

Licensing Committee

Wednesday, 20th January, 2016

MEETING OF LICENSING COMMITTEE

Members present: Councillor Hussey (Chairperson);
the Deputy Lord Mayor (Alderman Spence);
Alderman L. Patterson; and
Councillors Armitage, Attwood, Brown,
Bunting, Campbell, Carroll, Clark, Craig,
Groves, Hutchinson, Jones, McConville
and Sandford.

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

Apologies

Apologies were reported on behalf of Councillors Dudgeon, Magennis and Mullan.

Minutes

The minutes of the meeting of 16th December 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 January, 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.

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.

Application for the Renewal and Variation of a Seven-day Annual Entertainments Licence - The Spaniard, 3 Skipper Street

The Head of Building Control informed the Members that an application had been received for the renewal and variation of a Seven-day Annual Indoor 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.

In terms of the renewal application, he reminded the Committee that, under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, it must, in considering an application for the grant, renewal or transfer of an Entertainments Licence, have regard to any convictions of the applicant relating to an offence under the Order which had occurred within a five-year period immediately preceding the date on which the application had been made. With that in mind, he drew the Committee's attention to the fact that the applicant company had, on 11th August, 2015, been convicted at the Belfast Magistrates Court of providing entertainment within the ground floor area of the premises, which was not covered under the current Entertainments Licence. A fine of £150 and costs of £69 had been imposed.

He reported that the applicant had now sought to have the Entertainments Licence varied to include the ground floor area. Since the aforementioned offence had been detected, officers had met with the applicant to review the management procedures in place and were satisfied that all areas of the premises, including the ground floor, met the required licensing standards. He added that no written representation had been received in relation to the application, the Police Service of Northern Ireland had offered no objection and the Council's Environmental Protection Unit had, over the past year, received no complaints regarding noise in relation to the premises.

The Committee agreed, in its capacity as Licensing Authority, to grant a renewal and variation of a Seven-day Annual Indoor Entertainments Licence in respect of The Spaniard, 3 Skipper Street, with entertainment being permitted, in future, to take place within the ground floor area.

Application for the Renewal and Variation of a Seven-day Annual Entertainments Licence - The National Grand Café Bar and Sixty6

The Committee was advised that an application had been received for the renewal and variation of a Seven-day Annual Indoor Entertainments Licence in respect of The National Grand Café Bar and Sixty6, 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 reported that entertainment, in the form of a DJ or live band, was provided currently from Monday to Saturday till 1.00 a.m. and on a Sunday till midnight. The applicant was now seeking to operate the first, second and third floors of the venue till 3.00 a.m. on a Friday and Saturday night, with a view to enabling patrons to avail of musical entertainment after other premises had closed. The ground floor would, however, continue to operate only till 1.00 a.m. on those nights.

He reminded the Committee that it was normal practice for Entertainments Licences being renewed, which were not subject to objections, to be issued under the Council's Scheme of Delegation. However, in view of the fact that the applicant had applied also for a variation to extend the hours of entertainment beyond 1.00 a.m., both applications were being presented to the Committee for consideration.

The Head of Building Control confirmed that no written representation had been received in relation to the applications and that the Police Service of Northern Ireland had not objected. He pointed out that officers of the Building Control Service had, during the past year, visited the premises on three occasions whilst entertainment was being provided, none of which had detected breaches of the Entertainments Licensing legislation. However, the Council's Environmental Protection Unit had, over the same period, received three complaints regarding noise breakout from the premises, which had been brought to the attention of management and resolved.

The Committee agreed, in its capacity as Licensing Authority, to grant a renewal and variation of a Seven-day Annual Indoor Entertainments Licence in respect of The National Grand Café Bar and Sixty6, with entertainment being permitted, in future, to take place till 3.00 a.m. on a Friday and Saturday night on the first, second and third floors.

The Committee noted that a report would be submitted to a future meeting in relation to a recent newspaper article which had provided details of breaches of the liquor licensing legislation and other offences in licensed premises across Northern Ireland, including Belfast.

**Application for the Grant of a Seven-day Annual Entertainments Licence –
Beckett's Bar, 241 Stewartstown Road**

The Committee was reminded that, at its meeting on 16th December, it had agreed to defer consideration of the above-mentioned application, which had been submitted by Mrs. C. Hughes, until such time as the outcome of any legal proceedings being undertaken by the Council in relation to public safety issues at the premises had been determined and she had had the opportunity to consider fully the Council's response to Subject Access Requests which had been lodged by her and two family members.

The Head of Building Control reported that, since that meeting, all three Subject Access Requests had been withdrawn and the applicant had written to the Council requesting permission to address the Committee on its decision to defer her application. In terms of the legal proceedings, it was pointed out that summonses had now been issued and the matter was due to be heard on 9th February.

The Chairperson informed the Committee that it was required to decide firstly if it wished to hear from the applicant and, if so, if it wished to consider her application in full at this meeting.

After discussion, the Committee agreed to accede to the request and, accordingly, Mrs. C. Hughes and Mr. E. Hughes, her husband, were welcomed by the Chairperson.

Mr. Hughes explained that the Committee's decision of 16th December to defer his wife's application had led to the cancellation of over five hundred bookings and had placed significant financial pressure upon the business. He pointed out that Beckett's Bar sponsored five local football clubs and a boxing club, all of which used the venue

free of charge each month for fundraising activities and had suffered in the absence of an Entertainments Licence. He highlighted the fact that other premises had been licensed by the Committee, despite having been convicted of offences on a number of occasions, and that the outcome of the legal proceedings would not affect the applicant's ability to manage the business. He concluded by stating that the Entertainments Licence was central to the continued operation of the business and requested the Committee to grant the application.

It was

Moved by Councillor Armitage,
Seconded by Councillor Bunting and

Resolved - That the Committee, in its capacity as Licensing Authority, agrees to affirm its decision of 16th December to defer consideration of the application for Beckett's Bar until such time as the outcome of the legal proceedings being undertaken by the Council had been determined.

**Application for the Grant of a Seven-day Annual Entertainments Licence –
Hole in the Wall, 1–3 Baltic Avenue**

The Committee considered the undernoted report:

“1.0 Purpose of Report/Summary of Main Issues

1.1 To consider an application for the grant of a Seven-day Annual Indoor Entertainments Licence for the Hole in the Wall, based upon the Council's standard conditions to provide music, singing, dancing or any other entertainment of a like kind.

1.2 Members are reminded that, at the meeting on 16th December 2015, you agreed to consider the application at your January meeting, to which the objector and the applicant would be invited to attend.

<u>Premises and Location</u>	<u>Ref. No.</u>	<u>Applicant</u>
Hole in the Wall 1-3 Baltic Avenue, Belfast BT15 2HR	WK/2015/01058	Gerard Conn H.I.T.W. Limited 1-3 Baltic Avenue Belfast

1.3 Members should be aware that an initial application was received on 5th May, 2015 from Mr. Conn, H.I.T.W. Limited. However, that application was not completed and Mr. Conn subsequently resubmitted a further application on 28th August, 2015.

1.4 A petition of objections was received on 9th September from local residents regarding the application within the 28-day statutory consultation period.

1.5 The reason the application has not been brought before you for consideration until now is that Officers of the Service have attempted to engage with all parties affected by the application to convene liaison meetings and address the issues. However this has proved to be difficult as the objectors do not want to meet with the applicant.

2.0 Recommendations

2.1 Taking into account the information presented and representations received in respect of the application you are required to make a decision to either:

1. approve the application for the grant of the Seven-day Annual Entertainments Licence, or
2. approve the application for the grant with special conditions, or
3. refuse the application for the grant of the Seven-day Annual Entertainments Licence.

2.2 If the application is refused, or special conditions are attached to the licence to which the applicant does not consent, then the applicant may appeal the Council's decision within 21 days of notification of that decision to the Recorders Court.

3.0 Main report

Key Issues

3.1 Under the terms of the Local Government (Miscellaneous Provisions) (NI) Order 1985, the Committee, when considering an application, must have regard to any representation which is received within the 28 day statutory period.

Representations

3.2 Public notice of the application was duly placed and a total of 13 signatures in the form of a petition were received. The signatures are all from residents of Baltic Avenue. Members should note that whilst the nature of some of the representations relate to music noise from the premises,

Officers of the Service have monitored the premises and observed that it is not music that would require an Entertainments Licence.

3.3 The general nature of the objections referred to in the petition relate to the following:

- the premises are located in a residential street and the owner of the premises shows no regard for their neighbours;
- loud music can be heard in the street and inside resident homes at weekends;
- the noise disturbs their peace and right to enjoy their homes; and
- it is very difficult and distressing and impacts both mentally and physically on the health of our families, through stress and lack of sleep.

3.4 In the petition, the residents make allegations about the lack of response from the Council and refer to the following points:

- they are afraid of retaliation if they permit officers entry to take noise readings, as we have requested, in order to validate their complaints; despite officers observing music noise levels from the street, which weren't loud enough to warrant enforcement action, that it's still difficult to watch TV with background noise going on 3 days a week;
- why do Officers check for doors and openings being open to facilitate noise break out and inform planning, yet how has it not been identified until now that the premise does not have an Entertainments Licence;

3.5 The petition also refers to other issues they have contacted the PSNI about, as follows:

- fighting, bottling and arguing on a weekly basis and often on all 3 nights at the weekend;
- noise caused by people smashing the windows of the bar;
- noise caused by people trying to regain entry when they have been thrown out; The bar kicks them out and closes its doors, leaving the residents to deal with the fall out;
- damage to property and cars by drunks; and
- residents have had to go out and move their cars down the street away from people throwing things at each other.

3.6 The residents also allege that they have to deal with the following problems:

- drunks making 'polite conversation' with their children and babies;
- men urinating in the street, in the afternoon and at night;
- drunks, vomiting and littering;
- they are unable to walk down their street in the evening because of drunks outside smoking;
- they are kept awake until the bar closes and the drunks leave the street;
- we have drunks past our houses and cars and it isn't fair or safe;
- the impact on family life is already destructive; and
- the nuisances seen to increase when private parties are held or rave music played as these attract a younger crowd.

3.7 The residents state that this is the second letter they have written, however we have not received any other correspondence from them regarding the premises since it was previously considered by the Licensing Committee in 2012. A copy of the petition has been circulated to the Committee.

3.8 We can assure the Committee that every complaint has been followed up with both the applicant and complainant and that as part of this application, all 13 residents received an acknowledgement of their objection and notification that Officers of the Service would facilitate a meeting.

Liaison Meetings

3.9 As part of due process and to try and resolve the residents' concerns, officers of the Service offered to facilitate liaison meetings with all parties. However, when officers invited residents to attend a meeting, only three of them responded by telephone, to confirm they would be willing to attend a meeting with officers from the Service. All three respondents made it clear that they would not attend any meeting where the applicant and/or the applicant's representative were present. None of the other ten residents responded or acknowledged our correspondence.

3.10 As a result, officers agreed to meet with the residents and applicant separately to try and negotiate an agreement and resolve the issues. However, when officers sent out further invites to attend a meeting at the Building Control offices,

none of the residents attended. They also did not send us any apologies or acknowledgements to advise of their absence or failure to attend the meeting.

- 3.11 Officers have met with the applicant and/or his business colleague, Mr. Gavin Hawkins, on a number of occasions. The applicant has cooperated fully with the Council and appears keen to address residents' concerns.
- 3.12 However, as an agreement was unable to be negotiated we subsequently informed all parties that the matter would have to be considered by the Licensing Committee. Following your agreement to consider the application at this month's Committee meeting and as part of the Committee Protocol, we sent each party a copy of the relevant Representation Form and requested it to be provided in advance of the meeting to be presented to the Committee for consideration. The date given to the objectors was the 30th December 2015, 3 weeks in advance of your meeting and in accordance with the Committee Protocol. This is to ensure appropriate time to share the information between all parties and to allow Officers to articulate the points within the report for your consideration.

Objectors Representation

- 3.13 The objectors Representation Form was hand delivered to each of the objectors from Baltic Avenue. The applicant was also provided with a copy of their respective Representation Form.
- 3.14 Unfortunately, none of the objectors have submitted a completed Representation Form. Officers contacted the objectors and offered to give them further time to make their representation but no representations have been provided to date.
- 3.15 At the time of writing this report, two objectors have confirmed that they will not be available to attend Committee. The remaining 11 objectors have not confirmed whether they will be available to attend your meeting. Additionally, the objectors who confirmed they would not be available to attend Committee stated that they were confident that the other objectors would also not be attending.

Applicants' Representation

- 3.16 The applicant has provided a Representation Form, as required by the protocol, and a copy of his response has

been forwarded to the Committee. Despite the application being a new grant application, he is willing to adopt the previous terms, conditions and Action Plan, which was drawn up in agreement with the Council, PSNI and residents of Baltic Avenue in 2012.

- 3.17 Furthermore, despite the objectors not submitting Representation Forms, the applicant agreed to nonetheless provide a copy of his Representation Form to them and at the time of writing this report we have not received any further counter claim or representation from the objectors.
- 3.18 The applicant and/or their representatives will be available at your meeting to answer any queries you may have in relation to the application.

Details of the Premises

- 3.19 The areas previously licensed to provide entertainment are the:
- Ground floor public bar with a maximum capacity of 70 persons
 - First floor a maximum capacity of 170 persons
 - Second floor with a maximum capacity of 70 persons
- 3.20 As a technical matter, the numbers are being reviewed to consider the reconfiguration and seating layout of the premise. Officers will finalise and deal with this matter if you are of the mind to grant the premises an Entertainments Licence.
- 3.21 The days and hours during which the premises were licensed to provide entertainment:
- Monday to Thursday: 11.30 a.m. to 11.00 p.m.,
Friday and Saturday: 11:30 a.m. to 01:00 a.m. and,
Sunday: 12.30 p.m. to midnight
- 3.22 Members should note that this application is for the identical days and hours as was in the previous application.
- 3.23 The applicant is also content to accept the special conditions attached to the previous Entertainments Licence which are as follows:
- agree to the Action Plan, as set out on the reverse of the licence;

- entertainment (pool tournaments only) shall be permitted from 11.00 p.m. to midnight on a Monday, Tuesday, Wednesday or Thursday; and
- entertainment shall be permitted from 11.00 p.m. to 1.00 a.m., should Valentine's Day, St. Patrick's Day, Easter Monday or Tuesday, Halloween, Christmas Eve or New Year's Eve fall on a Monday, Tuesday, Wednesday or Thursday.

3.24 The Action Plan referred to previously, which the applicant has agreed to adopt, has been forwarded to the Committee.

History of the Premises

3.25 The applicant previously applied for the transfer and renewal of the Entertainments Licence on 18th January, 2011 and, at a meeting of the Licensing Committee on 11th April 2011, Members agreed to exercise their discretion to consider 10 letters of objection received from local residents all of which were outside the 28-day statutory representation period.

3.26 The application was subsequently considered at a meeting of the Licensing Committee on 19th September, 2012 and Members agreed to grant the transfer and renewal subject to the licensee installing an appropriate noise limiting device and the Council facilitating monthly meetings between the licensee, the police and local residents.

3.27 A copy of the minutes of the Committee decision of 19th September 2012 has been circulated to the Committee.

3.28 The Entertainments Licence was further renewed in 2013 and expired on the 31st August, 2014. No objections were received to the renewal of the Entertainments Licence in 2013.

3.29 Since 31st August, 2014, when the licence expired, Mr Conn has been made aware that no entertainment should be provided without a valid Entertainments Licence. By way of explanation for the Entertainments Licence not being renewed in August 2014, Mr. Conn explained that the premise had been leased from Beannchor Limited and he was in the process of purchasing it from them.

3.30 Members should note that the premises were monitored by the Service during this period and no entertainments were observed taking place.

PSNI

- 3.31 The PSNI has been consulted and has no objection to the grant of the licence.
- 3.32 The PSNI was involved extensively with the liaison meetings for the transfer and renewal of the Entertainments Licence in 2012 when they previously had concerns with the operation of the premises. A copy of its correspondence has been made available to the Committee.

Health, Safety and Welfare Inspections

- 3.33 Upon receipt of the alleged noise complaints and objections to the application, officers investigated the issues and allegations made. There have been several separate meetings with the applicant and telephone conversations with the objectors.
- 3.34 Since the licence expired in August 2014, officers from the Service have also carried out several monitoring inspections of the premises. Some of the inspections were a follow up to complaints to establish if Entertainment was taking place without a Licence and if there were any noise issues.
- 3.35 The other inspections were proactive measures undertaken by the Service to check the same. None of the inspections uncovered entertainment taking place other than music being provided through the premises juke box and Television.

Noise Issues

- 3.36 The Environmental Protection Unit has been consulted in relation to the application and it has confirmed that a total of 30 complaints have been received over the last 12 months relating to noise break out from the premises.
- 3.37 On each occasion, officers of the Noise Team endeavoured to respond and investigate the complaints. Officers of the Service also followed these up with the applicant but no evidence was uncovered to confirm that entertainment was taking place and they did not identify any noise issues. Details of complaints have been circulated to Members.
- 3.38 Members are reminded that the Clean Neighbourhood and Environment Act 2011 gives councils additional powers in relation to the control of entertainment noise after 11.00 p.m.

Financial and Resource Implications

- 3.39 Officers carry out during performance inspections on premises providing entertainment but this is catered for within existing budgets.**

Equality and Good Relations Implications

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

The Head of Building Control provided an overview of the application. He highlighted a number of difficulties which had been experienced by officers in dealing with the objectors, particularly around their failure to submit additional information, as required under the Committee’s licensing protocol, and their refusal to meet directly with the applicant, which had required officers to meet separately with each party. However, it had not been possible to resolve all of the issues to the satisfaction of the Building Control Service and, therefore, the application had been placed before the Committee for consideration.

He reported that, whilst none of the objectors were in attendance, the applicant was present and pointed out that the Committee could still consider the application, on the basis of the information contained within the report and the representation made by the applicant.

Accordingly, the Chairperson welcomed to the meeting Mr. G. Conn, the applicant, together with Mr. G. Hawkins, the Bar Manager.

Mr. Conn informed the Members that he had submitted his application some months earlier and that the ensuing delay had had a detrimental impact upon his trade, particularly over the Christmas period, and had forced him to reduce staffing levels. He explained that he had co-operated fully with the Council throughout the application process and confirmed that he would be adhering to a fifteen point action plan for the management of the premises which had been attached to the previous Entertainments Licence. He highlighted the fact that there were now thirty-eight closed circuit television cameras located around the premises and that he would, if requested, be willing to provide the Police Service of Northern Ireland with footage from them, should it wish to investigate the allegations which had been made by the objectors in relation to the venue. He added that he had, for the past four years, attempted to meet with the objectors to discuss their issues around the application, however, they had yet to agree to meet with him. Mr. Conn concluded by stating that he would be willing to attend any meetings being organised by the Council involving its officers, the Police Service of Northern Ireland and the objectors.

The Head of Building Control confirmed that Mr. Conn had fulfilled all of the requirements which had been placed upon him by the Council and that he had been willing to attend all of the meetings which Council officers had attempted to organise.

In addition, he had sought to have the same restrictions and conditions placed upon this Entertainments Licence as those which had, in September 2012, been attached by the Committee to the previous Licence.

In terms of the residents' assertions that they had contacted the Police Service of Northern Ireland on numerous occasions to complain about the Hole in the Wall Bar, the Head of Building Control pointed out that the Police Service had confirmed that, of the eleven complaints which it had received over a one-year period in relation to the premises, only one had originated from residents.

After discussion, it was

Moved by Councillor Hutchinson,
Seconded by Councillor Campbell and

Resolved - That the Committee, in its capacity as Licensing Authority, agrees to grant a Seven-day Annual Indoor Entertainments Licence in respect of the Hole in the Wall, 1-3 Baltic Avenue, with the following conditions being attached:

- (i) the licensee shall adhere to the fifteen point Action Plan which had been attached to the previous Licence by the Committee at its meeting on 19th September, 2012;
- (ii) entertainment (pool tournaments only) shall be permitted from 11.00 p.m. to midnight on a Monday, Tuesday, Wednesday or Thursday; and
- (iii) entertainment shall be permitted from 11.00 p.m. to 1.00 a.m., should St. Valentine's Day, St. Patrick's Day, Easter Monday or Tuesday, Halloween, Christmas Eve or New Year's Eve fall on a Monday, Tuesday, Wednesday or Thursday.

The Committee agreed also that Council officers should continue to attempt to engage with the residents to identify any issues relating to the premises and, if necessary, seek to facilitate meetings between them, the Council, the Police Service of Northern Ireland and the applicant.

Review of Entertainments Licensing Legislation

The Committee agreed that a letter be forwarded to the Minister for the Environment, Mark H. Durkan MLA, requesting an update on the review being undertaken currently of the Entertainments Licensing legislation in Northern Ireland.

Chairperson