ext 3780

1	**Relevant Background Information**
1.1	Members will recall approving in June 2014 the Terms of Reference for the internal review of how Council tackles anti-social behaviour.
1.2	The purpose of reviewing Council's responses to anti social behaviour was to provide a level of assurance that anti social behaviour issues are being tackled in an effective, cohesive and unified manner. The review would provide the strategic lead throughout council on the future direction, development, implementation and evaluation of work related to anti social behaviour.
1.3	The review would also consider changing needs within the city with a view to providing a more focused, cohesive and joined up approach; streamlined in order to enhance effective service delivery in dealing with anti-social behaviour. Finally, it would provide an element of scrutiny in relation to anti-social behaviour related work in keeping with this Council's obligation to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
1.4	Members of Health and Environmental Services Committee also appointed representatives to a Strategic Project Board to provide guidance and direction to the Officers undertaking the review. The Strategic Project Board met on the 19 September 2014 and approved the project plan for the review.

2	**Key Issues**
2.1	The project plan identified a range of actions under the following themes: • Information and Communication • Customer Service • Prevention and Early Intervention • Process • Accountability
2.2	These actions would work towards a unified Council approach to tackling anti-social behaviour and improve the service provided to communities.
2.3	<u>Progress to Date</u> ▪ Staff workshops have taken place with frontline staff in both Community Safety and Parks to outline the political vision for how Council tackles anti-social behaviour.

	▪ A full mapping of available information and data on anti-social behaviour across the city has been undertaken to identify areas of concern. ▪ From this mapping exercise four small areas of concern have been identified through which to progress collaborative working. These are Falls Park/City Cemetery, Woodvale Park, Musgrave Park and Orangefield Park. ▪ Joint teams of front line staff from Community Safety and Parks have participated in a joint planning workshop to clarify roles and responsibilities, explore opportunities to work more effectively together and to begin the process of planning the detail of focused interventions in the four identified areas. ▪ Joint Community Safety and Parks teams continue to meet on a weekly basis to share information and plan collaboratively. ▪ Final project plans for each of the four identified areas are to be finalised and submitted for review and approval by the Assistant Director Parks and Leisure and the Safer City Manager week commencing 5 January 2014. ▪ Full delivery of the collaborative interventions will begin mid January 2014.
2.4	The purpose of progressing this work by using real and genuine issues of concern to communities is to ensure that the internal review remains delivery focussed and not administrative. It is also expected that the Officers involved will more fully realise the benefits of working collaboratively by working together to tackle real and genuine issues.
2.5	Each project team will be monitored on the progress of their project plan and intervention on a monthly basis by the Assistant Director Parks and Leisure and the Safer City Manager with a further progress report brought to Committee in April 2014.
2.6	In the context of Local Government Reform and the opportunity to explore how services are delivered in the future, this internal review provides a strong basis for delivering more effective, efficient and customer focussed anti-social behaviour service delivery.

3	**Resource Implications**
3.1	None at present

4	**Equality and Good Relations Considerations**
4.1	None at present

5	**Recommendation**
5.1	Members are asked to note the report and to receive a further progress report in April 2014.

6	**Decision Tracking**
Alison Allen (Safer City Manager)	

7	**Key to Abbreviations**
N/A	

8	**Documents attached**
N/A	

Belfast City Council

Report to:	Health and Environmental Services Committee
Subject:	Update on result of Judicial Review in the matter of a decision of Belfast City Council on an application for a Dual Language Street Sign at Ballymurphy Drive
Date:	7th January, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	John Walsh Town Solicitor, ext. 6042

1	**Relevant Background Information**
1.1	The power for the Council to consider applications to erect a second street nameplate in a language other than English is contained in Article 11 of the Local Government (Miscellaneous Provisions) (NI) Order 1995. The Council's policy on the erection of a second street nameplate requires that at least two thirds (66.6%) of the people surveyed must be in favour of the proposal to erect a second street sign in a language other than English.
1.2	In May 2013 an application was received to erect a second street nameplate at Ballymurphy Drive, showing the name of the street expressed in a language other than English. The second language was Irish. The number required of positive responses required to recommend approval of the sign to the Council was not achieved and, in the absence of any exceptional circumstances which would warrant the application being brought before Committee, the application was refused. One of the residents, Eileen Reid of 13 Ballymurphy Drive (the Applicant) then applied for a Judicial Review against both the decision and the Councils policy in relation to this matter.
1.3	Leave was granted to the Applicant on 10 February 2014 to judicially review the decision referred to above. This case was subsequently heard on 5th September and 10th November 2014 before Mr Justice Horner.
1.4	The decision of Mr Justice Horner was delivered on 4th December 2014 and a copy of that decision has been forwarded to the applicant and the Council.

2	**Key Issues**
2.1	The decision to pursue this Judicial Review by Ms Eileen Reid was based upon five grounds:
2.2	The refusal of the Council to consider the proposal to erect an Irish language Street name plate at Ballymurphy Drive was ultra vires, because the respondent fettered its discretion in applying the policy in such a way as to prevent due consideration being given to the particular circumstances of this application. **("Ground 1")**

2.3	The Council's dual language street sign policy is unlawful because it requires two-thirds or more of the occupiers appearing on the Electoral Register to indicate that they are in favour of the proposal to erect a second language street sign and /or because it deems those who do not reply to the proposal as not being in favour of it and/ or set the level of expressions of approval at the same threshold as that formally required to change the street name**.** **("Ground 2")**
2.4	The terms of the policy are inconsistent with the terms of Article 11 of the 1995 Order, insofar as Article 11 requires the respondent to have regard to the views expressed by the occupier, whereas the policy allows those who do not respond to be considered to have expressed opposition to it. ("**Ground 3")**
2.5	The policy is inconsistent with the council's commitment to act in accordance with it's obligations under the European Charter for regional or minority languages, and in particular the Charter obligation under 10(2)(g) to the use of adoption of traditional and correct forms of place-names in regional or minority languages. **("Ground 4")**
2.6	The policy was ultra vires as it was an attempt to re-enact the substantive terms of (the repealed) Section 21 of the Public Health Amendment Act 1907, where no such legislative power exists. **("Ground 5")**
2.7	The decision of Mr Horner was delivered on 4th December 2014. In his judgement he found that the decision making process was lawful and that the applicant's challenge failed on each of the five grounds as advanced. In particular he found that as a general proposition, international treaties or agreements which have not been incorporated into national laws are not enforceable. He further found that a public authority cannot be obliged to treat itself as bound to act in compliance with an international obligation. Even where it does so, the courts will adopt a very light touch review which will not extend to ruling on the meaning or effect of the International Treaty.

3	**Resource Implications**
3.1	Financial An order for costs was made in favour of the Council. However, the Applicant was legally aided and therefore the order cannot be enforced without further leave of the court.
3.2	Human Resources There was substantial preparation and input to the hearing from our Legal Services Section and the Town Solicitor.
3.3	Assets and Other Implications None

4	**Equality Implications**
4.1	There are no equality or good relations issues.

5	**Recommendations**
5.1	To note the result of the Judicial Review decision delivered by Mr Justice Horner on 4th December 2014 at Belfast High Court.

6	Decision Tracking
None.	

7	Attachments
Decision of Judicial Review	

Neutral Citation No. [2014] NIQB 129 | *Ref:* **HOR9455**

Judgment: approved by the Court for handing down | *Delivered:* **04/12/2014**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY EILEEN REID FOR JUDICIAL REVIEW

IN THE MATTER OF A DECISION OF BELFAST CITY COUNCIL

HORNER J

A. Introduction

[1] This is a challenge by Eileen Reid ("the Applicant") who lives at 13 Ballymurphy Drive, Belfast, to the decision of Belfast City Council ("the Council") to refuse to erect an additional street name plate in Irish at Ballymurphy Drive, Belfast. The application for such a street name plate had the support of 52 out of the 92 members living in the street who were eligible to vote. She claims that the decision to refuse to erect a street name plate is unlawful, as is the policy underlying it. As this is a judicial review, it is important to emphasise that the court is not concerned with the merits of whether there should be a dual street name plate at Ballymurphy Drive but rather on whether the process that ultimately determined that no additional street name should be erected, was lawful.

B. Background to the policy on dual language street names

[2] Article 11(1) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995 states:

> "A council may erect at or near each end, corner or entrance of any street in its district a name plate showing the name of the street; and a name plate erected under this paragraph –
>
> (a) shall express the name of the street in English; and
>
> (b) may express the name in any other language."

[3] Street names and dual name plates have been a source of discord in Northern Ireland over the years leading to community tensions. They have also been a contentious issue at local government as the minutes of the meetings of the council and its various committees testify. On 12 June 1995 the attention of the Health and Environmental Services Committee ("HES") of the council was drawn to Article 11 of the 1995 Order which had just come in to effect. At that meeting on 12 June the HES requested a draft policy be produced to deal with the erection of street name plates in a language other than English and that this should be presented to the HES after consultation with all the other party groups of the council. By 11 December 1995 a policy had been agreed but there were issues as to the resources required to make it work. It was estimated that the basic cost of providing second language street signs over a 5 year period would be in the region of £200,000. To that sum had to be added the cost of providing additional staff and the resources to establish administrative systems and procedures. It was considered that this would require expenditure of approximately £30,000 per year over a 5 year period. Implementation of the policy was deferred pending consultation on the funding issues with the Department of the Environment. The views of the Director of Legal Services were sought by the Director of Health and Environmental Services with regard to the feasibility of the council charging for the erection of dual language street signs.

[4] On 10 August 1998 HES reached a decision that the council should implement the draft policy for the erection of dual language street signs. At the full meeting of the council on 1 September 1998 the council ratified HES's decision and the policy came into effect. This was an open policy and one in respect of which councillors would have been aware. Any ratepayer on inquiry could have found out about it.

[5] The policy noted that Article 11 of the 1995 Order gave councils the discretionary power to erect dual language street signs or secondary name street plates in languages other than English. It records at paragraph 2:

> "These policy proposals were developed in close consultation with the Director of Legal Services and are designed to promote consistent and reasonable responses. However, the policy should not be applied in such a way as to prevent due consideration being given to the particular circumstances of each application. Having regard to the significant resource consequences of administering the implications of the policy, the policy should be reactive in nature."

[6] The process can be summarised thus:

(i) Only applications supported by a petition representing not less than one third of the people appearing on the electoral register of the street will be progressed.

(ii) Where that requirement has been met the council will canvass those persons appearing on the Electoral Register of that street and seek their views on their request to erect a street sign in a second specified language. They will be each given a pre-paid envelope to be returned within one month of receipt.

(iii) Where two-thirds or more of the occupiers appearing on the Electoral Register have indicated that they are in favour of the erection of a second language street sign, then such a sign will be erected. People not returning a reply will be deemed not to be in favour of the application.

(iv) The council retains an <u>overriding</u> discretion to take the particular circumstances of each application into account in deciding whether there should be a street name plate erected regardless of the numbers voting in favour of the application.

[7] On 2 March 2000 the UK Government signed the Council of Europe Charter for Regional or Minority languages and ratified it in March 2001. The Charter was to come into force on 2 July 2001. The Policy and Resources Committee ("PRC") of the council considered the Charter and asked for a detailed report. This was prepared by the Assistant Chief Executive. At a meeting of 13 December

2002 various recommendations for compliance with the Charter were put forward. It is specifically recorded at paragraph 27 in respect of place names in Irish:

> "This issue is not expected to provide any difficulty for the Council, since it already has a policy of providing dual language street names in Belfast, if requested by two-thirds of the residents of the street."

This was then ratified by the full council on 6 January 2003. On 21 February 2003 the PRC considered the report of the Director of Legal Services which recorded that it had the force of international law but that "there is no specific domestic national legislation to compel District Councils to abide by the guidance coming from Government". On 3 March 2003 the PRC minutes were ratified at the meeting of the council.

[8] The policy was then reviewed following a request by the PRC. It was reaffirmed by the HES Committee on 16 June 2007 and at a meeting of the full council on 1 May 2007 it was agreed that it should be taken back to the HES for further consideration.

[9] On 11 June 2007, after further consideration by the HES of the policy, a one year pilot scheme was introduced whereby applications for additional street name plates no longer required petitions with one-third support before progressing to a full survey. There was also discussion of the two-thirds approach. On 2 June 2007 the council approved the decision instituting the pilot scheme. On 3 September 2008 HES reviewed the policy again and agreed to end the pilot scheme. On 1 October 2008 the full council sent the policy back for further consideration. On 8 October 2008 HES reaffirmed the decision of 3 September 2008 requiring submission of a petition. On 3 November 2008 this decision was approved by the full council.

[10] On 5 December 2011 HES was asked to consider whether the policy should be amended so as to require two-thirds only of those who had returned a survey form. On 8 February 2012 HES considered the range of options, discussed the matters and reaffirmed the policy after a number of votes. On 1 March 2012 the full council ratified the HES minutes following a contested vote.

[11] The Policy has thus been the subject of considerable democratic scrutiny by the council and its committees over an extended period of time. It is clear that it has been the subject of considerable debate and dispute. But ultimately the policy in general, and the two-thirds majority of issued surveys rule in particular, has prevailed.

[12] The policy seems to have worked well. From 1998 until the end of 2013, 180 applications have been made to the council to erect a street name plate in a second language. 144 of those applications have been approved. 34 applications were not progressed as there were insufficient responses to the council's surveys. From 2009 until the end of 2013, all the applications which were submitted have been approved, save for two applications, both of which had an insufficient response to the council's survey. In the two years preceding the present application, that is 2011 and 2012, there was a 100% success rate in respect of applications received.

[13] Of the 25 councils in Northern Ireland, 14 councils have a dual language policy. For the 14 who have a dual language policy, three use a straight majority of surveys returned, four use a two-thirds majority of surveys returned, two use a two-thirds of issued surveys rule and the other five are not known. The other two councils with the two-thirds of issued surveys rule are Castlereagh and Strabane councils.

C. Background to the Application

[14] On 23 May 2013 an application was received for dual language street signs for Ballymurphy Drive, Belfast, from Glór na Móna, 195 Whiterock Road, Belfast. This is an Irish language group, one of whose aims is to promote the Irish language. The application included a petition that met the one-third requirement. Accordingly, under its policy the council had to carry out its own survey. A survey was sent to all those people who appeared on the Electoral Register for Ballymurphy Drive. Ninety-two surveys in total were issued with a deadline of 13 July 2013 for the return of the surveys. The

letter accompanying the survey stated that following the questionnaire, based on the returns, Mr Martin, Head of Service, may make a recommendation to the council. It also indicated that as there were 92 people eligible to complete the survey the appropriate minimum for recommending approval was not less than 62 replies. Enclosed with the letter was a pre-paid envelope. The questionnaire contained 3 statements in respect of which the party surveyed was asked to tick their preferred answer. They were as follows:

(a) I wish to have a second street name plate erected at Ballymurphy Drive, the second one being an Irish translation.

(b) I do not wish to have a second street name plate erected at Ballymurphy Drive, the second one being an Irish translation.

(c) I have no preference either way. (As the policy states two-thirds of those surveyed must approve the request before recommendation is made, this answer is taken that you are happy with the current position regarding the sign.)

[15] The deadline was extended because it included a public holiday during the response period to the end of August 2013. There were 52 "Yes" responses received in total. There were 21 responses received on 17 June 2013, 25 responses on 4 July 2013, 11 responses on 10 July 2013. The remaining "yes" responses were received as follows, one response on 19 June 2013 and two responses on 20 June 2013. There seems to have been some organised campaign to obtain responses given that the vast majority of responses were received in three batches on three particular dates. These surveys are not confidential.

[16] On 5 November 2013 Mr Flanigan, Solicitor, wrote on behalf of the applicant asking the council to confirm that the application in respect of Ballymurphy Drive had been granted. The response from the Health and Environmental Services Department was from Mr Martin, Head of Service. He said:

> "I would confirm that the application in respect of Ballymurphy Drive has not been granted due to insufficient responses being returned to the Council …
> In the case of Ballymurphy Drive 92 people were eligible for completing (sic) the survey and the appropriate minimum recommending approval is not less than 62 replies in favour of the dual language street sign. To date Building Control have received 52 replies in favour of the dual language street sign."

[17] In response to requests as to how many were against the dual language street sign the council replied on 19 November 2013 that one person had responded on the basis that he was not in favour.

[18] There followed a letter of 26 November 2013 from Michael Flannigan, Solicitor, complaining that the policy was Wednesbury unreasonable and ultra vires, as it was not consistent with the relevant statutory duty, it was not consistent with the council's position that it would act in accordance with its obligations under the European Charter for Regional or Minority languages and that it was an unlawful fetter on the council's discretion.

[19] On 15 January 2014 Mr John Walsh, Town Solicitor for the council replied dealing with the complaints that have been made and concluding as follows:

> "The policy requirement for two-thirds of residents to respond favourably is not unreasonable and properly falls within the exercise of the council's discretion as to the circumstances in which it will erect a second name plate."

[20] He denied the policy was unlawful and said that the council had taken legal advice. The solicitors responded by issuing proceedings on behalf of the applicant and seeking leave to apply for judicial review.

D. The Grounds of Challenge

[21] There were five grounds of challenge put forward at the hearing. They were:

(a) The refusal of the council to consider the proposal to erect an Irish language street name plate at Ballymurphy Drive was ultra vires, unlawful and of no effect because the respondent fettered its discretion in applying the policy in such a way as to prevent due consideration being given to the particular circumstances of this application. ("Ground 1")

(b) The council's dual language street sign policy is ultra vires, unlawful and of no effect because it requires two-thirds or more of the occupiers appearing on the Electoral Register to indicate that they are in favour of the proposal to erect a second language street sign before the respondent will consider the proposal and/or because it deems those who do not reply to the proposal as not being in favour of it because it is Wednesbury unreasonable to:

(i) deem those that do not respond to the proposal as being opposed to it, and/or

(ii) set the level of expressions of approval at the same threshold as that formally required to change the street name. ("Ground 2")

(c) The impugned terms of the policy are inconsistent with the terms of Article 11 of the 1995 Order, insofar as Article 11 requires the respondent to have regard to the views **expressed by the occupiers**, whereas the impugned terms of the policy allow those who do not respond to the proposal to be considered to have expressed opposition to it. ("Ground 3")

(d) The impugned terms of the policy are inconsistent with the council's commitment to act in accordance with its obligations under the European Charter for Regional or Minority Languages, and in particular the Charter obligation under 10(2)(g) to the **use of adoption of traditional and correct forms of place-names in regional or minority languages**, which Charter should be used to interpret the statutory discretion available to the respondent under Article 11 of the 1995 Order. ("Ground 4")

(e) The policy is treated by the respondent as if it were of legislative force and expressed in mandatory terms, and as such amounts to an improper attempt by the respondent to exercise legislative powers where none exist. In particular, the impugned terms of the policy are ultra vires as an attempt to re-enact the substantive terms of (the repealed) Section 21 of the Public Health Amendment Act 1907, where no such legislative power exists. ("Ground 5")

As can be seen there is an overlap with some of these different arguments.

[22] At this stage I should record my thanks to both counsel who presented their respective cases both clearly and comprehensively. I have taken into account all the points which they have made in their detailed and nuanced skeleton arguments and oral submissions. The interests of brevity forbid me from rehearsing all of the arguments in full.

E. Statutory Background

[23] The relevant provision is Article 11(4) of the 1995 Order. It describes the discretionary power the council has to erect a second name plate:

> "In deciding whether and, if so, how to exercise its powers under paragraph (1)(b) or (2) in relation to any street, a council should have regard to any views in the matter expressed by the occupiers of premises in that street …"

[24] It is noteworthy that the requirement under the relevant provision is that the council "shall have regard to any views on the matter expressed by the occupier of premises …".

[25] Article 11(1) clearly gives the council a discretion whether or not to erect a second name plate. How that discretion is to be exercised is set out in 11(4). The words used and their context do not suggest that the council is only to have exclusive regard to the views expressed by the occupiers. In Sandford Ltd v New Zealand Recreational Fishing Council Inc [2008] NZCA 160 (this decision was subsequently upheld by the Supreme Court) the Court of Appeal found that a requirement to "have regard to" a matter requires the decision-maker "to give the matter genuine attention and thought but it remains open to the decision-maker to conclude that the matter is not of sufficient significance to outweigh other contrary considerations". The expression "to have regard to" is weaker than "to have particular regard to" and it is certainly much less constraining than "take into account" and "give effect to". So under this provision the council has a discretion. It must give genuine attention and thought to the expressed views of the occupiers, but it is still entitled to take into account other lawful considerations affecting its decision. I consider that this is the lawful way for the council to approach the discretion vested in it pursuant to Article 11(1).

F. Discussion

Ground 1

[26] The applicant says that the council fettered its discretion by requiring two-thirds of the Electoral Register at Ballymurphy Drive to approve the addition of a second street name in Irish. The council responds by stating that its discretion is not fettered. It could take into account other matters, but the applicant, for whatever reason, chose not to bring these matters to the attention of the council.

[27] There can be no doubt that the applicant and/or her solicitor and/or the local councillor for the area did not offer any reasons to try and persuade the Head of Service, HES or the council, despite not achieving 62 votes in favour of the proposal that there should be a second street sign in Irish erected at Ballymurphy Drive. However, subsequently the applicant has offered reasons which include:

(i) The proportion of the people in the lower Falls area with an interest in Irish is approximately 20%.

(ii) This street is within the Gaeltacht Quarter which is built on the traditional strengths of the Irish language and culture.

[28] The policy expressly states at Section 2 as follows:

> "These policy proposals were developed in close consultation with the Director of Legal Services and are designed to promote consistent and reasonable responses. However, the policy should not be applied in such a way as to prevent due consideration being given to the particular circumstances of each application. Having regard to the significant resource consequences of administering the implications of the policy, the policy should be reactive in nature."

The policy then goes on to state at (iii) of Section 3:

> "Where two-thirds or more of the occupiers appearing on the Electoral Register have indicated they are in favour of the erection of a second language street sign, then such a sign will be erected. People not returning a reply will be deemed not to be in favour of the application."

[29] The following points are of significance:

(i) The applicant complains that the application was not considered by the HES (or the full council) but was in fact dealt with by a council officer(s) and he operated as if he was in a self-imposed straitjacket.

(ii) The policy in relation to dual street signs was public, well-known and has been in operation for a number of years. It has been taken advantage of successfully by the occupiers of many streets in the Belfast area.

(iii) Mr Martin, Head of Services, "found no circumstances which warranted" it being put before the committee. Mr Martin, on the evidence adduced before this court, was legally entitled to reach such a conclusion.

(iv) The committee could decide that despite not reaching the two-thirds threshold that it wished to consider the matter in response to prompting by local residents and/or their solicitor and/or their local councillor or other councillors.

(v) The solicitor for the applicant was free to write in and make any submissions he wanted on the applicant's behalf. He chose not to do so. No satisfactory explanation has been given for this omission. Councillors have the right to sit in on any committee meeting. A councillor is able to write and make representations to any officer or member of any committee. The local councillor for Ballymurphy Drive could have made submissions on behalf of the application for a dual language street sign but chose not to do so. No explanation has been given as to why the council was not asked to exercise its residual discretion and permit a second street sign in Irish to be erected.

[30] An attack was also made on such a decision being taken by Mr Martin. However, Section 47A(1) of the Local Government Act (Northern Ireland) 1972 states:

> "The council may arrange for the discharge of any of its functions, except the power of making a rate, or of borrowing money or of acquiring, holding or disposing of land by an officer with the council and any transferred provision regulating the exercise of a function by a council shall also apply to regulate the exercise of that function by an officer of the council."

In the circumstances and in the light of the evidence there is nothing objectionable in the role which was carried out by Mr Martin.

[31] The court concludes that there is no force whatsoever in the complaint that the council unlawfully fettered its discretion. The court does find that there is considerable force in the submission that the applicant and her advisors by their actions, or more properly, their inaction, precluded the council from exercising its discretion. They failed to put before it any of the grounds which might have persuaded the council to grant a second street name being erected at Ballymurphy Drive despite the failure to achieve the number required under the policy of 62 returned surveys.

Ground 2

[32] The policy of a two-thirds majority of those eligible is not Wednesbury unreasonable for a number of different reasons.

(i) The policy of providing an additional street name in another language can be socially and politically divisive. The level of discord can be gauged from the debates within the council. Unfortunately, in Northern Ireland's deeply divided society many on each side of the political and cultural divide, rightly or wrongly, see the other's language, whether it be Irish or Ulster Scots, as associating that community with a particular political view point. In those circumstances it cannot be unreasonable to require clear and convincing evidence on the part of those who occupy the street that they want an additional street name plate in another language, apart from English.

(ii) The amount of effort required to return a stamped addressed envelope, especially against a background where there does appear to have been a campaign to obtain the necessary

approvals provides a good gauge to judge the groundswell of enthusiasm in favour of a second name plate.

(iii) The present rule allows the council to avoid a situation where the residents' preferred option could alter from time to time depending on movement of people within the street. There are obvious costs implications in providing or removing street furniture. The OFMDFM document ("A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland" (March 2005)) emphasises a need for authorities to take positive action to ensure that shared and neutral spaces remain shared and used by all sections of the community. As the council points out this supports a policy which requires a high level of demonstrated community desire for a dual name plate which, realistically, "might well be viewed as identifying a street clearly with one community and be construed as exclusive of other communities". This is especially so given that the surveys are not confidential. Those not wanting a dual street name need not nail their colours to the mast.

(iv) Finally, this is a view shared by two other councils who have adopted the same policy. They will have considered the issue and adopted the same policy of a two-thirds majority of those appearing on the electoral register. There is no suggestion that the councillors of Castlereagh and Strabane councils acted perversely.

In the circumstances the applicant has not begun to meet the high threshold necessary to prove "Wednesbury unreasonableness" on the part of the council.

Ground 3

[33] The applicant claims that the council is required to have regard to the views "expressed by the occupiers". Those who did not return the survey did not express a view and therefore should not have been taken into account. However, this argument is fundamentally flawed. No one who received the survey could fail to misunderstand the position and the consequences of not voting. It was crystal clear to everyone that in order for there to be a dual street sign, a two-thirds majority of those written to in Ballymurphy Drive must reply in favour of the proposal. Those who did not return their surveys can have been in no doubt as to the consequences of their inaction.

[34] In any event, as the court has already made clear in its interpretation of Article 11, the council is only required to "have regard to" views expressed and it retains an overall discretion. For the reasons set out elsewhere in the judgment, such a policy is not unlawful. The council is not bound to follow the majority of the views expressed by those who returned the survey or by a majority of those to whom the survey was sent.

Ground 4

[35] The applicant complains that the council has publicly committed itself to act in accordance with the European Charter for Regional or Minority Languages ("The Charter") and in particular Article 10 of the Charter. The central and key provision upon which it relies is Article 10(2)(g) which states:

> "In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is as such to justify the measures specified below, the Parties undertake to allow and/or encourage:
>
> (g) the use or adoption, if necessary, in conjunction with the name in the official language(s) of traditional and correct forms of place-names in regional or minority languages."

[36] The applicant makes the case that the levels of Irish language use and interest in the locality are high. Further, that the two-thirds issued surveys rule in favour of a dual street name in Irish is inimical to the council's obligation under the treaty.

As a general proposition international treaties or agreements which, as here, have not been incorporated into the national laws are not enforceable: see R v Secretary of State for the Home Department ex parte Brind [1991] 1 AC 696 at 761-2.

[37] In Re MacGiolla Cathain's Application for Judicial Review [2009] NIQB 66 Treacy J said at paragraphs [31]-[33] of his judgment:

> "[31] In respect of the first ground of challenge grounded in the alleged breach of Article 7(2) of the Charter the respondent submitted that its provisions operate only on the plane of international law and create no rights or obligations in domestic law.
>
> [32] The distinction between international law and domestic law has long been accepted by the courts in the United Kingdom. Where it is intended to give domestic legal effect to obligations arising from international treaties the method of achieving this is by incorporating the relevant treaty into domestic law as for example was done by the Human Rights Act 1998 in relation to the principal provisions of the European Convention on Human Rights. This has not however been done in relation to the Charter.
>
> [33] This well established legal position reflects the constitutional principle that in the UK the Executive does not have law making powers unless these are conferred upon it by Parliament. The ratification of an international treaty such as the Charter is an Executive action effected under prerogative power and involves no delegation of legislative power by the legislature. Moreover, unlike legislation, such an exercise does not require the assent of Parliament. The Crown cannot change unambiguous law by the exercise of prerogative powers. In this respect see the case of Proclamations (1611) 12 Co Rep 74 where at 75 it is stated that:
>
> > "The King by his proclamation or other ways cannot change any part of the common law, statute law, or customs of the realm."
>
> If the ratification of an international treaty had the effect of altering domestic law then the Executive would be able to supplant the legislature by making legislation without any form of Parliamentary consent or approval by the backdoor. This would clearly emasculate the constitutional principle that in the UK the Executive does not enjoy law making powers unless these are bestowed upon it by Parliament. See the House of Lords decisions in Rayner v DTI [1990] 2 AC 4 118 at 499-50, Brind [1991] 1 AC 696 at 747-748 and 762B-D and R v Lyons [2003] 1 AC 976 at [13] and [27]."

[38] Treacy J also rejected further arguments about the applicability of the Charter based on:

(a) The legitimate expectation it was claimed was created by the Executive action of ratifying the Charter. He rejected this as an impermissible attempt to bypass the constitutional principle referred to above.

(b) The Treaty should be used as an aid to statutory interpretation. However, in that case (as here) the wording was clear and unambiguous and its use was otiose.

[39] A public authority such as the respondent cannot be obliged to treat itself as bound to act in compliance with international obligation. Even where it does so it is clear from the authorities that the courts will adopt a very light touch review which will not extend to ruling on the

meaning or effect of the International Treaty. This was considered by Weatherup J in McCallion's Application (No: 4) 2009 NIQB 45 at paragraphs [20]-[21] where he said:

> "[20] A domestic decision maker may purport to make his decision in accordance the terms of an unincorporated international treaty. Or he may merely take into account the terms of the treaty in making his decision. Or he may declare that, having taken account of the terms of the treaty, the decision that he has made is in accordance with the treaty. Or he may declare that he will make his decision without regard to the terms of the treaty. In the present case the decision maker concluded that a decision adverse to the applicant would not involve a breach of the Convention. Further, in the present case, the decision maker did not purport to exercise his discretion in accordance with the Convention provision but rather, in reaching his decision, he took into account the Convention and his conclusion that a finding adverse to the applicant would not involve a breach of the Convention.
>
> [21] The effect of Charter House Research is that in general the Court will not seek to interpret the terms of an unincorporated treaty nor will the Court adjudicate upon the correctness in law of a decision maker's conclusion on the meaning of the treaty. The Court may do so where there is no issue about the interpretation of the Convention and the Court is considering whether the interpretation is compatible with the terms of the treaty. The Court may do so where there is settled Convention jurisprudence which provides a particular interpretation. The Court will hesitate to do so where the treaty provides a forum for the resolution of a dispute as to interpretation."

In the present circumstances the court does not consider that the Charter adds anything valuable to the construction to be given to Article 11.

[40] Further, there is no evidence before the court that the number of users of Irish is such as to justify the measures sought. Of course there is evidence of interest. Certainly in the last census approximately 1 in 5 claimed to have "some knowledge of Irish". It is a fairly anodyne expression. Many people who could claim to have some knowledge of Irish could not be described as users.

[41] More importantly Baile Uí Mhurchú is the traditional name for the Ballymurphy Townland. However, Ballymurphy Drive never had an original Irish name. The street since its original creation has always been known as Ballymurphy Drive.

For all these reasons the application grounded on an alleged breach of council's obligations under the Charter, whether self-imposed or not, fails.

Ground 5

[42] The complaint here is that the policy for the erection of an additional street name in another language is the same as existed under Section 21 of the Public Health Amendment Act 1907 (now repealed) for the change of a street name. However, this argument carries no weight.

(i) There is no evidence of the provision of the 1907 Act playing any part in the deliberations of the council: see the affidavit of Mr Martin, and in particular paragraph 38.

(ii) If it was taken into account, there is nothing unlawful about the council looking at other related legislation in making a decision in this controversial area, especially if there was evidence that the operation of such provision had worked well in the past.

(iii) In any event, and conclusively, once it is accepted that the council retains discretion to erect a dual name plate without the two-thirds response generally required by the policy, the grounds for such a complaint disappear.

G. Conclusion

[43] For the reasons which are set out in this judgment, the applicant's claim for judicial review fails on all the grounds that have been advanced. I will hear the parties on the issue of costs.

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Belfast City Council

Report to:	Health and Environmental Services Committee
Subject:	**Proposal for Dual Language Street Signs**
Date:	7th January, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

1	**Relevant Background Information**
1.1	The power for the Council to consider applications to erect a second street nameplate in a language other than English is contained in Article 11 of the Local Government (Miscellaneous Provisions) (NI) Order 1995.
1.2	An application has been received to erect a second street nameplate at Glenshane Gardens, showing the name of the street expressed in a language other than English. The second language is Irish.
1.3	The translation was authenticated by Queens University, the approved translator for Belfast City Council.
1.4	In accordance with the Council's policy for the erection of dual language street signs surveys of all persons appearing on the Electoral Register for the above street were carried out and the following responses were received. **Glenshane Gardens, BT11**
1.5	34 people (81%) are in favour of the erection of a second street nameplate 2 people (5%) have no preference either way 6 people (14%) did not respond to the survey
1.6	The Council's policy on the erection of a second street nameplate requires that at least two thirds (66.6%) of the people surveyed must be in favour of the proposal to erect a second street sign in a language other than English.

2	Key Issues
2.1	To consider the following applications for dual language street signs for existing street names within the City.

English Name	Non-English Name	Location	Applicant	Persons Surveyed
Glenshane Gardens	Garraithe Ghleann Sheáin	Off Slieveban Drive, BT11	Ms Rosie McCorley	42

3	Resource Implications
3.1	Financial There is a cost of approximately £200 covering the cost of the manufacturing and erection of the dual language street signs. The cost for these street signs has been allowed for in the current budget.
3.2	Human Resources None
3.3	Assets and Other Implications None

4	Equality Implications
4.1	There are no equality or good relations issues.

5	Recommendations
5.1	As at least two thirds of the total numbers of persons surveyed in the streets are in favour of the proposal to erect a second street nameplate in Irish at the above location the Committee is recommended to approve the application.

6	Decision Tracking

If the decision is to refuse the application, then a letter will be sent to the applicant within 5 days of the Council decision, advising them of the decision.

If the decision is to grant the application, then the applicant and all relevant organisations are advised within 14 days of the Council decision. Building Control will arrange for the dual language sign to be erected within 8 weeks.

The person responsible for the actions above is Trevor Martin, Head of Building Control.

Belfast City Council

Report to:	Health and Environmental Services Committee
Subject:	**Extension of Cleansing Services Litter Bin Tender**
Date:	7 January 2015
Reporting Officer:	Sam Skimin, Head of Cleansing Services
Contact Officer:	Sam Skimin, Head of Cleansing Services, ext 5273

1	**Relevant Background Information**
1.1	At a meeting of the Health & Environmental Services Committee on 2 February 2011 Members approved the tendering exercise for the supply and installation of litter bins.

2	**Key Issues**
2.1	The tender to supply free standing litter bins was awarded to Larkins Engineering Enterprises and the tender to supply post mounted litter bins was awarded to Unicorn Containers Ltd. The tender covered both types of litter bins and was awarded to both companies from 1 September 2011 for one year with the option to renew annually for a further two years. The tender period was due to end on 31 August 2014.
2.2	Given the current programme of tenders, the priority regarding vehicle tenders and limited officer time, due to LGR commitments, there was no capacity to get a tender issued this year. Following discussions with the Council's Central Procurement Unit and Legal Services, the tender was extended for a further year. As such, retrospective permission is sought from Committee to extend the tender for an additional year to August 2015, until a new tender can be put in place. This will also allow time to assess our future litter bin needs, in relation to the expanded Council boundary.

3	**Resource Implications**
3.1	The budget for this tender is £50,000 per year and the appropriate allowance has been made in the relevant annual revenue estimates, however as this is a call off contract, the actual amount may be less.

4	**Equality and Good Relations Considerations**
4.1	There are no equality or good relations implications in this report.

5	Recommendations
5.1	The Committee is asked to: ▪ provide retrospective permission for the extension of the current litter bin tender up to 31 August 2015; ▪ approve the commencement of a new tendering exercise in early 2015 for the future supply and installation of litter bins; ▪ give approval for the relevant Director to exercise their authority, under the Scheme of Delegation, to award the contract to the most economically advantageous tender, in line with the evaluation criteria, which will be based on both quality and cost.

6	Decision Tracking
N/A	

8	Documents Attached
Appendix 1 - H& E Services Committee Meeting minutes February 2011	

Appendix 1

Health and Environmental Services Committee,
Wednesday, 2nd February, 2011

TenderfortheSupplyandInstallationofLitterBins

The Head of Cleansing Services sought and was granted authority to initiate a tendering exercise for the supply and installation of litter bins for a two-year period, with the option to renew for a further year thereafter, subject to satisfactory performance. An amount of £50,000 had been allocated within the 2011/2012 budget for the provision of that service, however, the actual level of expenditure would depend upon operational need.

The Committee noted that the tenders would be evaluated against criteria based on both cost and quality and that, in accordance with the authority delegated to her,

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