Licensing Committee

Wednesday, 13th November, 2019

MEETING OF LICENSING COMMITTEE

Members present: Councillor S. Baker (Chairperson);
The High Sherriff, Alderman Sandford;
Aldermen Copeland; and
Councillors Bunting, Donnelly, Dorrian, Ferguson, Groves, Hussey, Hutchinson, M. Kelly, T. Kelly, Magee, Magennis, McAteer, Smyth and Whyte.

In attendance: Mr. A. Thatcher, Director of Planning and Building Control;
Mr. S. Hewitt, Building Control Manager;
Ms N. Largey, Divisional Solicitor;
Ms. D. Kiley, Barrister;
Mr. J. Cunningham, Regulatory Services Manager; and
Ms. E. McGoldrick, Democratic Services Officer.

Apologies

Apologies were reported on behalf of Councillors Howard and Hutchinson.

Minutes

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

Declarations of Interest

No declarations of interest were reported.

Committee Schedule 2020

The Committee approved the following schedule of meetings for 2020:

- Wednesday, 22nd January;
- Wednesday 19th February;
- Wednesday, 18th March;
- Wednesday, 15th April;
- Wednesday, 20th May;
- Wednesday, 17th June;
- Wednesday, 19th August;
- Wednesday, 16th September;

- Wednesday, 14th October;
- Wednesday, 18th November; and
- Wednesday, 16th December.

All meetings to commence at 5.00 p.m.

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 Grant of an Amusement Permit for Onassis Amusements, 25-41 Botanic Avenue

The Committee considered the undernoted report:

"1.0 Purpose of Report or Summary of Main Issues

1.1 To reconsider an application from Hazeldene Enterprises Limited, for the grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.

Premises and Location	**Applicant**
Onassis Amusements 2nd Floor 25-41 Botanic Avenue Belfast, BT7 1JG	Hazeldene Enterprises Ltd. 6 The Willows Magherafelt BT54 5RH

1.2 Members are advised that an Amusement Permit was granted for Onassis Amusements at your meeting on 6 October 2014.

1.3 Subsequently, Oasis Retail Services Limited, an objector to the grant of the amusement permit, sought leave to apply for Judicial Review in respect of the decision of the Council to grant the permit. The Court of Appeal decision, delivered on 24 September 2018, resulted in the quashing of the decision of the Council to grant a permit to Hazeldene Enterprises Limited for premises at Botanic Avenue.

1.4 The effect of the Judgement of the Court of Appeal to quash the decision is that the Licensing Committee must now consider the application afresh and in light of the Judgement.

1.5 **Mr John Gerard Burns is the applicant on behalf of Hazeldene Enterprises Limited.**

1.6 **A location map is attached as Appendix 1 (copy available here).**

2.0 **Recommendations**

2.1 **The current policy, dictated by the governing Order, is that the Committee, in considering the application for the Grant of an Amusement Permit, shall have regard to:**

a) The fitness of the applicant to hold a Permit having regard to his character, reputation and financial standing,
b) The fitness of any other person by whom the business is to be carried on under the Permit would be managed, or for whose benefit that business would be carried on,
c) Representation, if any, from the sub-divisional commander of the Police Service of Northern Ireland in whose sub-division the premises are situated, and
d) Representation, if any, as a result of the public notices of advertisement.

2.2 **You are then required to make a decision based on the following options set out under the Order. You must refuse the application unless satisfied that:**

a) The applicant is a fit person to hold an Amusement Permit; and
b) The applicant will not allow the business proposed to be carried on under the Amusement Permit to be managed by, or carried on for the benefit of, a person other than the applicant who would himself be refused the grant of an Amusement Permit.

2.3 **Thereafter:-**

1. You may refuse the application after hearing any representations from third parties, or
2. You may grant the application, subject to the mandatory condition that the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character, and

2.4 **In the case of premises, that have machines with the maximum cash prize of £25, where admission is restricted to persons aged 18 or over that –**

- **no persons under 18 are admitted to the premises; and**

- **at any entrance to, and inside any such premises there are prominently displayed notices indicating that access to the premises is prohibited to persons aged under 18, and in addition**

3. **You may also grant the application subject to discretionary conditions outlined in the Order relating to the illumination of the premises, advertising of, and window displays on the premises and the display of information notices.**

2.5 **Should you be of a mind to refuse the application for the grant of an Amusement Permit or grant the Permit subject to any discretionary conditions you are required to advise the applicant of your intention to do so. In this case you must afford the applicant the opportunity to make representations at a specified Licensing Committee meeting on the matter before making a final determination of the application.**

2.6 **If, subsequent to hearing the applicant, you refuse the application for the Grant of an Amusement Permit or decide to grant the application subject to discretionary conditions the applicant may appeal that decision to the County Court.**

3.0 **<u>Main report</u>**

<u>Key Issues</u>

3.1 **Members are reminded that the Licensing Committee is responsible for, and has full delegated authority for, determining all applications relating to the grant and provisional grant of Amusement Permits.**

<u>Original application</u>

3.2 **Objections to the Grant of this application were received and a summary of the objection is as follows:**

- **The suitability of the applicant; as the objector has concerns with regards to the applicants ability to run the property having due regard to the legal requirements pursuant to the Betting, Gaming, Lotteries and Amusements (NI) Order 1985.**

- **That there is a significant number of premises/businesses with the benefit of amusement permits in the locality of the applicant's premises and as a consequence there is no need for an additional business of this nature and in this regard we are mindful of the criteria outlined in the Belfast City**

Council Amusement Permit Policy which was adopted by the council on 1 May 2013.

- **That consideration of the application should be deferred in light of an application for Judicial Review.**

3.3 The detail of these objections and how they were considered are set out in the Minute of the meeting on 6 October 2014 which is attached at Appendix 2 (copy available here). After consideration of the application the Amusement Permit was granted.

3.4 At a meeting on 15 February 2017, Members were advised of the outcome of a Judicial Review Application by Oasis Retail Services Ltd. regarding the decision made by Belfast City Council to grant the Permit for Onassis Amusements.

Judicial Review of Council decision

3.5 The matter was heard by His Honour Judge Maguire on the 23 and 24 June 2016 with submissions provided by legal representatives acting on behalf of the applicant and the Council. At the heart of the leave applications was the challenge from Oasis Retail Services Ltd. to the Council's Amusement Permit Policy and in particular that it did not adequately assess or consider the issue of cumulative build up nor was there account taken of the effect of larger numbers of amusement arcades on the character of the neighbourhood.

3.6 Judgment was subsequently handed down on the 13 January 2017 and the court decided that, in respect of the application:

> **Leave to apply for judicial review was granted but the challenge was dismissed as the court was not satisfied that the council had failed to consider the issue of cumulative impact/proliferation of permits in relation to the character and amenity of the area or of the issue of the fitness of the applicant.**

3.7 Whilst dismissing the challenges His Honour Judge Maguire raised some concerns regarding the current wording of the Amusement Permit Policy.

Appeal of Judicial Review decision

3.8 Further to this decision, Oasis Retail Services Limited appealed the outcome of the Judicial Review and the Court of Appeal decision, delivered on 24 September 2018, resulted in the quashing of the decision of the Council to grant a

permit to Hazeldene Enterprises Limited for premises at Botanic Avenue.

3.9 The Court of Appeal found that the question was not whether the Committee had ultimately in fact considered cumulative impact, rather, it was whether the Committee had wrongly interpreted its policy, i.e. that an application met criterion 2 of the Policy simply because there was no other arcade on that commercial frontage.

3.10 The Court of Appeal held that it was wrong to say that the cumulative impact criterion is met because there was no other arcade on the commercial frontage. They found that the Committee is required to consider the cumulative impact of the grant of requested permits on the character of the area and that in its decision, the Committee mis-interpreted the policy.

3.11 Committee is required to consider the cumulative impact of the grant of requested permits on the character of the area. The existence of other arcades on the commercial frontage is one, but only one, relevant factor. The assessment of cumulative impact should not however amount to an assessment of need.

3.12 The effect of the Judgement of the Court of Appeal to quash the decision is that the Licensing Committee must meet again to consider the application afresh and in light of the Judgement. The Council understands that the premises are continuing to trade pending the Committee's reconsideration of the application.

3.13 Members are advised that a review of the Policy is overdue but has been delayed pending the outcome of the judicial review proceedings.

3.14 After the permit was granted at Committee on 6 October 2014 it was first issued on 1 March 2017 upon completion of works to the premises. Application to renew the permit was made in January 2018 and the permit was granted under the Scheme of Delegation for the period 1 March 2018 to 28 February 2019. A further application to renew the permit was received on 10 January 2019 but, further to the Court of Appeal decision, this has not been considered.

<u>Applicant</u>

3.15 For the application considered in 2014 the applicant made a request to operate the premises on Monday to Sunday from 8am to 5am the following morning. However, at the Committee meeting on 6 October 2014 the applicant agreed

to operate on the days and hours that were in accordance with their planning permission; Monday to Saturday from 9am to 11:30pm and Sunday from 12pm to 11:30pm.

3.16 The applicant has since been granted amended hours by Planning and the current opening hours are now on Monday to Saturday from 9:30am to 6am the following morning and on Sunday from 12pm to 6am the following morning.

3.17 The permit is for a total of 227 gaming machines, all of which are to pay out a maximum all cash prize of £25. During an inspection of the premises on 1 March 2019 the actual number of machines on the premises was 154.

3.18 Mr Burns and/or his representatives will be available to discuss any matters relating to the grant of the permit at your meeting.

PSNI

3.19 The PSNI has been consulted and, as enforcement of this legislation is a police matter, we suggested that they may wish to seek their own legal advice in relation to the continued operation of the premises in these unusual circumstances.

3.20 In relation to the original application we enquired if there had been any action taken by PSNI regarding the surveillance material forwarded to them from both the applicant (Hazeldene) and the objector (Oasis) prior to Committee on 6 October 2014. They have confirmed that no action was taken in response to this material.

3.21 Since the permit was issued in 2014 the police have not recorded any complaints regarding this establishment nor intervened in any disturbances which may be attributed to that premises.

3.22 The PSNI, having no other relevant information to offer, has confirmed that they have no objections to the application. The police have been invited to your meeting should you have any queries in relation the application. A copy of their correspondence is attached as Appendix 3 (copy available here).

NIFRS

3.23 The Northern Ireland Fire and Rescue Service has been consulted in relation to the application and confirmed that they have no objections to the application.

Health, Safety, Welfare and Technical requirements

3.24 After the application was granted by Committee on 6 October 2014, the applicant submitted a Building Regulations application and the works undertaken have been completed satisfactorily.

Planning matters

3.25 A planning application was made to the Planning Service on the 24 October 2013 for a change of use (second floor only) to an Amusement Arcade. This was granted on the 25 March 2014.

3.26 A copy of the planning permission is attached as Appendix 4 (copy available here).

3.27 The Committee may be aware that in an important Court of Appeal decision in June 1999, it was confirmed that the Council, in determining applications for Amusement Permits, may take into account planning considerations but should be slow to differ from the views of the Planning Authority.

3.28 The Court also confirmed that the Council can take into account matters such as location, structure, character and impact on neighbours and the surrounding area.

Amusement Permit Policy

3.29 Members will be aware that the Council's Amusement Permit Policy was ratified at Council on 1 May 2013. It outlines those matters which may be taken into account in determining any application and indicates that each application must be assessed on its own merits.

The key Policy objectives are to:

1. **Promote the retail vibrancy and regeneration of Belfast;**
2. **Enhance the tourism and cultural appeal of Belfast by protecting its image and built heritage;**
3. **Support and safeguard residential communities in Belfast;**
4. **Protect children and vulnerable persons from being harmed or exploited by gambling;**
5. **Respect the need to prevent gambling from being a source of crime and disorder.**

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

1. Legal requirements under the 1985 Order

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

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

3.32 References for the applicant are attached as Appendix 5 (copy available here) to the report for consideration.

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

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

(c) Opinions of the Police:

3.34 The Police comments have been sought and reference is made in paragraph 3.19 of the report and attached as Appendix 3 (copy available here).

(d) Submissions from the general public:

3.35 No objections have been received as a result of the public notices placed in three local newspapers. Solicitors for the original objector have been asked whether they wish to make any further representations on several occasions and have been referred to the Committee's Operating Protocol which requires objections to be made three weeks in advance of the Committee meeting so that they can be shared with the applicant. To date no further representations have been provided.

2. Assessment criteria for suitability of a location

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

3.37 Before considering each of these criteria it should be noted at the outset that this is a grant application because of the Judgement of the Court of Appeal and the Licensing Committee must consider the application afresh and in light of the Judgement.

(a) Retail vibrancy and regeneration of Belfast:

3.38 The application premises are on the second floor of the former Arts Theatre building on Botanic Avenue. They are located outside the Retail Core of Belfast City Centre but within the limit of the City Centre, as defined in the Belfast Metropolitan Area Plan 2015 (BMAP). They are bordered on one side by the railway line and on the other side by office use. They do not therefore break up a continuous shopping frontage.

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

3.39 In the desire to promote retailing in the City Centre the Council is keen to avoid a clustering of amusement arcades at a given location. Accordingly, it restricts the number of amusement arcades on a commercial frontage to one. There are no other amusement arcades on this commercial frontage.

3.40 In assessing cumulative build up the Committee is also required to more broadly consider the issue of the proliferation of permits and the effect of same on the character and amenity of an area.

3.41 This particular location is within the City Centre but outside its Retail Core and its character is defined by a mix of mainly commercial uses, including shops, offices, eateries and licensed premises. Some of these licensed premises include other amusement arcades operating nearby within a walking distance of 200m. These include: Oasis, 14 Shaftesbury Square; Players, 22 Shaftesbury Square; and Mavericks, 28 Bradbury Place.

3.42 A map of nearby premises and existing amusement arcades in the City Centre is attached to this report at Appendix 6 (copy available here).

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

3.43 Whilst the Arts Theatre once performed an important role in hosting plays and various acts in Northern Ireland it was vacant for a considerable period of time until becoming operational again in recent years for use as a bingo hall and more latterly as an amusement arcade. The building is not

listed and it has lawful development consent for use as a bingo hall and the incorporation of a slot machine area. Taking these considerations on board the application premises are not considered a tourism asset. The site is also not located at a recognised Gateway location into Belfast City Centre.

(d) Proximity to residential use:

3.44 (i) - predominantly residential in character

The application premises in the former Arts Theatre are located in the City Centre but outside the Retail Core, which contains the City's prime shopping streets. The premises are situated above ground-floor retail and commercial units. A mix of uses is found in this area including shops, restaurants, offices and licensed premises.

This location can therefore be viewed as a 'mixed use' area and not one that is predominantly residential in character. Residential use is mainly found in the streets leading off Botanic Avenue.

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

The nearest residential property to the application premises is a first floor flat at 34 Botanic Avenue. It is located approximately 19m across from the application site on the opposite side of the road and is not immediately adjacent to it.

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

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

<u>Conclusion</u>

3.47 On balance, the application premises broadly satisfy the criteria for assessing the suitability of a location for an amusement arcade as laid down in Belfast City Council's Amusement Permit Policy.

3.48 In addition to the above legal requirements and assessment criteria Members may take into account any matter which is deemed relevant. Members may also depart from the Policy where it is appropriate to do so, although it is envisaged that this should only happen in exceptional circumstances.

3.49 A copy of the Council's Amusement Permit Policy is attached for your information and reference as Appendix 7 (copy available here).

Financial & Resource Implications

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

Equality or Good Relations Implications/Rural Needs Assessment

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

The Building Control Manager provided a summary of the application and highlighted that no further objection had been received from the original objector. He advised also that no objections or complaints had been received from the PSNI. During the presentation of the application, he highlighted the Land Use Map which illustrated the nearby premises and existing amusement arcades in the vicinity.

The Divisional Solicitor clarified that it was for the Committee to decide what weight should be given to the previous objector comments which had been received in 2014, together with the counter objections in relation to the fitness of the objector. She reminded the Committee that, at its previous hearing, it had not attached any weight to these counter objections and that the Court had agreed that was the correct decision.

She also advised that, in the late afternoon, she had received an email from the objector's solicitor which stated that they would not be in attendance but wished to have it placed on record that, in their view, as the applicant had continued to trade after the Court of Appeal decision, the applicant was committing an offence under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985. She advised that it was for the Committee to decide what weight to attach to this representation.

The Barrister summarised the outcome of the Judicial Review and reminded the Committee that it was to consider the application afresh. She highlighted the Court of Appeal decision on the determination of cumulative build-up, in that the Committee must consider the impact of other permits on the character and amenity of the area, but a 'Needs Test' did not apply.

The Committee was informed that a representative of the PSNI was in attendance, however, the Committee decided that it did not wish to hear from the PSNI.

The Committee was informed that Mr J. Burns, applicant, Mr. S. Beattie QC, and Mr. I. Foster, Planning Consultant, were in attendance and they were welcomed by the Chairperson.

Mr. Beattie advised that the information in the email from the objector was not as straight forward as what had been suggested. In 2014, the Committee granted the application and, as a matter of law, it was presumptively valid unless quashed by the

Court. He provided an overview of the history of the amusement permit from when it had been originally granted by Committee in 2014 and highlighted the adjournment of the court dates. He suggested that the premises initially remained closed for 3 years, despite spending three quarters of a million pounds on a fit out of the premises, whilst his client awaited the outcome of the Judicial Review proceedings that had been taken by the objector. Due to the delay in resolution of the case, it had then opened in June, 2017, as the grant of consent was presumptively valid. He stated that no action had been taken to prevent the premises from opening and that remained the case today. He advised that a renewal had been granted before the Court of Appeal decision which was valid until early 2019. Once the application was quashed by the Court of Appeal, no steps had been taken in relation to the renewal or to challenge it.

He stated that, after the Court of Appeal decision, the objector wrote to the Council to request intervention and to close the premises. He suggested that Council officers had taken advice and liaised with the PSNI, in relation to the premises being open, and the police had not taken any steps to intervene.

He informed the Committee that an application for renewal was made in November, 2018 and the Council had subsequently written to the applicant advising that, if there was no objection from the PSNI or NIFRS, they could expect the renewal to be issued in February. He submitted that his client was waiting for the renewal or for the hearing to take place. He advised that 15 people were employed at the premises and, as they were of the view that there was a presumptively valid renewal in place, the decision was taken to continue trading. He advised that, had the Council or PSNI written to his client asking them to close, they would have taken action straight away. He also reminded the Committee that the PSNI had made no objection to the premises or how they have traded.

He suggested that, in relation to the Amusement Permit Policy, the consideration of cumulative impact was wider than the consideration of only the shop frontage, it considered the impact of the proposal on the street frontage and sought to prevent the build-up of a type of frontage that would destroy footfall. He advised the Committee that there was no visible link between his client's premises and the other amusement arcades in the area. He highlighted that, as the arcade was on the first floor of the premises, the application complied with both the intention and the letter of the Council's Policy, and what it was trying to achieve, namely to keep arcades of the ground floors. He pointed out that it was a matter for the Committee to assign weight and judgement to the relevance of other arcades in the area.

He also suggested that it was relevant that the premises had traded without any complaints from the PSNI or residents, or received any complaints from any trader, business or other operation to suggest that the business was having an adverse impact on trading.

He reminded Members that he had appeared before the Committee in 2014 on behalf of Kelly Burns and provided financial information regarding the fitness of the applicant.

He also advised that the information in relation to the objector which his client had submitted in 2014 should not be given any weight and invited the Committee to disregard it.

After discussion, the Committee agreed that it was satisfied the applicant was a fit and proper person and it was content that it would resolve not to have regard to the information which had been submitted in relation to the fitness of the objector in 2014.

The Committee also agreed in its capacity as Licensing Authority, to the grant the application for the Amusement Permit in respect of Onassis Amusements, 25-41 Botanic Avenue subject to:

(i) the premises are not to be used for an unlawful purpose or as a resort of persons of known bad character;

(ii) no persons under the age of 18 are admitted to the premises; and

(iii) at any entrance to, and inside the premises, there are prominently displayed notices indicating that access is prohibited to persons under the age of 18.

Final decision on competing Stationary Street Trading Licence applications for Fountain Street site.

The Committee was reminded that, at its meeting on 18th September, it had considered three separate applications for the grant of a Stationary Street Trading Licence for a designated site in Fountain Street. The Committee, having considered the representations made in respect of the applications, had agreed that it was minded to grant to Mr. S. Donnelly, a Stationary Street Trading Licence, on a one-year trial basis, permitting him to sell tour tickets and tour memorabilia on a Monday to Sunday between the hours of 9.00 a.m. and 5.00 p.m., in Fountain Street, at a site which had been designated previously for the sale of those commodities, subject to:

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

As a consequence of the decision to grant the Licence to Mr. Donnelly and the fact that there was only one designated site available, the Committee had agreed that it was minded to refuse the applications which had been submitted by Mr. Brown and Mr. Kerr, on the grounds set out in Sections 9(1) (a) (i) and (iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which they wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which they wished to trade.

The Building Control Manager reported that the unsuccessful applicants had been advised that, as required under Section 12(2)(b) of the Street Trading Act (Northern Ireland) 2001, they would be permitted to make written representation to the Council within twenty-one days of being notified of the Committee's decision. He confirmed that representations had been received from Mr. Brown and Mr. Kerr as outlined in the report.

After consideration, the Committee agreed, in its capacity as Licensing Authority, to affirm its decision of 18th September to grant to Mr. S. Donnelly, a Stationary Street Trading Licence, on a one-year trial basis, permitting him to sell tour tickets and tour memorabilia on a Monday to Sunday between the hours of 9.00 a.m. and 5.00 p.m., in Fountain Street, at a site which had been designated previously for the sale of those commodities, subject to:

iii. the applicant providing all necessary documentation;
iv. the receipt of the appropriate licensing fees; and

As a consequence of the decision to grant the Licence to Mr. Donnelly and the fact that there was only one designated site available, the Committee agreed to refuse the applications which had been submitted by Mr. Brown and Mr. Kerr, on the grounds set out in Sections 9(1) (a) (i) and (iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which they wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which they wished to trade.

Houses in Multiple Occupation (HMO) Licenses Issued Under Delegated Authority

The Committee noted the applications that had been issued under the Council's Scheme of Delegation.

Non-Delegated Matters

Member Training

Members were reminded that the Committee has received training in the following areas to date:

- Overview of the different types of regulatory functions for which the Committee is responsible;
- Committee protocol and representation process;
- Legal principles governing the decision-making process;
- Alcohol licensing matters and its relationship to entertainments licensing; and
- Belfast City Council's Amusement Permit policy.

After discussion, the Committee agreed that a further training session be organised on Houses in Multiple Occupation Act NI 2016 and its application.

Chairperson