

Public Document Pack

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



**Belfast
City Council**

13th January, 2017

MEETING OF LICENSING COMMITTEE

Dear Alderman/Councillor,

The above-named Committee will meet in the Lavery Room - City Hall on Wednesday, 18th January, 2017 at 5.00 pm., for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

1. Routine Matters

- (a) Apologies
- (b) Minutes
- (c) Declarations of Interest

2. Non-Delegated Matters

- (a) Invitation to Address the Licensing Committee – Police Service of Northern Ireland (Pages 1 - 2)
- (b) Fees for Street Trading Licences (Pages 3 - 44)
- (c) Consideration of Entertainments Licences with Previous Convictions (Pages 45 - 52)
- (d) Consideration of representations received outside of the statutory 28 day period (Pages 53 - 108)

3. **Delegated Matters**

- (a) Licences Issued Under Delegated Authority (Pages 109 - 112)
- (b) Applications for the Grant/Renewal/Variation of Entertainments Licences with Previous Convictions (Pages 113 - 144)



Subject:	Invitation to Address the Licensing Committee – Police Service of Northern Ireland
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues
1.1	To provide Members with an opportunity to discuss with a representative of the PSNI issues regarding representations made by the Police in relation to licensing applications and their attendance at Licensing Committee meetings.
2.0	Recommendation
2.1	The Committee is requested to receive the senior officer from the PSNI to discuss any Licensing matters which it wishes them to address.
3.0	Main Report
	<u>Key Issues</u>
3.1	Members will recall that, at your meeting on 17th August, 2016, you considered four Temporary Street Trading Licence applications for Boucher Road. The applicants were proposing to trade during the Tennents Vital event being held on 25th and 26th August.
3.2	After consulting with the PSNI regarding the applications, representation was received and it was, therefore, invited to attend the Committee meeting on 17th August.
3.3	However, after expressing concern that the Police Service had failed to attend the Committee, as requested, it was agreed that a senior representative should be invited to attend a future meeting in order to discuss issues around representations made by the Police Service in relation to licensing applications.
3.4	Members will also be aware that previous concerns have been raised by the Committee regarding general representations from the PSNI.

3.5	Following your request, we wrote to the Chief Constable, George Hamilton, inviting him to nominate a senior officer to attend a future meeting of the Committee to discuss these issues. We have been advised that an officer will be available to attend your January meeting.
3.6	Members will also recall that you have recently had queries regarding the Roads (Miscellaneous Provisions) Act (NI) 2010 coming into operation and we have been informed that the senior officer attending is prepared to answer any queries you may have regarding that legislation.
	<u>Financial and Resource Implications</u>
3.7	None <u>Equality or Good Relations Implications</u>
3.8	There are no equality or good relations issues.
4.0	Documents Attached
	None



Subject:	Fees for Street Trading Licences
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues
1.1	To report on the outcome of the public consultation on the proposed fees for Street Trading Licences.
1.2	Members will recall that, at your meeting on 15th June, 2016, regarding the review of Street Trading Licence Fees, the Committee agreed to the proposed fees, as presented, and to initiate a consultation process with licence holders.
2.0	Recommendations
2.1	The Committee is requested to consider the contents of the report and, taking into account any representations received, agree: <ol style="list-style-type: none"> 1. to set the fees for Street Trading Licences at the level outlined in the public consultation, or 2. to set the fees for Street Trading Licences at an alternative level, or 3. that further options for fees for Street Trading Licences arising from your discussions are developed to be presented at your next meeting.
3.0	Main Report
	<u>Key Issues</u>
3.1	Members are reminded that the Street Trading Act N.I. 2001 gives the Council powers that it may charge such fees as may be sufficient to cover any reasonable administrative or other costs in connection with the administration of the Street Trading Licence Scheme.

3.2 To remind Committee, below is a summary of the proposed fees you agreed provisionally at your meeting on 15th June:

	Fee
STATIONARY and MOBILE LICENCE	
Application Fee - <i>Non refundable</i>	£617
Renewal Application Fee - <i>Non refundable</i>	£523
Licensed for Monday to Friday	£1,500
Licensed for Monday to Sunday	£1,570
Licensed for Weekend	£1,350
Licensed for Sunday	£1,220
TEMPORARY LICENCE	
Application Fee - <i>Non refundable</i>	£677
Licence Fee	£130
Variation of Licence Particulars	£440

- 3.3** Consultation on the proposed fees was for the statutory 28 day period, as required by the Act.
- 3.4** Notice of the consultation was published in the three main newspapers and 76 licensed street traders were written to, including all known Temporary Street Traders, some of whom may only trade once a year.
- 3.5** The consultation sought the views from interested parties and a statement outlining how the fees were prepared was published and made available on the Council's website and at the Building Control offices.
- 3.6** As a result of the consultation, a total of 23 responses were received, which included 17 received by email or letter and a further 6 responses were received online.
- 3.7** Of the 6 responses received online, 2 identified themselves as being non-traders and only 1 of the remaining 4 online respondents identified themselves by name.
- 3.8** Arising from the consultation 2 of the online respondents agreed with some of the proposed fees, it is not known if these were street traders. Copies of the written correspondence and a synopsis of the online responses received are attached at Appendix 1.
- 3.9** Correspondence was received from the Right Honourable, Jim Shannon MP, in which he expressed concern that the proposed increases would have an adverse effect on the ability of the ice cream trade to continue trading, which would affect the tourist industry within the Belfast area and within his own constituency of Strangford.
- 3.10** Mr Shannon has stated that, whilst businesses should expect a reasonable increase in fees, in no way can those proposed be determined as reasonable.
- 3.11** A copy of Mr. Shannon's response is attached at Appendix 2.

Summary of Responses

3.12 All of the street traders who responded (26% of the total consulted) indicated that their business would be affected by the proposals and did not want any increase in fee; conversely 74% chose not to respond.

3.13 The Street Traders who responded and identified themselves, hold the following types of Street Trading Licences:

Licence Types	Number	%
Stationary	6	35.30%
Mobile	6	35.30%
Temporary	1	5.80%
Stationary & Temporary	2	11.80%
Mobile & Temporary	2	11.80%

3.14 A number of responses made reference to what other Councils currently charge and a few stated that “*street trading charges are no were (sic) near this in England or in the Republic*”.

Comparisons

3.15 Research on the cost of a Street Trading Licence in other larger local authorities across Great Britain and Ireland has been undertaken.

3.16 For comparison, the cost of a 7-day Stationary Street Trading Licence for one year was taken as an example and a sample of fees charged by other councils is provided below:

Council	Annual fee
Westminster City Council	£38,991
Oxford City Council	£8,110
Swansea City Council	£4,994
Birmingham City Council	£4,704
Newcastle City Council	£1,442
Manchester City Council	£720
Aberdeen City Council	£178
Newry, Mourne and Down Council	£875
Lisburn City and Castlereagh Council	£570
Causeway Coast and Glens Council	£290

3.17 Dublin City Council’s charges varied significantly across the City. It charges €8,000 for Grafton Street for flowers from Monday to Saturday and €6,000 for night time trade.

3.18 For further comparison, the table below shows the current fee, the current fee adjusted to take account of inflation alone and the proposed fee.

STATIONARY LICENCE	Current	Inflation	Proposed
Application Fee - Non refundable	£ 100	£ 149.00	£617
Renewal Application Fee - Non refundable			£523
Licensed for Monday to Friday	£ 629	£ 937.21	£1,500
Licensed for Monday to Sunday	£ 1017	£ 1515.33	£1,570
Licensed for Weekend*	£ 898	£ 1338.02	£1,350
Licensed for Sunday	£ 472	£ 703.28	£1,220

MOBILE LICENCE		Current	Inflation	Proposed
Application Fee - <i>Non refundable</i>		£ 120	£ 178.80	£617
Renewal Application Fee - <i>Non refundable</i>				£523
Licensed for Monday to Friday		£ 429	£ 639.21	£1,500
Licensed for Monday to Sunday		£ 882	£ 1314.18	£1,570
Licensed for Weekend*		£ 225	£ 674.97	£1,350
Licensed for Sunday		£ 254	£ 378.46	£1,220
TEMPORARY LICENCE				
Application Fee - <i>Non refundable</i>		£120	£ 178.80	£677
Licence Fee		£211	£ 314.39	£130
Variation of Licence Particulars		£50	£74.50	£440
<i>*Weekend is the current Saturday and Sunday fee combined.</i>				
<u>Financial and Resource Implications</u>				
3.19	There are significant financial and resource implication associated with this report.			
3.20	The proposed Street Trading Licence fees will ensure the cost of the operational and administration processes are proportionate to the licensing scheme. Details outlining the costings associated with administering Street Trading Licences are attached at Appendix 3.			
<u>Equality or Good Relations Implications</u>				
3.21	The Council's Equality and Diversity Officer has been consulted to ensure there are no issues with regards to the setting of fees.			
4.0	Documents Attached			
	Appendix 1 – Copies of written correspondences and synopsis of the responses to the consultation			
	Appendix 2 – Copy of Jim Shannon's response to the consultation			
	Appendix 3 – Costings associated with administering street trading licences			

By virtue of paragraph(s) 2 of Part 1 of Schedule 6
of the Local Government Act (Northern Ireland) 2014.

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of the Local Government Act (Northern Ireland) 2014.

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**Street Trading Act (NI) 2001
Statement of Fees**

	2016/17	Say		
STATIONARY & MOBILE LICENCE				
Application Fee - <i>Non refundable</i>	£ 617.50	£ 617		
Renewal Application Fee - <i>Non refundable</i>	£ 522.75	£ 523		
			<i>Per Month</i>	<i>Per Week</i>
Licensed for Monday to Friday	£ 1,502.19	£ 1,500	£ 125.00	£ 28.85
Licensed for Monday to Sunday	£ 1,567.44	£ 1,570	£ 130.83	£ 30.19
Licensed for Weekend	£ 1,349.94	£ 1,350	£ 112.50	£ 25.96
Licensed for Sunday	£ 1,219.44	£ 1,220	£ 101.67	£ 23.46
TEMPORARY LICENCE				
Application Fee - <i>Non refundable</i>	£ 677.50	£ 677		
Licence Fee	£ 130.50	£ 130		
Variation of Licence Particulars	£ 442.75	£ 440		

First Stationary and Mobile Street Trading Licence

Regulatory Services Unit tasks

Task	Hrs	Rate	Cost
Pre application discussions	1	£ 43.50	£43.50
Consultation letters merge, edit and assign to BS.	1	£ 43.50	£43.50
Assessment of response from consultees	1	£ 43.50	£43.50
Assessment of all relevant information relating to the application	1	£ 43.50	£43.50
Checking certification, insurance etc	1	£ 43.50	£43.50
Preparation of committee reports	4	£ 43.50	£174.00
Issue Licence	1	£ 43.50	£43.50
All tasks			£435.00

Business Support tasks

Task	Hrs	Cost	
Input procedure for new application	2	£36.50	£73.00
Issue of letters assigned from BCS	1	£36.50	£36.50
Recovery of costs procedure – calculation and invoicing	2	£36.50	£73.00
All tasks			£182.50

Total Cost

£617.50

Renewal of Stationary and Mobile Street Trading Licence

Regulatory Services Unit tasks

Task	Hrs	Rate	Cost
Pre application discussions	0.5	£ 43.50	£21.75
Consultation letters merge, edit and assign to BS.	1	£ 43.50	£43.50
Assessment of response from consultees	0.5	£ 43.50	£21.75
Assessment of representations received	0.5	£ 43.50	£21.75
Checking certification, insurance etc	1	£ 43.50	£43.50
Assessment of all relevant information relating to the application	1	£ 43.50	£43.50
Preparation of committee reports	4	£ 43.50	£174.00
Issue Licence	1	£ 43.50	£43.50
All tasks			£413.25

Business Support tasks

Task	Hrs	Cost	
Input procedure for new application	1	£36.50	£36.50
Issue of letters assigned from BCS	1	£36.50	£36.50
Recovery of costs procedure – calculation and invoicing	1	£36.50	£36.50
All tasks			£109.50

Total Cost

£522.75

Stationary and Mobile Street Trading Licence variation

Regulatory Services Unit tasks

Task	Hrs	Rate	Cost
Pre application discussions	0.5	£ 43.50	£ 21.75
Consultation letters merge, edit and assign to BS.	1	£ 43.50	£ 43.50
Assessment of response from consultees	0.5	£ 43.50	£ 21.75
Assessment of representations received	0.5	£ 43.50	£ 21.75
Assessment of all relevant information relating to the application	1	£ 43.50	£ 43.50
Preparation of committee reports	4	£ 43.50	£ 174.00
Issue Licence	1	£ 43.50	£ 43.50
All tasks			£ 369.75

Business Support tasks

Task	Hrs	Cost	
Input procedure for variation	0.5	£ 36.50	£ 18.25
Issue of letters assigned from BCS	1	£ 36.50	£ 36.50
Recovery of costs procedure – Lodgement	0.5	£ 36.50	£ 18.25
All tasks			£ 73.00

Total Cost

£ 442.75

Licence Compliance Checks

Task Monday to Friday	Hrs	Cost	
Monitoring Compliance			
Inspection/Intervention and enforcement, compliant/queries etc	1	£ 43.50	£ 43.50
Input inspection report	0.5	£ 43.50	£ 21.75
Travel time	1	£ 43.50	£ 43.50
All tasks			£ 108.75

Task Saturday (1.5 x OT Rate)	Hrs	Cost	
Monitoring Compliance			
Inspection/Intervention and enforcement, compliant/queries etc	1	£ 43.50	£ 65.25
Input inspection report	0.5	£ 43.50	£ 21.75
Travel time	1	£ 43.50	£ 43.50
All tasks			£ 130.50

Task Sunday (2 x OT Rate)	Hrs	Cost	
Monitoring Compliance			
Inspection/Intervention and enforcement, compliant/queries etc	1	£ 43.50	£ 87.00
Input inspection report	0.5	£ 43.50	£ 21.75
Travel time	1	£ 43.50	£ 43.50
All tasks			£ 152.25

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The number of Compliance Visits required is based on Risk

Licensed for Monday to Friday	£ 435.00	4 Visits Mon to Fri
Licensed for Monday to Sunday	£ 500.25	2 Visits Mon to Fri, 1 Sat & 1 Sun
Licensed for Weekend only	£ 282.75	1 Sat & 1 Sun
Licensed for Sunday only	£ 152.25	1 Sun
Temporary Licence Compliance Visits	£ 130.50	is based on the average cost of compliance i.e. Mon to Fri + Sat + Sun divided by 3

Recouping fees and ongoing queries and dispute resolution involving licensed traders and policy

	Hrs	Cost	
Business Support	30	£ 36.50	£ 1,095.00
Regulatory Services	50	£ 43.50	£ 2,175.00
All tasks			£ 3,270.00

Per month

Divided by number of Traders 50 £ 65.40 *Trader cost per month*

£ 784.80 *Trader cost per year*

*Advertisement of Licence Fee

£ 60.00 *Per Trader*

Administration cost per licence for a year £ **844.80**

Cost of Designation £ **222.39**

Total Administration cost of Street Trading matters £ **1,067.19** *Per Trader*

Designation Cost

Regulatory Services Unit tasks

Task	Hrs	Rate	Cost
Application queries and receipt	10	£ 43.50	£ 435.00
First Committee Report	4	£ 50.00	£ 200.00
First Notice	5	£ 50.00	£ 250.00
Consultation letters merge, edit and assign to BS.	3	£ 43.50	£ 130.50
Assessment of response from consultees	15	£ 43.50	£ 652.50
Site Visits and Neighbourhood consultation	37	£ 43.50	£ 1,609.50
Preparation of final Committee report	15	£ 50.00	£ 750.00
Final Notice	1	£ 43.50	£ 43.50
Updating Website and etc	1	£ 43.50	£ 43.50
All tasks			£ 4,071.00

Business Support tasks

Task	Hrs	Cost	
Issue of letters	3	£ 36.50	£ 109.50
Telephone call queries relating to Designation	2	£ 36.50	£ 73.00
Customer queries at reception	3	£ 36.50	£ 109.50
All tasks			£ 292.00

Technical Support Officer tasks

Task	Hrs	Cost	
Production of accurate maps	7	£ 33.50	£ 234.50
Availability to show application to customers calling to the office	1	£ 33.50	£ 33.50
Committee preparation(Powerpoint etc)	7	£ 33.50	£ 234.50
All tasks			£ 502.50

Total officer cost		£ 4,865.50	
Advertisement cost		£ 6,254.00	
Total cost of Designation		£ 11,119.50	
Divided by number of Traders	50	£ 222.39	Cost per trader

EXPLANATORY NOTES

How was the hourly rate worked out?

The rate is based on the average cost for the Unit. The cost per hour of each officer was taken and the average rate was worked out.

Business Support	@ SO2 (£39.50) + Scale 6 (£33.50)	Total	£73 ÷ 2 = £36.50
Regulatory Services	@ 1 Regulatory Services Manager (£50) + 1 R. S.	Total	£87 ÷ 2 = £43.50
Regulatory Services Manager	@ £50		
Regulatory Services Officer	@ £37		

What is the Hourly rate based on?

The Hourly rate is based on the total cost for an officer including salary, employer's National Insurance contributions, superannuation contributions.

* Advertisement of Fee - The Street Trading Act requires that the fee is advertised twice in the newspapers. The cost of those is approximately £6000. This cost is then proportioned out to each trader making the assumption that we will have 100 licences in the year this equates to £60 per licence.



Subject:	Consideration of Entertainments Licences with Previous Convictions
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues
1.1	To consider, under the Local Government Miscellaneous Provisions (NI) Order 1985 (the Order), current enforcement procedures and consideration of Entertainments Licensing applications when the applicant has been convicted of offences under the Order.
1.2	Members will recall that, at your meeting on 21st September, 2016, you agreed that a report be submitted to a future meeting providing information on breaches and associated convictions and penalties resulting from inspections which had, during the past five years, been undertaken by Council officers under the Entertainments Licensing legislation.
1.3	The Committee agreed also that the report should outline the enforcement approach undertaken by the Council, depending upon the nature of the offence detected, together with proposals for enabling it to review those applications where there had been a conviction for a breach of the legislation which had posed a serious risk to the safety of patrons.
2.0	Recommendations
2.1	Taking into account the information presented, the Committee is requested to note the content of the report and provide comment and recommendations regarding how Officers deal with the enforcement of Entertainments Licensing legislation and any breaches found which may result in the initiation of legal proceedings.
2.2	Members may also wish to advise on how they would prefer future applications to be presented to the Committee where the applicant has been previously convicted.
2.3	As all matters pertaining to policy and legislation in relation to licensing matters are not delegated, any decision will be subject to ratification by the Council.

3.0	Main Report
	<p data-bbox="260 230 416 259"><u>Key Issues</u></p> <p data-bbox="260 293 903 322">Powers to deal with Offences under the Order</p> <p data-bbox="150 360 1409 389">3.1 Where an applicant has been convicted of an offence under the Order the Council may :</p> <ol data-bbox="309 427 1445 595" style="list-style-type: none"> 1. revoke an existing Entertainments Licence if the licence holder is convicted of an offence, or 2. refuse an application on the grounds that the applicant has been convicted of an offence under the Order within the period of 5 years immediately preceding the date when an application was made. <p data-bbox="260 633 1114 663">Powers to deal with serious threats to Public Order or Public Safety</p> <p data-bbox="150 701 1449 797">3.2 If it appears to the Council that the provision of entertainment at any place in respect of which an Entertainments Licence is in force is causing, or is likely to cause, a serious threat to public order or public safety it may order the suspension of that licence.</p> <p data-bbox="150 835 1449 965">3.3 The Council may, at any time, revoke an order to suspend an Entertainment Licence. Prior to doing so, the Committee should satisfy itself that all the matters that gave rise to the decision to suspend the licence have been satisfactorily dealt with and that provision of entertainment at the premises will no longer cause a serious threat to the public.</p> <p data-bbox="150 1003 1449 1066">3.4 Authority to revoke, refuse or suspend a licence is fully delegated to the Licensing Committee.</p> <p data-bbox="150 1104 1449 1167">3.5 If the licence is revoked, refused or suspended then the applicant may appeal the Council's decision within 21 days of notification of that decision to the County Court.</p> <p data-bbox="260 1205 959 1234">Enforcement approach undertaken by the Service</p> <p data-bbox="150 1272 1449 1469">3.6 Our role in Building Control is primarily that of ensuring that licensed premises are operated safely and in accordance with the terms and conditions of the licence and obtained through working constructively with the licensee in accordance with the principles of Good Enforcement. Where legal action is taken it is seen as a last resort to deal with those offenders either operating without a licence or found to be committing offences of a more serious nature.</p> <p data-bbox="150 1507 1449 1570">3.7 There are currently 411 premises licensed for indoor entertainment in Belfast and 44 other venues where entertainment may be held either outdoors or within a marquee.</p> <p data-bbox="150 1608 1449 1738">3.8 As part of our application process, officers engage extensively with the applicant, licensee and any other representative associated with the application in order to help ensure the respective parties understand their responsibilities and duties as a licence holder. This helps ensure compliance with the terms and conditions of the Entertainments Licence.</p> <p data-bbox="150 1776 1449 1839">3.9 All venues are inspected as part of the annual renewal application process but are also subject to further inspection as part of our During Performance Inspection (DPI) protocol.</p>

During Performance Inspection and Enforcement Protocol

3.10 The DPI is not only carried out to ensure compliance with the terms and conditions of the licence but, importantly, it enables staff to develop a good working relationship with the person in charge of the premises and to help them understand their obligations in safeguarding the public.

3.11 The Service has an established risk rating process which enables targeted inspections to be carried out when entertainment is taking place where they are needed most. The risk is subject to regular review upon the completion of any DPI and updated accordingly.

3.12 The risk rating ultimately determines the frequency and number of inspections carried out on the premises over the annual period of the Entertainments Licence. However, other inspections can be arranged, as and when required, for monitoring purposes if a complaint is made or an issue occurs.

3.13 The following table provides a breakdown of the outcomes of DPI's by the Service over the last 5 years.

Outcome	Number	Action
Satisfactory	1580	None
Part Satisfactory	587	Letters Sent – 587 Office Meetings – 81
Not Satisfactory	100	Letters Sent (inc. PACE Letter) – 100 Office Meetings and resolved outside of court – 59

3.14 Generally, the majority of licensees and premises have been found to be compliant. The nature of the breaches and offences we have uncovered over the last five years range from an emergency exit sign not being illuminated at the time of the inspection to locked exits or overcrowding of the premises.

3.15 'Part Satisfactory' decisions will normally require a letter to be sent to the licensee highlighting the problems uncovered and requesting that they be rectified as soon as possible. This is then followed up with another DPI a few weeks later to ensure the problems have been corrected.

3.16 Depending upon the severity of the problems failure to rectify them may mean an office meeting has to be arranged or legal proceedings are initiated against the licensee.

3.17 In circumstances where the inspection brings to light defects which give rise to more serious concerns about the safety of patrons a meeting will be arranged with the management of the premises to discuss how they may be resolved. The meeting also allows Officers to question the licensee and explore how well they are managing the premises.

3.18 A decision of 'Not Satisfactory' is recorded when significant defects or breaches have been found. Examples of this may be a locked exit, overcrowding of the premises or the fire alarm system being disabled. These problems and defects will normally result in legal proceedings being initiated against the premises. However each case is considered on its own merits and there are some circumstances in which, after consultation with Legal Services, an alternative solution may be offered.

<p>3.19</p>	<p>Since 2011, through the adoption of the above procedures, the Service has secured a total of 41 prosecutions. These are broken down, as follows:</p> <ul style="list-style-type: none"> • 13 in 2011/2012 • 8 in 2012/2013 • 2 in 2013/2014 • 5 in 2014/2015 • 13 in 2015/2016 <p>Initiation of Legal Proceedings</p>
<p>3.20</p>	<p>For any serious breaches discovered, we send formal correspondence in the form of a letter containing the PACE Caution to the licensee or defendant to afford them the opportunity to provide an explanation in relation to the suspected offences and any evidence or information which may be relevant.</p>
<p>3.21</p>	<p>The matter is then referred to Legal Services to consider whether legal proceedings should be initiated. Unfortunately under the terms of the 1985 Order it is not possible to take cases in the Crown Court so all cases must be brought in the Magistrates Court.</p> <p>Alternative Proceedings and resolved outside of Court</p>
<p>3.22</p>	<p>A prosecution will not always ensue, as each situation and case has to be determined on its own merits. It is unlawful to adopt a policy whereby every offence results in prosecution regardless of the circumstances.</p>
<p>3.23</p>	<p>There are a wide range of alternative resolutions available under the Council's Regulation and Enforcement Policy. These range from informal warnings through to formal cautions.</p>
<p>3.24</p>	<p>Most alternative disposals have been either by way of administering a formal caution or through a formal meeting held with the applicant/licensee which would involve a thorough review of their premises, the passive and active measures they have in place and their management arrangements to ensure the premises operates safely and effectively.</p> <p>Penalties</p>
<p>3.25</p>	<p>As Members are aware, the penalties handed down by the Court in recent years are not always considered a true reflection of the severity of the offences discovered. Members may recall that in the Council's response to the review of entertainment licensing, in June 2015, the Committee provided alternative proposals on how to deal with breaches to the legislation.</p>
<p>3.26</p>	<p>Additionally, a letter has also recently been sent to the Minister for Communities, Mr Paul Givan MLA, to request that sentencing guidelines for breaches of the entertainments licensing be provided as part of his Department's review of entertainment licensing.</p>
<p>3.27</p>	<p>A summary of the problems, breaches and convictions and subsequent penalties handed down to licensed premises since 2011 is attached.</p> <p><u>Review of Applications where the applicant has been convicted for breaches of the</u></p>

	<p><u>legislation and posed serious risks to the safety of patrons</u></p>
3.28	<p>Members are advised that, since 2011, the Committee has considered a total of 81 Committee reports as a consequence of legal action and previous convictions of applicants. Some of the applicants offences have been considered on more than one occasion due to the '5 year rule'.</p>
3.29	<p>The Service believes that it takes a fair but robust approach to ensure applicants comply with the terms, conditions and restrictions attached to their Entertainments Licence.</p>
3.30	<p>In addition, Members can be assured that, in cases were legal proceedings are initiated we continue to engage proactively with all licensees to work to improve their overall safety procedures.</p>
3.31	<p>It was apparent, at the meeting on 21st September, 2016, that Members were concerned that, in some instances, the courts were handing down penalties for offences which did not reflect the seriousness of the offence.</p>
3.32	<p>It is not possible for the Council to appeal sentences to the County Court. The only mechanism available to challenge the level of penalty in the Magistrates Court is by way of judicial review. The threshold for successfully challenging a decision this way is quite high. It is not enough to demonstrate that the decision was unreasonable. The Council must establish that the decision was so irrational that it clearly falls outside the broad area of the lower courts sentencing discretion.</p>
3.33	<p>The Council has previously successfully challenged a sentence which was considered to be too lenient and a further judicial review is currently being considered by Legal Services in relation to a recent decision.</p>
3.34	<p>A further deterrent action which could be taken and which, to date, has not been utilised would be for Committee to consider the revocation of an Entertainments Licence immediately after a licence holder is convicted of an offence.</p>
3.35	<p>This would mean that as soon as an applicant is convicted of an offence, rather than when their licence falls due for renewal, the licence holder will be invited to appear before Committee and convince Members as to why their licence should not be revoked.</p>
3.36	<p>This would have the benefit that, regardless of any Court penalty, Members would have the opportunity to impress upon the applicant the severity of their offence and seek assurances in relation to future management of the premises. Whilst it is not possible to attach conditions to an extant licence undertakings could be sought from a licensee in terms of additional controls to be put in place at the premises. Compliance with such an undertaking would be relevant to their fitness in any future renewal application.</p>
	<p><u>Financial and Resource Implications</u></p>
3.37	<p>Officers carry out during performance inspections on premises providing entertainment which is catered for within existing budgets.</p>
	<p><u>Equality and Good Relations Implications</u></p>
3.38	<p>There are no equality or good relations issues associated with this report.</p>

4.0	Document Attached
	Summary of the problems, breaches, convictions and subsequent penalties handed down to licensed premises since 2011.

PREMISES	DEFENDANT	OFFENCE	DATE OF OFFENCE	OUTCOME & DATE	COSTS	FINE
MA NELSONS	TINA CALDER	Locked fire exit	06/11/2010	Convicted - 9 August 2011	£69	£1,250
THE ROOST	FERGAL MCVEIGH	Overcrowding	30/01/2011 & 13/02/2011	Convicted - 9 August 2011	£78	£800
ST PAULS GAC	BILLY McLARNON	Overcrowding	12/02/2011	Convicted - 11 November 2011	£69	£500
WHITES TAVERN	STEPHEN NIXON	Overcrowding	30/01/2011 & 13/02/2011	Convicted - 4 October 2011	£78	£1,500
RAIN	CORAL INNS (NI) LIMITED	Overcrowding, failure to manage the permitted occupancy and the migration between the licensed areas and entertainment being held in an unlicensed area	30/01/2011, 06/02/2011 & 11/02/2011	Convicted - 25 October 2011	£122	£5,000
IRISH NATIONAL FORESTERS	GERRY LAPPIN	Fire exit padlocked	09/06/2011	Convicted - 22 November 2011	£66	£400
THE ANNEX BAR	THOMAS GREER	Locked fire exit	08/10/2011	Convicted - 24 April 2012	£72	£800
BROWNES BAR	JOE WEBB	Fire Exit Blocked, Faults in Fire alarm and outdoor entertainment	06/11/2011	Convicted - 17 July 2012	£60	£600
VOODOO	CIARAN SMYTH	Locked Fire exit, Obstructed MOE & Logbook not complete	04/11/2011	Convicted - 4 September 2012	£69	£270
STORMONT INN	WILLIAM MCMAHON	Entertainment without a Licence	24/09/2011	Convicted - 6 November 2012	£91	£100
THE GROVE TAVERN	ELIZABETH THOMPSON	Locked roller shutter & Logbook not available	19/05/2012	Convicted - 8 January 2013	£69	£200
TEACH NA MONAGH	REGENT HOUSE MEWS LIMITED	Locked Fire exit, Obstructed MOE & Logbook not provided	18/05/2012	Convicted - 29 January 2013	£66	£800
JOHN HEWITT BAR	JOYCE GREEN	Overcrowding & logbook not completed	24/08/2012	Convicted - 5 March 2013	£69	£450
THE CUCKOO	NORTH DOWN LEISURE LIMITED	Locked Fire Exit & Log Book not completed	24/08/2012	Convicted - 26 March 2013	£69	£400
T13 COMPLEX	NO LIMAT LIMITED	Breach of Licence Condition. Failure to provide one months notice of an event and submit an appropriate Event Management Plan	14/09/2012	Convicted - 7 May 2013	£109	£200
DUNDELA FOOTBALL & SOCIAL CLUB	MR JACK MAJURY	Overcrowding & obstructed Emergency Exit	24/11/2012	Convicted - 23 July 2013	£69	£400
RED DEVIL BAR	MR MARTIN ROONEY EMC PROPERTIES LIMITED	Locked roller shutter on final exit & Log Book unavailable	24/11/2012	Convicted - 11 February 2014	£69	£500
FITZGERALD'S BAR	MS AILEEN CAMPBELL & MR STEPHEN MAILEY	Entertainment without a Licence	18/05/2013	Convicted - 4 March 2014	£207	£400
THOMPSONS GARAGE	MR STEPHEN BOYD	Failure to manage the permitted occupancy and the migration between the licensed areas. Also failure to ensure numbers in Smoking Area limited to 50 persons	25/09/2013	Convicted - 13 May 2014	£69	£800
FLAME RESTAURANT	MS CHARLOTTE SMYTH RESTAURANT VICTORIA LIMITED	Entertainment without a Licence	05/07/2014	Convicted - 3 February 2015	£69	£150
T13 COMPLEX	NO LIMAT LIMITED	Entertainment held beyond the permitted hours	06/09/2014	Convicted - 21 June 2016	£72	£100
BOX NIGHTCLUB	SHERIDAN NIGHTCLUBS LIMITED	Outdoor entertainment without a Licence	25/09/2014	Convicted - 17 November 2015	£69	£200
ARDOYNE WORKING MEN'S CLUB	BRENDAN MAILEY CLUB SECRETARY	Entertainment without a Licence	18/12/2014	Convicted - 28 July 2015	£66	£200
THE SPANIARD	JK PUBS LIMITED	Entertainment taking place in an area (Grd Floor) not covered by the Entertainments Licence	18/12/2014	Convicted - 11 August 2015	£69	£150
RED BARN GALLERY	FRANKIE QUINN	Entertainment without a Licence	28/02/2015	Convicted - 13 October 2015	£72	Conditional Discharge
STUDIO 2	TONY HAYNES	Entertainment without a Licence	28/02/2015	Convicted - 13 October 2015	£72	Conditional Discharge
ST PAUL'S GAC	PAUL DONNELLY CLUB SECRETARY	Entertainment taking place in an area (1st Floor) not covered by the Entertainments Licence	28/03/2015	Convicted - 10 November 2015	£69	12 months Conditional Discharge
BECKETTS BAR	SHARP (N.I) LIMITED & EUGENE HUGHES	Entertainment without a Licence	10/07/2015	Convicted - 16 February 2016	£146	£2,000
CAUFIIELDS BAR	TONY CLARKE & DOUGLAS ADAMS	Final Exit locked shut and an Obstructed Means of escape	04/07/2015	Convicted - 8 March 2016	£69	£200
THE CHESTER BAR	MR EAMON DIAMOND CHESTER PARK INNS LIMITED	Entertainment without a Licence in an outdoor area	01/08/2015	Convicted - 22 March 2016	£72	Conditional Discharge
CASEMENT SOCIAL CLUB	MR BOB MURRAY CLUB SECRETARY	Entertainment without a Licence	04/08/2015	Formal Caution Administered - 14 June 2016		
MALONE RUGBY FOOTBALL CLUB	MR RAYMOND THOMAS CLUB SECRETARY	Entertainment without a Licence	22/08/2015	Convicted - 5 April 2016	£69	Conditional Discharge
WHITEFORT INN	MOONEY INNS LIMITED	One Leaf of a Final exit closed and screwed to door frame. Log Book for pre-event checks was not completed. Fire door wedged open. Fire door/wall providing inadequate fire protection. Fire Safety signage not being illuminated. Designated means of escape was obstructed.	17/10/2015	Convicted - 28 June 2016	£69	£600
THE GLENOWEN INN	THE KEG COMPANY (NI) LIMITED	A rear exit was blocked by combustible materials, including a table, music equipment and speakers. The rear exit alleyway was also partially obstructed by a parked vehicle. A number of exit signs were not operational Log Book for recording pre-event checks was not completed.	17/10/2015	Convicted - 24 May 2016	£66	£600
THOMPSONS GARAGE	MR STEPHEN BOYD ENDLESS MUSIC LIMITED	2nd Floor of the premises was found to be overcrowded and in excess of the permitted occupancy.	18/10/2015	Convicted - 24 May 2016	£66	£750
PHOENIX BAR	MR JOE CRANGLE	Entertainment without a Licence	18/10/2015	Convicted - 24 May 2016	£69	Conditional Discharge
HAVANA BANK SQUARE	MR PATRICK MAGEE	Entertainment without a Licence	12/12/2015	Formal Caution Administered - 18 October 2016		
THE CORNER HOUSE	MR MICHAEL MARKEY	Entertainment without a Licence	28/02/2016	Convicted - 13 September 2016		Conditional Discharge
HOLE IN THE WALL	H.I.T.W LIMITED	An exit route from the side of the bar was blocked with a speaker and a fridge. Mag lock was installed to a final exit door and prevented the door from being open and a final exit within the smoking area was locked and the replacement of a push bar with a tea spoon on another fire exit door. An exit route to the fire panel and final exit was blocked with tables and chairs and a door leading to an exit route was locked. There was no 'Fire Exit Keep Clear' signs fitted to doorsets, as required and break glass Fire Action signs were missing. The Emergency Exit signs were not illuminated throughout the premises. No evidence of any pre-event log book checks being carried out. No Evacuation Procedures in place. Staff were not instructed or trained on the action to be taken in the event of a fire. The noise limiting device was not operating when entertainment was being provided.	13/02/2016	Convicted on Appeal 25 November 2016	£66	£5,000
BOYLES BAR	MR STEPHEN CARSON	Entertainment without a Licence	26/02/2016	Convicted - 13 December 2016	£66	£250
FITZGERALD'S BAR	MS AILEEN CAMPBELL & MR STEPHEN MAILEY	Entertainment without a Licence	19/06/2016	Convicted - 29 November 2016		Ms Campbell fined £250. Mr Mailey given Conditional Discharge
AM:PM	AMP:PM LIMITED	Rear final escape door was obstructed. Rear escape stair was obstructed. Rear escape corridor on the ground floor was obstructed. Fire door was held open on the ground floor escape route. All escape routes, including stairways, were not maintained with non-slippery and even surfaces. Entertainment was being provided on the 2nd floor which is an area not covered by the Entertainments Licence. The Entertainments Licence was not being displayed.	20/05/2016	Convicted on Appeal 6 January 2017	£66	£2,750

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Subject:	Consideration of representations received outside of the statutory 28 day period
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	Members will recall that, at your meeting of the 14th December, 2016, when agreeing to consider objections to the grant of a Seven-Day Annual Entertainments Licence for the Hawthorn Bar, which were received outside the 28 day statutory period, the Committee further agreed that officers submit to a future meeting a report outlining potential options for dealing with such representations which were submitted outside the statutory timeframe.
2.0	Recommendations
2.1	The Committee is requested to consider the proposal for dealing with representations received outside the 28 day statutory period and determine if you wish to adopt the proposal or adopt it with any necessary modifications arising from your discussions.
3.0	Main report
	<u>Key Issues</u>
	Legislative Requirements
3.1	In accordance with Schedule 1 of the Local Government (Miscellaneous Provisions) (NI) Order 1985, any person wishing to make any representation in relation to an application for the grant, renewal or transfer of an Entertainments Licence shall give notice to the council, stating in general terms the nature of the representation, not later than 28 days after the date of the application.
3.2	Under Paragraph 5(8), in considering any application for the grant, renewal or transfer of an Entertainments Licence, the council must have regard to any representations received

	<p>within 28 days and must give an opportunity of appearing before and of being heard by the council to any person who has made such representation.</p>
3.3	<p>Similar requirements are in place for other application types the Committee consider, namely:</p> <ul style="list-style-type: none"> • Amusement Permits under the Betting and Gaming (NI) Order 2004 and Betting, Gaming, Lotteries & Amusements (NI) Order 1985; • Sex Establishment Licences under Article 4, Schedule 2 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.
3.4	<p>For both these application types the council must also have regard to representations which have been received within the 28 day statutory period.</p>
	<p>House of Lords Judgement</p>
3.5	<p>The Local Government (Miscellaneous Provisions) (NI) Order 1985 permits the Committee to consider objections received outside the 28 day statutory period but it is a matter for the Committee to decide whether or not to exercise its discretion in such instances.</p>
3.6	<p>Members are reminded of the House of Lords decision in the case of Belfast City Council v Miss Behavin' Ltd. which, in 2007, upheld Belfast City Council's decision to refuse an application for a sex establishment. In delivering that judgement the Court held that it would be perverse if relevant information could not be taken into account just because it had been received outside the statutory time period.</p>
3.7	<p>The Court stated that the 28 day period should be treated as being administrative as opposed to mandatory. The Court ruled that the council was entitled to take into account late objections when deciding on an application and, in fact, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable.</p>
3.8	<p>This was also the view taken by the High Court in Northern Ireland in cases such as Ava Leisure, in which the Court held that the failure to take into account an objection just because it was out of time was unlawful.</p>
3.9	<p>In the Miss Behavin' case, Lord Neuberger declared that if an objection which revealed to a council for the first time certain highly relevant information was received one day late, it would be a little short of absurd if it could not be taken into account.</p>
3.10	<p>He stated that it might reveal, for instance, that a family with a large number of small children had moved into the flat above the subject property, or that the applicant had a string of relevant convictions. In such cases, it would be contrary to the purpose of the 1985 Order, and to the public interest generally, if the council was obliged to ignore the information.</p>
3.11	<p>He further declared that it would be the duty of council officers to open and read any letter received; such an officer would be placed in an impossible situation if she or he had read a late letter of objection, with new and important information, but was effectively precluded from communicating this information to Council members.</p>
3.12	<p>Additionally, it was stated that the council is not prohibited from taking all relevant representations into account, whether they have been communicated by objectors or others, early or late, or in any other way.</p>

3.13	In light of the above, Committee is advised that, in considering applications for Entertainment Licence, Amusement Permit or Sex Establishment Licences it has a discretion, but not a duty, to consider objections received outside the 28 day statutory period.
3.14	A copy of both the Miss Behavin' and Ava Leisure decisions are included as Appendix 1 to this report.
Consideration of objections received outside the 28 day statutory period by Committee	
3.15	A review of applications since 2013 for which objections were received outside the 28 day statutory period and subsequently brought to Committee for consideration was undertaken and details of those applications are contained in Appendix 2.
3.16	Members will note that for all 12 applications, which include both indoor and outdoor entertainment licence as well as amusement permit applications, the Committee has, in each case, exercised its discretion to consider objections received outside the 28 day statutory period.
Consideration of representations received outside the 28 day statutory	
3.17	Whilst late objections have been considered in the past there is nothing to preclude the Committee from determining that, in future, this will not always be the case. Legal Services have advised that given the Miss Behavin' decision discussed above it would be unlawful to refuse to consider all representations received outside the 28 day period.
3.18	It should also be borne in mind that when assessing applications the Committee is often tasked with assessing competing Convention rights, those of the business owner and those who are affected by the operation of that business. It is therefore important to ensure that both parties have a fair opportunity to express their case.
3.19	Should Committee wish to set guidance as to when late objections may be considered it is important to make provision for unforeseen and exceptional circumstances so that new relevant information, which comes to light through a late objection, is not precluded from being presented to Committee.
3.20	It is proposed that a more rigorous test of the merits of each late objection be undertaken which, unless Members are satisfied, will mean the objection is not taken into account.
Proposal for dealing with late representations	
3.21	<p>For any representation which is received outside the 28 day statutory period Members may wish to consider adopting the following criteria:</p> <ol style="list-style-type: none"> 1. Has a reasonable explanation been provided, in writing, by the objector as to why their representation was not made within the 28 day period; 2. Does the representation provide substantially different additional information to that already contained within representations that have been received within the 28 day period; 3. How far outside the 28 day period were the representations received; 4. The proximity of the objectors to the premises; 5. The number of other representations received outside the 28 day period; 6. Whether there are any other material considerations which would warrant consideration of the objection.

3.22	At present, when a late objection is received, a preliminary report is brought to Committee to seek its view on whether the late objection would be considered. If Committee agrees to do so all parties are invited to a subsequent meeting of the Committee which will receive a detailed paper. As part of the preparation for that meeting, both the applicant and objectors are required to submit their representations which are exchanged with the parties, considered by officers and addressed in the case officers report.
3.23	Committee had requested that officers consider the possibility of rolling up the process so that all matter could be dealt with at one hearing. Having done so officers are concerned that this will be more cumbersome for Committee, members of the public and officers.
3.24	A rolled up hearing would mean the parties would have to lodge formal representations in accordance with the Operating Protocol. Officers would have to investigate the issues raised in those representations and the objector would have to appear before Committee without any certainty as to whether they would be heard. It would also cause difficulties for applicants as they would not know until the last minute whether they had to address the objections in their deputation to Committee.
3.25	In light of these concerns officers would recommend that the present approach is maintained.
<u>Financial and Resource Implications</u>	
3.26	There are no financial or resource implications associated with this report.
<u>Equality and Good Relations Implications</u>	
3.27	There are no equality or good relations issues associated with this report.
4.0	Appendices – Documents Attached
<ul style="list-style-type: none"> • Appendix 1 – Miss Behavin’ Ltd and Ava Leisure Ltd Judgements • Appendix 2 – Consideration of objections received outside the 28 day statutory period by Committee 	

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

Belfast City Council (Appellants)

v.

Miss Behavin' Limited (Respondents) (Northern Ireland)

Appellate Committee

Lord Hoffmann
Lord Rodger of Earlsferry
Baroness Hale of Richmond
Lord Mance
Lord Neuberger of Abbotsbury

Counsel

Appellants:

Richard Gordon QC

John O'Hara QC

David Scoffield

(Instructed by Director of Legal Services,
Belfast City Council)

Respondents:

John F Larkin QC

Mark Reel

(Instructed by Fox & Associates, Belfast)

Hearing date:

26 February 2007

ON
WEDNESDAY 25 APRIL 2007

HOUSE OF LORDS

**OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT
IN THE CAUSE**

**Belfast City Council (Appellants) v. Miss Behavin' Limited
(Respondents) (Northern Ireland)**

[2007] UKHL 19

LORD HOFFMANN

My Lords,

1. The end of the *Chatterley* ban and the Beatles' first LP marked a sudden loss of confidence in traditional British prudishness by legislators and jurors which made the law against obscene publications very difficult to enforce. As a result, the distribution of all but the most hard core pornography became, at least in practice, a lawful trade. This gave rise to unexpected social and environmental problems. It was unacceptable for vendors of pornography to flaunt their wares before the public at large. Ordinary newsagents who sold soft porn avoided outraging sensitive customers by putting it on high shelves. Shops which specialised in pornographic publications and videos, together with sex aids and other such articles, tended to have opaque windows, as much to protect the privacy of customers as the sensibilities of passers-by. They congregated in run-down areas of large towns, usually near the railway station, clustering together on the same principle that people carrying on similar businesses have always traded in close proximity to each other. But the other inhabitants of the locality, both commercial and residential, often objected to the proliferation of sex shops on a mixture of environmental, social, aesthetic, moral and religious grounds: fears about the kind of people who ran them and the customers they attracted; distaste or moral or religious objection to what was going on inside; concern that they lowered the tone of the neighbourhood and attracted other even less desirable trades such as prostitution and organised crime.

2. All these concerns bubbled to the surface in the debate in the House of Commons in 1981 on the second reading of the Local Government (Miscellaneous Provisions) Bill, which contained elaborate

provisions dealing with the licensing of premises supplying meals or refreshments, tattooing and ear-piercing (the piercing of other parts of the body does not appear to have been contemplated), acupuncture and electrolysis, but said nothing about sex shops. Honourable members wanted to know why not. The strength of feeling was such that the government brought forward amendments at the report stage, introducing the system of local authority licensing which is now contained in section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The Act applied only to England, but the identical system was extended to Northern Ireland by the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 No 1208 (NI 15). In the Order, the relevant provisions are article 4 and Schedule 2.

3. Article 4 gives a council power to resolve that the licensing system contained in Schedule 2 should apply to its district. The Belfast City Council has so resolved. Paragraph 6 makes it unlawful to use premises as a sex shop without a licence. Paragraph 10 prescribes how an application for a licence should be made and sub-paragraphs (15) and (16) provides for representations by interested parties:

“(15) Any person wishing to make any representation in relation to an application for the grant, renewal or transfer of a licence under this Schedule shall give notice to the council, stating in general terms the nature of the representation not later than 28 days after the date of the application.

(16) Where the council receives notice of any representation under sub-paragraph (15), the council shall, before considering the application, give notice of the general terms of the representation to the applicant.”

4. Paragraph 12 deals with grounds of refusal. Sub-paragraph (1) specifies certain grounds personal to the applicant on which refusal is mandatory; for example, the council cannot grant a licence to a person under 18, or a foreign company, or someone whose licence has been revoked by the council within the previous 12 months. Sub-paragraph (3) contains grounds on which the council may refuse, of which the one relevant for present purposes is (c):

“that the number of sex establishments in the relevant locality at the time the application is made is equal or

exceeds the number which the council considers is appropriate for that locality”

5. This must be read with sub-paragraphs (4) and (5):

“(4) Nil may be an appropriate number for the purposes of sub-paragraph 3(c).

(5) In this paragraph, “the relevant locality” means...in relation to premises, the locality where they are situated ...”

6. The effect of these rather convoluted provisions is that a council may refuse a licence for a sex shop in any locality on the ground it does not consider it appropriate to have sex shops in that locality. It was said that because the Order says that the Council “may” refuse, this ground is “discretionary”. But I am not sure whether that is a very helpful adjective. It would hardly be rational for the Council to decide that the appropriate number of sex shops in the locality was nil, but that it would all the same exercise its discretion to grant a licence. I think it is more accurate to say that the question of how many sex shops, if any, should be allowed is a matter for the Council’s judgment. In this case the respondent company applied for a licence to run a sex shop at premises in Gresham Street and the Council’s Health and Environmental Services Committee, to which the application was referred, recommended refusal on the ground that the appropriate number of sex shops in the relevant locality was nil. In arriving at this decision, it said that it —

“gave consideration to the character of [the] locality, including the type of retail premises located therein, the proximity of public buildings such as the Belfast Public Library, the presence of a number of shops which would be of particular attraction to families and children and the proximity of a number of places of worship ...”

7. This recommendation was adopted by the Council and the application refused. The Council also gave other reasons, personal to the applicant, but I shall confine myself to the question of whether the refusal under paragraph 12(3)(c) was valid.

8. In arriving at its decision, the Council appears to have considered some representations and objections by members of the public which were made outside the 28 day period prescribed by paragraph 10(15). There was an argument about whether they were entitled to do so. Both the judge and a majority of the Court of Appeal said that the Council had a discretion to consider late objections but the Court of Appeal, reversing the judge, said that the Council had not purported to exercise such a discretion and was therefore wrong to have taken them into account. I do not agree. In my opinion, paragraph 10(15) is concerned only with the position of the objector. If he does not comply with the deadline, he cannot complain that the Council did not take his objection into account. But paragraph 10(15) does not prohibit the council from taking all relevant matters into account, whether they have been communicated by objectors or others, early or late, or in any other way. It would be very strange if such a provision, designed to allow the Council to carry on its business in an orderly and expeditious manner, had the effect of requiring it to shut its eyes to facts which it considered relevant to its decision. The only difficulty is sub-paragraph (16), which seems to suggest that only the terms of representations received within the 28 day period need be communicated to the applicant. Fairness obviously requires that the terms of any representations which the Council proposes to consider should be communicated to the applicant so that he may have an opportunity to comment. But this general principle is in my opinion sufficient to supplement sub-paragraph (16) and keep the scheme fair and workable.

9. As to the substance of the decision, both the judge and the Court of Appeal agreed that the Council had acted fairly and properly exercised its powers under the Order. But they disagreed over whether the Council had complied with the Human Rights Act 1998. The Court of Appeal said that the Council, in exercising its statutory powers, had not sufficiently taken into account the respondent's right to freedom of expression under article 10 of the Convention and its right to the peaceful enjoyment of its possessions under article 1 of Protocol 1.

10. I am prepared to assume, without deciding, that freedom of expression includes the right to use particular premises to distribute pornographic books, videos and other articles and, rather more doubtfully, that a person who is denied the right to use his premises as a sex shop is thereby "deprived of his possessions": compare, however, *ISKCON v UK* (1994) 18 EHRR CD 133 and *Re UK Waste Management Limited's Application* [2002] NI 130. But both of these rights are qualified. The right to freedom of expression may be subject to such restrictions as are necessary in a democratic society "for the prevention

of disorder or crime, for the protection of health or morals, for the protection of the...rights of others". The right to enjoyment of possessions is subject to the right of the State to "control the use of property in accordance with the general interest."

11. The Court of Appeal accepted that, in principle, the legislature was entitled to restrict both freedom of expression and the enjoyment of possessions by requiring that sex shops be licensed. The respondent has not argued the contrary. What it says is that, in exercising its judgment under article 12(3)(c) as to whether a sex shop was appropriate in the locality of Gresham Street, the Council ought to have had regard to its obligation under section 6 of the 1998 Act to respect Convention rights. Although the requirement of a licence was a restriction which pursued a legitimate aim, the Council should not, by its decision to refuse a licence, have interfered with the respondent's rights more than was necessary and proportionate for the achievement of that aim.

12. My Lords, I would not dissent from this proposition, although for the reasons I shall mention later, I find it difficult to imagine a case in which a proper exercise by the Council of its powers under the Order could be a breach of an applicant's Convention rights. If, however, the Court of Appeal had considered that the refusal of a licence was in this case a disproportionate interference with the human right of the respondent to sell pornography in a place of its own choosing, it should have quashed the decision for that reason. I would have disagreed on the facts, but at least the judgment would have proceeded on orthodox grounds. But the Court of Appeal did not say that the respondent's human right to operate a sex shop in Gresham Street had been infringed. Instead, it said that its Convention rights had been violated by the way the Council had arrived at its decision. In the reasons it gave, the Council had not shown that it was conscious of the Convention rights which were engaged. The decision was therefore unlawful unless it was inevitable that a reasonable Council which instructed itself properly about Convention rights would have reached the same decision.

13. This approach seems to me not only contrary to the reasoning in the recent decision of this House in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100 but quite impractical. What was the Council supposed to have said? "We have thought very seriously about your Convention rights but we think that the appropriate number of sex shops in the locality is nil." Or: "Taking into account article 10 and article 1 of the First Protocol and doing the best we can, we think that the appropriate number is nil." Would it have been sufficient to say that

they had taken Convention rights into account, or would they have had to specify the right ones? A construction of the Human Rights Act which requires ordinary citizens in local government to produce such formulaic incantations would make it ridiculous. Either the refusal infringed the respondent's Convention rights or it did not. If it did, no display of human rights learning by the Belfast City Council would have made the decision lawful. If it did not, it would not matter if the councillors had never heard of article 10 or the First Protocol.

14. In the *Denbigh High School* case, the Court of Appeal likewise quashed the decision of a school not to allow a pupil to wear a religious form of dress on the ground that it had arrived at its decision on grounds which did not sufficiently show consciousness of the pupil's Convention right to manifest her religion. As in this case, the Court of Appeal did not say that the school had actually infringed her Convention right to wear the dress. It demanded only that the school demonstrate a correct process of reasoning. Lord Bingham of Cornhill said (at pp 115-116):

“[T]he focus at Strasbourg is not and has never been on whether a challenged decision or action is the product of a defective decision-making process, but on whether, in the case under consideration, the applicant's Convention rights have been violated. In considering the exercise of discretion by a national authority the court may consider whether the applicant had a fair opportunity to put his case, and to challenge an adverse decision, the aspect addressed by the court in the passage from its judgment in *Chapman* quoted above. But the House has been referred to no case in which the Strasbourg Court has found a violation of Convention right on the strength of failure by a national authority to follow the sort of reasoning process laid down by the Court of Appeal. This pragmatic approach is fully reflected in the 1998 Act. The unlawfulness proscribed by section 6(1) is acting in a way which is incompatible with a Convention right, not relying on a defective process of reasoning, and action may be brought under section 7(1) only by a person who is a victim of an unlawful act.”

15. As Lord Bingham noted, some Convention rights may have a procedural content; most obviously article 6, but other rights as well. In such cases, a procedural impropriety may be a denial of a Convention

right. Thus in *Hatton v United Kingdom* (2003) 37 EHRR 28, an article 8 case, the ECHR considered not only the effect on the applicant's private life but whether he had had a fair opportunity to put his case. In such cases, however, the question is still whether there has actually been a violation of the applicant's Convention rights and not whether the decision-maker properly considered the question of whether his rights would be violated or not.

16. The Court of Appeal, as I have said, did not decide whether refusal of a licence was a violation of the respondent's Convention rights or not. Weatherup J decided that it was not. I agree. If article 10 and article 1 of Protocol 1 are engaged at all, they operate at a very low level. The right to vend pornography is not the most important right of free expression in a democratic society and the licensing system does not prohibit anyone from exercising it. It only prevents him from using unlicensed premises for that purpose. Even if the Council considered that it was not appropriate to have a sex shop anywhere in Belfast, that would only have put its citizens in the same position as most of the rest of the country, in having to satisfy their demand for such products by internet or mail order or going to more liberally governed districts like Soho. This is an area of social control in which the Strasbourg court has always accorded a wide margin of appreciation to member States, which in terms of the domestic constitution translates into the broad power of judgment entrusted to local authorities by the legislature. If the local authority exercises that power rationally and in accordance with the purposes of the statute, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights. That was not the case here and I would therefore allow the appeal and dismiss the application for judicial review.

LORD RODGER OF EARLSFERRY

My Lords,

17. I agree that the appeal should be allowed for the reasons given by my noble and learned friend, Lord Hoffmann. I add only a few observations on the Court of Appeal's conclusion that the Council's decision should be quashed because they failed to consider the human rights issue properly.

18. The amended Order 53 statement on behalf of the applicant, Miss Behavin' Ltd, indicated that relief was sought on two broad grounds. The first related to natural justice. The second claimed that the Council's decision was "illegal" inter alia because it turned upon a decision that the appropriate number of sex establishments in the relevant locality was nil, "which was in breach of the European Convention on Human Rights". Two of the supposed reasons advanced by the applicant related to article 10 of the Convention and one related to article 1 of protocol 1.

19. Mr Larkin QC, who appeared for the applicant, acknowledged that if he could not win on article 10 then he could not win at all on human rights. So he concentrated on article 10. In considering the position, I assume, without deciding, that the idea of freedom of expression in article 10(1) is wide enough to cover the use of premises to sell pornographic books, etc. Again, since the contrary was not suggested, I proceed on the basis that in an appropriate case it may be necessary for a council to restrict this use of premises in order to protect health or morals, as envisaged in article 10(2). The applicant's initial position, at least, was that in the circumstances of this case, however, a restriction in the form of a refusal of a licence was not justified.

20. In the Order 53 statement the first article 10 reason for illegality was said to be that the denial of a licence amounted to a disproportionate interference with the applicant's right to freedom of expression. The second was that the Council's decision was disproportionate since they were empowered, when granting a licence, to apply conditions which would have met their concerns, but they declined to do so. Before the House Mr Larkin presented no argument in support of either of these reasons. Matters of procedure were the order of the day.

21. Defects in procedure are, of course, very often a good reason for quashing a decision and requiring the relevant body to reconsider it. In its Order 53 statement the applicant mentioned various concerns about the procedure which the Council had adopted, but it did not suggest that any procedural failing had given rise to a breach of article 10. So far as article 10 was concerned, the applicant relied on the effects of the refusal of a licence: it meant that the applicant could not sell its books etc in its shop in Gresham Street in Belfast and such a restriction was unnecessary for the protection of morals in a democratic society.

22. Dealing with the issue as one of substance rather than procedure, Weatherup J concluded that the refusal of a licence had not violated any right to freedom of expression which the applicant might have under article 10. So he upheld the Council's decision. The Court of Appeal reversed him. They held that, since the Council had not taken the applicant's right to freedom of expression into account when reaching their decision, it would have to be quashed, unless the court could say that the Council would have reached the same decision if their deliberations "had taken place on an informed basis, taking into account the appellant's convention rights".

23. The basis for the applicant's contention that the Council's decision to refuse it a licence was illegal because of a violation of article 10 must be section 6(1) of the Human Rights Act 1998. In terms of that subsection the Council's refusal was unlawful if it was incompatible with the applicant's right to freedom of expression. In other words, if their refusal was disproportionate – because it went too far in interfering with the applicant's right to sell its books or films - then it was unlawful. In that event it would still have been unlawful however much the Council had analysed and agonised over the applicant's right to freedom of expression before refusing the licence. Equally, if the refusal did not interfere disproportionately with the applicant's right to freedom of expression, then it was lawful for purposes of section 6(1) – whether or not the Council had deliberated on that right before refusing.

24. This is just to apply what was said by Lord Bingham of Cornhill and Lord Hoffmann in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, 114E-116H, paras 26-31, and 125D-126C, paras 66-68. The House had, of course, already adopted much the same approach when carrying out the related function of considering the proportionality of legislation. What matters is its impact in the relevant circumstances, not the quality of the debate which preceded its enactment, perhaps many years before. In *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816, 843F-844A, Lord Nicholls of Birkenhead said:

“In particular, it is a cardinal constitutional principle that the will of Parliament is expressed in the language used by it in its enactments. The proportionality of legislation is to be judged on that basis. The courts are to have due regard to the legislation as an expression of the will of Parliament. The proportionality of a statutory measure is not to be judged by the quality of the reasons advanced in support of it in the course of parliamentary debate, or by

the subjective state of mind of individual ministers or other members. Different members may well have different reasons, not expressed in debates, for approving particular statutory provisions. They may have different perceptions of the desirability or likely effect of the legislation. Ministerial statements, especially if made *ex tempore* in response to questions, may sometimes lack clarity or be misdirected. Lack of cogent justification in the course of parliamentary debate is not a matter which ‘counts against’ the legislation on issues of proportionality. The court is called upon to evaluate the proportionality of the legislation, not the adequacy of the minister’s exploration of the policy options or of his explanations to Parliament.”

Similarly, Lord Hobhouse, at p 866F-H, para 144, emphasised that the question of justification and proportionality has to be answered by reference to the time of the events to which the statutory provision was being applied:

“Those who are seeking to justify the use of the statutory provision have to do so as at the time of that use. If they cannot justify it at that time, their use of it is a breach of the victim’s ‘Convention rights’. That is how the European Court would decide the question and it is also how the municipal court is required to look at it. In most cases the difference will probably be academic.... But as circumstances change so the justification or the absence of it may change. Merely to examine the situation at the time the Act in question was passed and treat that as decisive is wrong in principle.... [J]ust as the current state of the legislation at that time is what has to be the subject matter of the decision so also the circumstances and social needs existing at that time are what is relevant, not those existing at some earlier or different time. To look for justification only in the Parliamentary debates at the time the statute was originally passed invites error.”

25. On behalf of the Council Mr Gordon QC emphasised that the applicant had not alleged that any of the provisions on the licensing of sex establishments in Schedule 2 to the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 was incompatible with the Convention. So its provisions must be regarded

as having appropriately balanced the competing interests for Convention purposes, even though the Order was passed some fifteen years before the 1998 Act came into force. It followed, he submitted, that any decision duly taken by a council applying the Order would be compatible with the right to freedom of expression of any applicant for a sex establishment licence. Such an approach may have its attractions in practice, but the court must always keep in mind that it is not concerned with generalities about the legislation in question, but with whether the effect of the council's exercise of its statutory powers in the particular circumstances was in fact compatible with the Convention rights of the applicant for a licence.

26. Of course, where the public authority has carefully weighed the various competing considerations and concluded that interference with a Convention right is justified, a court will attribute due weight to that conclusion in deciding whether the action in question was proportionate and lawful. As Lord Bingham said in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, 116G, para 31:

“If, in such a case, it appears that such a body has conscientiously paid attention to all human rights considerations, no doubt a challenger's task will be the harder. But what matters in any case is the practical outcome, not the quality of the decision-making process that led to it.”

Similarly, having observed that head teachers and governors could not be expected to make decisions with textbooks on human rights at their elbows, Lord Hoffmann observed, at p 126C, para 68:

“The most that can be said is that the way in which the school approached the problem may help to persuade a judge that its answer fell within the area of judgment accorded to it by the law.”

27. In this case the Council did not weigh the competing human rights and other considerations in that way. So, when deciding whether their refusal of a licence interfered disproportionately with the applicant's right to freedom of expression, the court had to go about its task without that particular kind of assistance. Weatherup J concluded that, having regard to the various features of this particular locality which he

mentioned, the refusal of a licence to sell pornography in the applicant's Gresham Street premises did not interfere disproportionately with its right to freedom of expression. Neither the Court of Appeal nor indeed Mr Larkin actually challenged that conclusion on its merits. But, if it is sound – as I believe it is - then the Council's decision was lawful in terms of section 6(1) of the 1998 Act and cannot be quashed on the ground of incompatibility with article 10.

28. The Court of Appeal would also have quashed the Council's decision on the separate ground that the applicant's article 10 right was a relevant consideration which the Council had failed to take into account in reaching their decision. The court felt unable to say that, if the Council had taken account of that right, they would have reached the same decision. This is back to a traditional judicial review point – but, significantly perhaps, not one which was advanced by the applicant in its Order 53 statement. At the meeting of the Health and Environmental Services Committee on 11 December 2002 the applicant's representative had referred to the right to freedom of expression of the applicant and of users of sex shops in Belfast. But he does not seem to have developed the point. Nor did the representative who appeared at the full Council meeting on 3 March 2003. Nor again did Mr Larkin in the hearing before the House. All this is scarcely surprising since, in a case like the present, it is hard to see what anyone could have said beyond reciting the value of the right to sell and use the pornographic material. Similarly, the value of that right is all that the Council could have been expected to consider. So, at most, the Council are criticised for failing to take into account what can only be the modest value of that right. The basic pros and cons of having a right to sell and use pornography must surely have been well known, however, to the members of the Council who took the decision. Unlike the Court of Appeal, I am accordingly satisfied that, even if they had had regard to the applicant's article 10 right in formulating their decision, it would still have been the same. There were, in any event, other special factors relating to the applicant which would have justified refusing the licence.

29. For these reasons, as well as the others given by Lord Hoffmann, I would allow the appeal and restore the order of Weatherup J dismissing the application for judicial review.

BARONESS HALE OF RICHMOND

My Lords,

30. This case must take the prize for the most entertaining name of any that have come before us in recent years. It also takes the prize for exemplifying two of the most important questions which have so far arisen under the Human Rights Act 1998. But since the decision of the Northern Ireland Court of Appeal in this case, both have been effectively answered by this House, one in the case of *R (SB) v Governors of Denbigh High School* [2007] AC 100, the other in the case of *R (Huang) and R (Kashmiri) v Secretary of State for the Home Department* [2007] UKHL 11.

31. The first, and most straightforward, question is who decides whether or not a claimant's Convention rights have been infringed. The answer is that it is the court before which the issue is raised. The role of the court in human rights adjudication is quite different from the role of the court in an ordinary judicial review of administrative action. In human rights adjudication, the court is concerned with whether the human rights of the claimant have in fact been infringed, not with whether the administrative decision-maker properly took them into account. If it were otherwise, every policy decision taken before the Human Rights Act 1998 came into force but which engaged a convention right would be open to challenge, no matter how obviously compliant with the right in question it was. That cannot be right, and this House so decided in *R (SB) v Governors of Denbigh High School* [2007] AC 100, in relation to the decisions of a public authority. To the same effect were *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816 and *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 AC 246, in relation to legislation passed before the 1998 Act came into force. In each of those cases, the House considered the justification for the policy or legislation in question on its merits, regardless of whether the decision-maker had done so.

32. The second, and more difficult, question is the weight to be accorded to the views of the various public authorities involved in making the decision which is alleged to have infringed convention rights. The recent decisions of this House in *R (Huang) and R (Kashmiri) v Secretary of State for the Home Department* [2007] UKHL 11 address this very point.

33. In this case, there are arguably four levels of such decision making. The first is the decision of the Northern Ireland legislature permit local authorities to prohibit the operation of sex establishments without a licence. No-one has suggested that this decision in itself infringed convention rights. Control of the use of land is permitted under Article 1 of Protocol 1 to the Convention and restrictions on freedom of speech are permitted under Article 10. Having such a licensing regime is clearly consistent with the convention rights, provided that it is operated consistently with those convention rights. The question is how it is operated.

34. The second level is the decision of Belfast City Council to adopt the licensing regime in its area. No-one has suggested that this decision in itself infringed convention rights, for the same reasons that the legislation itself does not do so.

35. The third level is the decision of Belfast City Council that there should be no sex shops in this particular locality. That might have been taken as a policy decision which would dictate all subsequent decisions on individual applications. However, the legislation, as explained by my noble and learned friend, Lord Neuberger of Abbotsbury, indicates that the decision should be made in relation to each individual case. An application may - but not must - be turned down on the basis that the authority considers that there already are enough sex shops in the locality, enough being capable of being none: see Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, Schedule 2, para 12(2), (3)(c) and (4). The decision that the appropriate number in this locality was none appears to have been taken in response to individual applications rather than as a general policy. So, perhaps unusually, this third level of decision making merges into the fourth.

36. The fourth level is the decision on the individual application. Mr Gordon QC, on behalf of the Council, argues that this decision cannot be attacked if the existence of the licensing regime itself cannot be attacked. I cannot agree. I do agree, of course, that there are situations in which the court is entitled to say that the legislation itself strikes a fair balance between the rights of the individual and the interests of the community, so that there is no room for the court to strike the balance in the individual case. That is what this House decided in *Kay v Lambeth London Borough Council* [2006] 2 AC 465. At issue there was whether a landowner with the right to possession of land (in that case a public authority, but the same question would arise with a private landowner whose rights are protected under Article 1 of

Protocol 1) could be deprived of that right because to enforce it against the particular individual occupier would be a disproportionate interference with the occupier's right to respect for his home under Article 8 of the Convention, even though he had no right in domestic law to be or to continue in occupation. The whole history of housing law since rent control began has been an attempt by the legislature to strike just that balance. In those circumstances, the courts are entitled to say that unless the legislation itself can be attacked, the issue cannot be raised in an individual case.

37. But this is not a case in which the legislation itself attempts to strike that balance. The legislation leaves it to the local authority to do so in each individual case. So the court has to decide whether the authority has violated the convention rights. In doing so, it is bound to acknowledge that the local authority is much better placed than the court to decide whether the right of sex shop owners to sell pornographic literature and images should be restricted - for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights of others. But the views of the local authority are bound to carry less weight where the local authority has made no attempt to address that question. Had the Belfast City Council expressly set itself the task of balancing the rights of individuals to sell and buy pornographic literature and images against the interests of the wider community, a court would find it hard to upset the balance which the local authority had struck. But where there is no indication that this has been done, the court has no alternative but to strike the balance for itself, giving due weight to the judgments made by those who are in much closer touch with the people and the places involved than the court could ever be.

38. My Lords, there are far more important human rights in this world than the right to sell pornographic literature and images in the backstreets of Belfast City Centre. Pornography comes well below celebrity gossip in the hierarchy of speech which deserves the protection of the law. Far too often it entails the sexual exploitation and degradation of women for the titillation of men. But there is always room for debate about what constitutes pornography. We can all think of wonderful works of literature which once were banned for their supposed immorality (my example would be *The Well of Loneliness* by Radclyffe Hall rather than *Lady Chatterley's Lover*, but the point is the same). No-one is suggesting that pornographic literature and images (always supposing that it is lawful) should be inaccessible to those in Belfast who wish to gain access to them. The authors can publish their work in any other medium should they wish to do so, and the public can

gain access to them there. Indeed, the City Council has not, as far as we know, refused to license sex establishments elsewhere in the city. There were good reasons for refusing to license establishments in this street and even better ones for refusing this particular company a licence. The suggestion that this is a disproportionate limitation on the company's right to freedom of expression is to my mind completely untenable. The same applies, *a fortiori*, to the complaint under Article 1 of Protocol 1.

39. For these reasons, and I believe in agreement with all of your lordships, I would allow this appeal and restore the decision of Weatherup J.

LORD MANCE

My Lords,

40. I have had the advantage of reading in draft the opinions of my noble and learned friends, Lord Hoffmann, Lord Rodger of Earlsferry, Baroness Hale of Richmond and Lord Neuberger of Abbotsbury. For the reasons given by Lord Hoffmann and Lord Neuberger, there is nothing in the complaint that the Council should have declined to consider the late representations and objections.

41. In agreement with other members of the House, I would reject the Council's submission that, if the respondent had any cause for complaint, it was inherent in the scheme of the relevant legislation so that, in the absence of any challenge to that scheme, the appeal should succeed on that ground alone. The present scheme is not analogous with *Kay v. Lambeth L.B.C.* [2006] UKHL 10; [2006] 2 AC 465. Here, the Council had a licensing jurisdiction, in the exercise of which it was both able and bound to act compatibly with the Convention: cf section 6 of the Human Rights Act 1998.

42. I can for present purposes proceed on the basis that both freedom of expression under article 10 of the Convention and the enjoyment of possessions under Protocol 1 were engaged by the exercise of that jurisdiction, albeit (as others have observed) hardly in a very compelling sense. But both those interests may be restricted, in the former case for inter alia the protection of health or morals and of the rights of others

and in the latter case in accordance with the general interest. I agree that any complaint about restriction of the latter interest, assuming that it exists, can add nothing in the present context to any complaint about restriction of the former article 8 interest.

43. The Court of Appeal cited *Re Connor's Application* [2004] NICA 45 for the uncontroversial proposition that the evaluation of the interests protected by the Convention was primarily one for the Council (paragraph 55). But it went on to rely on that case (decided in relation to article 8) for the proposition that:

“Where no appraisal of the relevant interests had been made, the court could only conclude that the interference was justified if, on analysis, it determined that it was inevitable that the decision-maker would have decided that the article 8 rights of the individual would have to yield to protect the wider interests outlined in article 8(2)”.

The Court of Appeal went on to apply that proposition in relation to both article 1 of the First Protocol (paragraph 56) and article 10 of the Convention (paragraph 63). It said (paragraph 56):

“The interference with the appellant’s rights can only be justified, therefore, if either the public authority has decided that the general interest demands it or it is inevitable that it would have so decided had it been conscious of the interference with the appellant’s rights that refusal of the application entailed.”

44. Authority now shows that this is not the correct approach. The court’s role is to assess for itself the proportionality of the decision-maker’s decision: *R (SB) v. Governors of Denbigh High School* [2006] UKHL 15, [2007] 1 AC 100. The court will not require a decision-maker to put itself through the hoops of a complex series of questions such as the Court of Appeal suggested in that case ([2005] EWCA Civ 199; [2005] 1 WLR 3372). In the *Denbigh* case, Lord Bingham rejected the “new formalism” that the Court of Appeal’s approach would have involved, and said that “what matters in any case is the practical outcome, not the quality of the decision-making process that led to it” (paragraph 31).

45. Lord Hoffmann also contrasted the position regarding judicial review, where “the court is usually concerned with whether the decision-maker reached his decision in the right way rather than whether he got what the court might think to be the right answer” (*Denbigh*, paragraph 68). This is not of course to say that the Convention contains no procedural rights; it clearly does - articles 5 and 6 contain the most obvious examples - but there is authority in the European Court of Human Rights that other provisions can implicitly involve ancillary procedural rights, e.g. article 8: cf *McMichael v. United Kingdom* (24th February 1995, paragraphs 85-93; *Buckley v. United Kingdom* (25th September 1996, paragraph 76) and *Chapman v. United Kingdom* (2001) 33 EHRR 399, paragraph 92).

46. The question may arise how the approach described in paragraph 44 above inter-relates with the courts’ recognition of a “discretionary area of judgment” within which “the judiciary will defer, on democratic grounds, to the considered opinion of the elected body or person whose act or decision is said to be incompatible with the Convention”: *R v. DPP, Ex p Kebilene* [2000] 2 AC 326, 381B-D per Lord Hope; *A v. Secretary of State for the Home Department* [2004] UKHL 56; [2005] 2 AC 68, paragraphs 37-42 per Lord Bingham. The existence of a discretionary area of judgment means necessarily that there may be decisions which a court could regard as proportionate, whichever way they went. Lord Hope’s dicta in *Kebilene* postulate a context in which the decision-maker has reached a “considered opinion”, whatever the formal structure of his decision-making process. But, what is the position if a decision-maker is not conscious of or does not address his or its mind at all to the existence of values or interests which are relevant under the Convention?

47. The court is then deprived of the assistance and reassurance provided by the primary decision-maker’s “considered opinion” on Convention issues. The court’s scrutiny is bound to be closer, and the court may, as Baroness Hale observes in paragraph 37 of her opinion, have no alternative but to strike the balance for itself, giving due weight to such judgments as were made by the primary decision-maker on matters he or it did consider.

48. In the present case, however close the court’s scrutiny, I have no hesitation in concluding that the Council’s decision was proportionate (and indeed inevitable) for the reasons relating to both the Council’s primary and its secondary grounds for refusal with which Lord Neuberger deals in paragraphs 94 to 96, which are also consistent as I

see it with those given by Lord Rodger in his paragraph 28 and Baroness Hale in her paragraph 38. I too would therefore allow this appeal and restore the decision of Weatherup J dismissing the respondent's application.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

49. This appeal concerns an application for a sex establishment licence in respect of Unit 2, 2-8 Gresham Street, Belfast ("the premises"), made to the Belfast City Council ("the Council") under the provisions of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (1985 No. 1208 NI15), which I shall refer to as "the 1985 Order".

Schedule 2 to the 1985 Order

50. Article 4 of the 1985 Order provides that a council "may resolve that Schedule 2 is to apply to its District". It then sets out the procedure to be adopted in such an event. Schedule 2 to the 1985 Order is headed "Licensing of Sex Establishments", and references hereafter to paragraphs are to paragraphs of that Schedule.

51. Paragraph 2 provides that "'sex establishment' means a sex cinema or a sex shop". The expression "sex shop" is defined in paragraph 4(1) as including premises:

"used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating –

- (a) sex articles; or
- (b) other things intended for use in connection with, or for the purpose of stimulating or encouraging –
 - (i) sexual activity;
 - (ii) acts of force or restraint which are associated with sexual activity.

By virtue of paragraphs 4(3) and (4), a “sex article” includes “any article containing or embodying matter to be read or looked at” and “any recording of vision or sound”.

52. Paragraph 6 precludes the use of any premises “in any district in which this Schedule is in force” “as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the council for the district”. Paragraph 7 enables a council “to waive the requirement of a licence” where “to require a licence would be unreasonable or inappropriate”. Paragraph 8 empowers the council to grant, renew or transfer licences, and paragraph 9 is concerned with the duration of licences.

53. Paragraph 10 deals with applications for licences. Sub-paragraphs (1) to (6) set out procedural requirements to be satisfied by applicants for licences. Sub-paragraphs (7) to (14) are concerned with publicising the existence of the application, and require an applicant to advertise his application in a newspaper within seven days of it having been made, and to display a notice of the application in an appropriate location “for 21 days beginning with the date of the application”.

54. Sub-paragraphs (15) to (18) of paragraph 10 are in these terms so far as relevant:

- “(15) Any person wishing to make any representation in relation to an application for the grant...of a licence...shall give notice to the council, stating in general terms the nature of representation not later than 28 days after the date of the application.
- (16) Where the council receive notice of any representation under sub-paragraph (15) the council shall, before considering the application, give notice of the general terms of the representation to the applicant.
- (17) ...
- (18) In considering any application for the grant...of a licence the council shall have regard to...any representations of which notice has been sent to it under sub-paragraph (15)”

55. Paragraph 10 (19) requires a council to give an applicant “an opportunity of appearing before and of being heard by the council...before refusing to grant a licence, to the applicant...”.

56. Paragraph 12 (1) sets out the grounds upon which a council “shall refuse an application for the grant...of a licence”. They include cases where the applicant is under 18, has had a licence revoked, has been refused a licence within the past 12 months, or is a foreign company. Paragraph 12 (2) provides that a council “may refuse” to grant a licence on the grounds set out in paragraph 12 (3), which are:

- “(a) that the applicant is unsuitable to hold the licence by virtue of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted...the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant...of such a licence if he made the application himself;
- (c) that the number of sex establishments in the relevant locality of the time the application is made is equal to or exceeds the number which the council considers is appropriate for that locality;
- (d) that the grant...of the licence would be inappropriate, having regard –
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises...in respect of which the application is made.”

57. Paragraph 12 (4) provides that “nil may be an appropriate number for the purposes of sub-paragraph (3) (c)”. Paragraph 12(5) identifies “the relevant locality” as “the locality” in which the premises the subject of the relevant application “are situated”.

58. Paragraph 20 states that a person who “knowingly uses, or knowingly causes or permits the use of, any premises...contrary to paragraph 6...shall be guilty of an offence”. Paragraph 26 is concerned with the right of appeal of a disappointed applicant for a licence. It entitles such a person to appeal to the County Court within 21 days of the licence being refused, save where the ground of refusal is under paragraph 12 (3) (c) or (d).

The facts

59. In 1988, the Council resolved, pursuant to article 4 (1) of the 1985 Order, that Schedule 2 should apply to its district. In 1989, when considering an application for a sex establishment licence in respect of a property in the same locality as the premises (“the Gresham Street locality”), the Council had determined that the appropriate number of sex establishments in that locality should be nil, a view that the Council revisited and confirmed in February 1997.

60. On 13th May 2002, the respondent, Miss Behavin’ Limited, applied to the Council for a sex establishment licence (a “Licence”) to use the premises as a sex shop. This application (“the Application”) was duly advertised, and resulted in 70 notices of objection (“objections”), only one of which was received within the 28 day time limit stipulated in paragraph 10 (15). During September and October 2002, the Council informed the respondent of these objections, together with the grounds upon which they were based.

61. At the time of the Application, the premises had been operated as a sex shop without a Licence, and therefore unlawfully, for a period before February 2001. During that period, the premises had been leased to a Mr Patrick McCaffrey. In 2001, he was successfully prosecuted for a number of offences arising out of his business at the premises. About one month prior to the Application, the respondent was incorporated as a limited company with an issued capital of 99 shares, of which 40 had been allocated to Mr McCaffrey.

62. Together with five other applications for sex establishment licences in the Gresham Street locality and a neighbouring locality, the Application came before the Council’s Health and Environmental Services Committee (“the Committee”), whose functions include the consideration of such applications with a view to recommending to the full Council whether they should be granted or refused.

63. The Committee met on 18th November 2002 in order to consider the six applications. The respondent had been invited to attend this meeting in order to present arguments as to why there should be a change in the nil determination – i.e. the determination that the appropriate number of sex establishments in the locality should be nil - and why the Application should succeed. The meeting was abortive for

present purposes, because of the respondent's expressed concern that certain documents had not been disclosed. Accordingly, it was adjourned to 2nd December 2002.

64. Ahead of the 2nd December 2002 meeting, the members of the Committee were supplied with reports from Mr Crothers, a Chartered Surveyor, which dealt with the nature of the Gresham Street locality, and future developments therein, and from Mr Martin, the head of the Council's Building Control Services. Mr Martin referred to earlier decisions of the Council and to the previous meetings of the Committee at which it had been determined that the appropriate number of sex establishments in the Gresham Street locality should be nil. He reported that 70 objections had been received, and that "all but one of the letters was received outside the 28 day period", and he summarised the various different grounds of objection that had been raised. His report concluded by stating that there were two issues for the Committee to decide, namely (1) if the nil determination was confirmed, then the Application should be refused and (2) if the number was to be "other than nil", then it would be necessary to decide which of the applications to grant..

65. The meeting of 2nd December overran, and was adjourned to the 11th December 2002, when the Application was considered. The Committee was addressed by Mr Fox, the respondent's solicitor. The minutes record that Mr Fox "enquired whether the objections had been received within the statutory 28 day period". He is also recorded as having suggested that the Committee reconsider and reverse the earlier nil determination, and having said that the respondent "together with those members of the public who used the sex shops which were currently operating illegally in Belfast, were entitled to freedom of expression" under the Human Rights Act 1998.

66. The Committee deferred making the decision on the six applications to its meeting of 20th January 2003. The minutes of that meeting reveal that:

"The Committee gave consideration to the character of each locality, including the type of retail premises located therein, the proximity of public buildings such as the Belfast Public Library, the presence of a number of shops which would be of particular attraction to families and children and the proximity of a number of places of worship, and agreed to recommend that the Council, in its

capacity as Licensing Authority, determine that the appropriate number of sex establishments in the Gresham Street and North Street localities be nil. The Committee in recommending that the appropriate number of sex establishments be nil, acknowledged that these recommendations would not necessarily impact on its views in relation to the appropriate number of such establishments in other localities in the City.”

The Committee then went on to consider (and to recommend the refusal of) each of the six applications on their perceived merits; the relevant extracts from the minutes for present purposes are as follows:

“In considering the above mentioned matter, the Committee was mindful of the Council might, if it so desired, decide that the appropriate number of Sex Establishments in the Gresham Street and/or North Street localities be other than nil. Accordingly, the Committee agreed to consider the merits of each application.

After discussion, the Committee, having regard to the information contained in the report of the Head of Building Control...agreed to recommend that the Council...refuse the under noted applications...for the following reasons:

.....

Miss Behavin’

Unit 2, 2-8 Gresham Street

- (1) that the applicant had been operating a sex shop without a Licence and in breach of the relevant legislation;
- (2) that an associated person, convicted of relevant offences, appeared to have an interest in the business carried out under the Licence; and
- (3) that the company’s formation appeared to have been for the purpose of making the application other than in the name of a convicted person.”

67. The six applications were accordingly remitted to the full Council with a refusal recommendation. For reasons not germane to this appeal, the Council at its monthly meeting of 3rd February 2003 sent back the six applications to the Committee for reconsideration. At its meeting of

10th February 2003, the Committee “affirmed its decisions of 20th January to recommend that the Council...determine that the appropriate number of Sex Establishments in the Gresham Street and North Street localities be nil and refuse the applications in respect of Sex Establishment licences for the reasons outlined in the minutes of that meeting”.

68. The six applications then came before the Council at its monthly meeting on 3rd March 2003. Before discussing those applications, the Council afforded each of the applicants an opportunity to make representations. On this occasion, the respondent was represented by Mr Reel of Counsel, a summary of whose submissions is contained in the minutes of that meeting. The Council then turned to the various applications, and resolved that “the minutes of the proceedings of the Health and Environmental Services Committee of 10th February 2003 be and they are hereby approved and adopted...”. The decision of the Council was communicated to the respondent in a letter dated 13th March 2003.

The procedural history

69. Pursuant to leave given by Weatherup J on 25th June 2003, the respondent applied to the High Court to quash the Council’s decision of 3rd March 2003 to refuse the Application. The respondent’s case was based on a number of grounds, only two of which are now relevant, namely: (1) the Council (through the Committee) ought not to have taken into account the 69 objections which were out of time, or in the alternative ought not to have taken them into account without first considering whether to exercise their discretion to do so; (2) the decision of the Council was flawed in that it infringed the respondent’s rights under article 10 of the European Convention on Human Rights (“Article 10”) and under article 1 of the first Protocol to the Convention (“Article 1 of the First Protocol”).

70. This application came before Weatherup J who dismissed it on all grounds – see [2004] NIQB 61. The respondent appealed to the Court of Appeal, who, on 15th September 2005, allowed the appeal – see [2005] NICA 35. On the first issue, the majority, Kerr LCJ and Sheil LJ, held that it was, in principle, open to the Council to take into account late objections, but their decision was flawed because the Committee had not expressly considered and determined whether or not to exercise its discretion to take the late objections into account. Hart J held that, on a

true construction of paragraph 10, it was not open to the Committee to have taken into account late objections at all. The Court of Appeal unanimously considered that the Committee should have taken into account the respondent's rights under Article 10 and under Article 1 of the First Protocol, and that for those reasons also, the respondent should succeed. Accordingly, the Court of Appeal decided that the Council's refusal of the Application should be quashed.

The late notices of objection

71. The first question is whether a council to whom an application for a sex establishment licence is made is entitled to take into account a late objections, that is objections received after the 28-day period referred to in paragraph 10 (15). It would, in my judgement, be unrealistic and unjust if a council were absolutely precluded from taking into account such objections. If an objection which revealed to a council for the first time certain highly relevant information was received one day late, it would be a little short of absurd if it could not be taken into account. It might reveal, for instance, that a family with a large number of small children had moved into the flat above the subject property, or that the applicant had a string of relevant convictions. In such cases, it would be contrary to the purpose of the 1985 Order, and to the public interest generally, if the council was obliged to ignore the information. Furthermore, it would be the duty of council officers to open and read any letter received; such an officer would be placed in an impossible situation if she or he had read a late letter of objection, with new and important information, but was effectively precluded from communicating this information to Council members.

72. Indeed, unless the 1985 Order provided otherwise in very clear terms, it would seem to me that, if a council received significant relevant information in a late objection, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable. Of course, much would depend on the circumstances of the particular case. It may very well be right to disregard a late objection if it was intentionally last minute, or if it was received so late that taking it into account would lead to unfairness to the applicant (because he would not have had the chance to consider it) or to unacceptable disruption to the council's business. Accordingly, one would expect the effect of Article 10 to be that late objections could, but need not, be taken into account.

73. In my view, that is indeed the effect of the provisions of paragraphs 10 (15) to (18). Paragraph 10 (18) is merely concerned with identifying what a council is obliged to take into account; it says nothing about what the council is entitled to take into account. Accordingly, nothing in paragraph 10 (18) would exclude the consideration of late objections. Once one appreciates that that is the effect of paragraph 10 (18), the meaning of paragraph 10 (15) seems clear. Its effect is that, if an objector wishes to have his objection taken into account as of right under the terms of the Schedule, then he has to ensure that it is sent to the council within the 28 day period. In other words, what those two subparagraphs are concerned with for present purposes is to make it clear that, if an objection is received within 28 days, the council has an obligation to take it into account, and the objector has a right to expect it to be taken into account. Neither sub-paragraph says anything about the parties' respective rights and duties in relation to a late objection. A late objection is therefore governed by general administrative law principles: it is a matter for the council whether to take it into account, and the court will not interfere with its decision in that regard, save on classic administrative law principles, i.e. unless the decision took into account irrelevant factors or failed to take into account relevant factors or was a decision which no reasonable council could, in all the circumstances, have made.

74. It might be said that the notion that the council can take into account late objections is inconsistent with paragraph 10 (16), which appears to require the council to give notice to the applicant of only in-time objections. It does not seem to me that that presents any difficulties. Paragraph 10(16) is just like paragraphs 10 (15) and 10 (18) in that it is only concerned with in-time objections. In the same way as the right and duty to consider late objections are governed by general administrative law principles rather than by paragraph 10, so is the question of whether the contents of late objections have to be communicated to the applicant. In that connection, it seems to me that the answer is clear: if such a late objection is to be taken into account by the council, then the applicant must be informed as to its contents in good time so as to be able to consider it and deal with it appropriately.

75. It is right to mention that this point is not without authority. The provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (which are to all intents and purposes identical to those of Schedule 2 to the 1985 Order) have been considered in a number of cases culminating in *Quietlynn Ltd v Plymouth City Council* [1988] QB 114. In that case, at 133A-134E, the Divisional Court

considered and, in my view rightly, rejected the submission that a council could not take into account late objections.

76. That brings me to the second question, namely whether the decision of the Council in the present case was nonetheless flawed because the Committee did not expressly direct its mind to the question of whether or not to take into account late objections. In my judgment, there are two reasons why there is nothing in that point.

77. First, on the facts of this case, it seems to me that the Committee could not have reached any conclusion other than that the late objections should be admitted. Given that there is no suggestion of the objections being late for lack of good faith, the only reasons for not admitting the late objections would have been prejudice to the applicant or disruption to the Council's business. Neither suggestion could possibly have been raised in this case, and indeed neither suggestion was raised. The respondent had ample notice of the contents of all 70 objections, and their effect had been fully reported to the Committee. Even if there had been a failure by the Committee to consider the issue, it could not have caused detriment to the respondent.

78. Secondly, on a fair reading of the documents, the Committee did in fact properly and sufficiently address the question of whether or not to admit the late objections. As I have mentioned, the Committee had Mr Martin's report which stated in terms that all but one of the objections were received out of time, and the point was specifically raised before the Committee by Mr Fox on behalf of the respondent. In those circumstances, I think it is unrealistic to suggest that the Committee did not effectively address its mind to the question of whether to take into account the late objections. There could have been no point in Mr Martin and Mr Fox referring to the fact that objections had been received late, unless that was a factor to be taken into account. On the facts of this case, at any rate, it seems to me unrealistic, at least in the absence of evidence in support, to conclude that the members of the Committee were unaware of the existence of time limits.

79. In some cases, the facts may be such that one would expect fuller consideration to have been given to the issue of whether to consider late objections. Here, however, as already mentioned, there was no question of tactical lateness on the part of the objectors, or prejudice to the respondent or disruption to the Council as a result of taking the late

objections into account, so the consideration given to this issue was, in my view, quite sufficient.

80. There may well be two other reasons for reaching this conclusion. First, the respondent has effectively waived its right to take the point. It was represented by a solicitor before the Committee and by a barrister before the Council, and they were clearly aware of the fact that 69 of the 70 objections had been received out of time. Yet on neither occasion was it argued that those late objections should not be taken into account. Secondly, even if the Council should not have taken into account the late objections, it appears highly unlikely (to put it at its lowest) that it would have granted the Application if it had disregarded the late objections. Given that these two reasons were only touched on in argument, and do not need to be ruled on in order to determine this appeal, I shall say no more about them.

81. Accordingly, in respectful disagreement with the Court of Appeal, I consider that Weatherup J was right to dismiss the respondent's case on this issue.

Article 10 of the Convention

82. My Lords, in my judgment, it is, necessary to answer three questions of principle in relation to the applicability of Article 10 where a council refuses an application for a Licence, and then to apply the answers to those questions to the facts of the present case.

83. The first question which has to be considered is whether Article 10 is engaged at all. Mr Richard Gordon QC, who appeared for the Council, contended that it was not. Article 10 provides:

“Freedom of expression.

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority...

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic

society..., for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

In my judgment, both as a matter of language and as a matter of principle, Article 10 is indeed engaged in this case, albeit at a relatively low level, so far as the proposed use of the premises was for the sale of books, magazines and DVDs and the like. In addition to the respondent’s right to seek to disseminate such articles, the compilers, whether they are writers, photographers, film-makers or actors, are entitled to seek to express themselves through the medium of these articles; indeed members of the public wishing to buy and look at these articles have the right to seek to do so. The fact that some people may well find some or all of the articles in question offensive or damaging to public morality is catered for by the second part of Article 10. Like many other fundamental rights, the right to freedom of expression must not be abused and can be subject to appropriate restriction. Indeed, when it comes to restrictions on the dissemination of pornographic material, the margin of appreciation afforded to member states must, it appears to me, be wide.

84. Having decided that Article 10 is, in principle, engaged in a case such as this, the second question is how it is engaged. Mr Gordon contended that the sole question of principle is whether the legislation in question, in this case the 1985 Order, complies with Article 10. If it does comply, then it is not open to a disappointed applicant, such as the respondent in the present case, to raise an Article 10 argument in relation to his own particular application. If that is right, then the respondent in the present case has effectively “sold the pass” by not contending that the 1985 Order does not comply with Article 10.

85. There is no doubt that in relation to some legislation the approach urged on us on behalf of the Council is appropriate: see, for example, the view of the majority in *Kay v Lambeth London Borough Council* [2006] 2 AC 465 at paragraph 110. However, that does not seem to me to be the appropriate approach in the present case.

86. *Kay* was a case concerned with the impact of Article 8 (right to respect for private and family life) on the domestic law which gave a public authority landlord an unqualified right to possession of property occupied by temporarily homeless people and by gypsies. By a bare majority, your Lordships decided that, unless it could be shown that the

domestic law did not achieve fair balance between the competing interests of occupiers of land and landowners, it would be compatible with Article 8.

87. In my judgment, the present case is very different. It is not concerned with the property rights of a local authority, but with the exercise of a licensing jurisdiction which has been delegated by the legislature, through the medium of the 1985 Order, to a local authority which decides to adopt the provisions of Schedule 2. In other words, when exercising its functions under schedule 2, a council is carrying out what may be characterised as a public administrative function; in that capacity, a council should carry out its functions in a manner, and to achieve a result, which is compatible with the Convention. That seems to me to follow from the provisions of section 6 of the Human Rights Act 1998, which renders it “unlawful for a public authority to act in a way which is incompatible with a Convention right”.

88. The third question to be considered is what the engagement of Article 10 means in practice. In my judgment, it means that any decision reached by a council in relation to an application for a Licence must comply with the Convention, and that, where a decision is challenged in this connection, it is a matter for the court to decide whether it does so comply. That seems to me to follow from the decision of this House in *R (SB) v The Governors of Denbigh High School* [2006] 2 WLR 719, a case concerned with Article 9 of the Convention.

89. In that case, at paragraphs 29 and 30 Lord Bingham of Cornhill said that:

“29.the focus at Strasbourg is not and has never been on whether a challenged decision or action is the product of a defective decision-making process, but on whether, in the case under consideration, the applicant’s convention rights have been violated.

30. ...[T]he court’s approach to an issue of proportionality under the convention must go beyond that traditionally adopted to judicial review in a domestic setting... .There is no shift to a merits review, but the intensity of review is greater than was previously appropriate... . The domestic court must now make a value judgment, an evaluation, by reference to the circumstances prevailing at the relevant

time... . Proportionality must be judged objectively, by the court.”

To the same effect, at paragraph 68, my noble and learned friend Lord Hoffmann said this:

“68. ...In domestic judicial review, the court is usually concerned with whether the decision-maker reached his decision in the right way rather than whether he got what the court might think to be the right answer. But Art. 9 is concerned with substance, not procedure. It confers no right to have a decision made in any particular way. What matters is the result: was the right to manifest a religious belief restricted in a way which is not justified under Art.9 (2)?...”

Article 9 is very similar to Article 10, both in the nature of the topic with which it is concerned (freedom of thought, conscience and religion, a substantive right), and in the way it is structured (in two parts, the first of which is concerned with identifying the right, and the second of which is concerned with permitted restrictions on the right).

90. In my view, therefore, the contention advanced by Mr Larkin QC, on behalf of the respondent (which was accepted by the Court of Appeal), namely that, because Article 10 is engaged, the Council’s decision was irretrievably flawed because it failed to take the respondent’s Article 10 rights into account when considering the Application, is incorrect. The right issue to be considered, and which is to be determined by the court, is whether, in all the circumstances of this case, the Council’s decision to refuse the Application infringed the respondent’s Article 10 rights. In connection with that issue, I respectfully agree with the analysis in paragraph 37 and paragraphs 45-47 of my noble and learned friends Baroness Hale of Richmond and Lord Mance, whose speeches I have had the benefit of reading in draft.

91. Because the issue involves careful scrutiny by the court of the decision, a council faced with an application for a sex establishment licence would be well advised to consider expressly the applicant’s right to freedom of expression, and to take it into account when reaching a decision as to whether to grant or refuse the licence. While the fact that a council has expressly taken into account Article 10 when reaching a

decision cannot be conclusive on the issue of whether the applicant's Article 10 rights have been infringed, it seems to me, consistently with what Lord Bingham and Lord Hoffmann said in *Denbigh* at paragraphs 31 and 68, that where a council has properly considered the issue in relation to a particular application, the court is inherently less likely to conclude that the decision ultimately reached infringes the applicant's rights.

92. It is fair to say that it may not always be easy to see, or at least to express in clear terms, how an applicant's Article 10 rights can satisfactorily be weighed against a council's decision to refuse a Licence (or, indeed, could be factored in to a council's decision-making process when deliberating on whether to grant a Licence). In the present case, what was at any rate the primary reason for refusing the Application was the nil determination. It can be said with considerable apparent force that, where a council has made a nil determination in respect of a locality on environmental and social grounds, it is hard to see how the applicant's Article 10 rights could justify the grant of a Licence. I accept that this would be correct in the majority (possibly the great majority) of cases. However, the nil determination is a discretionary, and not a mandatory, ground of refusal, because it is within paragraph 12 (2) (3), not paragraph 12 (1). One can imagine circumstances where, for instance, the demand is so great, the level of objections is so low, the articles proposed to be sold are relatively inoffensive to any but the most prudish, and a nil determination is issued for every locality in the whole city or district, that Article 10 considerations in a particular case could outweigh the effect of the nil determination.

93. I turn now to apply these conclusions to the facts of the present case. On a fair reading of the minutes, it seems clear that, in the last two meetings to which I have referred, the Committee decided to recommend rejection of the Application for two reasons; the primary reason was in order to give effect to the nil determination; the second reason, which only applied in the event that the nil determination was either resisted or not put into effect, was that the Application should be refused for the three-pronged reason of the respondent being in breach of the legislation, Mr McCaffrey, who had been convicted of a relevant offence, having an interest in the respondent, and the respondent having been formed in order to make the application in place of Mr McCaffrey.

94. In these circumstances, it seems to me positively fanciful to suggest that the decision to refuse the Application could conceivably have infringed the respondent's Article 10 rights. Assuming for the

moment in favour of the respondent that the Council's decision to refuse the Application on the primary ground might have been incompatible with the respondent's Article 10 rights, it seems to me inconceivable that the secondary grounds could possibly be similarly assailed. I arrive at this conclusion by taking into account the nature of the articles, namely pornographic books, magazines and videos, whose sale from the premises is precluded by the refusal of the Application (and the consequent low level at which Article 10 is engaged), and the three secondary grounds for refusing the Licence, which speak for themselves.

95. Turning to the primary ground for the refusal of the Licence in this case, it appears to me clear that the assumption upon which the analysis in the previous paragraph proceeded was over-generous to the respondent. In my judgement on the facts of the present case, the primary reason given by the Council for refusing the Application cannot possibly be said to fall foul of the respondent's Article 10 rights. The reason put forward by the Committee, as adopted by the Council, for the nil determination for the Gresham Street locality, namely the proximity of certain public buildings and shops of particular attraction to children, and of places of worship, appears to me to represent a rational ground for making and adhering to a nil determination: indeed it is just the sort of assessment that a local authority is best able to judge. Article 10 is, as mentioned, engaged at a low level, and no special facts were advanced for departing from this determination by allowing the Application. The effect of the refusal of the Application was merely to prevent the sale taking place, at best, from buildings within the Gresham Street locality: it is not as if it has been suggested that the general policy of the Council was to prevent the sale of pornographic articles anywhere in Belfast.

96. It is not even as if the question of freedom of speech was wholly overlooked by the Council (as the Court of Appeal appears to have thought). As already explained, the solicitor representing the respondent told the Committee that the right to free speech under the Convention was engaged by the Application, and the minutes of the meeting record that what had been said on behalf of the respondent had been taken into account. While that cannot be said to suggest any sort of careful consideration of Article 10, it does indicate that some regard was had to it. However, for reasons already given, that is not the essential point. The essential point is that, particularly when one looks at the reasons for refusing the Application as a whole, and the fact that the respondent has not argued that there are any special features in this case (which might conceivably have justified a different result), such as, for instance, a policy on the part of the Council which resulted in there being no sex

shops anywhere in Belfast, there cannot be said to have been any Article 10 infringement.

97. Accordingly, it seems to me that Weatherup J reached the right conclusion on this issue also. The Court of Appeal appears to have reached the opposite conclusion, not so much on the basis that the Council's refusal of the Application represented a substantive breach of the respondent's Article 10 rights, but more on the basis that in failing to consider the respondent's Article 10 rights, the refusal was, in effect, procedurally defective. Apart from the facts that it is at least arguable that the council did in fact consider and take into account the respondent's Article 10 rights (albeit only cursorily), and that I would not accept that the Court of Appeal's conclusion follows from its premises, it seems to me that this analysis fell foul of the proper approach as laid down by this House in the *Denbigh* case (and it should be added that the decision of the Court of Appeal in this case predated your Lordships' decision that case).

Article 1 of the First Protocol

98. In his submissions for the respondent, Mr Larkin QC, who appeared with Mr Reel, realistically accepted that, if he could not persuade your Lordships to uphold the decision of the Court of Appeal under Article 10, then he would be bound to fail, essentially for the same reasons, insofar as his case rested on Article 1 of the First Protocol.

99. Article 1 of the First Protocol provides as follows:

“Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law...

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest....”

In my judgement, it is highly questionable whether the respondent's case can even get as far on Article 1 of the First Protocol as it gets on Article 10. In this case, your Lordships are concerned with the third limb of that Article, control of use, in relation to which it is well established that member states are accorded a wide margin of appreciation when striking the balance between the general interest of the community and the requirement of the protection on an individual's rights under the Article: see for instance the observations of the Strasbourg court in *Jacobson v Sweden* (1989) 12 EHRR 56 at paragraph 55.

100. While Article 1 of the First Protocol is, as I see it, engaged in the present case, I find it impossible to conceive of circumstances in which a disappointed applicant for a sex establishment licence who could not show that a refusal contravened his Article 10 rights could nonetheless succeed on the ground that it infringed his rights under Article 1 of the First Protocol. It would be wrong to express a concluded view to that effect, because experience shows that circumstances can arise which are not foreseen by judges.

101. Nonetheless, it is appropriate briefly to refer to two decisions in this connection. The first is *ISKCON v United Kingdom* 18 EHRR CD 133, where the Commission, in a decision that the application in question was inadmissible, observed "that, as a general principle, the protection of property rights ensured by Article 1 of Protocol Number 1...cannot be used as a ground for claiming planning permission to extend permitted use of property". Secondly, there is the reasoning of the Court of Appeal in *re UK Waste Management Limited's Application* [2002] NI 130, where the Court of Appeal similarly held that a refusal of planning permission could not give rise to an infringement of Article 1 of the First Protocol. Carswell LCJ, giving the judgment of the court, said at 143F that the applicant's "peaceful enjoyment of its property has not been disturbed" and that "[s]till less is it a deprivation of [its] possessions". He also stated that, if there had been any relevant interference "it was in the public interest and proportionate".

102. It is perhaps also worth mentioning the decision of the Strasbourg court in *Fredin v Sweden* [1991] ECHR 12033/86 which concerned the revocation of an existing licence to extract gravel from land owned by the applicant. It was held that this did not infringe the applicant's rights under Article 1 of the First Protocol on the grounds that, even though the applicant suffered a substantial financial loss as a result of the revocation, and received no compensation therefore, the revocation, which was for environmental reasons, was within the wide margin of

appreciation afforded to the state under the third limb of the Article. Of course each case turns on its own facts, but if the revocation of an existing licence, with its substantial financial detrimental effect on the landowner, can be justified, it is indeed hard to conceive circumstances in which the refusal of the grant of a licence for the use of a property for the selling of pornographic articles on any of the grounds set out in paragraph 12 could fall foul of the property owner's rights under Article 1 of the First Protocol.

103. In this case, I consider that the respondent's case on Article 1 of the First Protocol is hopeless. That was the view of Weatherup J, but the Court of Appeal, again approaching the issue in the wrong way (for the reasons given in *Denbigh*), held that the decision of the Council was flawed because it had not specifically addressed the respondent's rights under Article 1 of the First Protocol. I am bound to add that, even if that had been a good point, it would seem to me fanciful to think that the Council would (or even could) have come to a different conclusion from that which it did, if it had taken into account those rights.

Conclusion

104. In all these circumstances, I would allow the appeal and restore the Order of Weatherup J dismissing the respondent's application for judicial review.

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Northern Ireland Unreported Judgments

In Re Ava Leisure Limited (Application for Judicial Review)

COURT OF APPEAL (CIVIL DIVISION)

CARSWELL LCJ, NICHOLSON LJ, COGHLIN J

15 JUNE 1999

15 June 1999

CARSWELL LCJ

Introduction

This is an appeal from a decision of Kerr J given on 26 November 1998, whereby he granted an application by Ava Leisure Ltd, the respondent in this appeal, for judicial review of a decision of Mr FG Brown, sitting as a deputy county court judge in Belfast on 18 May 11, 1998. On that occasion the deputy county court allowed an appeal from a decision of the appellant Belfast City Council (the Council), in which it refused to grant a provisional amusement permit to the respondent in respect of premises at 35 Ann Street, Belfast under the provisions of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (the 1985 Order). Kerr J held that the deputy county court judge had been in error in his conclusions about the matters which the Council could properly take into account in determining whether to grant a permit and remitted the matter to him to reconsider the appeal in accordance with the rulings which he set out in his judgment.

The Statutory Provisions

Under the 1985 Order an amusement permit is required for the use of gaming machines on premises other than certain specified categories. By Article 109(1) the grantee of the permit is to be the occupier of the premises. The district council is the granting authority under Article 111, paragraphs (1) and (2) of which provide:

"111. - (1) An application for the grant of an amusement permit shall be made by the person who is, or by any person who proposes to be, the occupier of the premises for which the amusement permit is sought to the district council for the district in which those premises are situated and the applicant shall -

(a) attach to the application a fee of £8.50; and

(b) serve a copy of the application upon the sub-divisional commander of the police sub-division in which those premises are situated.

(2) Subject to paragraphs (3) and (4), where an application is made for the grant of an amusement permit, the district council, after hearing representations if any, from the sub-divisional commander upon whom notice is required by paragraph (1) to be served, -

- (a) may grant the amusement permit: or
- (b) may refuse to grant the amusement permit."

Application may be made under Article 113 for the provisional grant of a permit where premises are about to be constructed, altered or extended, and the provisionally granted permit may subsequently be made final when the conditions attached to it have been fulfilled.

Appeals against the refusal of amusement permits are dealt with in Article 119:

119. - (1) Not less than 14 days before a district council -

- (a) refuses to grant, or renew, an amusement permit; or
- (b) grants an amusement permit subject to a condition specified in Article 111(6) or renews an amusement permit subject to a condition specified in Article 115(7); or
- (c) imposes a requirement under Article 118;

the council shall serve notice of its intention to so refuse, grant, renew or impose the requirement on the applicant or, as the case may be, the holder of the amusement permit.

(2) Every such notice shall state the grounds on which the district council intends to so refuse, grant, renew or impose the requirement under Article 118 and shall contain an intimation that if, within 14 days after the service of the notice, the applicant or, as the case may be, the holder of the amusement permit informs the council in writing of his desire to show cause, in person or by a representative, why the application should not be refused or granted or renewed subject to a condition or the requirement not imposed, as the case may require, the council shall, before so refusing granting, renewing or imposing the requirement, afford him an opportunity to do so.

(3) If the district council, after giving the applicant or, as the case may be, the holder of the amusement permit an opportunity of being heard by it, decides to refuse the application or to grant or renew the application subject to a condition or to impose a requirement under Article 118, it shall serve notice of the decision on the applicant or, as the case may be, the holder of the amusement permit, and such notice shall inform him of his right to appeal under paragraph (4) and of the time within which the appeal may be brought.

(4) A person aggrieved by a decision refusing an applicant for the grant or renewal of an amusement permit, or granting such an application subject to a condition specified in Article 111(6), or renewing such an application subject to a condition specified in Article 115(7) or imposing, a requirement under Article 118 may, within 21 days from the date on which notice of the decision is served on him, appeal to the county court.

(5) The decision of a county court on an appeal brought under paragraph (4) shall be final, and the district council shall give effect to that decision."

The Factual Background

On 7 February 1997 the respondent, which operates a number of amusement arcades in Northern Ireland, applied to the Council for the grant of a provisional amusement permit in respect of the premises 35 Ann

Street, Belfast, which had thitherto been occupied as a shoe shop. It is situated on the southern side of Ann Street, about half way between Arthur Square and Victoria Street. The premises are small: the area of the ground floor is 49 square metres and the frontage is 3.35 metres wide.

The respondent applied on 31 January 1997 to the Planning Service of the Department of the Environment for planning permission to change the use of the premises to that of "an adult amusement centre". The application had not been determined by 15 April 1997, on which date the respondent, treating the failure to determine it as a deemed refusal under Article 33 of the Planning (Northern Ireland) Order 1991, appealed to the Planning Appeals Commission. The appeal was heard by a member of the Commission, Mrs DS Fitzsimons, on 31 July 1997 and she submitted her report on 26 August to the Commission, which allowed the appeal and granted planning permission subject to certain conditions.

In her report the commissioner concentrated mainly on the contents of the Belfast Urban Area Plan and the Development Guidance Note DGN 8a "Control of Non Retail Uses in Belfast's Main shopping Area." She concluded that Ann Street is not a prime retail street but is rather a secondary retail street a conclusion which was not challenged. She was of opinion that the crucial issue was the potential effect of the development on the amenity and character of the surroundings. An important consideration was whether an amusement centre would break up an otherwise continuous shopping frontage, and on that issue the commissioner stated:

"In my view the scale of the proposal and the size and proposed treatment of the frontage mean that the amusement centre would not break up the shopping frontage to an unacceptable extent."

She considered that the blanket ban introduced by DGN 8a was out of step with the statutory plan and with changes to the leisure industry since 1985, and concluded:

"I have not been persuaded that the change of use of this small unit to an amusement centre would cause such a break up on the retail frontage of Ann Street that it would have an adverse impact on the shopping function of the street. Neither have I been persuaded that in the context of para 4.3 of DGN 8a the proposal would have an 'adverse effect on the character and function of existing commercial uses'. This would be the first such amusement centre located in the street and any later applications for amusement centres would have to be considered in the light of the cumulative impact on the shopping function of the street. In coming to my conclusion I have considered the argument that the existing unit is not viable as a shop but have given this issue little weight since, in my view, it could be reunited with the unit from which it was severed not long ago. I have also taken account of the fact that any changes to the frontage of the unit and any new signage will require further permission from the Department."

The commissioner recommended that the appeal be allowed and the Commission accepted her recommendation and allowed the appeal by notice dated 19 September 1997. The material part of its conclusion was as follows:

"The analysis by the appointed Member of the various planning documents which might be taken to have relevance to the proposal is broadly endorsed by the Commission. It is noticed that DGN 8A states that 'within the shopping area identified on the map (within which the appeal site lies) future applications are likely to be refused on the basis that they will. have an adverse effect on the character and function of existing commercial areas'. However, having regard to the limited street frontage of the proposal the Commission is not persuaded that the adverse effects envisaged in DGN 8A would result if the proposal were approved."
The Challenges to the Council's Decision

By letter dated 4 August 1997 the Council informed the respondent, pursuant to Article 119 of the 1985 Order, that it intended to refuse the application on the grounds -

"that the proposed amusement arcade would detract from one of the best secondary retail locations in Belfast and that many of the shops now located in the street attracted young customers and the proposed use would therefore be inappropriate."

The respondent was given the opportunity to address the Council and accepted the invitation. The Council decided nevertheless to refuse the application and so notified the respondent by letter dated 5 November 1997, which set out the grounds for refusal in the same terms as those contained in the letter of 4 August.

The respondent on 14 November 1997 served a notice of appeal against the Council's decision, giving as its grounds:

"(i) the alleged detraction from one of the best secondary rental locations in Belfast is a planning consideration and the respondent [Council] did not have jurisdiction to refuse the application on this ground;

(ii) alternatively, the respondent erred in concluding that the proposed amusement arcade would so detract;

(iii) further, the respondent erred in concluding that as shops in Ann Street attracted young customers the proposed use would be inappropriate."

By letter dated 5 February 1998 the Council's Legal Services Department informed the respondent's solicitors that the Council intended on the hearing of the appeal to rely on three further grounds for refusing the application for the amusement permit:

"(i) there are already sufficient places of amusement in the area, which adequately cater for the demand and/or need for premises of this type;

(ii) that the proposed location of the premises, situate in a pedestrianised retail area of the city centre, and on a direct pedestrian route from the new bus station to the city centre is inappropriate;

(iii) that the siting of an (sic) amusement type premises in the proposed location would have an adverse and detrimental effect on the future development of Ann Street."

The respondent's solicitors notified the Council that the respondent proposed to object to the introduction of further grounds, and at the hearing before the deputy county court judge counsel put forward the objection. The judge held, for the reasons which he set out at pages 11-12 of his written judgment given on 18 May 1998, that the respondent was entitled at the hearing of appeal to rely on such further grounds. He proceeded to hear evidence and argument and reserved his decision. It was argued before him that the Council in deciding whether to grant an amusement permit was not entitled to take into account planning considerations, which were a matter for the planning authority, and that it must accept the conclusions reached by the Planning Appeals Commission on such matters. The Council submitted, on the other hand, that the effect on retail business in Ann Street was not a planning consideration in the strict sense, but related rather to the area of commercial estate agency. It further contended that it was in any event open to the Council to take into account planning considerations and to make its own judgment upon them. The judge ruled that the Council was entitled to take into account matters of a planning nature, such as the impact on existing businesses and the flow of traffic. He expressed his conclusions in the following terms:

"I am satisfied, having heard the evidence, and, taking into account the views of individuals representatives and the local groups, that the grant of an amusement permit to Ava, thus enabling it to establish an amusement centre in Ann Street, would create an unacceptable risk to the current and possible further viability of

retailers in Ann Street and would jeopardise the future development of the street as a location for retail outlets. The evidence clearly establishes that Ann Street is a gateway to the City and notwithstanding the high standard which Ava clearly maintains in its centres, the establishment of an amusement centre in such a street as Ann Street would have an impact on how the public view Ann Street as a retail location and jeopardise the potential expansion of Belfast City Centre for retail outlets.

In conclusion therefore I am satisfied that notwithstanding the fact that the Appellants obtained planning permission to use the premises as an amusement arcade, the evidence clearly establishes that the Respondent was justified in refusing to grant the Appellants an amusement permit because of the adverse and detrimental effect the opening of such a centre would have on the current retail viability of Ann Street and its future development. Accordingly I dismiss the appeal."

By Article 119(5) of the 1985 Order the decision of the county court is to be final, but the respondent on 16 June 1998 made an application for judicial review of its decision. The grounds set out in its statement were the following:

"(a) The learned Deputy County Court judge acted unlawfully and ultra vires his powers by refusing to allow the Applicant's appeal under Article 119(4) of the Order on the ground that the opening of an amusement arcade in Ann Street, Belfast would have an adverse and detrimental effect on the street's current retail viability and its future development.

(b) The ground on which the learned Deputy County Court judge relied is a planning consideration which had already been considered and adjudicated upon by the Planning Appeals Commission in its decision of 19 September 1997 whereby Planning Permission for use of the premises as an amusement arcade was granted.

(c) Where parliament has conferred jurisdiction on the Planning Appeals Commission to determine whether to grant or refuse Planning Permission, the reason given for dismissing the Appeal was not within the competence of the Court.

(d) Since the only ground on which the learned County Court judge relied upon to refuse the Appeal was a ground he was not competent to consider he should be directed by this Honourable Court to decide the Appeal in the Applicant's favour.

(e) Under Article 119(1) and (2) of the Order, where a Council intends to refuse an Amusement Permit it is required to serve notice of its intention on the Applicant stating the grounds on which it intends to refuse the permit. If he so desires the Applicant is then given the opportunity of being heard by the Council. In such circumstances an Applicant will make submissions based on the grounds on which the Council intends to refuse the Permit. The introduction of new grounds on which the Council intends to rely on Appeal means that the Applicant has been deprived of the opportunity of addressing the Council on those grounds prior to its decision. The intention of the legislature is that all grounds on which the Council intend to rely should be disclosed to the Applicant so that he may make representations to the Council to show cause why the Application should not be refused."

The application was heard by Kerr J, who gave a written judgment on 26 November 1998, in which he granted the application and remitted the matter for rehearing before the deputy county court judge, to reconsider it and reach a decision in accordance with the rulings set out in his judgment. On the issue of fresh grounds, he upheld the ruling of the deputy county court judge. On the main ground, he held that the impact on retail shopping in Ann Street gave rise solely to planning considerations. Such considerations fell to be determined only by the planning authority or Planning Appeals Commission and the Council was not entitled

to have regard to them in determining applications for amusement arcade licences. In doing so the Council was in error and its decision should be set aside.

The Council appealed by notice dated 5 January 1999, whereby it contended that Kerr J was wrong in law in his conclusions on the main grounds. The respondent by counter-notice dated 20 January 1999 challenged the judge's conclusion that the Council was entitled to advance further grounds for its refusal to grant a permit on the appeal to the county court.

Fresh Grounds on Appeal

Article 119(4) provides simply for an appeal to the county court, and we consider that in these circumstances, as Curran J held in *Belfast Corporation v Goldring* [1954] NI 107, it takes the form of a rehearing in which the county court should hear evidence de novo. It follows in my opinion that the court is entitled to take into account all grounds which may be advanced, and that the parties are not confined to the evidence or arguments which were brought before the Council. If this were not so, the court would, as Kerr pointed out at page 12 of his judgment, be unable to give any consideration to matters, possibly compelling or even conclusive, which emerged for the first time after the Council's decision was made.

I respectfully agree with the approach adopted by the majority of the English Court of Appeal in a case involving very similar considerations, *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614. That was an appeal under the Betting, Gaming and Lotteries Act 1963 to quarter sessions against a local authority's refusal of a permit for the provision of amusements with prizes. The local authority had followed the general policy which it had previously adopted of refusing all such applications. The recorder held that he could deal with the matter de novo with an unfettered discretion, heard evidence on the merits of the application and allowed the appeal. The Court of Appeal, Lord Denning MR dissenting, upheld his decision, with one qualification.

Edmund Davies and Phillimore LJJ accepted the proposition, which stemmed from the decision of Lush J in *R v Pilgrim*, (1870), LR 6 QB 89, that where a statute gives a right of appeal without limiting the inquiry, the matter is at large and the appellate tribunal is to rehear the whole matter and give its judgment on all the evidence that is brought before it. Were it not so, the right of appeal would be illusory, being in effect confined to the point of law whether the local authority had material before it upon which it could properly find as it did. The court did not consider, however, that the views earlier formed by the licensing authority should be entirely disregarded by the appellate tribunal. It took the view that the proper approach was that enunciated by Lord Goddard CJ in *Stepney Borough Council v Joffe* [1949] 1 KB 599 at 602-3:

"That does not mean to say that the court of appeal, in this case the metropolitan magistrate, ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and it ought not lightly, of course, to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right."

I consider that the principles adopted by the Court of Appeal in *Sagnata Investments Ltd v Norwich Corporation* are applicable to appeals of the present kind. It follows accordingly that the deputy county court was correct in allowing the Council to rely upon the grounds set out in its letter of 5 February 1998.

Planning Considerations

Mr Weir QC for the Council sought to draw a distinction between considerations relating solely to planning and those relating to commercial estate agency. It is established that in deciding on the grant of planning

permission a planning authority should leave out of account the harm which the proposed development might do to private interests. He submitted that matters concerning the value of property in Ann Street, the major ground to which the Council had regard in refusing the application, fell into the latter category. Accordingly, if the Council was, as the respondent contended, required to accept the decision of the Planning Appeals Commission on purely planning matters, it was still entitled to refuse the application on the ground of adverse effect on the value of the other traders' premises in Ann Street.

In so submitting he placed reliance upon the decision in *Esdell Caravan Parks v Hemel Hempstead Rural District Council* [1966] 1 QB 895, where the Court of Appeal drew a distinction between "planning considerations" and "site considerations" in the context of the grant of site licences for caravan parks. It was clear that in that context there was a potential conflict between the functions to be exercised by the planning authority in granting permission for the use of land for the purpose of a caravan park and those of the local authority, which had the power to impose conditions when granting site licences. The court resolved it by holding that the planning authority should direct their attention to matters in outline, leaving the site authority to deal with all matters of detail. It may be necessary to draw such a distinction for the purpose of the legislation relating to caravan parks, although it may be seen from such cases as *Babbage v North Norfolk District Council* (1990) 59 P & CR 248 how difficult it may be in particular cases to differentiate between planning, considerations and site considerations. It is far from straightforward to apply the distinction in other contexts. For example, in *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65 at 77 Cooke J expressed the view that in principle "any consideration which relates to the use and development of land is capable of being a planning consideration", a statement which was approved by the Court of Appeal in *Clyde & Co v Secretary of State for the Environment* [1977] 3 All ER 1123 at 1127. Again, in *Great Portland Estates plc v Westminster City Council* [1984] 3 All ER 744 at 750 Lord Scarman said that the human factor is to be taken into account in planning control. It accordingly seems to me a matter of great difficulty to draw a valid distinction between considerations which relate solely to planning and those which concern only the value of neighbouring property and to accept that a local authority determining whether to grant an amusement permit may have regard to the latter but not the former.

I consider rather that the conclusion of the deputy county court judge was right when he held that the local authority may take into account planning considerations and is not bound to accept in its entirety the decision of the planning authority on the use of premises for the purpose of an amusement arcade. This is not to say that it should be anything but slow to differ from the views of the planning authority, to which such decisions are entrusted because of its expertise in that field. An analogy may be found in the field of liquor licensing, where the court, when considering the suitability of premises, is free to reach its own determination of matters entrusted to statutory agencies, such as planning. It will, however, pay very substantial regard to the agencies' decisions, as I stated in *Donnelly v Regency Hotel Ltd* [1985] NI 144, 151:

"I do not think that the court ought to absolve itself of its own statutory task of deciding upon suitability by placing complete reliance upon the determination of a statutory agency, however skilled and experienced in a technical field the latter may be. It may, however, legitimately take the view that it will be slow to reach a conclusion which is at variance with the considered decision of a competent agency such as a planning authority acting within its own sphere, even if in principle it is entitled to do so."

The deputy county court at page 10 of his judgment put the matter in the following manner:

"If the Council could not take into account matters such as location, structure, character and impact on neighbours and surrounding area, it would have very little left on which to exercise its discretion. The Legislature did not provide for such a limitation and in my view to imply same would be to impose an almost meaningless discretion on the Council."

I agree with this expression of opinion and consider that it shows that the legislature in entrusting the decision on the grant of permits to the district council did not intend that the sphere of their consideration should be so limited.

I accordingly am of opinion that the deputy county court judge was correct in the matters which he took into account in hearing and determining the appeal from the Council's decision. I do not consider that an order for Judicial review of his decision should be made and I would allow the appeal.

NICHOLSON LJ

I agree.

COGHLIN J

I agree.

Appeal allowed.

Consideration of objections received outside the 28 day statutory period by Committee

2013

Filthy McNastys, 41-45 Dublin Road, BT2 7HD (Renewal and Variation of a 7 Day Annual Indoor Entertainments Licence)

Written representations were received both within the 28 day statutory period and outside of the 28 day statutory period, objecting to the application.

A letter of objection was received on behalf of a delegation of local residents within the area. The nature of the objection related to concerns regarding the additional noise that the proposed opening hours will create for local residents.

After deliberation, the Committee agreed to consider the representation received outside the 28 day statutory period.

El Divino, Mays Meadow, Belfast, BT1 3PH (Grant of a 14 Day Occasional Marquee Entertainments Licence and Renewal of a 7 Day Annual Indoor Entertainments Licence)

Written representation was received outside of the 28 day statutory period, objecting to the applications from a local resident. The nature of the objection related to concerns regarding the noise associated with a previous outdoor event, the additional hours proposed and the fact that the days following the events were working days for the objector.

After deliberation, the Committee agreed to consider the representation received outside the 28 day statutory period.

Holy Cross Boys Primary School, Brookfield Street (Grant of a 7 Day Annual Outdoor Entertainments Licence)

Written representations were received both within the 28 day statutory period and outside the 28 day statutory period, objecting to the application.

The nature of objections received were broadly similar in nature but a summary of those received outside the 28 day period were as follows:

1. Disrespect for residents living in the vicinity and noise generated from deliberately playing music at excessive levels.
2. Laser lights at night resulting in nuisance and lack of sleep.
3. Residents being subjected to offensive behaviour from people attending the event.
4. Litter being thrown from passing cars and mess left behind as a result of the event.
5. Crowd control issues.
6. The sectarian and offensive content of the event and from those attending it.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

Little Vegas, 163 Stranmillis Road, Belfast, BT9 5AJ (Grant of an Amusement Permit)

Written representations were received both within the 28 day statutory period and outside the 28 day statutory period.

The nature of the objections related to the following:

1. Location – Residents are concerned about the impact an arcade will have upon the established character of the area. Residents have indicated that the area is predominantly residential and there is a Secondary School within a quarter of a mile of the premises.
2. Potential for anti-social behaviour.
3. Road safety/parking/traffic concerns.
4. Noise issues.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

2014

Mynt, 2-6 Dunbar Street, Belfast, BT1 2LH (Renewal of a 7 Day Annual Indoor Entertainments Licence)

Written representation was received outside the 28 day statutory period objecting to the application from an anonymous source.

The nature of the objection related to concerns regarding the management of the premises and their links to those who were previously the subject of enforcement action by the Council.

After deliberation, the Committee agreed to consider the representation received outside the 28 day statutory period.

Boucher Road Playing Fields (Grant of a 7 Day Annual Outdoor Entertainments Licence)

Written representation was received outside the 28 day statutory period objecting to the application from a resident of the area.

The nature of the objection related to music being too loud from the concerts and music festivals held at the venue, for such a residential area. It also stated that the music can be heard a considerable distance away.

After deliberation, the Committee agreed to consider the representation received outside the 28 day statutory period.

El Divino, Mays Meadow, Belfast, BT1 3PH (Renewal of a 7 Day Annual Indoor Entertainments Licence)

Written representations objecting to the application were received both within the 28 day statutory period and outside the 28 day statutory period from residents of a nearby apartment block.

The nature of the objections related to concerns regarding the noise and antisocial behaviour associated with patron dispersal until 3.00am.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

2015

Hatfield House, 128-130 Ormeau Road, Belfast, BT7 2EB (Renewal and Transfer of a 7 Day Annual Indoor Entertainments Licence)

Written representations were received four months outside the 28 day statutory period from local residents and representative community groups regarding the applications.

The nature of the objections related to the following:

1. The proposed smoking area would diminish the quality of life in their home as they would be unable to sleep in their bedroom.
2. Their children will also be unable to use their back garden for fear of overhearing adult conversation from the area.
3. When patrons leave the premises at 1.00am this will create further disruption to the children and their home routine.
4. The building is an impingement on their human rights and will be detrimental to their children's education and well-being.
5. This will be further compromised should the numbers be allowed to increase from what they have now to 375 patrons. It will increase over time to the 700 that it was reportedly built for.
6. They took a home behind a local bar, which had occasional entertainment upstairs and not a venue that is used twice a week for young students.
7. The development of Lavinia Square was to house young families and as the houses are great family homes, the objector felt that should the increase in numbers to the premises go ahead that it will undermine a great public development of family homes.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

2016

El Divino, Mays Meadow, Belfast, BT1 3PH (Renewal of a 7 Day Annual Indoor Entertainments Licence)

Written representation were received both within the 28 day statutory period and outside the 28 day statutory period, objecting to the application from local residents of nearby apartment blocks.

The nature of the objections were broadly similar and related to concerns regarding the noise and antisocial behaviour associated with patron dispersal until 3.00am.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

Rock Bar, 491-493 Falls Road, Belfast, BT12 6DE (Renewal of a 7 Day Annual Entertainments Licence)

Written representation were received outside the 28 day statutory period, objecting to the application from local residents

The nature of their objections related to the following:

1. Music being played too loud.

2. Public urination.
3. Disposal of glasses and bottles, plastic cups, cigarettes and drug related items.
4. Customers causing noise and nuisance during their visit to the premises and when they leave at the end of the night.
5. The encouragement by the establishment for customers to leave with their drink in a plastic glass.
6. The premises and streets being overcrowded for occasional high profile events.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

Thompsons Garage, 3 Patterson's Place, Belfast, BT1 4GW (Renewal of a 7 Day Annual Entertainments Licence)

Written representation was received outside the 28 day statutory period, objecting to the application.

The objection relates to an alleged assault suffered by the objector on the 12th March, 2015 by door staff and a director of the applicant company. The objector alleges he sustained injuries after trying to intervene during a separate assault on another member of the public by the door staff and company director of the premises.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.

The Hudson Bar, 10-14 Gresham Street, Belfast, BT1 1JN (Renewal of a 7 Day Annual Indoor Entertainments Licence and 7 Day Annual Outdoor Entertainments Licence)

Written representations were received both within the 28 day statutory period and outside the 28 day period.

The objections were from residents of the area and the nature of their objections related to the following:

1. Music being played too loud.
2. Patrons causing noise and nuisance from singing and shouting.
3. Drunks from the bar standing on the road causing problems and bar management doing nothing to stop it.
4. One objector being attacked by a drunk patron from the bar.

After deliberation, the Committee agreed to consider the representations received outside the 28 day statutory period.



Subject:	Licences Issued Under Delegated Authority
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues																
1.1	Under the Scheme of Delegation, the Director of Planning and Place is responsible for exercising all powers in relation to the issue, but not refusal, of permits and licences, excluding provisions relating to the issue of Entertainments Licences, where adverse representations have been made. Those applications which were dealt with under the Scheme are listed below.																
2.0	Recommendation																
2.1	The Committee is requested to note the applications which have been issued under the Scheme of Delegation.																
3.0	Main Report																
3.1	<p><u>Key Issues</u></p> <p>Under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 the following Entertainment Licences were issued since your last meeting:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%;">Premises and Location</th> <th style="width: 15%;">Type of Application</th> <th style="width: 25%;">Hours Licensed</th> <th style="width: 25%;">Applicant</th> </tr> </thead> <tbody> <tr> <td>Havana Bank Square, 56-58 Berry Street, Belfast, BT1 1FJ</td> <td style="text-align: center;">Grant</td> <td style="text-align: center;">Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00</td> <td style="text-align: center;">Mr. Patrick Magee</td> </tr> <tr> <td>Balmoral Hotel, Blacks Road, Belfast, BT10 0NF</td> <td style="text-align: center;">Renewal</td> <td style="text-align: center;">Sun: 12:00 - 22:00 Mon - Sat: 07:30 - 01:00</td> <td style="text-align: center;">Clady Inns Limited</td> </tr> <tr> <td>Glenburn Methodist Church Hall, Rochester Road, Belfast, BT6</td> <td style="text-align: center;">Grant</td> <td style="text-align: center;">Sun - Fri: 08:00 - 01:00 Sat: 08:00 - 00:00</td> <td style="text-align: center;">Mr. Geoffrey C Stewart</td> </tr> </tbody> </table>	Premises and Location	Type of Application	Hours Licensed	Applicant	Havana Bank Square, 56-58 Berry Street, Belfast, BT1 1FJ	Grant	Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00	Mr. Patrick Magee	Balmoral Hotel, Blacks Road, Belfast, BT10 0NF	Renewal	Sun: 12:00 - 22:00 Mon - Sat: 07:30 - 01:00	Clady Inns Limited	Glenburn Methodist Church Hall, Rochester Road, Belfast, BT6	Grant	Sun - Fri: 08:00 - 01:00 Sat: 08:00 - 00:00	Mr. Geoffrey C Stewart
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Maddens Bar, 74 Berry Street, Belfast, BT1 1JE	Renewal	Sun: 12:30 - 03:00 Mon - Sat: 11:30 - 03:00	Mr. Brian McMullan
Maverick, 106-110 Donegall Street, Belfast, BT1 2GX	Renewal & Transfer	Sun - Sat: 08:00 - 03:00	Mr. John McElhatton
Ballynafeigh Apprentice Boys Flute Band, 1-5 Walmer Street, Belfast, BT7 3EA	Renewal	Sun: 12:30 - 22:00 Mon - Sat: 11:30 - 23:00	Mr. Stephen Biggerstaff
St Johns GAC Social Club, Corrigan Park, Whiterock Road, Belfast, BT12 7PG	Renewal	Sun: 12:30 - 22:00 Mon - Sat: 11:30 - 23:00	Mr. Martin Crummey
Windsor Lawn Tennis Club, 37 Windsor Avenue, Belfast, BT9 6EJ	Renewal	Sun: 12:30 - 22:00 Mon - Sat: 11:30 - 23:00	Mr. Aidan Mimnagh
Accidental Theatre, 4th Floor, Wellington Buildings, 2-4 Wellington Street, Belfast, BT1 6HT	Renewal	Sun - Sat: 08:00 - 01:00	Mr. Richard Lavery
Crumlin Road Gaol, Visitor Attraction and Conference Centre, 53-55 Crumlin Road, Belfast, BT14 6ST	Renewal	Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00	Belfast Tours Limited
The Fitzwilliam Hotel Great Victoria Street, Belfast, BT2 7BQ	Renewal	Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00	Graffan Properties limited
The National Grande Cafe Bar & Sixty6 (Outdoor) 62-68 High Street, Belfast, BT1 2BE	Renewal	Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00	Cathedral Leisure Limited
The National Grande Cafe Bar & Sixty6, 62-68 High Street, Belfast, BT1 2BE	Renewal	Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00 Fri - Sat: 11:30 - 03:00	Cathedral Leisure Limited
The Perch, 43 Franklin Street, Belfast, BT2 7GG	Renewal	Sun: 12:30 - 01:00 Mon - Sat: 12:00 - 01:00	Abacus Inns Limited
Falls Bowling and Lawn Tennis Club, 63 Andersonstown Road, Belfast, BT11 9AH	Renewal	Sun: 12:30 - 00:00 Mon - Sat: 08:00 - 01:00	Mr. Paul McGeough
St Malachy's College, College Hall, 36 Antrim Road, Belfast, BT15 2AE	Grant	Sun: 12:30 - 00:00 Mon - Sat: 11:30 - 01:00	Mr. Shane Mc Brien

<p>3.2</p>	<p>Under the terms of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, the following Amusement Permit was renewed since your last meeting:</p> <table border="1" data-bbox="220 282 1452 488"> <thead> <tr> <th data-bbox="220 282 619 353">Premises and Location</th> <th data-bbox="619 282 810 353">Type of Application</th> <th data-bbox="810 282 1171 353">Hours Licensed</th> <th data-bbox="1171 282 1452 353">Applicant</th> </tr> </thead> <tbody> <tr> <td data-bbox="220 353 619 488">Little Vegas, 163 Stranmillis Road, Belfast, BT9 5AJ</td> <td data-bbox="619 353 810 488">Renewal</td> <td data-bbox="810 353 1171 488">Sun - Sat: 11:00 - 23:00</td> <td data-bbox="1171 353 1452 488">Little Vegas (NI) Limited</td> </tr> </tbody> </table>	Premises and Location	Type of Application	Hours Licensed	Applicant	Little Vegas, 163 Stranmillis Road, Belfast, BT9 5AJ	Renewal	Sun - Sat: 11:00 - 23:00	Little Vegas (NI) Limited		
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Little Vegas, 163 Stranmillis Road, Belfast, BT9 5AJ	Renewal	Sun - Sat: 11:00 - 23:00	Little Vegas (NI) Limited								
<p>3.3</p>	<p>Under the terms of the Street Trading Act (Northern Ireland) 2001, the following Street Trading Licence was issued since your last meeting.</p> <table border="1" data-bbox="220 622 1445 1057"> <thead> <tr> <th data-bbox="220 622 507 689">Location</th> <th data-bbox="507 622 699 689">Type of Application</th> <th data-bbox="699 622 944 689">Commodity</th> <th data-bbox="944 622 1228 689">Hours Licensed</th> <th data-bbox="1228 622 1445 689">Applicant</th> </tr> </thead> <tbody> <tr> <td data-bbox="220 689 507 1057">Belmont, Knocknagoney, Sydenham, Strandtown, Bloomfield, Ballyhackamore, Ballymacarrett, Ballynafeigh and Castlereagh</td> <td data-bbox="507 689 699 1057">Mobile</td> <td data-bbox="699 689 944 1057">Ice cream, confectionery and non- alcoholic beverages</td> <td data-bbox="944 689 1228 1057">Mon – Sun: 11:00 – 21:00</td> <td data-bbox="1228 689 1445 1057">Mr. John Gibson</td> </tr> </tbody> </table>	Location	Type of Application	Commodity	Hours Licensed	Applicant	Belmont, Knocknagoney, Sydenham, Strandtown, Bloomfield, Ballyhackamore, Ballymacarrett, Ballynafeigh and Castlereagh	Mobile	Ice cream, confectionery and non- alcoholic beverages	Mon – Sun: 11:00 – 21:00	Mr. John Gibson
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<p>3.4</p>	<p><u>Financial and Resource Implications</u></p> <p>None</p>										
<p>3.5</p>	<p><u>Equality or Good Relations Implications</u></p> <p>There are no equality and good relations issues.</p>										
<p>4.0</p>	<p>Documents Attached</p>										
<p>4.1</p>	<p>None</p>										

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Subject:	Applications for the Grant/Renewal/Variation of Entertainments Licences with Previous Convictions
Date:	18th January, 2017
Reporting Officer:	Stephen Hewitt, Building Control Manager, ext. 2435
Contact Officer:	Patrick Cunningham, Assistant Building Control Manager, ext. 6446

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report/Summary of Main Issues
1.1	To consider applications for Entertainments Licences where the applicant has been convicted of an offence under the Local Government Miscellaneous Provisions (NI) Order 1985 (the Order) within the previous five years.
2.0	Recommendations
2.1	<p>Taking into account the information presented, you are required to consider the applications and to:-</p> <ol style="list-style-type: none"> 1. approve the applications, or 2. should you be of a mind to refuse any of the applications, or approve any applications with additional special conditions, an opportunity of appearing before and of being heard by the Committee must be given to the applicants.
3.0	Main report
	<u>Key Issues</u>
3.1	Members are reminded that the normal process for dealing with Entertainments Licence applications which are not the subject of objections is that the licence will be granted as provided for in the Council's Scheme of Delegation.
3.2	However, as each applicant has been found guilty of committing an offence within five years of the application for a licence being submitted to the Council, you are required to consider the following applications.

Premises and Location	Applicant	Application Type	Offence Details	Date of Conviction and Penalty
<p align="center">AM:PM</p> <p>38-44 Upper Arthur Street Belfast BT1 4GH</p>	<p align="center">AM:PM Limited</p>	<p align="center">Renewal and Variation</p>	<p align="center">20th May 2016</p> <p>Rear final escape door was obstructed. Rear escape stair was obstructed. Rear escape corridor on the ground floor was obstructed. Fire door was held open on the ground floor escape route. All escape routes, including stairways, were not maintained with non-slippery and even surfaces. Entertainment was being provided on the 2nd floor which is an area not covered by the Entertainments Licence. The Entertainments Licence was not being displayed.</p>	<p align="center">On appeal: 6 January 2017</p> <p>£2750 and £66 Court costs.</p> <p>Charges 1-5 £500 each, Charge 6 withdrawn 7-8 £250 each.</p> <p>Original penalty was £3250 – charge 6 was withdrawn – penalty reduced to £2750.</p>
<p align="center">Hole In The Wall</p> <p>1-3 Baltic Avenue Belfast BT15 2HR</p>	<p align="center">H.I.T.W Limited</p>	<p align="center">Renewal</p>	<p align="center">13th February 2016</p> <p>An exit route from the side of the bar was blocked with a speaker and a fridge. Mag lock was installed to a final exit door and prevented the door from being open and a final exit within the smoking area was locked and the replacement of a push bar with a tea spoon on another fire exit door. An exit route to the fire panel and final exit was blocked with tables and chairs and a door leading to an exit route was locked. There was no 'Fire Exit Keep Clear' signs fitted to doorsets, as required, and break glass Fire Action signs were missing. The Emergency Exit signs were not illuminated throughout the premises. No evidence of any pre-event log book checks being carried out. No Evacuation Procedures in place. Staff were not instructed or trained on the action to be taken in the event of a fire. The noise limiting device was not operating when entertainment was being provided.</p>	<p align="center">On appeal 25th November 2016</p> <p>£6000 and £66 Court costs.</p> <p>Original penalty was £9000 but following Appeal by the applicant it was reduced to £6000.</p>

	<p>Boyles Bar 91 Falls Road Belfast BT12 4PE</p>	<p>Mr. Stephen Carson</p>	<p>Grant</p>	<p>26th February 2016 Entertainment was taking place without a valid Entertainments Licence.</p>	<p>13th December 2016 £250 and £66 Court costs.</p>
	<p>St Paul's GAC 98c Shaws Road Belfast BT11 8LN</p>	<p>Dr. Paul Donnelly</p>	<p>Renewal</p>	<p>28th March 2015 Entertainment was taking place in an area (1st Floor) not covered by the Entertainments Licence. The appropriate pre-entertainment checks had not been completed prior to entertainment taking place. A games machine was obstructing a final exit. The main entrance door was not being manned.</p>	<p>10th November 2015 12 months Conditional Discharge and ordered to pay court costs of £69.</p>
		<p>Mr. Billy McLarnon</p>		<p>2nd February 2011 Ground floor of the premises was overcrowded</p>	<p>11th November 2011 £500 and ordered to pay court costs of £69.</p>
	<p>Voodoo 9-11 Fountain Street Belfast BT1 5ED</p>	<p>Phoenix Wine and Spirits Store Limited</p>	<p>Renewal</p>	<p>4th November 2011 Locked fire exit Obstructed means of escape The appropriate pre-entertainment checks had not been completed prior to entertainment taking place.</p>	<p>4th September 2012 £270 and ordered to pay court costs of £69.</p>
<p>3.3</p>	<p>Notwithstanding the possibility of refusing an Entertainments Licence on any other grounds, the Council may refuse an application on the grounds that the applicant has been convicted of an offence under the Order.</p> <p><u>Application History</u></p> <p>AM:PM</p>				
<p>3.4</p>	<p>These are the first offences committed by the applicant and, therefore, this is the first time since the applicant was convicted that the Committee has an opportunity to take them into account in considering the applications for the renewal and variation of the licence.</p>				
<p>3.5</p>	<p>The variation application is to include the 2nd floor area on the Entertainments Licence. One of the offences witnessed on 20th May, 2016 was that entertainment was being provided on the 2nd floor which, at that time, was unlicensed.</p>				
<p>3.6</p>	<p>Due to the seriousness of the offences, officers met with the applicant immediately after legal proceedings were initiated to discuss them and to seek assurance that the applicant had taken appropriate steps to ensure that there would be no recurrence of these or any other safety issues.</p>				

<p>3.7</p>	<p>Since then, the premises have been subject to two further during performance inspections, as well as a renewal inspection, to ensure that there has been no recurrence of these or any other safety issues and we have found that management procedures are being implemented effectively.</p> <p>Hole In The Wall</p>
<p>3.8</p>	<p>These are the first offences committed by the applicant and, therefore, this is the first time since the applicant was convicted that the Committee has an opportunity to take them into account in considering the application for the renewal of the licence.</p>
<p>3.9</p>	<p>Due to the seriousness of the offences, officers met with the applicant on several occasions to ensure that the problems were resolved and revised measures were put in place to prevent further problems. The meetings involved a critical analysis of the passive and active safety measures as well as the management procedures that the applicant had in place for the premises.</p>
<p>3.10</p>	<p>Since then, the premises have been subject to two further during performance inspections, as well as a renewal inspection, to ensure that there has been no recurrence of these or any other safety issues and we have found that management procedures are being implemented effectively.</p> <p>Boyles Bar</p>
<p>3.11</p>	<p>This is the first offence committed by the applicant and the Committee now has an opportunity to take it into account in considering the application for the grant of the licence. The premises were previously licensed for entertainment but this was under a different name and management and expired in 2009.</p>
<p>3.12</p>	<p>A grant application was received in November, 2013 and the applicant was advised on numerous occasions that they were not permitted to provide entertainment until an Entertainments Licence was issued. Despite these warnings, entertainment was found to be taking place without a licence and legal proceedings were initiated.</p>
<p>3.13</p>	<p>A new grant application was subsequently made and is placed before you for your consideration.</p> <p>St Paul's GAC</p>
<p>3.14</p>	<p>This is the fourth time an application for the premises has been considered by the Committee since being convicted in 2011 and for the most recent 2015 offences. Three previous renewal applications have subsequently been considered by the Licensing Committee, namely, on 15th August, 2012, 18th September, 2013 and 19th August, 2015.</p>
<p>3.15</p>	<p>The 2012 and 2013 reports were in relation to the 2011 offence and the most recent report of 2015 was regarding both the 2011 and the 2015 offences. However, after consideration, the Committee agreed to renew the Entertainments Licence on each occasion.</p>
<p>3.16</p>	<p>The 2011 offence may now appear to be outside of the legislative five year period but as this application was made in September, 2016 both are still applicable. However, this is the final year you are required to take the 2011 offence into consideration.</p>

	<p>Voodoo</p> <p>3.17 This is the third time an application for the premises has been considered by the Committee since the applicant was convicted on the 4th September, 2012.</p> <p>3.18 Two previous renewal applications were brought before the Committee on the 21st August, 2013 and the 16th September, 2015 and, after consideration, you agreed to renew the licence on each occasion.</p> <p>3.19 Since you last considered the application the premises have been subject to five further during performance inspections as well as a renewal inspection to ensure that there has been no recurrence of these or any other safety issues and we have found that management procedures are being implemented effectively.</p> <p><u>Representations</u></p> <p>3.20 Notice of the applications has been advertised and no written representations have been received.</p> <p><u>PSNI</u></p> <p>3.21 The PSNI has confirmed that it has no objections to the applications.</p> <p><u>NIFRS</u></p> <p>3.22 The Northern Ireland Fire Rescue Service has been consulted in relation to each of the applications and confirmed that it has no objections.</p> <p><u>Applicants</u></p> <p>3.23 The applicants and/or their representatives will be available at your meeting to answer any queries you may have in relation to their respective applications.</p> <p>3.24 Copies of the application forms for each of the premises are attached.</p> <p><u>Financial and Resource Implications</u></p> <p>3.25 Officers carry out during performance inspections on premises providing entertainment, which is catered for within existing budgets.</p> <p><u>Equality and Good Relations Implications</u></p> <p>3.26 There are no equality or good relations issues associated with this report.</p>
4.0	Documents Attached
	Application Forms

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of the Local Government Act (Northern Ireland) 2014.

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