

Licensing Committee

Wednesday, 20th May, 2015

MEETING OF LICENSING COMMITTEE

- Members present: Councillor Hussey (Chairperson);
the Deputy Lord Mayor (Alderman Spence);
Councillors Attwood, Bell, Brown,
Campbell, Carroll, Clarke, Craig, Dudgeon,
E. Groves, Hutchinson, Jones, Magennis,
McConville, Mullan and Sandford.
- In attendance: Mrs. S. Toland, Lead Operations Officer/
Head of Environmental Health;
Mr. T. Martin, Head of Building Control;
Mr. P. Cunningham, Assistant Building Control Manager;
Ms. N. Largey, Solicitor;
Mr. J. Hanna, Senior Democratic Services Officer; and
Ms. L. Francey, Democratic Services Officer.

Apologies

An apology was reported on behalf of Alderman L. Patterson.

Minutes

The minutes of the meeting of 15th April were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 5th May, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

No declarations of interest were reported.

Non-Delegated Matters

Revised Protocol for use by the Licensing Committee

The Committee considered the undernoted Protocol for use by the Licensing Committee:

**“PROTOCOL FOR DECISION MAKING
BY THE LICENSING COMMITTEE**

Introduction

1. The following protocol has been developed for use by the Licensing Committee ('the Committee'). It should be read alongside relevant provisions of the Council's Standing Orders and the Code of Conduct for Councillors and is not intended to replace either document. The key aims of the protocol are to ensure that:

Those who apply for, or make representation to, applications before the Committee are able to make informed representations and know the case which they have to meet; and

The Committee makes decisions in a soundly based, lawful, and transparent way and in a timely and efficient manner.

2. Meetings of the Committee will be open to the public; however, seating within the Committee chamber will be limited according to venue capacity and associated fire and safety regulations.

3. Seating for applicants, statutory consultees, and objectors ('the parties') to an application will be reserved but only for the time in which their application is being considered.

Representations to Committee

4. Only those who have made written submissions and registered a request to speak in respect of an application shall be permitted to make oral representations before the Committee.

5. Parties to an application will be subject to the following conditions:

i. Deputations shall be heard in the following order:

Statutory consultees or other notice parties;

Objectors and/or their representatives;

Applicant and/or their representatives and/or those supporting the application.

ii. Where more than one application is received in relation to a street trading site, deputations will be heard in alphabetical order according to the surnames of the applicants;

iii. Deputations, unless otherwise agreed in advance by the Committee, shall consist of no more than 3 persons. Where there are more than 3 objectors or groups of objectors they will be

required to arrange a single deputation to express their representations;

iv. The privilege of such deputation shall be confined to the presentation of a statement and the making of a short address either by each member of the deputation or, should they so wish, by their nominated spokesperson or legal adviser;

v. Each deputation shall be permitted, as far as is reasonably practicable, a maximum of 5 minutes to address the Committee. Where more than one person wishes to make representation the 5 minutes should be shared between the members of the deputation;

vi. Speakers will not be permitted to circulate papers to members at the Committee meeting;

vii. All members of a deputation must continue to be seated and remain silent whilst other deputations are making representations to the Committee;

viii. Cross-examination, discussion or any type of debate between persons making representations to Committee shall not be permitted;

ix. Once all deputations have been made, the parties shall be permitted an opportunity to rebut any factual inaccuracies only which may have arisen from the oral representations of another deputation and in respect of which they have not had an opportunity to comment. This will be strictly limited to responding to any such issue and the party will not be permitted to rehearse any representations which have already been made;

x. The Committee may, upon advice from officers, exclude any deputation from being present during the whole or part of the time when any other deputations are being made due to:-
the confidential nature of information relevant to the application to be discussed; or
For such other reasons as may be appropriate;

xi. The Committee may seek clarification from those who have spoken on any issues raised by them but should not enter into a debate with them;

xii. Officers can address any issues raised during the course of representations from any deputation and the Committee can question officers; and

xiii. The Committee may agree to accept representations outside these procedures but will only do so in exceptional circumstances.

Submission of representations to Council

6. Each deputation shall submit a prepared statement in advance of the meeting in a format as required by the Committee.

7. The statement, along with any other supporting information, must be provided in sufficient time which, unless circumstances dictate otherwise, shall be 3 weeks prior to the date of the Committee at which the matter is to be considered and the statement shall be included in the report to Committee.

8. Save for exceptional circumstances, all material supplied to the Committee will be shared with the parties. In particular;

Objectors will receive the material supplied on behalf of the applicant or representatives in support of an application;
Applicants will receive the material supplied on behalf of objectors in opposition to an application; and
All parties to an application shall be supplied with the report and all appendices thereto which is to be presented to Committee apart from any information which is restricted by virtue of the confidentiality provisions in the Council's publication policy.

9. Any relevant information which was not made available for inclusion in the report to Committee in advance of the meeting must be received by the Building Control Service (in writing or by email) no later than 12.00noon two working days prior to the meeting. Any such information may then be verified or investigated and must also be supplied to all the parties to an application in advance of the meeting. Failure to do so may result in either the documentation being disregarded or the hearing being deferred.

10. Any documentation which is provided directly to any members of the Council must also be copied to the Building Control Service so as to ensure that the issues raised can be fully investigated by officers prior to the Committee hearing. Failure to do so may result in either the documentation being disregarded or the hearing being deferred.

11. All Committee papers will be available online. However, access to some documentation may be restricted by virtue of the Council's publication policy. Information which is determined to be exempt by virtue of Schedule 6 of the Local Government (Northern Ireland) Act 2014 may be published where the Council considers that the public interest in disclosing same outweighs the public interest in maintaining the exemption.

Role of Committee Chairman

12. It is the role of the Committee Chairman to chair the proceedings in such a way as to facilitate decisions which are consistent with the Committee's aims and to ensure that licensing decisions are properly debated.

13. The Chairman will ensure that those making representations to the Committee adhere, as far as is practicable, to any time limits fixed for such presentations. These time limits will have been communicated to those making representations in advance of the meeting.

14. The Chairman may at any time during the hearing of deputations, if s/he thinks it necessary to secure order, direct the removal of any individual from the meeting, or order that the meeting be cleared of all deputations.

15. When hearing deputations, the Chairman will only permit questions to be put to persons appearing before the Committee and will require members engaging in debate to desist, until such time as all relevant information has been received.

16. The Chairman may bring the questioning of any person appearing before the Committee to a close provided s/he is satisfied that all relevant issues have been addressed. The Chairman may also prevent duplication of questions being put.

17. In any circumstances in which relevant information has been omitted from the information presented to the Committee, or the information appears to be deficient or appears to require further clarification or investigation, the Committee should consider deferring consideration of the matter to the subsequent monthly meeting of the Committee to allow the relevant information to be brought before it.

18. The Chairman may permit any member of Council who is not a member of the Committee to appear before the Committee and make representations but the member cannot vote or take any other part in the proceedings.

19. If a member of the Committee moves that the question be put to a vote and the Chairman is of the opinion that the application before the Committee has been sufficiently discussed, s/he shall put the motion to the vote.

20. The Chairman shall, if necessary, seek clarification on any proposal put by any member before a motion is put to a vote.

Role of Committee Members

21. The Committee's aim will be to make decisions which are sound, lawful, fair and transparent. In particular, members of the Committee should ensure that they take into account all relevant considerations and leave out of account irrelevant considerations.

22. Members must act fairly and be seen to act fairly. This means that they must have an open mind when considering an application and not pre-determine, or appear to pre-determine, an application before all of the evidence has been heard.

23. In considering any application only those members of Committee that have been present to consider representations from all deputations and any other information presented in relation to that application shall be permitted to vote on the matter.

24. Members of the Committee who have any pecuniary interest or other personal interest in a particular decision of the Committee should declare same and withdraw from the meeting whilst that matter is being considered.

25. Any member of the Committee who feels they cannot remain impartial and wishes to support an applicant or objector at a Committee meeting can do so in their capacity as a local Councillor. If they do so, they can appear before the Committee and make representations but the member cannot vote or take any other part in the proceedings.

26. Only those members sitting on the Committee will be permitted to engage in the questioning of those giving presentations or making representations to the Committee.

27. If legal advice is provided by Legal Services, the Committee must have regard to any such advice before reaching a decision."

The Head of Building Control advised Members that the protocol had been designed to ensure consistency in approach by the Committee and to place the Council in a stronger position to resist any potential legal challenge relating to the transparency of its decision making process. The key aims of the protocol were to ensure that those who applied for, or made representation to, applications before the Committee were able to make informed representations, know the case which they had to meet and that the Committee made decisions in a soundly based, lawful, and transparent way and in a timely and efficient manner. He emphasised that the protocol should be read alongside relevant provisions of the Council's Standing Orders and the Code of Conduct for Councillors and was not intended to replace either document.

The Committee recommended that the revised protocol be adopted by the Council.

Map defining the Boundary for the City Centre

The Head of Building Control reminded the Committee that it had requested that a map defining the boundary of the City Centre be submitted to a future meeting for consideration.

He reported that the Belfast Metropolitan Area Plan (BMAP) had come into operation on the 9th September, 2014 and that by using the same City Centre boundary as defined within BMAP, in order to determine which premises were required to advertise in the four main newspapers, this would ensure that decisions made by the Committee would remain aligned with planning policy and would be consistent with the Council's Amusement Permit policy, which also used the boundary as defined by BMAP.

The Assistant Building Control Manager demonstrated an in-house digital map which had been created to illustrate the number, type and location of Entertainments Licences, Amusement Permits, Outdoor venues, Street Trading pitches and Sex Establishments across the City. He explained that the map would be useful in illustrating to the Committee how many late licences were in operation in certain areas of the city centre, for example, when making decisions in the future.

In response to a Members question, the Head of Building Control agreed to submit a report to a future meeting detailing the number of licensed premises which were previously within the Lisburn or Castlereagh areas and which were now within the Belfast boundary.

The Committee agreed to adopt the City Centre boundary area, as proposed, for the purposes of determining those premises which were required to advertise an application for an Entertainments Licence in one of the four main newspapers.

Charging for Special Policing Services

The Committee considered the undernoted report:

“1.0 Purpose of Report

- 1.1 The Police Service of Northern Ireland (PSNI) wrote to the Council on 27th April to make it aware of a new policy regarding charging for special policing services at events and enterprises. This policy has been agreed with the Policing Board and is effective from 1st April 2015. They have asked that this letter and the relevant Policy are brought to the attention of the Licensing Committee for information.**
- 1.2 The PSNI wish to inform the Committee of this new policy and of the relevance it has with the Committee's role in the licensing of entertainments. The PSNI have stated in the policy that, where there is no request for PSNI services, or there is no agreement with the event organiser on the extent of**

provision and payment for policing services, they may look to make the case to the Committee to object to the event.

2.0 Recommendation

- 2.1** The Committee is asked to consider the letter and policy and whether it wishes to avail of the offer to receive a briefing from the PSNI at a future meeting.

3.0 Main Report

3.1 Key Issues

The PSNI have indicated they have the legal authority to charge for policing services under Section 11 of the Police (Northern Ireland) Act 2000 and that this policy formalises existing arrangements and brings the PSNI into line with other Police Services within the United Kingdom.

- 3.2** In cases where the PSNI cannot get agreement by way of numbers then they will seek to raise the concerns with the Licensing Committee either by objecting to the event or seeking the Council to impose their requirements by way of conditions on the entertainments.

- 3.3** Entertainments Licences are granted to premises on an annual basis, so within their terms and condition they can provide entertainments for the duration of that licence. Whilst the PSNI can object at any time and are not constrained as to the substance of that objection it can only be considered at the grant and/or renewal of the licence.

- 3.4** If the proposed event is due to take place under a current Entertainments Licence, the only basis upon which a proposed event can be stopped is where the Council is satisfied that the event is causing, or likely to cause a serious threat to public order or public safety.

- 3.5** Suspending an Entertainments Licence is a significant Council decision, which has legal and financial implications for the Council. Furthermore, before suspending a Licence, a meeting of the Licensing Committee must be convened and the applicant permitted to address the Committee before it decides whether to suspend the Licence.

- 3.6 Financial & Resource Implications**
None

3.7 Equality or Good Relations Implications

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

During discussion, a number of Members of the Committee expressed concerns at the proposal, particularly given the widespread effect that this would have on a number of Council Departments. Accordingly, the Committee agreed that:

1. Council officers would write to the PSNI on behalf of the Committee detailing the numerous concerns and questions around this issue, asking to meet with PSNI representatives to discuss their concerns; and
2. officers would submit a report to the Committee with any outcomes arising from those discussions; and
3. PSNI representatives would be invited to a future meeting, if it was deemed necessary.

**Review of Entertainments Licensing Legislation
by the Department of the Environment**

The Head of Building Control reminded Members that, on 1st May 2015, the Minister for the Environment, Mark H Durkan MLA, had announced that a consultation on the review of Entertainments Licensing legislation would be undertaken by a Working Group set up by the Minister. The Head of Building Control advised Members that the consultation would run until 26th June, 2015 and that the Committee was being asked to submit a response.

After discussion, the Committee agreed that:

1. officers would draw up a draft response to the consultation questions;
2. Members would email any specific comments to the Head of Building Control for inclusion within the response; and
3. a special meeting of the Licensing Committee, to which all Members of the Council would be invited, would be held to discuss and agree the Council's response before the next Licensing Committee.

Review of Street Trading and Pedlary Laws - Update

The Committee considered the undernoted report:

1.0 Purpose of Report

- 1.1 At your meeting of the 17th December 2014, you considered the report regarding the proposed changes being introduced by the Department for Social Development (DSD) to the Pedlars Acts 1871 and the Street Trading Act (N.I.) 2001.
- 1.2 Officers of the Service reported to you that the Minister had decided to implement the changes and highlighted to you the detrimental and negative impacts that the changes were likely to create for the city.
- 1.3 The Committee, after considering the matter endorsed the comments set out within the report and agreed, in addition to writing to the Minister for Social Development to express its concerns at the proposed changes to the legislation, that the Minister be invited to meet with an All-Party delegation from the Committee and relevant council officers to discuss the matter.
- 1.4 A letter was subsequently sent to the Minister on behalf of the Committee on 13th January 2015 to express your concerns and is attached as Appendix 1.
- 1.5 The Minister responded to your letter and stated that it may be more beneficial, in the first instance, if a meeting was convened at officer level to discuss your concerns. Committee subsequently agreed that officers should meet with Social Development officials to discuss the Council's concerns.

2.0 Recommendations

- 2.1 The Committee is asked to consider the comments arising from the meeting with DSD and to consider writing to the Minister once again raising the Council's concerns on the proposed changes along with any amendments arising from your discussion.

3.0 Main report

3.1 Key Issues

A meeting was held on 24th March 2015 with Mr Liam Quinn, Head of Social Policy, Department for Social Development and a delegation of Council Officers.

- 3.2 There was considerable discussion around the proposed changes including the major issue of removing the 'house to house' restriction regarding pedlars in Northern Ireland.

3.3 In effect, those proposals will allow a pedlar to trade in the city centre, outside entertainment venues and a host of tourist destinations across the city, even if the Council has designated them as prohibited areas. As long as the pedlar isn't pushing or pulling a trolley they can trade from a bag or trade from a tray worn around the neck.

3.4 A brief summary of the discussions are detailed below:

- 1. The DSD propose to introduce the changes in October 2015 in line with the rest of the UK;**
- 2. The PSNI will continue to licence Pedlars and take enforcement for licence offences. However the police have no power to suspend, revoke or seize a pedlar's certificate. Councils will be responsible for enforcement against Pedlars who are engaged in illegal street trading who aren't acting as a pedlar;**
- 3. For consistency across the United Kingdom, the Association of Chief Police Officers will introduce guidance for police. There will be no input from councils;**
- 4. To repeal the Pedlars Act would take between 6 to 12 months and to review the Street Trading Act would take approximately 2 years. Both will require a body of evidence of problems following the introduced changes. Realistically this could mean that it could take much more than 2 years to resolve any problems in the City that may occur following the changes;**
- 5. The Council will seek legal advice on what is a Pedlar and what Pedlars are allowed to do, as there is considerable case law following the introduction of the Pedlar legislation in the 1800s;**
- 6. The Council will also approach the Institute of Licensing to assist in building a body of evidence of problems associated with Pedlars across the United Kingdom.**

3.5 Financial & Resource Implications

None

3.6 Equality or Good Relations Implications

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

After discussion, the Committee agreed that Legal Services would obtain a Senior Counsel’s opinion regarding the proposed changes being introduced by the DSD to the Pedlars Acts 1871 and the Street Trading Act (N.I.) 2001, and, following that, that a further request be sent to the Minister inviting him to meet with an All-Party delegation from the Committee.

THE COMMITTEE DEALT WITH THE FOLLOWING ITEMS IN PURSUANCE OF THE POWERS DELEGATED TO IT BY THE COUNCIL AT ITS MEETING ON 1st MAY, 2007 IN ACCORDANCE WITH STANDING ORDER 46

Licences issued under Delegated Authority

The Committee noted a list of licensing applications which had been granted under the Council’s Scheme of Delegation.

Applications for the Entertainments Licence to run beyond 11.00 p.m. at Falls Park - Feile an Phobail Event

The Head of Building Control advised that a request had been received from the organisers of Féile an Phobail to hold a 10 day music event within a marquee at Falls Park, running from Friday, 31st July to Sunday, 9th August, and which sought permission for the entertainment to run beyond 11.00pm to 12.00am on 8 of the nights. He reminded the Committee that it was a condition of the Falls Park licence that all requests to operate beyond the permitted hours of entertainment must be considered by the Licensing Committee.

The Head of Building Control outlined that the organisers had requested that consideration be given to permit 8 nights of entertainment to run beyond 11.00pm, to 12.00am. The proposed dates for the extension would be Friday 31st July and 1st, 3rd, 4th, 5th, 6th, 7th, and 8th August.

He informed Members that the Police Service of Northern Ireland (PSNI) had been consulted in relation to the event and had offered no objections to the application. The Environmental Protection Unit (EPU) and the Northern Ireland Fire and Rescue Service (NIFRS) had also been consulted in relation to the request for late night entertainment.

The Head of Building Control advised the Committee that, as with all such events, a series of detailed planning meetings would be held to look at traffic management, transport and any wider operational policing issues. He also informed Members that officers from the Service had carried out during performance inspections over previous years at events organised by Féile An Phobail and had always found the

organisers to be professional in their approach and had found no issues with the health, safety or welfare management of the events during that time.

As in previous years, officers were currently working with the organisers and their representatives regarding a suitable noise assessment and noise management plan for the festival. The noise assessment must demonstrate that noise from the event would not cause unreasonable disturbance to commercial and residential premises. Officers would consider all reports and supporting information to ensure that the technical requirements were in accordance with all the relevant legislation and guidance.

Accordingly, the Committee agreed, in its capacity as Licensing Authority, that the eight proposed events, taking place on Friday 31st July and 1st, 3rd, 4th, 5th, 6th, 7th, and 8th August in the Falls Park would be permitted to take place beyond the standard hours to 12.00am.

Applications for the Grant of an Outdoor Entertainments Licence for Crusaders Football, Athletic and Sports Club

The Head of Building Control advised that an application had been received for a 14-day Occasional Outdoor Entertainments Licence for Crusaders Football, Athletic and Sports Club based on the Council's standard conditions to provide outdoor musical entertainment.

The Members were advised that, in accordance with Standing Orders, all applications for the grant of Outdoor Entertainments Licences should be brought before the Committee for its consideration.

The Head of Building Control advised the Members that the purpose of the application was to facilitate a proposed Nathan Carter outdoor concert on 19th June, 2015 on the football grounds. Nathan Carter would be supported by Hugo Duncan and his band, with the concert commencing at 7.45 pm and finishing by 10.30 pm. He reminded the Committee that the standard days and hours for an Outdoor Entertainments Licence were Monday to Sunday: 11.30 am to 11.00 pm.

The Committee were advised that the PSNI had been consulted and had confirmed that they had no objection to the application. They had also attended a pre-event meeting with the applicant regarding the event and would be consulted in advance of any other proposed event at the venue to consider traffic management and wider operational policing issues.

Accordingly, the Committee agreed, in its capacity as Licensing Authority, to grant approval for a 14-day Occasional Outdoor Entertainments Licence to the Crusaders Football, Athletic and Sports Club.

Update on Street Trading Licence Appeal for Berry Street

The Head of Building Control reminded the Committee that, at its meeting on 17th December, 2014, it had considered an application from Mr. Musa Gulusen for the

renewal of a Stationary Street Trading Licence for a designated site in Berry Street, near its junction with Royal Avenue. Subsequently, the Committee had refused the application on the discretionary grounds as set out within Section 9 (1) (c) of the Street Trading Act (Northern Ireland) 2001, in that Mr Gulusen was, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a Street Trading Licence.

He advised that a Notice of Appeal had then been lodged by Mr Gulusen with Belfast Magistrates Court on 23rd January, 2015. The licence therefore remained in force until the determination of the Appeal. The Members were advised also that, after hearing from both parties on 5th May, 2015, the Court had rejected Mr Gulusen's Appeal and that this had meant that Mr Gulusen could no longer trade at the site in Berry Street.

The Committee noted the information which had been provided.

Consideration of applications for Temporary Street Trading Licences

The Head of Building Control advised Members that Section 14 of the Street Trading Act (N.I.) 2001 permitted the Council to issue a Temporary Licence where a full-term licence might not be appropriate, for example, for special events such as festivals or fairs. In recognition of the possibility that applications might need to be processed quickly and, because of the ad-hoc nature for which a Temporary Licence was designed to cater, the legislation permitted the Council a wide degree of discretion.

The Head of Building Control advised the Committee that two Temporary Street Trading Licence applications had been lodged by Mr Daniel Hennessey of Sense Marketing Limited, who was acting on behalf of The Economist magazine. Mr Hennessey proposed to operate one coffee tricycle measuring 2.4m by 1.2m at Castle Place junction outside Barclays Bank on 28th May 2015, from 7.30 am to 3.30 pm, and a second coffee tricycle at Great Victoria Street, near the junction with Glengall Street, at the same time. Mr Hennessey proposed to hand out complimentary coffee and information leaflets to members of the public in order to promote The Economist magazine and then attempt to sell a subscription for the magazine to members of the public. The Head of Building Control advised that Sense Marketing Limited had been informed that they would be required to apply for a permit from Cleansing Services in order to hand out leaflets in these areas, as required under the Distribution of Free Printed Matter (Belfast) Designation Order 2012.

He advised Members that the PSNI had been consulted and that their response was outstanding, while Belfast City Centre Management had expressed concerns regarding the Castle Place location and its proximity to the Coffee Kiosk. Mr Russell Bailie, who holds the Stationary Street Trading Licence for the Coffee Kiosk at Castle Place junction, had been formally consulted and had verbally objected to the Temporary Licence application for 28th May but had not submitted a written objection.

After discussion, the Committee agreed to grant and approve both Temporary Street Trading Licences to Mr Daniel Hennessey, to operate one coffee tricycle measuring 2.4m by 1.2m at Castle Place junction outside Barclays Bank on

28th May 2015, between 7.30 am to 3.30 pm, and a second coffee tricycle at Great Victoria Street, near the junction with Glengall Street, at the same date and time, despite the fact that they fell outside the Council's Policy due to the merits, and limited nature, of the applications.

Chairperson