

Licensing Committee

Wednesday, 16th September, 2015

MEETING OF LICENSING COMMITTEE

Members present: Councillor Hussey (Chairperson);
Alderman L. Patterson;
Councillors Armitage, Attwood, Bell, Brown, Bunting,
Campbell, Carroll, Clarke, Craig, Dudgeon, Groves,
Hutchinson, Jones, Magennis, McConville, Mullan
and Sandford.

In attendance: Mr. T. Martin, Head of Building Control;
Ms. N. Largey, Divisional Solicitor; and
Mr. H. Downey, Democratic Services Officer.

Minutes

The minutes of the meeting of 19th August were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st September, 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

Change of Date of November Meeting

The Committee was reminded that, at its meeting on 17th June, it had authorised the attendance of the Chairperson, the Deputy Chairperson, the Director of Planning and Place and the Head of Building Control (or their nominees) at the Institute of Licensing National Training Event which was being held in Birmingham from 18th to 20th November.

The Head of Building Control explained that the event would coincide with the monthly meeting of the Licensing Committee which was scheduled to take place on 18th November and he suggested that, under the circumstances, it might be beneficial to reschedule that meeting.

Accordingly, the Committee agreed that the meeting be moved to Thursday, 12th November and that it commence at 5.30 p.m.

Police Service of Northern Ireland Policy on Charging for Police Services

The Committee considered the following report:

“1.0 Purpose of Report or Summary of Main Issues

1.1 Members will recall, from your meeting on 20th May, that the PSNI has implemented a new policy, with effective from 1st April 2015, which enables it to charge for what are referred to legally as ‘special policing services’ and are primarily requests to provide police at events on private land.

1.2 At that meeting, Members expressed concerns at the proposal particularly given that, as part of the process, the PSNI may engage the Licensing Committee in making representations in relation to individuals Entertainments Licences and the potential impact it could have on a number of Council Departments which organise events. It was agreed that Council Officers would write to and meet with the PSNI to discuss these concerns. The purpose of this report is to inform Members that Council officers met with Superintendent Nigel Goddard on 2nd September and to update them on the outcomes of that meeting.

2.0 Recommendation

2.1 The Committee is requested to consider the feedback received from Superintendent Goddard and agree:

- that this adequately addresses previous concerns of Members, or**
- that Superintendent Goddard be invited to attend a future meeting of the Committee to discuss the policy and clarify any points that may still be of concern.**

3.0 Main report

Key Issues

3.1 The legal basis for the charging policy is set out in Section 11 of the Police (Northern Ireland) Act 2000 which states that the Chief Constable may, at the request of any person, provide special police services subject to the payment to the Board of such charges, or charges on such scales, as may be determined by the Board.

3.2 The policy, at Section 4, sets out five categories of events to which it may apply:

- (a)** Commercial events and/or enterprises;
- (b)** Non-commercial events and/or enterprises;
- (c)** Sporting events (both commercial and non-commercial);
- (d)** Northern Ireland Executive sponsored events/ enterprises;
- (e)** Statutory events reflecting constitutional rights or processes.

3.3 The level of recoupment for each category of event is also set out in the policy.

3.4 Through our discussions, Superintendent Goddard has advised that:

- As a result of a number of media enquiries about the cost of policing at events, the Chief Constable asked that a policy be developed to ensure there is a consistent approach to cost recovery by police across N. Ireland;
- The PSNI has implemented the policy to facilitate a transparent, open and visible approach to charging for both providers and receivers of special police services;
- Whilst there was previously no charging policy in place, the PSNI has been working to the ACPO guide on charging for police services since it was introduced in 1985 and this policy codifies that approach;
- Consultation on the formulation of the policy took place across the PSNI and with the Policing Board;
- The policy was screened out after an equality impact assessment by the PSNI;
- Current case law (Leeds Utd. F.C. v West Yorkshire Police) has established that it is not possible to charge for policing services at statutory events which reflect constitutional rights or processes such as parades and legal protests;

- The case law also established that it is only possible to charge for events which take place on privately owned land and within the event boundary. Whilst this could apply to events in Council Parks, it is not envisaged that special policing services will be required for the vast majority of these events. For those that may, as was the case with Tennents Vital recently, any such costs will be borne by the promoter of the event;
- Any event taking place in the public realm is part of normal policing responsibilities and as such would incur no charge, e.g. Christmas Lights switch on, Belfast Marathon;
- The type of events which the Police Service will seek to charge for are small in number and restricted only to those events in which the organiser has requested policing services or where there is a clear public safety/public order concern held and evidenced by the Police in relation to an event and a request/agreement has not been forthcoming from the organiser/promoter;
- The Chief Constable will decide on the level of policing required in support of these events. This will involve undertaking a risk assessment and considering the Safety Plan; and
- In terms of dispute resolution, ACC Martin chairs a review group which will meet should there be any dispute regarding application of the policy. This was not stated within the policy but Superintendent Goddard has confirmed that this provision is in place.

3.5 The policy states that where no request has been made for policing services or no agreement has been reached with the organiser, the PSNI will ask the promoter to demonstrate through an Event Management Plan how the safety of persons is facilitated. If the PSNI are not satisfied this is the case, and the promoter refuses to pay for additional policing, then they will raise an objection to the Entertainments Licence where a risk to the public is envisaged.

- 3.6 In the instance where such an event requires a licence from the Council, the Police Service may make representation to the Licensing Committee as part of the application process and the Council must consider that representation in making a decision.
- 3.7 Where there is a licence in force and the PSNI has concerns as outlined in 3.5, then it can make representations to Council on the grounds of the event causing a serious threat to public order or public safety. However, the only option open to the Council in these circumstances would be to suspend the licence if the Council agree there is a serious threat to public order or public safety. The PSNI has indicated all such representations made to the Council will be clearly evidence based.
- 3.8 Such a decision carries an element of risk, as where the Council suspends a licence on the basis of PSNI objections, it is possible that the event organiser may take legal action against the Council leaving the Council liable for damages and costs should the Court subsequently overturn the decision to suspend.
- 3.9 In this situation, the PSNI has been advised that we will be seeking assurances from the PSNI that it will indemnify the Council in respect of any such damages and/or costs.
- 3.10 The PSNI has also been advised that the Council will expect it to have explored all other avenues by which enforcement of the Charging Policy may be achieved, e.g. by way of injunction or objecting to any occasional liquor licence under the Licensing (NI) Order 1996.
- 3.11 **Financial and Resource Implications**
- None
- 3.12 **Equality or Good Relations Implications**
- There are no Equality or Good Relations implications.”

The Head of Building Control provided a brief overview of the discussions which had taken place with Superintendent Goddard, who had confirmed, amongst other things, that the Police Service of Northern Ireland would now only be charging for those events listed within categories (a) to (c), as set out within paragraph 3.2 of the report.

During discussion, the Members raised a number of further concerns in relation to the policy, including the financial implications for local sports clubs, the lack of consultation afforded to the Council in advance of its implementation and the potential risk to the Council arising from the suspension of an Entertainments Licence at the request of the Police Service.

Accordingly, the Committee agreed that Superintendent Goddard be invited to attend a future meeting in order to enable Members to outline their ongoing concerns in relation to the policy.

Implementation of the Licensing of Pavement Cafes Act (Northern Ireland) 2014

The Committee considered the undernoted report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 The purpose of this report is to provide the Committee with a draft response for consideration to working draft guidelines which have been produced by the Department for Social Development (DSD).**
- 1.2 The guidelines are in relation to the implementation of the Licensing of Pavement Cafes Act (NI) 2014 (the Act).**
- 1.3 The DSD has prepared these guidelines to assist district councils with the implementation of the statutory licensing scheme contained in the Act. The Department propose to bring this Act fully into operation on the 1st April, 2016.**

2.0 Recommendation

- 2.1 The Committee is requested to consider the attached response and agree it, subject to any amendments arising from your discussion.**

3.0 Main report

Key Issues

- 3.1 Members will recall that the Licensing Committee, at its meeting on 21st August 2013, approved a response in relation to a consultation on the Licensing of Pavement Cafes Bill.**
- 3.2 Subsequently, the Licensing of Pavement Cafés Act (Northern Ireland) 2014 concluded its legislative passage and received Royal Assent on 12 May 2014.**

- 3.3 The Department informed councils, by way of letter on the 3rd July 2015, that it is currently drafting regulations and guidelines for councils on the implementation of the Act. When fully implemented, the legislation will introduce a statutory licensing scheme for the regulation of pavement cafés by district councils in Northern Ireland.
- 3.4 The DSD has sought comments from district councils on these working draft guidelines and the draft council response to these guidelines is attached. The draft response confirms that although the Council welcome the legislation concern remains that the implementation date suggested by DSD is not workable.
- 3.5 Currently, it is estimated that upwards of 300 pavements cafes are operating across Belfast. Therefore, the introduction of a new licensing scheme will place sizeable administrative and resourcing implications on the Council. Councils will be required to set fee levels, establish a suitable inspection regime, raise awareness across the business industry and ensure that processes for managing the scheme are established and embedded within existing regulatory services. It is suggested in the draft response that is highly unlikely that these measures can be achieved by the proposed date of 1st April 2016.
- 3.6 Another matter of concern is that the working draft guidelines produced by the DSD were drafted without proper engagement with councils or indeed many other concerned bodies. Although DSD refer to 'informal' feedback from council licensing officers, given that these Departmental guidelines will be integral to the successful implementation of this Act, it is suggested that formal meaningful engagement with district councils and others as noted in our response was and is required.
- 3.7 The draft response continues to highlight the need for this legislation and associated Departmental guidance to be supported by a set of Model Terms and Conditions. Model Terms and Conditions have underpinned the technical aspects of the entertainments licensing regime for the last 30 years. It is the view of officers that this new scheme will have similar considerations to entertainment licensing and applications will often require technical interpretation. Officers firmly believe that if the scheme is supported by a set of Model Terms and Conditions this will ensure clarity and consistency within and across councils; thus ensuring that applicants and cafe owners are operating in full knowledge of their requirements. As the vast majority of applications will conform to set Model Terms and Conditions it means we would only consult by exception which will reduce the burden to the Council and other agencies and vastly reduce waiting times on applications.

- 3.8 The guide for licensing pavement cafes used by Nottingham City Council has been forwarded to Members. This guide illustrates the type of guide which the Council will need to produce to ensure understanding of the new licensing scheme for business owners, statutory agencies and the general public.
- 3.9 The attached draft response outlines the main issues which officers have identified with the DSD guidance in terms of some policy and technical aspects. Subject to Committee approval this response shall be sent to DSD.

3.10 Financial and Resource Implications

As outlined in the draft response, there are potential staffing implications for the council in taking on the implementation of this Act on 1st April, 2016. These will not be known until we see the final Act and the implications for the administration thereof.

3.11 Equality or Good Relations Implications

There are a number of minor equality implications outlined in the draft response.

COUNCIL RESPONSE

Introduction

- Having considered the Department's working draft Guidelines on the Licensing of Pavement Cafes (NI) Act 2014, Belfast City Council ('the Council') would like to submit the following comments and recommendations for consideration in respect of the Guidelines.
- The Council is fully supportive of the need to regulate the operation of pavement cafes in its area. Developing a cafe culture can have a positive effect on urban environments, help to promote town and city centres, attract visitors and tourists and contribute to the general well-being of communities.
- The Council has previously commented on the Bill which is now law and would again reiterate those comments and recommendations. However, there are a number of matters, now that the Act is due to be implemented, that the Council would like to comment on.

Date of Implementation and Manner of Legislation

- **The Council considers that the implementation date of 1st April 2016 is too soon given that most councils are still dealing with changes to their structure following reform. In Belfast, it is expected that around 300 cafes will potentially make applications for pavement cafe licences once the legislation has been implemented. It is envisaged that it may take up to 12 months to licence all of them.**
- **Under the EU Services Directive, if a council does not determine a licence application within a given time then it is considered that the application is granted. This will put considerable pressure on councils to deliver.**
- **These pressures must also be considered in light of the fact that prior to implementation, policies and procedures will have to be drawn up, application forms and other documentation will need to be developed, and there is a need to raise awareness with affected parties.**
- **There may be implications for Councils in relation to budgetary provision for administering the legislation, decisions to be made around the level of fees to be set and equality issues to be considered.**
- **This task has been made considerably more difficult given that the Department has not drafted Model Terms and Conditions. To facilitate this the Council would recommend that the legislation is adoptive, with transitional arrangements to deal with applications from existing pavement café operators and for new operator applications.**
- **The Council considers this to be absolutely necessary as it would be impossible to process potentially several hundred applications at the one time. While previously DOE Roads Service has taken a pragmatic approach in Belfast provided pavement cafes do not restrict the free flow of pedestrians or vehicles or compromise public safety, once the Licensing of Pavement Cafes Act (NI) 2014 has been implemented then it automatically becomes an offence to operate a pavement cafe without a licence. The Council needs a transitional period so as to prepare for this.**

Current DSD Consultation and required Consultees

- **Concerns have been raised by the Council's Equality Section that there has been insufficient consultation on the guidance. It is important that councils, potential licensees and members of the public are aware of the full implications of the legislation prior to its implementation. It is the view of the Council that the guidelines are inadequate, particularly in relation to disabled access, and this inadequacy may be related to the fact that the consultation has not been wide enough.**
- **The Council believes the following agencies, in addition to others the DSD may determine, should be consulted with:**
 - **Transport NI;**
 - **PSNI;**
 - **Land and Property Services;**
 - **Planning Service;**
 - **Disability Action Groups;**
 - **The Royal National Institute for the Blind;**
 - **Older people and people with dependants; and**
 - **(Belfast City Council can provide an extensive list of disability related groups if requested).**

Opinion on the DSD Guidance

- **Despite the Department's reticence to establish a Model Terms working group, the Council is of the view that the guidance should be produced in conjunction with all interested parties such as town centre management, Hospitality Ulster, Police Service of Northern Ireland, Transport N.I. etc.**
- **The Council takes the view that the absence of Model Terms and Conditions is a retrograde step. Model Terms have proved extremely successful for entertainments licensing over a period of 30 years. It is likely that if Model Terms and Conditions are not produced, it will lead to differing standards within and across councils. It will also mean that more consultation will be required than should otherwise be necessary, i.e. consultation will be required for each application. Having agreed guidelines in place reduces the amount of red tape for applicants and ensures consistency across councils. It would also ensure an accountable and transparent framework to enable a cafe culture to develop in a sustainable way and which would facilitate regulation. Increased**

consultation on each application could be problematic given that a council is required to publish the length of time expected to process an application and to make the time period public in advance in accordance with the Provision of Services Regulations 2009.

- Model Terms would also be useful in establishing city-wide criteria on design. This would mean that any pavement cafes are aesthetically sensitive to the surrounding built environment and streetscape and that the infrastructure enhances the experience of living, working and visiting the city. While the guidance mentions at Para 1.6 the importance of colour and design being appropriate to the locality and sensitive to those with visual impairments, it does not offer any further guidelines.
- From an equality perspective, having model terms would be welcomed by both customers and cafe owners as it would promote understanding of what is acceptable. For example, in terms of mobility rather than defining only a minimum passageway of 2 metres, model terms and conditions could state a maximum percentage of the footpath to be used, with no less than 2 metres left clear.

Interpretation

- There may be difficulties in interpretation of the legislation for councils that are not addressed in the guidance. For example, Section 1 defines furniture as umbrellas, barriers, heaters, etc. Under Section 2 it is an offence to place furniture on a public area without a pavement cafe licence. However, Section 2(1) qualifies the term 'furniture' by stating that it is 'for use for the consumption of food or drink.' It could be argued that this definition does not include barriers or heaters which 'facilitate the use...of tables and chairs.' It is unclear why Sections 1 and 2 have been drafted somewhat at odds with each other and further guidance would assist; the term 'facilitate the use of...' would have been preferable for both. The Council needs to be clear what exactly it is granting a licence for and whether it will be necessary to have recourse to other legislation, such as the Roads (NI) Order 1993 in order to prosecute for furniture remaining onsite, which does not meet this definition.
- Other terms that a council will need to define by policy and perhaps by empirical research are as follows:

- Unsuitability;
 - Likelihood of resulting in disorder or inconvenience.
- The Council would appreciate further guidance on what has, to date, been an unregulated matter and it takes the view that the imposition of conditions is limited by the legislation.
- Section 30 defines premises. The definition could prove problematic given that it includes any place other than a public area, and any stall, moveable structure, vehicle or vessel. This means that a pavement cafe can be placed almost anywhere (except for outside off-licence premises), including outside a street trading stall. The Council needs to consider how it will determine such applications, particularly given that the grounds for refusal are vague. Again this is an area in respect of which further guidance or Model Terms and Conditions would be helpful.
- The Council, without Model Terms and Conditions, is being required to define such matters in considerable detail and it is the view of the Council that responsibility for doing so properly rests with the Department. The legislation requires a council to consider the grant or refusal of pavement cafes on an ad hoc basis which is extremely difficult without having an overall planned approach, 'District councils are best placed to make these decisions on a site by site basis, taking account of the characteristics of the site, the space available and the proposed layout of the cafe area.' Para 4.8.

Issues regarding Public and Private Land

- The guidance lacks clarity in relation to planning issues, for example:
- Para 1.5, page 9, states 'Any proposal to establish a pavement cafe on private land would be a matter best dealt with through the planning system'. It continues by advising potential applicants to contact the relevant planning office for advice and guidance.
- Para 4.15, page 18, states 'While it is unlikely that a pavement cafe established under the Act will need formal planning approval, such permission may be required depending on the nature and scale of the proposal'.

- **Belfast Planning Service has confirmed that planning permission is not likely to be required where it is proposed to place tables and chairs on private land associated with an existing restaurant i.e. within its curtilage, This would include, for example, its forecourt or other open land within the curtilage.**
- **Use of a public pavement or concourse outside of a restaurant or pub would cause there to be a material change of use to a mixed use of pub / restaurant and public highway. This would require a formal planning application.**
- **The guidance should advise anyone considering establishing a pavement cafe to contact the relevant planning office for advice/guidance. It should also emphasise that they should consult the planning office with full details of what they propose, including details of the size and layout, means of enclosure, any proposed canopies, awnings and signage.**
- **Furthermore, planning is not applicable where pavement cafes are on private land where they fall within the curtilage of a site that holds an overarching class use for that facility. It is imperative that the Department consults with DOE Planning Service in relation to this guidance, particularly since the guidance suggests that the Planning Service ought to offer advice and guidance in relation to this matter.**
- **It appears that the Act will not apply to privately owned land and privately owned land is not defined. As previously advised, there are significant areas of land within the Belfast City Council area which are privately owned, for example, Belfast Harbour Estate and Lanyon Place. However, the public do have access to such areas and some clarification as to whether such areas are intended to be excluded from the requirement to have a pavement cafe licence would be imperative. The term 'as of right' is unclear and the Council is of the view that the guidelines should offer further guidance. It must be remembered that the public will not always have access to private land as of right and if it is the intention to exclude such areas, the guidance should say so.**
- **Furthermore, some bars in Belfast city centre own the land upon which they have placed pavement cafe furniture, for example, Ten Square and Victoria's bar. It would appear that these premises would not be**

required to apply for a pavement cafe licence under the legislation.

- This may result in the Council licensing some but not all premises along the same stretch of road. If a pavement cafe licence is issued, the enforcement authority will be the Council. If not, the enforcement authority for alcohol consumption, noise, nuisance etc will be the PSNI. This will lead to two different authorities and regimes regulating the same activity which will inevitably lead to inconsistencies. It will also mean that for some premises, there will be no control on design, layout or operating times in the pavement cafe area. A pavement cafe licence will exempt an area from the alcohol byelaws, but those areas which cannot be licensed cannot be rendered so exempt.
- The Council recommends that the definitions applied by the Street Trading (NI) Act 2001 would be more appropriate.

Section 25 of the Street Trading (NI) Act 2001 provides the following definitions:

(3) In this Act 'street' includes—

- (a) any road or footpath within the meaning of Article 2(2) of the Road Traffic (Northern Ireland) Order 1995 (NI 18);
- (b) any public place within the meaning of subsection (4); and
- (c) any part of a street.

(4) In subsection (3) 'public place' means a place in the open air within 10 metres of a road or footpath—

- (a) to which the public has access without payment, but
- (b) which is not within enclosed premises or the curtilage of a dwelling.

Decision to Zone/Restrict Areas

- If it is the intention of the Department to zone areas, it is necessary to provide guidance to the councils as to what constitutes zoning. It would be prudent of the Department to establish criteria and the Council is of the view that Model Terms and Conditions would support this. However, it is noted that Para 4.4 of the

guidelines stated that 'a council cannot simply introduce a blanket ban on pavement cafes in its district' but it can decide that 'a particular street or location is unsuitable.' The Council would appreciate some guidance as to how it can justify zoning under the legislation.

- The Act is not drafted in a manner that would facilitate zoning. A licence must be granted unless one of the grounds of refusal applies. The grounds of refusal set out in Section 4 appear to support the refusal of pavement cafes on a case-by-case basis rather than providing powers to zone out areas. Cumulative impact is not a ground for refusal within Section 4. There is a risk that there will be a large number of applications in one area and the grounds of refusal are too vague to permit these to be addressed. There is also a duty to consult with DRD and the PSNI 'before deciding an application for a pavement cafe licence.' (S. 4(4)). This does not support the concept of zoning, given that applicants could potentially judicially review a council if their application was not individually consulted on and considered on its relevant merits.

Duration of Licences and the introduction of Indefinite Licences

- Having indefinite licences is not considered an appropriate option at this stage. However, the Council appreciates that licences should be longer than a year. The Council would favour having pavement cafe licences of a duration of initially three years and then progressing to five years. While the Council does not oppose permanent licences, it takes the view that fees would need to be geared to include the initial application fee and a 'top-up' fee to deal with costs of regulation and enforcement.
- The default position appears to be that, under S.6, where a period has not been specified in a licence, that a licence shall remain valid indefinitely. Where there is an error on the licence, e.g. if a time period has by error not been specified, the Council would need a mechanism of rectifying this if it was not the intention to give the licensee an indefinite licence.

Equality Issues

- It is important that the free flow of pedestrians or vehicles is not impacted and that public safety is not compromised.

- There needs to be a conscious reconciliation between the needs of fostering the café culture without discouraging pedestrians from using the footpath.
- Consideration should be given to the increased placement of A – Boards. A board should be easily detectable and noticeable to pedestrians with visual impairments.
- Guide dogs are trained to avoid street clutter but many pathways do not leave enough space for guide dog and assistance dog partnerships to get through without having to step onto the road.
- It is essential that there is a consistent approach to regulation and enforcement across Northern Ireland as the lack of this causes confusion. The Council agrees with the recommendation from Imtac, that there should be a minimum of 2m unobstructed width around a pavement café. Para 4.11 of the draft guidance states: 2m as the ‘ideal minimum footpath width, to allow 2 wheelchairs to pass each other comfortably. Where this is not possible, 1.5m or 1m is the absolute minimum’.
- The reference point for this guidance is given as the Inclusive Mobility Report carried out for Department for Transport (GB) 2005. Extracting from any report can lead to confusion when only parts of the relevant information are highlighted. To provide context this is an 89 page report based on ten years old research, during which time the understanding of disability legislation and issues has increased significantly. The report also provides extensive information on maximum length of restricted areas, Para 3.1 states the minimum under ‘normal conditions’ which the introduction of a pavement café should fall under (given that there are over 300 in Belfast), the following should apply:
 - (a) A clear width of 2000mm allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints 1500mm could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another. The absolute minimum, where there is an obstacle, should be 1000mm clear space. The maximum length of restricted width should be 6 metres (see also Section 8.3). If there are local restrictions or obstacles causing this sort of reduction

- (b) in width they should be grouped in a logical and regular pattern to assist visually impaired people
- (c) Tactile paving and the lead up to it should not be obstructed in any way by the introduction of the café furniture onto the public highway.
- (d) All café furniture on the public highway should be of conservative design and made of a non reflective material to limit sensory stimulation for people with autism spectrum disorders. Use of materials should not make it more difficult for blind and partially-sighted people to orientate themselves.

Additional specific Comments in relation to the Guidance

Temporary Furniture

- The guidance states that furniture is temporary if it can be removed within 20 minutes. The drafting is odd given that it refers to furniture that is capable of being removed within 20 minutes, as opposed to furniture that has not been removed after 20 minutes. An offence is committed under Section 2 if furniture remains on a public area – it does not state that an offence is committed if it remains there for more than 20 minutes after the licence expires for the day.
- The Council is concerned that where the licensee has a disability which restricts their ability to remove furniture within the time permitted this could be seen as discriminatory. It would be preferable to allow Councils to consider what amounts to temporary.
- Furthermore, it is only necessary for the applicant to remove the furniture from a public area. Parked vehicles may be used to remove furniture and this could cause further obstruction of the public highway. This matter would most likely fall to Transport NI and the Council cannot refuse a licence simply because there are inadequate storage facilities onsite.

Area for which Licence is Granted

- Under Section 5, where the plan changes, but remains within 75% of the area originally proposed, it is unclear whether it will be necessary to re-consult. An area could remain within 75%, yet depending on the new position of the cafe, it could have an impact on various parties. The guidance states that ‘the needs

of users of the pavement are paramount.’ This provision means that the Council will be licensing an area for use that was not in the plan. Because the 75% is entrenched in legislation, it is likely to mean that the Council will not be able to impose a condition which will require the pavement cafe to remain as it is on the plan. It may also mean that further plans, etc. could be required although the legislation does not state this. Further guidance on this matter would be of assistance.

Remote Cafes

- Consideration will have to be given to how food and drink will be transported from the premises in which the food/ drinks are being prepared and transported to the pavement café if it is remote and some distance from primary food premises. This aspect has not been considered in the guidance.

Smoking

- Paragraph 4.12 of the guidance states that ‘the pavement cafe area should be enclosed’. This must be considered in the context of The Smoking (NI) Order 2006, which makes it an offence to smoke in a smoke free place. A smoke-free place is defined as those areas which are enclosed or substantially enclosed. This could potentially mean that it will not be lawful to smoke in a pavement cafe.”

After discussion, the Committee agreed that the foregoing comments be forwarded to the Department for Social Development as the Council’s response to the consultation and agreed also that officials from that Department be invited to attend a future meeting in order to discuss in greater detail a number of issues which had been raised within the response.

THE COMMITTEE DEALT WITH THE FOLLOWING ITEMS IN PURSUANCE OF THE POWERS DELEGATED TO IT UNDER STANDING ORDER 37(d)

Licences Issued under Delegated Authority

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

Competing Applications for the Grant of a Stationary Street Trading Licence - Boucher Crescent

The Committee was advised that competing applications had been received from two persons wishing to trade from a designated site in Boucher Crescent, which had become vacant following the cancellation of his Street Trading Licence by the current

licensee. The Head of Building Control reviewed the applications, one of which had been submitted by Ms. K. Finn, who had applied to sell, from a hot food trailer measuring 5.5 metres by 2.15 metres, hot food and non-alcoholic beverages from Monday to Saturday between the hours of 9.00 a.m. and 6.00 p.m. He explained that, whilst the applicant was not registered currently as a food business and had not obtained accreditation under the Food Hygiene Rating Scheme, she had, in the past, held Temporary Street Trading Licences which had permitted her to trade at parades taking place on 12th July. On those occasions, her business had been inspected and approved by the Council's Environmental Health Service.

The second applicant, namely, Mr. C. Hamill, was seeking to sell, from a hot food trailer measuring 6 metres by 2.2 metres, hot food and non-alcoholic beverages from Monday to Saturday between the hours of 7.00 a.m. and 4.00 p.m. Mr. Hamill operated currently within the car park of the B&Q premises on the Boucher Road, however, he had been informed by the operator that that premises was due to close and that he would no longer be permitted to trade there. The Head of Building Control pointed out that Mr. Hamill's business was registered currently by the Council and that it had been given a 5* food hygiene rating. He confirmed that the applicants had been invited to outline to the Committee their proposals for the site and Mr. Hamill, who had availed of the opportunity, was welcomed by the Chairperson.

Mr. Hamill informed the Members that he had been trading for six years in the car park of the B&Q premises on the Boucher Road. However, as that business would cease trading early in 2016, he was required to find an alternative site, which had necessitated the submission of his application to the Council. He pointed out that his business was registered currently by the Council and that it had attained a 5* food hygiene rating and stressed that the vacant designated site on the Boucher Road would offer a suitable alternative to his current site and secure his means of income.

After discussion, it was

Moved by Councillor Attwood,
Seconded by Councillor Campbell and

Resolved – That the Committee agrees, in its capacity as Licensing Authority, that it is minded to grant to Mr. C. Hamill a Stationary Street Trading Licence permitting him to sell, from a hot food trailer measuring 6 metres by 2.2 metres, hot food and non-alcoholic beverages from Monday to Saturday between the hours of 7.00 a.m. and 4.00 p.m., at a site which has been designated previously for the sale of those commodities, on the basis that his business was registered currently by the Council and held a 5* food hygiene rating and that it could continue to operate only through the acquisition of an alternative site, subject to:

- (i) the applicant providing all necessary documentation; and
- (ii) the receipt of the appropriate licensing fees.

As a consequence of the decision to grant the Licence to Mr. Hamill and the fact that there was only one designated site available, the Committee agreed that it was minded to refuse the application which had been submitted by Ms. K. Finn, on the

grounds set out in Sections 9(1) (a) (i) and (iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which she wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which she wished to trade.

The Head of Building Control informed the Members that the unsuccessful applicant would be advised that, in accordance with Section 12 (2)(b) of the Street Trading Act (Northern Ireland) 2001, she would be permitted to make written representation to the Council within twenty-one days from the date of notice.

**Application for the Grant of a Temporary Street Trading Licence –
Lower Garfield Street**

The Head of Building Control informed the Members that Section 14 of the Street Trading Act (Northern Ireland) 2001 permitted the Council to issue a Temporary Street Trading Licence for special events, such as fairs and festivals, where a full-term Licence might not be appropriate and to attach to it any conditions which it might deem necessary. Such a Licence could not, however, be granted for a period exceeding seven days and no more than five could be granted to a person in any year.

He reminded the Committee that, at its meeting on 21st January, it had granted to Mr. B. McGeown, the licensee of Aether and Echo, 1-3 Lower Garfield Street, a Temporary Street Trading Licence permitting him to sell food, alcohol and non-alcoholic beverages outside his premises on two evenings in the following month, as part of the 'Guinness Amplify' series of events. He confirmed that a further application had now been received from Mr. McGeown seeking approval to sell between the hours of 6 p.m. and 11 p.m. on Friday, 18th and Saturday 19th September alcoholic and non-alcoholic beverages from outside his premises, as part of a music event which he was organising, the first night of which would coincide with Culture Night, which would be centred upon the Cathedral Quarter. In order to enable the licensee to apply to the Petty Sessions Court for an Occasional Liquor Licence, he required from the Council a Temporary Street Trading Licence.

The Head of Building Control explained that the event would necessitate the erection of a stage outside the premises, which would face into Lower Garfield Street in order to avoid creating a distraction for drivers in nearby Lower North Street. The applicant would be seeking Transport NI's consent to place the stage and crowd barriers on Lower Garfield Street and had confirmed that pedestrian access between that street and others nearby would be maintained at all times. It was pointed out that Belfast City Centre Management, the Police Service of Northern Ireland and Transport NI, which had been consulted as part of the application process, had offered no objections and that officers of the Building Control Service would be working closely with the applicant to ensure that the two events would not impact adversely upon the venue's Indoor Entertainments Licence.

After discussion, the Committee agreed, in its capacity as Licensing Authority, to grant to Mr. B. McGeown a Temporary Street Trading Licence permitting him to sell on Friday, 18th and Saturday, 19th September, between the hours of 6.00 p.m. and 11.00 p.m., alcoholic and non-alcoholic beverages outside Aether and Echo, 1-3 Lower Garfield Street. The Committee agreed also that a report be submitted to a future meeting outlining the criteria for determining if an Entertainments Licence was required for an event taking place on public land.

**Application for the Renewal of a Stationary Street Trading Licence –
Donegall Quay**

The Committee was informed that an application had been received from Mr. G. Grimley seeking the renewal of a Stationary Street Trading Licence for a designated site in Donegall Quay. The Head of Building Control reported that Mr. Grimley had, since 2013, been licensed to sell beverages, boat tour tickets, confectionery, hats, key rings, souvenirs and t-shirts at that location and that he had operated in accordance with the Street Trading legislation.

He explained that the applicant had applied to extend the list of commodities for sale to include Wee Tram tour tickets, which offered purchasers an opportunity to explore the various visitor attractions within the Titanic Quarter. He reminded the Committee that, at its meeting on 15th March, it had agreed to defer consideration of an application to vary another Street Trading Licence to sell bus tour tickets, pending the outcome of an ongoing review which had been commissioned by the Development Department into sightseeing coach provision in the City. He pointed out that, should the Committee be minded to accede to Mr. Grimley's request to include the sale of Wee Tram tour tickets on his licence, it could give rise to similar applications for other street trading sites.

After discussion, the Committee agreed, in its capacity as Licensing Authority, to renew a Street Trading Licence held by Mr. G. Grimley, permitting him to sell beverages, boat tour tickets, confectionery, hats, key rings, souvenirs and t-shirts at a designated site in Donegall Quay. The Committee agreed also to defer consideration of his application to sell Wee Tram tour tickets until the review into sightseeing coach provision in the City had been concluded.

**Application for the Grant of a Seven-day Annual Outdoor Entertainments Licence
- The Perch, 43 Franklin Street**

The Committee was advised that an application had been received for the grant of a Seven-day Annual Outdoor Entertainments Licence for the above-mentioned venue, based upon the Council's standard conditions to provide outdoor musical entertainment.

The Head of Building Control reported that the licensee, who currently held an Indoor Entertainments Licence for four areas within the venue, was seeking approval to provide entertainment within the outdoor smoking area, which was located on the fifth floor and referred to as The Perch. It was proposed that the area, which was covered by a Liquor Licence, would hold up to a maximum of 220 patrons, with entertainment being offered from Monday to Saturday between the hours of 12.00 pm. and 1.00 a.m. and on a Sunday between 12.30 p.m. and 1.00 a.m. No written representations had been received in relation to the application and the Police Service of Northern Ireland had offered no objection.

He pointed out that the premises had, during the past year, been visited on two occasions by officers of the Building Control Service whilst entertainment was being provided and that it had been found on both occasions to be operating in accordance with the Entertainments Licensing legislation. However, the licensee was working with the Council's Tobacco Control Officer to implement measures arising from a detected

breach of the Smoking (Northern Ireland) Order 2006. He added that the Council's Environmental Protection Unit had confirmed that, during the past twelve months, it had received no complaints in relation to noise disturbance from the premises and that it was working closely with the licensee to address any technical issues which might arise as a result of his successful application to have the condition on the planning approval for the smoking area amended to permit entertainment to take place.

The Committee agreed, in its capacity as Licensing Authority, to approve the application for the grant of a Seven-day Annual Outdoor Entertainments Licence for The Perch, 43 Franklin Street, with entertainment being permitted to take place from Monday to Saturday between the hours of 12.00 pm. and 1.00 a.m. and on a Sunday from 12.30 p.m. to 1.00 a.m., subject to any necessary measures relating to the control of noise being implemented to the satisfaction of Council officers.

**Application for the Renewal of a Seven-day Annual Entertainments Licence -
Voodoo, 9-11 Fountain Street**

The Committee was advised that an application had been received for the renewal of a Seven-day Annual Entertainments Licence in respect of the above-mentioned premises, based upon the Council's standard conditions to provide music, singing, dancing or any other entertainment of a like kind. The Head of Building Control explained that, under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, the Committee, in considering an application for the grant, renewal or transfer of an Entertainments Licence, must have regard to any convictions of the applicant relating to the Order which had occurred within the five-year period immediately preceding the date on which the application had been made.

He reported that the applicant had, on 4th September 2012, been convicted at the Belfast Magistrates Court of an offence under the aforementioned Order. That had related to an inspection of the premises by officers of the Building Control Service whilst entertainment had been taking place which had found that an emergency exit door had been locked, a means of escape had been blocked and the premises' log book had not been maintained. As a result, a fine of £270 and costs of £60 had been imposed. He provided details around a further issue relating to the operation of a shutter door which had been detected since that prosecution and confirmed that that had been resolved. Subsequent inspections had revealed that the premises were being operated in accordance with the conditions of the Entertainments Licence. No written representations had been received and the Police Service of Northern Ireland had offered no objection.

Accordingly, the Committee agreed, in its capacity as Licensing Authority, to grant a renewal of a Seven-day Annual Entertainments Licence in respect of Voodoo, 9-11 Fountain Street.

**Application for the Grant of a Fourteen-day Occasional Outdoor Entertainments
Licence - Writers' Square**

The Head of Building Control informed the Committee that Writers' Square was owned by the Department for Social Development and that it had been licensed previously by the Council to provide both indoor and outdoor entertainment. He reported

that that Department had, earlier in the year, informed the Building Control Service that, due to budgetary cuts, it would not be renewing those Licences and that anyone wishing to use the area for an event would be required to submit an application in their own right.

He explained that an application had been received on behalf of the Cathedral Quarter Trust seeking to provide entertainment, in the form of live stage performances, in the Square until 11.00 p.m. on the night of Friday, 18th September, as part of the Culture night festival, which would be taking place within the Cathedral Quarter. Should the Committee be minded to grant the application, officers of the Building Control Service would engage with organisers and other relevant parties to ensure that all documentation and safety and technical requirements, including a Noise Management Plan, were met in advance of each event taking place. No written representations had been received in relation to the application and the Northern Ireland Fire and Rescue Service and the Police Service of Northern Ireland, both of which would be invited to a final pre-event meeting, had offered no objection.

The Committee agreed, in its capacity as Licensing Authority, to grant to the Cathedral Quarter Trust a Fourteen-day Occasional Outdoor Entertainments Licence in respect of Writers' Square, permitting entertainment to take place until 11.00 p.m.

Applications for the Renewal of a Seven-day Annual Indoor and Outdoor Entertainments Licences and for the Grant of a Seven-day Annual Outdoor Entertainments Licence

The Committee was advised that applications had been received from Mr. Liam Lynch, on behalf of No Limat Limited and Square Pit Limited, in relation to the T13 Complex, Queen's Road and land under the M3 Motorway, Donegall Quay, respectively. The Head of Building Control reported that, under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, the Committee, in considering an application for the grant, renewal or transfer of an Entertainments Licence, must have regard to any convictions of the applicant relating to the Order which had occurred within the five-year period immediately preceding the date on which the application had been made.

He reported that Mr. Liam Lynch, a Director of both companies, had, on 7th May 2013, been convicted at the Belfast Magistrates Court of an offence under the aforementioned Order. That offence had related to a breach of the Entertainments Licensing conditions, in that he had not provided the Council with one month's notice of his intention to provide within the T13 Complex entertainment for children or sought its agreement on the maximum number of patrons to be admitted to the event. In addition, he had failed to provide an Event Management Plan and to make the premises' log book available for inspection. As a result, Mr. Lynch had been given a twelve-month conditional discharge, been fined £200 and requested to pay costs totalling £109. Following the conviction, officers of the Building Control Service had met with Mr. Lynch to review all of his procedures and had been satisfied that the T13 Complex was being operated in accordance with the entertainments licensing legislation. That had led the Committee, at its meeting on 22nd January, 2014, to renew both the Indoor and Outdoor Entertainments Licences for the venue.

The Head of Building Control reported further that, subsequent to that renewal, the Council's Legal Services Section had been requested to initiate legal proceedings in

respect of two further offences relating to the T13 Complex which had been detected in 2014. The first of those concerned the failure by No Limat Limited to submit to the Council within the required twenty-eight day timescale an appropriate Event Management Plan for an event which had taken place on 21st June. The second offence had concerned entertainment being provided on 6th September beyond the time permitted on the Indoor Entertainments Licence.

He pointed out that the applicant had, subsequently, provided an explanation for each offence and had met with officers of the Building Control Service and the Environmental Protection Unit, who were now satisfied that appropriate measures had been put in place to prevent a recurrence. In view of that, Mr. Lynch had requested that the Council approve the applications which had been submitted for the two locations.

In terms of the application relating to the T13 Complex, the Head of Building Control stated that the premises were licensed currently to provide entertainment from Monday to Sunday from 9.00 a.m. till 1.00 a.m., whilst outdoor entertainment was permitted from Monday to Sunday between the hours of 11.30 a.m. and 11.00 p.m. No written representations had been received in relation to the application and the Police Service of Northern Ireland had offered no objection. He confirmed that, since the offences arising from the 2014 inspection, the premises had been visited on seven occasions by the Building Control Service whilst either indoor or outdoor entertainment was taking place, all of which had revealed that the new operational and management procedures were being implemented effectively. However, the Environmental Protection Unit had received seven noise complaints arising from an event which had taken place on 30th May, 2015, which had been due largely to a final exit door being held open and the relocation of the stage, the latter of which had been agreed on an experimental basis with officers of the Building Control Service and the Environmental Protection Unit.

The Head of Building Control reported that the area of land under the M3, to which the application for the grant of the Outdoor Entertainments Licence related, was owned currently by the Department for Regional Development. The applicant intended to use the site to deliver between September and December an event entitled Contained Belfast 2015, which was designed to animate, through the use of shipping containers, urban spaces to connect the City and support the City events programme. He confirmed that the Council's City Growth and Regeneration Committee, at its meeting on 12th August, had agreed that the applicant should deliver the Contained Belfast project, as part of the Belfast Integrated Tourism Strategy's Ideas Factory, and had allocated £60,000 from the Tourism Culture and Arts budget for that purpose.

He informed the Members that a public notice inviting representations in respect of the application was due to expire on 1st October and that no submissions had been received to date. The Northern Ireland Fire and Rescue Service and the Northern Ireland Police Service, who had been consulted as part of the application process, had offered no objections. Officers of the Building Control Service had met with the applicant to ensure that the appropriate documentation would be in place before the staging of the event and that all safety and technical requirements would be met. He added that it was the applicant's intention to appoint in due course an acoustic consultant and develop an appropriate Noise Management Plan for the event and space, which would require the approval of the Council's Environmental Protection Unit.

It was reported that Mr. Lynch was in attendance and the Committee agreed that it would be beneficial to obtain from him clarification around the offences which had been brought to its attention by the Head of Building Control.

Mr. Lynch highlighted his success in delivering events and projects within the City to the highest standard possible and reviewed the circumstances surrounding each of the offences. He pointed out that he had, subsequently, been proactive in working with Council officers to comply with their requirements through, for example, the engagement of an acoustic consultant and in ensuring that all documentation was submitted within the requested timescale.

After discussion, during which several Members highlighted the valuable work which had been undertaken by Mr. Lynch for the benefit of young people and the fact that many of his projects had achieved international acclaim, it was

Moved by Councillor Hutchinson,
Seconded by Councillor Brown and

Resolved – That the Committee agrees, in its capacity as
Licensing Authority:

- (i) to renew the Seven-day Annual Indoor and Outdoor Entertainments Licences in respect of the T13 Complex, Queen's Road and
- (ii) that, should no representation be received by the expiry date of 1st October, authority be granted to the Head of Building Control to issue the Seven-day Annual Outdoor Entertainments Licence in respect of the area of land under the M3 Motorway, Donegall Quay, to permit the holding of the Contained Belfast 2015 event.

The Committee noted that, should representation be received by 1st October, it would be required to consider the application at a future meeting, to which the objectors and the applicant would be invited.

Chairperson