

Licensing Committee

Wednesday 16th January, 2019

MEETING OF LICENSING COMMITTEE

Members present: Councillor O'Hara (Chairperson);
Aldermen Copeland and L. Patterson, and
Councillors Boyle, Bunting, Clarke, Collins, Dudgeon,
Garrett, Groves, Heading, Hussey, Hutchinson, Magennis,
and Nic Biorna.

In attendance: Mr. J. Walsh, City Solicitor;
Mr. A. Thatcher, Director of Planning and Building Control;
Mr. S. Hewitt, Building Control Manager;
Mr. J. Cunningham, Regulatory Services Manager;
Mr. H. Downey, Democratic Services Officer; and
Miss C. Donnelly, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported on behalf of Alderman Spence and Councillor Craig.

Minutes

The minutes of the meeting of 12th December were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 7th January, subject to the omission of those matters in respect of which the Council had delegated its powers to the Committee.

Declarations of Interest

Councillor Boyle declared an interest in relation to Item 2 (c) – Application for the Renewal of a 7-Day Annual Entertainments Licence for Fourteen Tomb Street, in that he had been involved in a radio interview regarding the premises and its promotions, and left the meeting whilst the matter was being considered.

Delegated Matters

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

Applications Approved under Delegated Authority

The Committee noted a list of licences and permits which had been issued under the Council's Scheme of Delegation.

Application for the Renewal of Entertainments Licences with Previous Convictions – Ardoyne Working Men’s Club and Bootleggers

The Committee was reminded that, under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, it had a duty, when considering any application for the grant, renewal or transfer of an Entertainments Licence, to take into account any convictions of the applicant relating to an offence under the Order which had occurred within a five-year period immediately preceding the date on which the application had been made.

The Building Control Manager informed the Committee that applications had been received for the renewal of a Seven-Day Annual Indoor Entertainments Licence where the applicant had been convicted of an offence under the Local Government (Miscellaneous Provisions) (NI) Order 1985 within the previous five years, in respect of Ardoyne Working Men’s Club, 9b Kerrera Street and Bootleggers, 46 Church Lane.

He reported that it was a requirement of the legislation that, after an individual had been convicted of an offence under the Local Government (Miscellaneous Provisions) (NI) Order, any application for renewal of an Entertainments Licence must be brought before the Committee for a period of five years.

He reported that the licensee of Ardoyne Working Men’s Club had, on 28th July, 2015, been fined £200 and instructed to pay costs of £66, following an inspection by Council officers, which had found that entertainment was being provided without an Entertainments Licence. In terms of Bootleggers, the licensee had, on 21st February, 2017, been convicted of a breach of a special condition to maintain width through the rear yard to the final exit and of failing to have the log book for recording pre-event checks available for inspection and been fined £500 and ordered to pay £69 in costs.

He pointed out that the Committee had, in subsequent years, agreed to renew the Entertainments Licences and that, on the two occasions over the past year on which each of the premises had been inspected, officers had found that all management procedures were being implemented effectively.

He confirmed that no written representations had been received in relation to the applications and that the Police Service of Northern Ireland had offered no objections.

The Committee agreed, in its capacity as Licensing Authority, to renew the Annual Indoor Entertainments Licences in respect of Ardoyne Working Men’s Club, 9b, Kerrera Street and Bootleggers, 46 Church Lane.

A Member suggested, any application for the renewal of an Entertainments Licence, where the applicant had previously committed an offence under the Local Government (Miscellaneous Provisions) (NI) Order, that had previously been renewed by the Committee, that any further applications for the renewal of the annual licence within the specified five year period, need not be brought before the Licensing

Committee, and authority be delegated to the Director of Planning and Building Control to approve the applications.

The Building Control Manager agreed to bring a report back to the Committee outlining the options available to the Committee regarding authority to grant future applications for the renewal of Entertainments Licences with Previous Convictions.

**Application for the Renewal of a 7-Day Annual Entertainments Licence –
Fourteen Tomb Street**

The Committee was reminded that, at its meeting on 19th September 2018, the issue of a cut-price drinks promotion being advertised by Fourteen Belfast was raised, which had been brought to the attention of a number of the Members by concerned parents.

Whilst it had been acknowledged that liquor licensing was the responsibility of the Police Service of Northern Ireland, the Committee had previously, as part of the Entertainments Licensing process, requested that a number of licensees agree to adhere to the Pubs of Ulster's voluntary code of practice on irresponsible drinks promotions.

The Building Control Manager informed the Members that Constable Donna Tolan, who was representing the Police Service of Northern Ireland (PSNI) was in attendance and that the applicant, Mr Patrick Fegan was also present, should the Committee require additional information.

The Committee agreed that it would be beneficial to hear from Constable Tolan and she was welcomed to the meeting.

A Member informed Constable Tolan that the Committee previously had some concerns regarding the drink promotions that were advertised by Fourteen Tomb Street which had caused the Members to receive numerous complaints by concerned parents and that the Committee had requested that the licensee be invited to attend the meeting at which the renewal of his Entertainments Licence was being considered.

Constable Tolan informed the Committee that the PSNI was not objecting to the application and that inspections had been carried out since September 2018, when the drink promotions commenced, and that there had been no breaches. She reported that she had discussed the promotions with the applicant and had requested that terms and conditions were applied to the drinks promotions and advertised with the phrase 'terms and conditions apply' for clarity around what was actually being offered in the promotion. She informed the Committee that the applicant had agreed to revise the drinks promotions to include the aforementioned request.

In response to a Member's question regarding recorded incidents that had been reported in connection with Fourteen Tomb Street and how that amount compared with other similar licenced premises within Belfast, Constable Tolan informed the Committee that similar venues in Belfast had around the same number of recorded incidents and highlighted that, over the past three years, the number of recorded incidents concerning Fourteen Tomb Street had reduced considerably.

The Chairperson thanked Constable Tolan for her attendance and the Committee agreed that it would be beneficial to hear from Mr. Fegan and he was welcomed to the meeting.

Mr. Fegan informed the Committee that his promotions were run in a controlled environment, that his door staff were all medically trained and that all of his staff were Drinkaware trained. He added that anyone who presented at the premises in an intoxicated state was not permitted entry. He further informed Committee that his customers were not exploiting the drink promotions to consume copious amounts of alcohol but rather that the majority of them were students with limited funds and that the promotion was catering to a student budget.

A Member asked Mr. Fegan if he was willing to give assurances that, if his licence were to be renewed, he would undertake to adhere to the Pubs of Ulster Voluntary Code of Practice in relation to drinks promotions. Mr. Fegan informed the Committee that, since he had acquired Fourteen Tomb Street, he had been working with Pubs of Ulster for guidance on drinks promotions to ensure that he was adhering to their Code of Practice. Mr. Fegan gave the Members assurance that he would continue to adhere to the Pubs of Ulster Voluntary Code of Practice.

Mr. Fegan added that all staff at Fourteen Tomb Street had been Drinkaware trained and that the training formed part of the induction process for all new staff.

The Chairperson thanked Mr. Fegan for his attendance and he retired from the table.

The Committee agreed to the renewal of the 7-Day Annual Indoor and Outdoor Entertainments Licences with the following special condition:

- The Applicant adheres to the Responsible Retailing Code NI in relation to drinks promotions.

Temporary Street Trading Licence – Donegall Place

(Mr. J. Greer, Director of Economic Development, attended in connection with this item.)

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 Following the Bank Buildings fire in August a number of businesses in the immediate area were not able to trade due to the very dangerous condition in which the building was left. City Picnic, a burger restaurant, situated in Unit 5 McAuley House, 2-6 Castle Street has been one of those**

affected businesses, they still remain displaced from their premises and will remain so for a number of months to come.

1.2 As part of an assistance package from the Council City Picnic have been trading from a trailer as part of the Christmas Continental Market on Donegall Place. This was facilitated under the Council's Market Rights.

1.3 As the Market has now stopped trading, the only other mechanism that is available to permit lawful trading is through the granting of Temporary Street Trading Licences.

2.0 Recommendations

2.1 Based on the information presented and considering any representations received, the Committee is requested to consider the application and decide whether it is minded:

1. To grant and approve the Licence, or;
2. To grant and approve the Licence with additional conditions, or
3. To refuse the Licence application.

2.2 Members may attach any reasonable Conditions when granting a Street Trading Licence.

2.3 If Members are minded to grant the Temporary Licence, you are then requested to delegate to the Director of Planning and Building Control authority to grant any further Temporary Licences that may be required.

2.4 If the licence is refused, the applicant may appeal the Council's decision within 21 days of notification of that decision to the Magistrates' Court.

3.0 Main report

Key Issues

3.1 Committee is reminded of a decision of the Council's Health and Environmental Services Committee on 10th December 2003, in which they refused to designate Donegall Place and Royal Avenue as places in respect of which it might grant stationary Street Trading Licences.

3.2 That decision was taken after a series of Special meetings of the Health and Environmental Services Committee from September 2003 to December 2003, when the Committee heard from applicants, statutory consultees, business

representatives and professional independent experts. One of the key issues discussed was around the sale of hot food.

- 3.3 Committee had considered that cooking odours are an unavoidable consequence of hot food stalls/vans. Odour dispersal will be dependent on climatic conditions and experience showed that cooking smells cause annoyance and give rise to complaints from people living or working in the vicinity. There is also a potential for complaints to arise due to litter associated with a hot food stall/van.
- 3.4 It has been the Council's policy position since then that no street trading takes place on Donegall Place and Royal Avenue (more specifically the portion from the junction with North Street to Donegall Place).
- 3.5 Most recently, the Licensing Committee, at its meeting of 15th May 2013, upheld the policy decision and refused a Temporary Street Trading Licence for Royal Avenue outside Castle Court that was for the free distribution of popcorn by way of a promotion.

Legislative background for Temporary Street Trading

- 3.6 The Street Trading Act (NI) 2001 Section 14 permits the Council to issue a Temporary Street Trading Licence where a full-term Licence may not be appropriate, for example, for special events such as festivals, fairs, etc. The Act permits temporary trading to take place in an undesignated street or in goods or services which are normally prohibited in that street.
- 3.7 There is a limitation on the duration of a Temporary Licence, it cannot be granted for a period exceeding 7 days and no more than 5 Temporary Licences may be issued to any one applicant in a year.
- 3.8 There is however, no prohibition on a new applicant applying for a Temporary Licence to allow trade to continue after the 5 Temporary Licences have expired.
- 3.9 The restrictions on the frequency and duration of Temporary Licences represent a balance between the number of days when special events/occasions may occur and the need to prevent an unreasonable level of trading in an area, which may not have been designated.
- 3.10 Members may be aware that the Council, through the Health and Environmental Services Committee, had previously

agreed a Policy in 2001 with respect to the granting of Temporary Licences.

- 3.11 Applications to permit Temporary Street Trading are normally only permitted at special events such as Christmas Lights Switch-on, New Year's Eve, Halloween Events, Festival & Civic Events, Community Organised Events and Cultural Parades/Events.
- 3.12 The Committee is however entitled to depart from its usual policy where there are exceptional circumstances, which would warrant it to do so.
- 3.13 It is also important that the holder of a Temporary Licence should not have an unfair advantage over the holder of a full-term licence who may only trade in designated streets.

Extenuating Circumstances

- 3.14 In considering this application, Members may wish to have regard to the exceptional circumstances relating to the Primark fire that have led to extreme financial and emotional hardship for the owners of City Picnic (and others) who were unable to operate at all for a number of weeks and had to lay off staff as a result.
- 3.15 It is also the case that as soon as the remedial works to Bank Buildings are complete City Picnic intend to return to their existing premises and resume trading. The latest indications from Primark are that Castle Street should be accessible to the public by Easter and we would expect City Picnic to be open and trading again by the end of April at the latest.

Application

- 3.16 Mr Gavin Gregg of City Picnic has applied to sell hot and cold food and non-alcoholic beverages from a catering trailer. His proposed hours of operation are as follows:
- Monday to Sunday - 24 hours a day.

Consultation

- 3.17 DfI Roads, PSNI, Belfast One, Belfast City Centre Management have been asked for their views on the proposal. At the time of writing this report responses had only been received from DfI Roads, PSNI and Eason.

- 3.18 DfI Roads and the PSNI have no objections to the proposals. (Attached as Appendix 1)
- 3.19 Eason are located in 40-46 Donegall Place and have the City Picnic hot food van outside their premises. They have indicated that they are not in support of the application and have raised a number of points attached as Appendix 2. These include:
- Eason's believed the street would have been cleared of all pre-Christmas trading.
 - They have a coffee shop in their store that serves hot food and its owner, who is also an independent trader, already has difficulty trading with M&S and Next also having coffee shops.
 - It seems strange that this Van is not located in a place where there are not as many food outlets.

Fee

- 3.20 The Council's Economic Development Division of the Place and Economy Department have agreed that they will pay the Licence fees required for the duration of the applicant's stay at this location given the exceptional circumstances the applicant finds himself in. Depending on the success of the continued trading and the ongoing works at the Primark Building, the applicant may require up to 10 Temporary Street Trading Licences at a cost of £5,000. Members are asked to consider waiving the fee on this occasion, as the payment is an internal Council transaction.

Delegated Authority

- 3.21 Members are reminded that the normal process for dealing with a Temporary Street Trading Licence application, which is not the subject of objections is that the Director of Planning and Building Control will grant the Licence as provided for in the Council's Scheme of delegation. This application is before Committee as it is contrary to the Committee's current policy position in that it would permit trading in areas where street trading is not usually permitted and also involves the sale of hot food in the city centre.
- 3.22 If Committee agree to grant the Licence for 7 days, it is requested that delegated authority be granted to the Director of Planning and Building Control to impose Conditions and grant any subsequent applications made by the applicant.

3.23 Financial and Resource Implications

If the Committee is of the mind to grant the applicant a Street Trading Licence, the fee is as follows:

- **Application Fee of £180, and**
- **A Licence fee, for Monday to Sunday £320.**

The fees will be met from the existing budget of the Council's Economic Development Division.

3.24 Equality or Good Relations Implications/Rural Needs Assessment

There are no issues associated with this report."

The Building Control Manger informed the Members that, to enable the owners of City Picnic to continue trading on the Donegall Place site, the Committee was being asked to consider granting Temporary Street Trading Licenses until such time as the owners of City Picnic were able to return to their premises.

He advised the Committee that the Police Service of Northern Ireland and the Department for Infrastructure had no objections to the application. He added that a local trader had submitted an objection, but had withdrawn it prior to the meeting of the Licensing Committee commencing.

The Building Control Manager indicated to the Members that correspondence had been received from three other local traders who had concerns regarding the application. He also advised that Belfast City Centre Management had confirmed that businesses, in the main, welcomed the opportunity for City Picnic to trade but had raised the issue about the possibility of increased littering.

He added that if the Committee was minded to grant the Temporary Street Trading Licence, then consideration be given to delegating authority to the Director of Planning and Building Control to approve subsequent applications for the site on Donegall Place.

He informed the Committee that Mr. Gavin Gregg and Mr Arthur McAnerney were present, should the Committee require additional information.

The Director of Economic Development informed the Members that the circumstances were exceptional and the application was a temporary measure to provide assistance to the applicants who had been displaced because of the cordon that surrounded Bank Buildings. He informed Members that efforts to find a unit for the applicants to occupy on a temporary basis had been fruitless, as landlords and letting agents were unwilling to provide short-term leases to food and beverage businesses. He added that the site on Donegall Place appeared to be the only option available to the applicants to continue trading until they were able to return to their premises on Castle Street.

The Committee agreed that it would be beneficial to hear from Mr. Gregg and Mr. McAnerney and they were welcomed to the meeting.

The Chairperson welcomed Mr. McAnerney and Mr. Gregg to the meeting and expressed her sympathy to them for the exceptional circumstances that they had found themselves in and acknowledged the financial and emotional stress endured since August 2018 as a result of the fire at Bank Buildings.

Mr. McAnerney informed Committee that if it was minded to grant the Temporary Street Trading Licence, then it would offer him the opportunity to retain some of his staff members. He added that it would also allow him to continue promoting his brand and have a presence within the city centre which would also allow him to retain the business' habitual customers.

In response to a question from a Member with regard to the hours of operation on the application for 24 hour trading, Mr. McAnerney informed Members that he did not require 24 hour trading and that he was seeking to trade from Tuesday to Saturday 8am to 5pm, that he would not operate on a Sunday or a Monday and that he intended to open on Friday and Saturday evenings to 2am.

Following a further question from a Member regarding litter, Mr. McAnerney said that the Council had an arrangement in place with regard to waste collection at the site and that it was an ongoing arrangement. He also gave the Members assurances that the area adjacent to the site would be maintained and that waste would not be left in bags in the surrounding area.

After further discussion, it was

Moved by Councillor Hussey,
Seconded by Councillor Boyle,

That the Committee agrees to approve the application for a temporary street trading licence for seven days, for the daytime hours requested by the applicant, with no evening trading permitted. That authority is delegated to the Director of Planning and Building Control to renew the licence upon application on not more than four further occasions, and that the Licensee must also undertake to maintain the area adjacent to the premises with regard to litter.

Amendment

Moved by Councillor Collins,
Seconded by Councillor Clarke,

That the Committee agrees to approve the application for a temporary street trading licence for seven days, for the daytime hours requested by the applicant, and to include Friday and Saturday evenings to 2am. That authority is delegated to the Director of Planning and Building Control to renew the licence upon application on not more than

four further occasions, and that the Licensee must undertake to maintain the area adjacent to the premises with regard to litter.

On a vote by show of hands, ten Members voted for the amendment and four against and it was declared carried.

The Committee also agreed to the waiving of the applicable fee, as the Council's Economic Development Division of the Place and Economy Department had agreed that it would pay the licence fee and any subsequent renewal fees.

It was further agreed that the City Solicitor would provide a legal opinion for consideration at the February meeting of the Licensing Committee regarding protocol for future applications for Temporary Street Trading Licences in Donegall Place.

Chairperson