

Licensing Committee

Wednesday, 15th June, 2016

MEETING OF LICENSING COMMITTEE

Members present: Councillor Armitage (Chairperson);
the Deputy Lord Mayor (Councillor Campbell);
Aldermen L. Patterson, Sandford and Spence; and
Councillors Bell, Boyle, Brown, Bunting, Collins,
Craig, Dudgeon, Groves, Heading, Magennis and
McConville.

In attendance: Mr. S. Hewitt, Building Control Manager;
Ms. N. Largey, Divisional Solicitor; and
Mr. H. Downey, Democratic Services Officer.

Apologies

Apologies were reported on behalf of Alderman McCoubrey and Councillors Clarke, Hutchinson and Jones.

Minutes

The minutes of the meeting of 18th May were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st June, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor Boyle declared an interest in respect of item 2(g) - Application for the Provisional Grant of an Amusement Permit for Roll the Dice, 181 Ormeau Road, in that he was acquainted with the applicant, and left the meeting whilst the matter was under discussion.

Non-Delegated Matters

Review of Licence Fees for Sex Establishments

The Committee considered the following report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 Under Article 4 and Schedule 2 of The Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order), the Council has powers relating to the Licensing of Sex Establishments. Paragraph 19, Schedule 2 provides that an applicant for the grant,**

renewal or transfer of a licence shall pay a reasonable fee determined by the council.

- 1.2 Unlike the Street Trading Act (NI) 2001 and the Licensing of Pavement Cafés Act (NI) 2014, there is no procedure prescribed in the Order that the Council must follow in determining the licence fee.

Hemming v Westminster Case

- 1.3 Members may be aware of the recent case involving Hemming v Westminster City Council. The case was determined on 29th April, 2015 in the UK Supreme Court, which delivered judgment, in what was a significant case for regulators and the regulation of licensing or other similar regulatory regimes. The introduction of the EU Services Directive 2006 changed the basis upon which fees for certain licences and permissions could be charged by the issuing authorities which are, in the main, local authorities.
- 1.4 The Supreme Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. The Supreme Court, therefore, ruled that the *type* of costs which Westminster included within its licences fee were legitimate. It referred the issue of *how* the charges were levied to the European Court of Justice. The Court identified two different approaches to charging fees:
1. whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
 2. where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.
- 1.5 The Court found the type A approach of charging two fees is permissible under the Services Directive but felt that the type B approach of charging a single fee was more problematic. The Court felt that it remained unclear whether including all costs upfront involved in law a charge incurred from the application, which is contrary to the Services Directive. The Court suggested that a charge could possibly include borrowing or loss of interest during

the period in which the application was considered, but noted that the Hemming legal team had not provided any evidence of such costs.

1.6 The EU Services Directive, the Provision of Services Regulation 2009 and the Hemming case have provided clarity about the specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme and councils must not use fees to make a profit or act as an economic deterrent to certain business types from operating within an area.

2.0 Recommendations

2.1 The Committee is requested to:

- agree that the Council's current fee arrangements should be amended to include a non-refundable application fee and subsequent licence fee charge if an application is granted;
- consider the proposed fees and determine the appropriate fees for the grant, renewal and transfer of a licence to operate a sex establishment; and
- recommend that a review is conducted each year so that appropriate fees for sex establishments can be determined by the Council annually.

2.2 Members are asked to note that, if full cost recovery is not achieved, then this will have a direct impact on the district rate and would need to be referred to the Strategic Policy and Resources Committee.

2.3 Members are advised that the Licensing Committee does not have delegated powers in relation to policy decisions concerning licensing matters and as such your recommendation as to the appropriate fees for Pavement Cafe Licences will be subject to ratification by Council.

3.0 Main report

Key Issues

3.1 The current Sex Establishment Licence fees were set in 2002 and have not been determined by Council since then. It is therefore necessary to review the current level of fees to ensure they remain reasonable and proportionate and to establish a regular review process.

- 3.2 Since 2002, the Council has processed a number of licence applications and most recently two applications were considered for Gresham Street at a meeting of the Licensing Committee on 22nd October 2014.
- 3.3 Information gained from dealing with these and previous applications has been used to develop an up to date understanding of the costs associated with Sex Establishment Licensing.
- 3.4 An analysis of the time allocated to each task in the licensing process was undertaken and costing estimates developed based on revised administration and compliance costs arising from increased salaries, employer's National Insurance contributions, superannuation contributions, office rental costs and other on-costs.
- 3.5 This analysis has demonstrated that the current fees are not proportionate to the cost of the processes associated with administering a Sex Establishment Licence. Details of these costs have been circulated to the Committee.
- 3.6 As mentioned, the Supreme Court had some concerns about the legality of whether the total fee, including the cost of the compliance element of administering the licence, could be charged upfront on the basis that this is refunded to unsuccessful applicants.
- 3.7 Presently, if an application for a Sex Establishment Licence is refused the applicant is entitled to a refund of £500.00. The majority of the application fee is associated with the administrative aspect of the application and the refunded amount relates to the cost of the compliance element of the fee.
- 3.8 To avoid any potential challenge it is proposed that our current fee arrangement should be amended to include a non-refundable application fee and subsequent licence fee charge if an application is granted.
- 3.9 The proposed fees, arising from the analysis, and the associated increase are shown below.

	Current	Proposed	Increase
Application Fee	£3,000	£3,200	£200
Renewal Fee	£1,000	£1,430	£430
Transfer Fee	£375	£1,125	£750
Licence Fee	£500	£500	0

- 3.10 The transfer fee was determined in 2002 as £375 and may well have been based on the level of transfer fees of those Councils consulted on sex shop fees at that time - these were significantly lower than the grant or renewal fees set by those Councils. Having undertaken an assessment of the work associated with processing a transfer application, it has increased significantly and is more aligned to the proposed revised renewal fee.**

Financial and Resource Implications

- 3.11 The proposed increase in Sex Establishment Licence fees will ensure that the cost of the operational and administration processes are proportionate to the licensing scheme.**

Equality and Good Relations Implications

- 3.12 Equality and good relations implications have been reviewed and a completed screening form has been forwarded to the Equality and Diversity Officer.”**

In response to a question from a Member, the Divisional Solicitor explained that the Council had a statutory responsibility in relation to the enforcement of legislation for sex establishments, street trading and pavement cafés, for which fees were being considered at this meeting, and it could not, therefore, employ an external company to undertake the administration of the licensing process on its behalf.

After discussion, it was

Moved by Councillor Heading,
Seconded by the Deputy Lord Mayor, Councillor Campbell,

That the Committee agrees to adopt the following recommendations, as set out within the report:

- i. that the Council's current fee arrangements be amended to include a non-refundable application fee and subsequent licence fee charge if an application was granted;
- ii. that the Council apply the fees for sex establishment applications, as set out within paragraph 3.9; and
- iii. that the fees for sex establishments be reviewed by the Committee on an annual basis.

On a vote by show of hands twelve Members voted for the proposal and one against and it was declared carried.

Review of Licence Fees for Street Trading

The Committee considered the following report:

“1.0 Purpose of Report/Summary of main Issues

1.1 Section 15 of the Street Trading Act (NI) 2001 (the Act) gives the Council the power to set sufficient fees to allow it to recover the full costs of administering the Street Trading Licence Scheme. The Act, prescribes the range of circumstances in which the Council may charge a fee:

- 1. for the grant or renewal of a Street Trading Licence;**
- 2. for the grant of a Temporary Licence; and**
- 3. for varying the conditions on a Licence at the request of the licence holder.**

1.2 The Act also limits the maximum amount of the fee to that required to cover the Council’s costs in administering the scheme. The Council is, therefore, denied the right to use the Street Trading Licensing system to raise revenue.

Hemming v Westminster Case

1.3 Members may be aware of the recent case involving Hemming v Westminster City Council. The case was determined on 29th April, 2015 in the UK Supreme Court who delivered judgment, in what was a significant case for regulators and the regulation of licensing or other similar regulatory regimes. The introduction of the EU Services Directive 2006 changed the basis upon which fees for certain licences and permissions could be charged by the issuing authorities which are, in the main, local authorities.

1.4 The Supreme Court ruled that licensing authorities are entitled under the Local Government (Miscellaneous Provisions) Act 1982 to impose fees for the grant or renewal of licences covering the running and enforcement costs of the licensing scheme. The Supreme Court therefore ruled that the type of costs Westminster included within its licences fee were legitimate. It referred the issue of how the charges were levied to the European Court of Justice. The Court identified two different approaches to charging fees:

1. whereby a council charged a fee upon application (covering the costs of authorisation procedures) and a subsequent fee to successful applicants (covering the cost of administering and enforcing the framework) - the 'type A' approach, or
 2. where a council charged a single fee on application covering all costs, on the basis that the relevant proportion of the fee would be refunded to unsuccessful applicants – the 'type B' approach.
- 1.5 The Court found the type A approach of charging two fees is permissible under the Services Directive but felt that the type B approach of charging a single fee was more problematic. The Court felt that it remained unclear whether including all costs upfront involved in law a charge incurred from the application, which is contrary to the Services Directive. The Court suggested that a charge could possibly include borrowing or loss of interest during the period in which the application was considered, but noted that the Hemming legal team had not provided any evidence of such costs.

Procedure for Fee Setting

- 1.6 The Act states the procedures which the Council must follow in setting the fees and these stages may be summarised as follows:
1. the Council is to give notice of the proposed fees to licence holders and to publish a notice in two or more newspapers showing how the fees have been calculated.
 2. the Council is required to consider any written representations concerning the proposed fees and charges.
 3. furthermore, the Act allows the Council to determine the time and manner in which fees or charges are to be paid.
- 1.7 However, as a prerequisite, Members need to determine the proposed level of fee, which will allow the Council to start the statutory process for setting the fee as per stage one above.

- 1.8** As we progress with the proposed changes, further reports will be brought before the Committee detailing the outcome of the process of consultation. At that stage, Members will be able to determine the final fee you consider appropriate.
- 1.9** The EU Services Directive, the Provision of Services Regulation 2009 and the Hemming case, have provided clarity about the specific requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme and councils must not use fees to make a profit or act as an economic deterrent to certain business types from operating within an area.
- 2.0** Recommendations
- 2.1** The Committee is requested to:
- 1.** approve and authorise the proposed fees for publication and commence consultation with licence holders.
 - 2.** agree to remove the 5% discount for full payment and for Direct Debit.
 - 3.** agree that, after 3 defaults in payment, the licence be referred to Committee for consideration of revocation.
 - 4.** agree to recover from the licence holders the full costs associated with the removal of street trading receptacles (Stalls and Vehicles).
- 2.2** Members are asked to note if full cost recovery is not achieved then this will have a direct impact on the district rate and would need to be referred to the Strategic Policy and Resources Committee.
- 2.3** Members are advised that the Licensing Committee does not have delegated powers in relation to policy decisions concerning licensing matters and as such your recommendation as to the appropriate fees for Pavement Cafe Licences will be subject to ratification by Council.

3.0 Main Report

Key Issues

- 3.1** The current Street Trading Licence fees were set in 2002. In the intervening time period, the Council has processed numerous licence applications and dealt with any associated licence holder queries. This has allowed the Service to have a better understanding of what it costs to administer the licence scheme.
- 3.2** Within that intervening time period, costs associated with an application and licence compliance have also increased such as those relating to salary, employer's National Insurance contributions, superannuation contributions, etc.
- 3.3** The process for administration and regulation of the various types of licences has been examined and the time allocated to each task has been reviewed.
- 3.4** In assessing our processes for both Stationary and Mobile Licences it has been determined that both types of licence cost an identical amount for licence compliance. The cost for a Stationary Licence application or for the renewal of a Mobile Licence application to be processed are also identical; the only major difference between the licence types is in the cost of a new Mobile Licence application which requires consultation with Transport N.I. and the PSNI.
- 3.5** It is, therefore, recommended that, instead of having separate fees for both types of licence, a new combined fee structure is introduced.
- 3.6** Temporary Licences were extensively examined and in particular the amount of work that is required to process and ensure licence compliance. Given the nature of a Temporary Licence, it is normally granted for 1 day for a one off event, a daily charge is therefore applied. However, a Temporary Licence can be granted for up to 7 consecutive days and the trader will have been charged for seven compliance visits even though a compliance visit has not taken place every day.
- 3.7** To rectify the situation, it is proposed that there will be an application fee and a single charge for a Temporary Licence whether it is for 1 day or 7 days.

- 3.8 The amount of work required for processing a Temporary Licence application is the same as the other types of licences; hence the cost of a Temporary Licence application is identical.
- 3.9 The revised licence fees reflect the changes the Service consider are required and will make it easier for all parties involved to understand, namely the respective applicants.
- 3.10 The detailed costs of the revised licence fees have been circulated to the Committee.
- 3.11 Additionally, for Members reference and comparison with the revised fees, a copy of the current licence fee has been circulated.
- 3.12 The following table is a summary of the proposed fees which have been rounded to the nearest pound.

	2016/17	Say
Stationary and Mobile Licence		
Application Fee - <i>Non refundable</i>	£617.50	£617
Renewal Application Fee - <i>Non refundable</i>	£522.75	£523
Licensed for Monday to Friday	£1,502.19	£1,500
Licensed for Monday to Sunday	£1,567.44	£1,570
Licensed for Weekend	£1,349.94	£1,350
Licensed for Sunday	£1,219.44	£1,220
Temporary Licence		
Application Fee - <i>Non refundable</i>	£677.50	£677
Licence Fee	£130.50	£130
Variation of Licence Particulars	£442.75	£440

Time and Manner of Payment

- 3.13 The Act allows the Council to determine the time and manner in which fees or charges are to be paid.
- 3.14 In order to accommodate licence holders, it is proposed that the Mobile and Stationary Licence Fees continue to be spread over a

one year period of twelve equal instalments. The first payment must be received before the licence is issued. The remaining eleven instalments may be made by Direct Debit or eleven payments in person. For a three year licence, the trader would in effect continue to make 36 payments over the licence term.

- 3.15 Members may recall that, when the fees were previously set the Committee agreed, by way of incentive and to encourage timely payment, that the Council would offer a 5% discount where the person paid in full at the start of their licence year or where they paid by Direct Debit.
- 3.16 This discount scheme has proven to be problematic and complicated under the Direct Debit scheme, as licence holders regularly default on monthly payments, which involves additional time for Council staff in following up and pursuing process of payment.
- 3.17 The same licence holders then move from the Direct Debit scheme to paying in person on a monthly basis and no discount is afforded, which results in a recalculation of the licence fee that must be paid monthly. Often the licence holder then wants to go back on the Direct Debit scheme resulting in another recalculation of the fee to be paid. This process becomes confusing and time consuming for licence holders as to the actual fee that must be paid.
- 3.18 In addition, no payments have been made in full in recent years to benefit from the 5% discount, which would support the removal of the incentive.
- 3.19 Members may wish to consider if they want to discontinue offering this small discount for payment in full and by Direct Debit.

Non-Payment of Fees

- 3.20 Members will also recall that a number of reports have already been presented to you regarding licence holders who have defaulted on licence payments and the matter has become so serious that the Council has either revoked or considered revoking their licences.
- 3.21 Members may now wish to take the opportunity to determine the appropriate payment structure for Street Trading Licences that 3 defaults in payment will result in the licence being referred to the Licensing Committee for consideration of revocation. Authorisation is sought to permit the publication of the statutory 28-day Notice and to commence consultation with licence holders.

Power to Remove Receptacles

- 3.22 Section 23 of the Street Trading Act (NI) 2001 gives the Council the power to remove any receptacle (Stalls and Vehicles) used by the holder of a Street Trading Licence to a place of storage when the receptacle has not been removed by the trader at the end of trade.**
- 3.23 Section 23 also permits the Council to recover from the licence holder the costs incurred by the council in removing and storing the receptacle. Any charges incurred by the Council must be paid by the licence holder before the receptacle is returned to them.**
- 3.24 Three times in the last two years, this power has been used and we charged only the cost of the recovery company (£200). Whilst there were officer and administration charges incurred by the Council, these were not passed on to the licence holder. The total cost was on average £464.**
- 3.25 Members may also now wish to determine if the Council should recover the full cost from the licence holder of this enforcement action.**

Financial and Resource Implications

- 3.26 The proposed increase in Street Trading Licence fees will ensure the cost of the operational and administration processes are proportionate to the licensing scheme.**

Equality and Good Relations Implications

- 3.27 Equality and good relations implications have been reviewed and a completed screening form has been forwarded to the Equality and Diversity Officer.”**

After discussion, it was

Moved by Councillor Craig,
Seconded by Councillor Dudgeon,

That the Committee agrees to adopt the following recommendations, as set out within the report:

- i. to approve the proposed fees for street trading licences, as set out within paragraph 3.12, and to initiate a consultation process with licence holders;

- ii. to remove the current 5% discount for full payment and for direct debit;
- iii. that, after three defaults in payment, the licence be referred to the Committee for consideration of its revocation; and
- iv. to recover from licence holders the full costs associated with the removal of street trading receptacles.

On a vote by show of hands twelve Members voted for the proposal and one against and it was declared carried.

At the request of the Committee, the Building Control Manager undertook to include within the future report on the outcome of the consultation process information on the fees being charged by councils of a similar size to Belfast.

Licence Fees for Pavement Cafés

The Committee considered the following report:

“1.0 Purpose of Report/Summary of main Issues

- 1.1 **Section 12 of the Licensing of Pavement Cafés Act (NI) 2014 gives the Council the power to set sufficient fees to allow it to recover the full costs of administering the Pavement Cafe Licence Scheme. However, the Council has the discretion to charge a reduced fee or to waive all charges.**
- 1.2 **Any reduced fee will result in a short fall in income to cover the cost of administering the scheme which will need to be recovered by another means.**
- 1.3 **The Act, prescribes the range of circumstances in which the Council may charge a fee:**
 1. **for the grant or renewal of a Pavement Licence; and**
 2. **for varying the conditions on a Licence at the request of the licence holder.**
- 1.4 **The Act also limits the maximum amount of the fee to that required to cover the Council's costs in administering the scheme. The Council is, therefore, prohibited from using the Licensing system to raise revenue.**
- 1.5 **The EU Services Directive, the Provision of Services Regulation 2009 and the Hemming case have provided clarity about the specific**

requirements that apply to the charging of fees. Charges must be reasonable and proportionate to the cost of the processes associated with a licensing scheme and councils must not use fees to make a profit or act as an economic deterrent to certain business types from operating within an area.

Hemming v Westminster Case

- 1.6 Members may be aware of the recent case involving Hemming v Westminster City Council. The case was determined on 29th April 2015 in the Supreme Court who delivered judgment, in what was a significant case for regulators and the regulation of licensing or other similar regulatory regimes.
- 1.7 The Supreme Court held that local authorities can charge for the cost of 'enforcement of licence' as well as the cost of 'processing the licensing application.' The Supreme Court referred the question to the Court of Justice in Luxemburg of whether the total fee, including management costs, could be demanded upfront on the basis that the management fee is refunded to unsuccessful applicants.
- 1.8 Section 5 of the Act allows the Council to determine the period of the Licence, for example the Council could determine 1 year, 3 year, 5 year licence and so on. The period of the licence will impact on the overall cost to the licensee. A 5 year licence would also be compatible with proposed changes to entertainment licensing and with liquor licensing.

Procedure for Fee Setting

- 1.9 The Act states the procedures which the Council must follow in setting the fees and these stages may be summarised as follows:
1. the Council is to give notice of the proposed fees to licence holders and to publish the proposed fees by such means as it thinks appropriate.
 2. the Council is required to consider any written representations concerning the proposed fees and charges.
- 1.10 However, as a prerequisite, Members need to determine the proposed level of fee, which will allow the Council to start the statutory process for setting the fee as per stage one above.

1.11 As there are no licence holders presently, we propose this year that the Council publishes the proposed fees in the same manner as the Street Trading Fees, in two or more newspapers showing how the fees have been calculated. This should ensure that as many prospective applicants are aware of the proposed fees. This cost will be borne by the Service.

1.12 As we progress, further reports will be brought before the Committee detailing the outcome of the process of consultation. At that stage, Members will be able to determine the final fee you consider appropriate.

2.0 Recommendations

2.1 Members are asked to:

- i determine the proposed level of fee;
- ii agree the period of a Pavement café licence;
and
- iii authorise the proposed fees for publication
and commence consultation.

2.2 Members are asked to note that, if full cost recovery is not achieved, then this will have a direct impact on the district rate and would need to be referred to the Strategic Policy and Resources Committee.

2.3 Members are advised that the Licensing Committee does not have delegated powers in relation to policy decisions concerning licensing matters and, as such, your recommendation as to the appropriate fees for Pavement Cafe Licences will be subject to ratification by Council.

3.0 Main report

Key Issues

3.1 The licensing of Pavement Cafés is a new Council function, as such, fees have never previously been determined. However, the Council has extensive experience in processing and granting similar types of licence, such as a Street Trading Licence.

3.2 Information gained from dealing with these and other licence applications has been used to develop an up to date understanding of the costs associated with Pavement Café Licensing.

- 3.3 An analysis of the time allocated to each task in the licensing process was undertaken and costing estimates developed based on administration and compliance costs arising from salaries, employer's National Insurance contributions, superannuation contributions, office rental costs and other on-costs.
- 3.4 The detailed costs of the revised licence fees are attached. Below is a summary of the proposed fees:

	2016/2017	Say
Grant Application Fee - <i>Non refundable</i>	£661.00	£660
Renewal Application or Variation Fee - <i>Non refundable</i>	£433.50	£435
Licensed Fee (yearly)	£110.00	£110

- 3.5 As previously mentioned in the report and to assist Members in deciding the period of the licence, the actual costs over the time period are set out below. For ease of comparison, we have based it on a 5 year period and worked out the average cost per year for that licence:

	Year 1	Year 2	Year 3	Year 4	Year 5	Total	Ave cost
1 Year Lic	£770	£545	£545	£545	£545	£2,950	£590
3 Year Lic	£770	£110	£110	£545	£110	£1,645	£329
5 Year Lic	£770	£110	£110	£110	£110	£1,210	£242

- 3.6 What this shows is that a 5 year licence period will allow for an overall saving to the licensee.

Financial and Resource Implications

- 3.7 The proposed Pavement Café Licence fees will ensure the cost of the operational and administration processes are proportionate to the licensing scheme.

Equality and Good Relations Implications

- 3.8 Equality and good relations implications are being reviewed and a completed screening form will be forwarded to the Equality and Diversity Officer.”

After a lengthy discussion, it was

Moved by Councillor Craig,
Seconded by Alderman Sandford and

Resolved – That the Committee agrees:

- i. to initiate the consultation process in relation to pavement cafés fees, on the basis of the costs proposed within paragraph 3.4 of the report, and to include within the consultation options around the cost and duration of a licence and an indication that the Committee favours a five-year fee, which would equate to an annual cost of £242; and
1. to include within the consultation document information on the fees being charged by councils of a similar size to Belfast and whether the fees were being subsidised by those councils.

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 issued under the Council's Scheme of Delegation.

Application for the Renewal of a Seven-day Annual Entertainments Licence - Irish National Foresters' Club, 14-18 Albert Street

The Building Control Manager informed the Committee that an application had been received for the renewal of a Seven-day Annual Indoor Entertainments Licence in respect of the above-mentioned premises.

He 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 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 had, on 22nd November, 2011, been convicted at the Belfast Magistrates' Court of an offence under the aforementioned Order. That offence had been detected during an earlier inspection of the premises by officers of the Building Control Service whilst entertainment had been taking place, which had found that an emergency exit had been locked. As a result, a fine of £400 and costs of £66 had been imposed.

He pointed out that the Licensing Committee, at its meetings on 17th October 2012, 20th November 2013 and 15th April, 2015 had agreed to renew the Entertainments Licence, on the basis that the Building Control Service had been

satisfied that the premises were being managed in accordance with the Entertainments Licensing legislation, particularly around the safety of patrons, performers and staff. A number of subsequent inspections had confirmed that that continued to be the case. He added that no written representations had been received in relation to the application, neither the Northern Ireland Fire and Rescue Service nor the Police Service of Northern Ireland had offered any objection and the Council's Environmental Protection Unit had received no complaints regarding noise disturbance from the premises.

Accordingly, the Committee agreed, in its capacity as Licensing Authority, to renew the Seven-day Annual Indoor Entertainments Licence in respect of the Irish National Foresters' Club, 14-18 Albert Street.

**Application for the Grant of a Seven-day Annual Entertainments Licence –
Phoenix Bar, 179-181 Antrim Road**

The Committee was informed that an application had been received from the licensee of the Phoenix Bar for the grant of a Seven-day Annual Indoor Entertainments Licence.

The Building Control Manager reported that the previous Entertainments Licence had expired on 31st March, 2011. He confirmed that no written representations had been received in relation to the application and that the Northern Ireland Fire and Rescue Service and the Police Service of Northern Ireland had offered no objection. In such circumstances, it would be normal practice for the Entertainments Licence to be issued under the Council's Scheme of Delegation. However, given that the applicant had, on 24th May, 2016, been convicted at the Belfast Magistrates' Court of providing entertainment within the bar without a valid Entertainments Licence, the application had, as required under the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, been placed before the Committee for consideration. The applicant had received a conditional discharge in relation to the offence and been ordered to pay costs of £69.

The Building Control Manager confirmed that, in terms of this application, all of the required works had been completed to the satisfaction of the Building Control Service and that no entertainment had been found to be taking place during any of the fourteen inspections which had been carried out since the aforementioned offence had been detected. In addition, the Council's Environmental Protection Unit had indicated that it had received no complaints regarding noise disturbance from the premises.

The Committee agreed, in its capacity as Licensing Authority, to grant a Seven-day Annual Indoor Entertainments Licence in respect of the Phoenix Bar, 179-181 Antrim Road.

Recovery of Court Costs

Arising from discussion on the foregoing applications, the Divisional Solicitor confirmed that a report on the outcome of a review of the level of costs which the

Council could apply for in relation to prosecutions taken under the entertainments licensing legislation would be submitted to the next monthly meeting of the Committee.

Noted.

Application for the Grant of a Fourteen-day Occasional Outdoor Entertainments Licence - Aether & Echo, 1-3 Lower Garfield Street

The Committee considered the following report:

“1.0 Purpose of Report/Summary of main Issues

- 1.1 To consider an application from Mr Brian McGeown of IM BIBE Limited, for the grant of a Fourteen-day Occasional Outdoor Entertainments Licence for Aether & Echo, Lower Garfield Street, based on the Council’s standard conditions to provide outdoor musical entertainment.

Area and Location	Ref. No.	Applicant
Aether & Echo	WK/201600574	Mr Brian McGeown
1-3 Lower Garfield Street		IM BIBE Limited
Belfast BT1 1FP		Aether & Echo
		1-3 Lower Garfield
		Street
		Belfast, BT1 1FP

- 1.2 A copy of the application form has been forwarded to the Committee.
- 1.3 A location map has been circulated to Members.
- 1.4 Members are reminded that all applications for the grant of Outdoor Entertainments Licences must be brought before Committee for consideration.

2.0 Recommendations

- 2.1 Taking into account the information presented and any representations made in respect of the application you are required to make a decision to either:
1. approve the application for the grant of a Fourteen-day Occasional Outdoor Entertainments Licence, or
 2. approve the application for the grant with special conditions, or
 3. refuse the application for the grant of the Fourteen-day Occasional Outdoor Entertainments Licence.

2.2 If Members are minded to grant the application, it will be conditional upon any outstanding technical matters, such as those relating to noise management, being completed to the satisfaction of the Council.

2.3 If an 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 County Court. In the case that the applicant subsequently decides to appeal outdoor entertainment may not be provided until any such appeal is determined.

3.0 Main Report

Key Issues

3.1 The applicant currently holds a Seven-day Annual Indoor Entertainments Licence. The indoor areas licensed to provide entertainment are the:

- Ground floor Bar and Lounge, with a maximum capacity of 150 persons
- 1st floor Bar, with a maximum capacity of 220 persons
- APOC, with a maximum capacity of 40 persons.

3.2 The days and hours during which the premises are currently licensed to provide indoor entertainment are:

- Monday, Thursday, Friday and Saturday: 11.30 am to 3.00 am the following morning,
- Tuesday and Wednesday: 11.30 am to 1.00 am the following morning, and
- Sunday: 12.30 am to 12.00 am the following morning.

3.3 The premise operates as a public bar and nightclub with indoor entertainment being provided in the form of DJs and live bands. The applicant proposes to provide further outdoor entertainment events on Lower Garfield Street, in front of the premises.

3.4 The standard days and hours for an Outdoor Entertainments Licence are:

- Monday to Sunday: 11.30 am to 11.00 pm.

3.5 In addition, the following special conditions are usually attached to Outdoor Licences:

1. maximum numbers will be agreed at the discretion of the Building Control Service and will vary depending upon individual concert set up proposals;
2. prior to any event taking place the promoters are required to demonstrate evidence of early consultation and have in place a robust system of dealing with any complaints, which has been agreed in advance with the Council;
3. any requests to provide entertainment later than 11.00 pm must be considered by the Licensing Committee and therefore must be made at least 3 months in advance of the proposed event; and
4. should an application to provide entertainment beyond 11.00 pm be granted and the Council then receive a significant number of complaints regarding noise or the complaint is of such significant impact, authority is granted to the Director of Planning and Place, in consultation with the Town Solicitor, to reduce the finishing time for any subsequent nights of the event, in which case the promoter will be required to make contingency arrangements.

Previous Considerations and Background

- 3.6 Members may recall that, on three previous occasions, the Committee considered applications for Temporary Street Trading Licences from the applicant at the same location.
- 3.7 The last application considered by the Committee was at your meeting on 21st October, 2015 for a Temporary Street Trading Licence to enable Mr McGeown to apply to the Petty Sessions Court for an Occasional Liquor Licence. The licence facilitated the operation of a bar facility outside their premises for an outdoor musical event.
- 3.8 The Council's Bye-Laws regarding the consumption of intoxicating liquor in designated places do not have effect where intoxicating liquor is consumed for which an Occasional Liquor Licence has been granted.
- 3.9 Lower Garfield Street is regarded as a no through vehicular route with Aether & Echo being the prime business on this short street.

The land is the responsibility of Transport NI and thus regarded as public land.

- 3.10** Under Schedule 1, Article 3 of the Local Government (Miscellaneous Provisions) (NI) Order 1985, an Outdoor Entertainments Licence is required if any public musical entertainment is held wholly or mainly in the open air and at a place on private land.
- 3.11** Following consideration of the aforementioned applications, Committee further requested 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.
- 3.12** As a result, a report was presented to the Committee on 12th November, 2015. After consideration, the Committee agreed that, with effect from 1st January 2016, where an outdoor musical event is proposed on land in respect of which Transport NI has, pursuant to Article 72 of the Roads (Northern Ireland) Order 1993, issued a Consent, the organiser must apply for an Outdoor Entertainments Licence.
- 3.13** Therefore, as part of their long term plans for their business and the area going forward, this application has been received and is placed before you for your consideration. A copy of the minutes from the Committee meeting on 12th November 2015 has been circulated to the Committee.
- 3.14** The applicant has also applied for a Fourteen-day Occasional Marquee Entertainments Licence, which will be issued under the Council's Scheme of Delegation. However, if the Outdoor Entertainments Licence is granted the applicant intends to use the space for a range of events and utilise both licences.

Consent

- 3.15** As the street in question is the responsibility of Transport NI, the Service has met with their representatives and the applicant to coordinate the issue of the Consent to enable the Entertainments Licence application to be considered.
- 3.16** Transport NI is satisfied to grant Consent for both the Occasional Outdoor and Marquee Entertainments Licences at the venue and arising from this draft terms and conditions, which have been agreed with the applicant, are outlined below which Members may wish to consider including on the Entertainments Licence if you are minded to grant it:

1. the Outdoor area must be managed in conjunction with the premises Indoor Entertainments Licence and the agreed maximum numbers of those respective areas must be controlled to ensure they do not exceed those stipulated on the Entertainments Licences;
 2. a minimum 2m wide general public access route must be maintained at one side of the site at all times;
 3. all event documentation, such as the Event Management Plan, Site Layout Plan and Health & Safety documentation must be provided no less than 2 months prior to the event taking place. The submission of the documentation will be subject to assessment and will require the facilitation of pre-event meetings;
 4. a Noise Level must be established and agreed with the Council prior to any event taking place. This level will be subject to continued review and may be adjusted depending upon complaints received by the council, the individual event set up and nature of entertainment taking place; and
 5. as part of evidence of early consultation, the licensee must put in place appropriate neighbourhood notification in the form of a letter. The letter must be submitted no less than 3 weeks prior to the event for approval and distributed to areas in a timeframe agreed at the discretion of the Building Control Service.
- 3.17 Representatives from Transport NI will be available at your meeting to answer any queries you may have in relation to the application.

Representations

- 3.18 Public notice of the application has been placed and no written representation has been lodged as a result of the advertisement.

PSNI

- 3.19 The Police Service of Northern Ireland has been consulted and has confirmed that it has no objection to the application. The Police

Service will also be consulted in advance of any proposed event to consider any traffic management and wider operational policing issues. A copy of its response has been circulated to Members.

NIFRS

- 3.20 The Northern Ireland Fire and Rescue Service was also consulted and has no objection to the application. It will also be invited to meetings and provided with the relevant documentation in advance of any planned event.

Health, Safety and Welfare

- 3.21 The Service has previously administered Temporary Street Trading Licences at the venue and, as a result, we have a working knowledge of the venue and the surrounding area and infrastructure.
- 3.22 Officers will engage with organisers and other interested parties to ensure that the appropriate documentation is developed and that all safety and technical requirements are met in advance of each specific event taking place, should you decide to grant the licence.

Noise

- 3.23 The Environmental Protection Unit (EPU) has been informed of the applications and will comment on each individual event when information relevant to it has been provided, such as the appropriate noise management plan.
- 3.24 Members should note that no complaints have been received regarding noise disturbance or patron dispersal from the premises, or from the three outdoor events which have already taken place.

Applicant

- 3.25 The applicant, and/or their representatives, will be available at your meeting to answer any queries you may have in relation to the application.

Financial and Resource Implications

- 3.26 Officers will be required to carry out inspections for each outdoor event and attend any planning meetings which are catered for within existing budgets.

Equality or Good Relations Implications

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

After discussion, the Committee agreed, in its capacity as Licensing Authority, to grant a Fourteen-day Occasional Outdoor Entertainments Licence for Aether & Echo, 1-3 Lower Garfield Street, and to attach to the licence those conditions set out within paragraph 3.16 of the report.

**Application for the Renewal of a Seven-day Annual Entertainments Licence –
The House, 12 Stranmillis Road**

The Committee considered the following report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 To consider an application for the renewal of a Seven-day Annual Entertainments Licence for The House, based on the Council’s standard conditions to provide music, singing, dancing or any other entertainment of a like kind where an objection has been received.**
- 1.2 Members are reminded that, at your meeting on 20th April, you agreed to consider the application at a future monthly meeting, to which the objector and the applicant would be invited to attend.**

Premises and Location	Ref. No.	Applicant
The House	WK/201600301	Mr. Timothy
12 Stranmillis Road		O’Kane
Belfast, BT9 5AA		DJTJ Enterprises
		Limited
		12 Stranmillis Road
		Belfast, BT9 5AA

- 1.3 The renewal application was received from Mr Timothy O’Kane of DJTJ Enterprises Limited, on 25th February 2016.**
- 1.4 A location map has been circulated to Members.**
- 1.5 Members are reminded that one objection was received within the 28 day statutory period.**

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 renewal of the Seven-day Annual Entertainments Licence, or**
- 2. approve the application with special conditions, or**
- 3. refuse the application for the renewal 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 Records Court.

3.0 Main report

Key Issues

3.1 The objection is from a resident of an adjacent residential property on Stranmillis Road and the nature of their objection relates to allegations that the noise emanating from the premises is disturbing their sleep and causing sleep deprivation.

3.2 Following receipt of the objection, the Service offered to facilitate a liaison meeting between all parties involved in an attempt to resolve the matter. However, the objector advised the Service that they did not wish to avail of this opportunity and instead wanted his objection to remain and be considered by the Committee.

3.3 The Service advised the objector to contact the Night Time Noise Team when he was being disturbed by noise emanating from the applicant's premises, to enable the Council to record the noise levels to substantiate the objection. The Service has also requested the Night Time Noise Team to prioritise any calls from the objector.

3.4 Officers have also offered the objector the opportunity to provide a suitable date and time for the Night Time Noise Team to carry out planned monitoring in his apartment to establish the noise nuisance. The objector has not yet availed of the offer of planned monitoring.

Previous Application and background

- 3.5 The current applicant, Mr Timothy O’Kane of DJTJ Enterprises Limited, contacted the Service to advise us that he was taking over the running of the premises and that he was now the licensee. He also advised us that he was closing the premises for a number of weeks from 24th August 2015 until 9th October 2015 in order to carry out renovation and redecoration of the premises.
- 3.6 He further advised that he took over the management of the premises in September, 2015 and entered into a 10 year lease for the premises on 2nd September, 2015.
- 3.7 Mr O’Kane was advised that a transfer application must be submitted prior to operating the premises and as a result, an application was made on the 26th October, 2015.
- 3.8 On 7th and 8th September 2015, the Environmental Protection Unit (EPU) received an emailed complaint and a telephone complaint from the objector, stating that he was aware that the premises were now under new management and that he was being disturbed by noise emanating from the premises and he requested that the licence be revoked.
- 3.9 EPU advised the objector to contact the Service regarding his objection and if he was disturbed by noise he should contact the Night Time Noise Team and it would visit to assess the noise level and speak to the responsible person in the premises, if warranted.
- 3.10 The applicant was advised of the complaint. He advised that due to the works which were being undertaking at the premises, the premises were not operating at that time. Officers visited the premises and were satisfied that they were not operating.
- 3.11 On 17th September 2015, the objector formally objected to the transfer of the Entertainments Licence.

Liaison Meeting

- 3.12 Following receipt of this objection, the Service also offered to facilitate a liaison meeting between all parties involved in order to discuss the issues in an attempt to resolve the matter.

- 3.13** The liaison meeting took place in The House bar on 12th January, 2016 and the objector highlighted the noise issues and level of disturbance he was experiencing. These included noise arising from entertainment, an external gate being dragged closed at the end of the night, the main door of the premises being slammed shut at the end of the night, noise arising from patrons using the external smoking area, light emanating from an external light fitting into his bedroom and bins being placed to the front of the bar.
- 3.14** Subsequently, the applicant agreed to carry out remedial action to alleviate all of the objectors concerns and, as a result, the objector withdrew their objection against the transfer application and an Entertainments Licence was issued to the new owner.
- 3.15** Following your agreement to consider the application at your April Committee meeting and in line with the Committee Protocol, we sent the applicant and the objector a Representation Form and requested each to provide their representation in advance of the meeting for consideration.
- 3.16** This was requested 3 weeks in advance of your meeting to ensure that there is appropriate time to share the information between all parties and to allow Officers to incorporate the points raised in the report for your consideration.

Objectors Representation

- 3.17** To date, the objector has not submitted his Representation Form as required by the Protocol.
- 3.18** Officers have also tried to contact the objector to confirm their attendance at your meeting but, at the time of writing this report, we have been unable to make contact and are therefore unaware if the objector or their representative will be attending.

Applicants Representation

- 3.19** The applicant has provided their Representation Form, as required by the Protocol, and a copy of his response has been made available to the Committee. The applicant has highlighted the measures which they have undertaken to try and reduce the objector's specific issues, such as:

- the installation of two new speakers positioned away from the party wall between the bar and the objectors property. These have also been calibrated through a sound limiter.
- they no longer empty their bottle bins after 11.00 pm and
- they exit the premises as quietly as possible after closing time.

3.20 The applicant also confirms that they are fully aware that the premises is situated in a residential area and they will do everything they can to improve relations with the objector. They also offer assurances to the Committee that they will continue to fully comply with the terms and conditions of the Entertainments Licence.

3.21 As the objector did not submit a representation form, the applicant has advised that he did not wish to share his representation form with the objector.

3.22 The applicant and/or their representatives will be available at your meeting to answer any queries you may have in relation to the application.

History of the Premises and the Objector

3.23 The objector is known to the Service, as he has complained about noise from the premises in the past and also objected to a previous application when the premises were under the control and responsibility of former licensees.

3.24 Complaints were received, as follows:

- November, 2013
- September, 2013
- October, 2009
- August, 2009

3.25 The objector objected to previous transfer, renewal and variation applications in October, 2007. The variation was to increase the maximum permitted occupancy of the premises. The nature of that objection related to the following:

- noise from entertainment being clearly audible in his bedroom and that it was causing sleep disturbance;

- noise from patrons outside the premises, particularly in summertime, being clearly audible in his bedroom and that it was causing sleep disturbance; and
- light emanating from an external light fitting into his bedroom.

- 3.26 A meeting was convened by the Service between all parties involved in order to discuss the issues in an attempt to resolve the matter. However, resolution could not be achieved and the applications were subsequently considered by the Licensing Committee at their meeting on 19th March, 2008.
- 3.27 The objector was unable to attend the Committee meeting but after consideration the Committee agreed to grant the transfer and renewal applications and the variation to increase the maximum permitted occupancy.

Details of the Premises

- 3.28 The areas currently licensed to provide entertainment are the:
- Ground Floor Bar, with a maximum capacity of 134 persons.
- 3.29 The days and hours during which the premises are currently licensed to provide entertainment are:
- Monday to Saturday: 11.30 am to 1.00 am the following morning, and
 - Sunday: 12.30 pm to 12.00 midnight
- 3.30 The following special conditions are attached to the licence:
- no entertainment shall be provided other than through the in-house sound system set to 85db (A) and access restricted and
 - the main front door to be kept closed and manned whilst entertainment is taking place.

PSNI

- 3.31 The PSNI has been consulted and has no objection to the application. A copy of its correspondence has been circulated.

Health, Safety and Welfare Issues

- 3.32 The issues raised by the objector were generally the same as previously outlined at the time the transfer application was made and the subsequent remedial works identified, including the installation of a new noise limiting device, have been completed.
- 3.33 A total of three during performance inspections have been carried out on the premises by Officers from the Service since the last renewal. The inspections revealed that the conditions of the Entertainments Licence were being adhered to with the exception of some issues such as a pre-event checklist not being completed properly at the time of one of the inspections.
- 3.34 Through the recent Entertainment Licensing renewal inspection, we were satisfied that all operational and management procedures are being implemented effectively.

NIFRS

- 3.35 The Northern Ireland Fire Rescue Service has also been consulted in relation to the application and confirmed that it has no objection to the application.

Noise Issues

- 3.36 The Environmental Protection Unit (EPU) has been consulted in relation to the application and confirmed that it has received a total of three noise complaints since the applicant took over the running of the premises.
- 3.37 The complaints are from the objector and relate to noise emanating from the premises.
- 3.38 EPU received from the objector an emailed complaint at 6.58 pm on 7th September, 2015 and a telephone complaint at 8.00 pm on 8th September, 2015 stating that he was aware that the premise was under new management and that he was being disturbed by noise from the premise and he asked for the licence to be revoked.
- 3.39 The other complaint was a telephone call from the objector at the time of disturbance.
- 3.40 At 10.41 pm on 18th April 2016, the objector contacted the Night Time Noise team regarding loud music. The Night Time Noise Team called to the premises at 11.47 pm and witnessed no noise in the objector's bedroom. The objector stated that the noise level had reduced.

- 3.41 The applicant was notified of these complaints but no further action was deemed necessary.
- 3.42 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 pm.

Financial and Resource Implications

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

Equality or Good Relations Implications

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

The Building Control Manager reviewed the application and highlighted the fact that Mr. A. Parmar, the objector, had failed to submit a representation form outlining the nature of his objections, as required under the Protocol governing the operation of the Licensing Committee. He had failed also to respond to officers who had sought to resolve the issue, which meant that, under normal circumstances, he would not be permitted to address the Committee. However, he had, on the previous day, confirmed that he had received neither the letter nor the email containing the representation form which had been forwarded to him by the Building Control Service. The Building Control Manager reported that Mr. Parmar was in attendance and pointed out that, since the Protocol made provision for the Committee to accept representations in exceptional circumstances, it was a matter for it to decide whether it wished to exercise its discretion in this instance.

The Committee agreed to exercise its discretion and consider Mr. Parmar’s objection and he was welcomed by the Chairperson.

Mr. Parmar informed the Members that his objection was based primarily around the unacceptable level of noise, particularly from live music, patron dispersal and staff clearing up after closing time, which emanated on a regular basis from the House Bar. That noise continued until 2.00 a.m. on some nights and, given that it was audible from his bedroom, had caused him sleep deprivation.

He explained that, since the licensee had been made aware of the issues which he had raised, there had been no occasions on which noise levels could have been monitored by the Council, with a view to supporting his objection. In his opinion, the licensee had behaved in such a deliberate way as to ensure that, in the lead up to the Committee meeting, there would be no issues associated with the premises which could

jeopardise his application. He suggested that, should the application be approved, there was every possibility that the noise disturbance would return. He concluded by requesting the Committee, if it was minded to renew the Entertainments Licence, to attach to it a condition stating that, should the stipulated noise level be exceeded, the licence would be revoked with immediate effect. Such a move would, he argued, ensure that he would not have to wait for another year in order to submit an objection.

In response to a question from a Member, Mr. Parmar confirmed that a number of residents from adjoining apartments had experienced similar issues in relation to the House Bar and had invited him to pursue the matter on their behalf.

The Chairperson thanked Mr. Parmar for his contribution.

In response to Mr. Parmar's request for the Entertainments Licence to be revoked in the event of noise levels being exceeded, the Building Control Manager confirmed that there was currently a condition on the licence which limited the noise level to 85db. He added that, should a complaint be received and noise levels were found by Council officers to have been breached, enforcement proceedings could be initiated against the licensee.

The Divisional Solicitor confirmed that the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 permitted the Council to suspend an Entertainments Licence only where there was a serious threat to public safety and that it could not, as had been suggested by the objector, be applied where a noise level had been breached. In the latter instance, the matter could be dealt with by way of a prosecution which would, in accordance with the Order, be brought to the attention of the Committee in terms of the fitness of the applicant when future applications were being considered.

The Chairperson welcomed to the meeting Mr. T. O'Kane, Mr. Daniel Coyles and Mr. Danny Coyles, representing DJTJ Enterprises Limited, the applicant company.

Mr. Danny Coyles informed the Committee that DJTJ Enterprises Limited had assumed control of the House Bar on 2nd September, 2015 and that it had been closed for a period of six weeks thereafter to allow for the installation of a new kitchen and for redecoration. Therefore, the complaints which the objector had lodged with the Council on the evenings of 7th and 8th September regarding entertainment noise could not be attributed to the premises.

He explained that, during a meeting which had taken place on 12th January, 2016 with the licensee, Mr. Parmar had highlighted issues around night time noise disturbance from bottle bins being emptied and from the front door and a gate being closed when staff were leaving the premises. Mr. Parmar had been assured that bottle bins would no longer be emptied after 11.00 p.m. and, subsequently, adjustments had been made to the door and gate and staff had been instructed to keep noise levels to a minimum when leaving the premises. In addition, the licensee had voluntarily relocated two speakers, which had been attached to the wall between the bar and Mr. Parmar's residence, to a central position over the porch area within the bar. In terms of the complainant's assertion that the management had intentionally ensured that there would

be no issues in advance of the application being considered by the Committee, he pointed out that the way in which the premises were operated had remained unchanged since DJTJ Enterprises Limited had assumed control and that there was a possibility that the relocation of the speakers in itself may have addressed a long standing noise issue.

Mr. O'Kane referred to the fact that the objector had, earlier in the meeting, indicated that he had been disturbed by noise till 2.00 a.m. on some nights and pointed out that it could not have originated from the House Bar, given that the Liquor Licensing legislation permitted the licensee to operate only until 1.00 a.m. from Monday to Saturday and to midnight on a Sunday. He added that entertainment was provided primarily in the form of one or two performers and that the noise level, which had been set by the Council at 85db, was continually monitored by management and had never been exceeded.

The Chairperson thanked the deputation for their contribution.

After discussion, the Committee agreed, in its capacity as Licensing Authority, to renew a Seven-day Annual Indoor Entertainments Licence in respect of the House Bar, 12 Stranmillis Road and that the following conditions should remain on the licence:

- i. no entertainment shall be provided other than through the in-house sound system, which is to be set at 85db (A), and access to that system must be restricted; and
- ii. the main front door of the premises is to be kept closed and manned whilst entertainment is taking place.

Application for Extended Hours – Orangefest Event, Woodvale Park

The Committee was advised that an application had been received from the Woodvale and Cambrai Youth and Community Association in relation to an outdoor musical event which it was proposing to hold on the night of 11th July, as part of a week-long programme of Orangefest activities taking place within the Woodvale Park.

The Building Control Manager explained that the Council's City and Neighbourhoods Services Department held both a Seven-day Annual Outdoor Entertainments Licence and a Fourteen-day Occasional Marquee Entertainments Licence for the Park, which it transferred to organisers for the duration of their event. Under the terms of those licences, entertainment was permitted to take place from Monday to Sunday between the hours of 11.30 a.m. and 11.00 p.m. and special conditions were attached to each licence in relation to occupancy levels, early consultation with residents and businesses, extended hours and addressing complaints.

He reported that the Association had requested that the Committee give consideration to permitting entertainment to run until 1.00 a.m. on the night of 11th July, which would bring to a close a family fun day, consisting of live entertainment, face painting and similar activities, although the overall programme of entertainment had yet to be finalised. He reminded the Committee that it had, at recent meetings, approved

requests for similar events taking place in Custom House Square, in Writers' Square and in the Falls Park and pointed out that, since the applicant was seeking to extend the hours permitted under an existing licence condition, rather than vary the Entertainments Licence itself, there had been no requirement for the application to be advertised. He confirmed that neither the Northern Ireland Fire and Rescue Service nor the Police Service of Northern Ireland had objected to the application and that the Police Service had stated that it had found the Woodvale and Cambrai Youth and Community Association to be both responsible and organised and that their programme of events helped to ease tensions in the area.

The Building Control Manager informed the Members that, whilst the Building Control Service had yet to receive the relevant event documentation, officers were liaising with the organiser and other Council Departments and agencies to ensure that appropriate measures would be put in place in advance of the event to safeguard the health, safety and welfare of patrons. The Council's Environmental Protection Unit had confirmed that it had no particular concerns around the request to operate till 1.00 a.m. and that it would seek to ensure that an appropriate noise management plan was developed, in consultation with all relevant parties, with a view to keeping noise breakout and disturbance to a minimum. He added that a special condition attached to the Entertainments Licence placed a requirement on the Association to consult with residents in advance of the event and that officers would approve an appropriate letter in that regard. Furthermore, they would discuss with the Association the process for dealing with any complaints arising on the night of the event.

After discussion, the Committee agreed, in its capacity as Licensing Authority, that the standard hours on the Seven-day Annual Outdoor Entertainments Licence for the Woodvale Park be extended to enable entertainment to take place till 1.00 a.m. on the night of Monday, 11th July, as part of the Orangefest event, subject to all technical requirements being met to the satisfaction of Council officers.

**Application for the Provisional Grant of an Amusement Permit –
Roll the Dice, 181 Ormeau Road**

The Committee was reminded that, at its meeting on 20th April, it had agreed that it was minded to refuse an application for the grant of an Amusement Permit in respect of the above-mentioned premises, on the grounds that it failed to comply with the Council's Amusement Permit Policy.

The Building Control Manager explained that, under the provisions of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) 1985, the applicant had been advised of the Committee's intention to refuse the application and afforded the opportunity to attend a future meeting to make representation regarding that decision. However, the applicant had since confirmed that it was not his intention to pursue the matter.

Accordingly, the Committee agreed, in its capacity as Licensing Authority, to affirm its decision of 20th April to refuse an application for the grant of an Amusement Permit in respect of Roll the Dice, 181 Ormeau Road, on the grounds that it failed to comply with the Council's Amusement Permit Policy.

**Application for the Grant of an Amusement Permit –
Players, 22-23 Shaftesbury Square**

The Committee considered the following report:

“1.0 Purpose of Report/Summary of Main Issues

- 1.1 To consider an application from Ms. Kerry Boyle of KB Shaft Limited, for the grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 ('the 1985 Order').

Premises and Location	Ref. No.	Applicant
Players	WK/20160593	Ms. Kerry Boyle
Ground Floor		KB Shaft
22-23 Shaftesbury Square		Limited
Belfast		
BT2 7DB		

- 1.2 The Director of KB Shaft Limited is Ms. Kerry Boyle.
- 1.3 A copy of the application form has been circulated to the Committee.
- 1.4 A location map has also been circulated.

2.0 Recommendations

- 2.1 The 1985 Order states that the Committee, in considering the application for the Grant of an Amusement Permit, shall have regard to:
1. the fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing,
 2. the fitness of any other person by whom the business is to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,
 3. representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and
 4. representation, if any, as a result of the public notices of advertisement.

- 2.2 You must refuse the application unless satisfied that:**
- 1. the applicant is a fit person to hold an Amusement Permit; and**
 - 2. the applicant will not allow the business proposed to be carried on under the Amusement Permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an Amusement Permit.**
- 2.3 Thereafter:-**
- 1. You may refuse the application after hearing any representations from third parties, or**
 - 2. You may grant the application, subject to the mandatory condition that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character, and**
- 2.4 In the case of premises that have machines with the maximum cash prize of £25.00, where admission is restricted to persons aged 18 or over that –**
- no persons under 18 are admitted to the premises; and**
 - at any entrance to, and inside any such premises there are prominently displayed notices indicating that access to the premises is prohibited to persons aged under 18, and in addition**
 - 3. You may also grant the application subject to discretionary conditions outlined in the 1985 Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.**
- 2.5 Should you be of a mind to refuse the application for the grant of an Amusement Permit or grant the Permit subject to any discretionary conditions, you are required to advise the applicant of your intention to do so. In this case you must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination of the application.**
- 2.6 If, subsequent to hearing the applicant, you refuse the application for the Grant of an Amusement Permit or decide to grant the**

application subject to discretionary conditions the applicant may appeal that decision to the County Court.

3.0 Main report

Key Issues

- 3.1** Members are reminded that the Licensing Committee is responsible and has full delegated authority for determining all applications relating to the grant and provisional grant of Amusement Permits.
- 3.2** Members may be aware that an arcade has operated at 22 Shaftesbury Square since 1994 under previous ownership, formerly known as Winners, but was recently granted to KB Shaft Limited at your meeting on 19th August 2015.
- 3.3** As there is no mechanism within the 1985 Order to cater for the extension to an existing premise, as is happening in this case, an application must be made for the grant of an Amusement Permit for the ground floor of 22-23 Shaftesbury Square.
- 3.4** The current Amusement Permit for 22 Shaftesbury Square is due to expire on 31st July, 2016.

Applicant

- 3.5** The applicant has requested to operate the proposed premises under the same hours as the existing Amusement Permit for 22 Shaftesbury Square from 9.00 am to 3.00 am, Monday to Sunday.
- 3.6** The permit is for a total of 94 gaming machines, all of which are to pay out a maximum all cash prize of £25.00. In the case of premises which have machines with a maximum cash prize of £25.00 admission is restricted to persons aged 18 or over. This is an increase of 64 machines as the current Amusement Permit is for a total of 30 gaming machines. However, the applicant has confirmed that they are willing to reduce the number of machines, if required.
- 3.7** Ms Boyle and/or her representatives will be available to discuss any matters relating to the grant of the permit at your meeting.

Health, Safety, Welfare and Technical requirements

- 3.8 Officers from the Service have met with the applicant to discuss the application and status of the premise. The applicant has confirmed that a Building Regulations application will be made to the Service for the building work that will be required to create the new arcade layout.

Planning Matters

- 3.9 A planning application was made to the Planning Service on the 3rd April 2014 for a change of use of the ground floor of No. 23 to an Amusement Arcade including an extension and frontage alterations to allow for the amalgamation with No. 22 Shaftesbury Square. This was granted on the 5th January 2015.
- 3.10 A copy of the planning permission has been forwarded to Members.
- 3.11 The Committee may be aware that in an important Court of Appeal decision in June 1999, it was confirmed that the Council, in determining applications for Amusement Permits, may take into account planning considerations but should be slow to differ from the views of the Planning Authority.
- 3.12 The Court also confirmed that the Council can take into account matters such as location, structure, character and impact on neighbours and the surrounding area.

Amusement Permit Policy

- 3.13 Members will be aware that the Council's Amusement Permit Policy was ratified at Council on 1st May 2013. It outlines those matters which may be taken into account in determining any application and indicates that each application must be assessed on its own merits.
- 3.14 The key Policy objectives are to:
1. Promote the retail vibrancy and regeneration of Belfast;
 2. Enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;
 3. Support and safeguard residential communities in Belfast;
 4. Protect children and vulnerable persons from being harmed or exploited by gambling;

5. Respect the need to prevent gambling from being a source of crime and disorder.

3.15 The Policy consists of two components which are considered below:

1. Legal requirements under the 1985 Order

3.16 Members must have regard to the legal requirements under the 1985 Order relating to:

(a) The character, reputation and financial standing of the applicant:

3.17 References and additional supporting information for those associated with the application have been circulated to Members.

(b) The nature of the premises and activity proposed:

3.18 To ensure that the nature of the premises proposed is suitable for this location Members may consider how the premises are illuminated, the form of advertising and window display, and how notices are displayed on the premises. Whilst the appearance of amusement arcades is considered a planning matter, Members may still wish to be satisfied that the façade integrates with adjacent frontages.

(c) Opinions of the Police:

3.19 The Police comments have been sought and reference is made in paragraph 3.9 of the report and have been forwarded to Members.

3.18 (d) Submissions from the general public:

3.20 No objections have been received as a result of the public notices placed in three local newspapers.

2. Assessment criteria for suitability of a location

3.21 There are five criteria set out in the Policy which should typically be considered when assessing the suitability of a location for an amusement arcade. These are detailed below as they relate to this application.

3.22 Before considering each of these criterion it should be noted at the outset that this is a grant application because of a proposed

extension to the existing arcade to incorporate the adjacent vacant unit

(a) Retail vibrancy and viability of Belfast:

- 3.23 The application site at 22-23 Shaftesbury Square is located outside the Retail Core of Belfast City Centre but within the limit of the City Centre, as defined in the Belfast Metropolitan Area Plan 2015 (BMAP). It is bordered on one side by the South Belfast Northern Ireland Supporters Club, and on the other, by a vacant retail unit (formerly Age Concern), which forms part of the 'Lesley House' commercial building. Because the premises are not bordered on both sides by a retail unit it cannot be concluded that the application would break up a continuous shopping frontage.

Complies with this criterion.

(b) Cumulative build-up of amusement arcades in a particular location:

- 3.24 In addition to the existing Players arcade at No. 22 Shaftesbury Square, which forms part of this application, there is another amusement arcade operator on this commercial frontage, namely Oasis Gaming. It operates from a number of units located at 14 Shaftesbury Square and 1-7 Donegall Road. This amounts to the largest concentration of Amusement Centres found within a commercial block in Belfast.
- 3.25 In the desire to promote retailing in the City Centre, as per the first key objective of the Amusement Permit Policy, the Council is keen to avoid a clustering of Amusement Centres at a given location. Accordingly, it restricts new openings to one per commercial frontage and one per shopping centre. It also restricts the ground floor extension of an existing establishment into an adjoining unit.
- 3.26 While the Council recognises that this commercial block currently has a high rate of vacancy (including the application site at No.23) the Council also acknowledges that it is a Gateway location with landmark development potential (see next criterion), an element of which could involve retailing.
- 3.27 Mindful of the above, therefore, this application to extend an existing Amusement Centre into another shop unit runs counter to the cumulative build-up criterion.

Does not comply with this criterion.

(c) Impact on the image and profile of Belfast:

- 3.28 As noted above, the application premises are located at a key entrance junction (Gateway) to the City Centre, as identified in the BMAP 2015. This is one of 11 Gateway locations at the edge of Belfast City Centre which, as recognised in the Development Plan, presents the visitor with an initial impression that can influence their overall perception of the City. Accordingly, BMAP considers these locations suitable for landmark development capable of raising the profile of Belfast. Indeed, one of the four elements of BMAP's tourism strategy reads as follows:

“enhancing the urban environment generally and, in particular, ‘first impression’ points at major gateways, and in city and town centres.”

- 3.29 Within this context, and in recognition of the Amusement Permit Policy's objective to enhance the appeal of Belfast by protecting its image, the Council considers the granting of Amusement Permits at ground floor level as inappropriate for this and other Gateway locations.

Does not comply with this criterion.

(d) Proximity to residential use:

(i) - predominantly residential in character

- 3.30 The application premises are located at ground floor level at Shaftesbury Square where a mix of commercial uses exists. They are therefore located within a part of the City Centre which is predominantly commercial as opposed to residential in character.

(ii) – non-residential property that is immediately adjacent to residential property

- 3.31 The residential properties located nearest to the application site are St. George's Gardens, which are located approximately 20.5m to the rear of the application site and separated from it by Stroud Street. Residential property is not therefore located immediately adjacent to the application premises.

Complies with this criterion.

(e) Proximity to schools, youth centres, and residential institutions for vulnerable people:

- 3.32** There are no schools, youth centres, or residential institutions for vulnerable people within 200m of the application premises.

Complies with this criterion.

- 3.33** A copy of the Council's Amusement Permit Policy has been circulated to the Committee.

Conclusion

- 3.34** The application does not comply with all assessment criteria for the suitability of the location as laid down in Belfast City Council's Amusement Permit Policy. Planning Service was made aware of this when determining the planning application but it still chose to approve it, citing planning policy and guidance, particularly DCAN 1.

- 3.35** The Amusement Permit Policy does permit the Committee to depart from the Policy where it appears appropriate or necessary, although it goes on to state that it is envisaged that would only happen in exceptional circumstances.

- 3.36** **Financial and Resource Implications**

There are no financial or resource implications associated with this report.

- 3.37** **Equality or Good Relations Implications**

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

The Committee was advised that Ms. K. Boyle, the applicant, together with Ms. R. Hughes and Mr. F. O'Reilly, her legal representatives, and Mr. I. Foster, Planning Consultant, were in attendance and they were welcomed by the Chairperson.

Mr. O' Reilly informed the Members that the applicant operated two amusement arcades in the City, on the Lisburn Road and in Shaftesbury Square. He then addressed the issues surrounding the failure of Ms. Boyle's application to comply with two of the five criteria set out within the Council's Amusement Permit Policy, in terms of the impact which the arcade would have upon the image and profile of Belfast and in relation to the cumulative build-up of arcades around that particular location.

He pointed out that, on approaching Shaftesbury Square, there was currently an amusement arcade on the corner of the Donegall Road and Shaftesbury Square, which was managed by another operator. The applicant's premises were situated a short distance away, beside a retail unit, which had been vacant for a considerable length of time, into which she wished to extend her business. Ms. Boyle's architect had formulated plans which would allow for the amalgamation of the two premises, which would have a single frontage and entrance. The applicant was proposing to increase the number of gaming machines from thirty to sixty, rather than ninety-four as had been stated on her application, and to create a 'comfort area', without machines, for the benefit of customers.

He reminded the Committee that, in August, 2015, it had granted an Amusement Permit for Ms. Boyle's current arcade in Shaftesbury Square, despite the fact that the same issues had existed around, for example, image and profile and its gateway location as applied to this application. The refusal of her current application by the Committee would, he argued, have no impact in terms of improving the topography of the area and the view which visitors entering the City through Shaftesbury Square would encounter.

Mr. O'Reilly reminded the Committee further that the Planning Service had, in January, 2015, approved an application for the change of use of the vacant unit to allow for its incorporation into his client's arcade, despite being advised by the Council that it failed to comply with the same two criteria as the application which was now before the Committee. He made the point that the Planning Service, in granting the application, had taken the view that it was preferable for the premises to be utilised as an extension of the adjoining amusement arcade, rather than remain vacant. He concluded by urging the Committee to take into account the fact that the number of arcades in Shaftesbury Square would not be increased by approving his client's application and that it would only enhance the area by a bringing a vacant unit back into use.

In response to a number of questions from the Members, Ms. Boyle confirmed that the provision of a 'comfort area' was designed to enhance the experience of customers and highlighted another premises in Castle Street which provided such a facility. She explained that, due to the lack of available space, she was unable to provide such an area within her current arcade, however, as highlighted within her architect's plans, approximately half of the proposed extension would be utilised for that purpose. She accepted that her application form had indicated that there would be ninety-four gaming machines within the amalgamated arcade but pointed out that that figure had been calculated by the architect, based upon using all of the available floor space, and had not taken into consideration her proposal to include a 'comfort area'.

The members of the deputation were thanked by the Chairperson and they returned to the public area.

It was reported that Dr. T. Quinn, Braniff Associates, who had assisted the Council in the formulation of its Amusement Permit Policy, was in attendance, should the Committee wish to seek clarification on any issues surrounding the Policy and its application.

The Committee agreed that it would be beneficial to obtain the views of Dr. Quinn and he was welcomed by the Chairperson.

Dr. Quinn explained that the cumulative build-up criterion had been included within the Council's Amusement Permit Policy with a view to controlling arcade numbers within any given location and encouraging other forms of retail development. He pointed out that Shaftesbury Square was situated within the City Centre, albeit that it was outside the retail core, and that it was one of eleven recognised gateways leading into the City. Whilst there were currently a considerable number of vacant properties in that locality, it had been earmarked for landmark development and he suggested that the Committee, in considering the application, should, in terms of its image and profile, take into account not only the current state of the location but also its future potential.

Dr. Quinn then addressed a number of issues which had been raised by the Committee.

In terms of potentially encouraging dereliction within Shaftesbury Square by refusing the application on the basis of the Amusement Permit Policy, he explained that the Council, when formulating the Policy, had sought to align it closely with the Belfast Metropolitan Area Plan, which had identified Shaftesbury Square as being a first impression point for visitors entering the City. The Policy had, with that in mind, sought to limit the number of amusement arcades to one per commercial frontage and per shopping centre and to prohibit the merger of an existing establishment into an adjoining unit, as was the case with this application. He stressed that, should the Committee be minded to grant the application on the basis that it could, as a Member had suggested, assist in revitalising the area in the short-term, it would be departing from the Policy, which should occur only in exceptional circumstances. He added that that could create a precedent which other arcade operators across the City could potentially utilise in the future for their benefit.

The Building Control Manager explained that the Council had, in 2014, as part of the consultation process, informed the Planning Service that the application to extend the amusement arcade into number 23 Shaftesbury Square contravened two of the criteria set out within its Amusement Permit Policy and had requested it to take that into consideration. However, the Planning Service had chosen not to do so and had granted the application for other reasons. The matter had then been placed before the Town Planning Committee and, subsequently, the Council and the Council had agreed to reject the opinion of the Planning Service to approve the application.

In response to a point from a Member regarding the impact of a decision to approve the application, the Divisional Solicitor confirmed that the Amusement Permit Policy permitted a departure from the Policy in exceptional circumstances. However, the Committee should be clear as to the exact nature of those circumstances which, regarding this application, she suggested might revolve around the fact that there were no issues with the applicant, she was licensed to operate in the adjoining premises and that she wished to expand into a vacant unit. It was, ultimately, up to the Committee to decide if those circumstances could be deemed to be exceptional and whether they would create a precedent.

She drew the Members' attention to a Court of Appeal decision in 1999 in respect of the Council's decision to refuse an application by Ava Leisure Limited for the grant of an Amusement Permit to operate an arcade in Ann Street, which had ruled that the Council could depart from the views of the planning authority but should be slow to do so. She explained that that application was broadly similar to Ms. Boyle's, in that Ava Leisure Limited had obtained planning permission to operate an amusement arcade in a vacant unit in Ann Street which, at that time, had been a rundown area of the City. The Court of Appeal had, in its decision, made reference to the fact that Ann Street was a gateway to the City and had considered whether the presence of an amusement arcade therein would have an impact upon the public entering the City by that route.

The Divisional Solicitor referred also to the point which had been raised by the applicant's legal representative around the Amusement Permit which Ms. Boyle had, in 2015, been granted for her existing arcade in Shaftesbury Square. She highlighted the fact that the Committee had, in that instance, exercised its discretion, as that application had, technically, contravened the Amusement Permit Policy, however, since the premises had already been in existence, officers had recommended that the Committee grant the application in those circumstances.

After consideration, it was

Moved by Councillor Heading,
Seconded by Councillor Brown and

Resolved - That the Committee, in its capacity as Licensing Authority, agrees that it is minded to refuse an application for the grant of an Amusement Permit in respect of Players, 22-23 Shaftesbury Square, on the grounds that it fails to comply with two of the five criteria set out within the Council's Amusement Permit Policy in terms of (i) the cumulative build-up of amusement arcades in a particular location and (ii) the impact of the arcade upon the image and profile of Belfast.

Subsequent to the decision having been taken, Mr. O'Reilly requested that the Committee offer him the opportunity to raise an issue around the way in which the representations surrounding the application had been managed.

The Chairperson, upon the recommendation of the Divisional Solicitor, agreed to exercise his discretion in this instance and to accede to Mr. O'Reilly's request.

Mr. O'Reilly explained that he had been afforded by the Chairperson only five minutes in which to put forward his client's case, whilst Dr. Quinn had taken fifteen minutes to deliver his submission. That, he argued, had implications in relation to the administration of natural justice and he confirmed that a transcript of the recording of the meeting would be produced in the County Court when the Committee's decision was being appealed.

In response, the Divisional Solicitor confirmed that the deputation had been informed that they would be allocated in total five minutes in which to address the Committee and that they would be afforded an opportunity thereafter to answer any questions which Members might wish to raise. She added that Dr. Quinn's initial

presentation had been brief and that it had not exceeded five minutes. However, he had, subsequently, provided clarification on a number of points which had been raised by the Committee.

Mr. O'Reilly then added that he took exception to the Divisional Solicitor pointing out to him the relevance of the Ava Leisure Limited Court of Appeal decision, given that he had been involved in that case and that it had been heard a considerable length of time before she had qualified to practice as a solicitor.

The deputation then retired from the meeting, following which several Members condemned the comment which had been directed at the Divisional Solicitor by Mr. O'Reilly in relation to the Court of Appeal decision.

The Committee noted that, in accordance with the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, the applicant would be afforded the opportunity to make representation to the Committee regarding its decision at a future meeting.

Chairperson