

Licensing Committee

Wednesday, 14th October, 2020

MEETING OF LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Donnelly (Chairperson);
Aldermen Copeland and Sandford; and
Councillors Bradley, Bunting, Groves,
Hussey, Hutchinson, M. Kelly, T. Kelly, Magee,
Magennis, McAteer, McKeown, Nicholl and Smyth.

In attendance: Mr. A. Thatcher, Director of Planning
and Building Control;
Mr. S. Hewitt, Building Control Manager;
Ms. N. Largey, Divisional Solicitor;
Mr. J. Cunningham, Regulatory Services Manager;
Mr. K. Bloomfield, HMO Unit Manager;
Mrs. E. McGoldrick, Democratic Services Officer; and
Ms. C. Donnelly, Democratic Services Officer.

Apologies

Apologies for inability to attend were received from Councillors Howard, McCullough and McCusker.

Minutes

The minutes of the meeting of 16th 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 recorded.

Delegated Matters

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

Licences Issued Under Delegated Authority

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

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

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

**Applications for the renewal of a Licence to operate a
House of Multiple Occupation for 4 Landseer Street**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 4 Landseer Street.

**Applications for the renewal of a Licence to operate a
House of Multiple Occupation for 7 Pretoria Street**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 7 Pretoria Street.

**Applications for the renewal of a Licence to operate a
House of Multiple Occupation for 29 St Ives Gardens**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 29 St Ives Gardens.

**Applications for the renewal of a Licence to operate a
House of Multiple Occupation for 4 Stranmillis Park**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 4 Stranmillis Park.

Applications for the renewal of a Licence to operate a House of Multiple Occupation for 4 Stranmillis Gardens

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 4 Stranmillis Gardens.

Applications for the renewal of a Licence to operate a House of Multiple Occupation for 50 Stranmillis Gardens

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 50 Stranmillis Gardens.

Applications for a new Licence to operate a House of Multiple Occupation for 32 Stranmillis Park

The HMO Unit Manager provided an overview of the application and explained that as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

He pointed out that the property was previously licensed as an HMO up and until 20th August 2019, at which time the licence had expired. Prior to the expiry of the licence, the NIHMO Unit had written to the owner on 13th August 2019 reminding him that the licence on the property was about to expire. On 2nd October 2019, an authorised officer from the HMO Unit had inspected the property and established that the property was occupied as an HMO by 5 individuals from more than 2 households.

He further advised that officers had written to Mr. Rafferty on 2nd October 2019 asking him if he had a reasonable excuse for operating the accommodation without it being licensed. As no such reasonable excuse was forthcoming, a Fixed Penalty Notice ("FPN") was issued on 14th October 2019 for the sum of £5000.00, offering Mr. Rafferty the opportunity of discharging any liability to conviction for the alleged offence, by

paying the fixed penalty. Mr. Rafferty accepted the opportunity and paid the FPN on the 28th October 2019.

On 28th November 2019, pursuant to Section 15 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, a Temporary Exemption Notice (TEN) was granted until 28th February 2020 after the owner specified the steps he would be taking, with a view to securing the accommodation ceases to be an HMO. The TEN was subsequently extended until 28th May 2020. On 17th July 2020 officers had confirmed that the property was no longer in HMO usage. On 13th February 2020 an application for a new HMO licence was submitted to the NIHMO Unit.

Following the publication of the application, an objection was received in relation to the application. The objection raised general concerns about the overprovision of HMOs in the Stranmillis HMO Policy Area.

The HMO Unit Manager informed the Committee that as it was a new application, the HMO Unit had consulted with the Council's Planning Service which confirmed that on 17th January 2020, a Certificate of Lawful Use or Development was granted with the planning reference **LA04/2019/2946/1de**.

For the purpose of determining whether or not the granting of a licence would result in an overprovision of HMOs in the locality of the accommodation, the locality was defined as being HMO Policy Area "HMO 2/19 Stranmillis" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.

The Committee agreed that Mr. Steven Rafferty, speaking on behalf of the applicant, Mr. Niall Rafferty, could address the Committee regarding the application for a new HMO for 32 Stranmillis Park.

Mr. Rafferty explained that because of miscommunications and inaccuracies provided by the HMO Office, the application process had been conducted extremely poorly and that it was the applicant's view that the application should have been considered by the HMO Office as a renewal and not a new application.

Mr. Rafferty advised that the applicant acknowledged that he had allowed the licence to lapse, however, there were several contributing factors, which included some health concerns and changes in the administration process undertaken by Belfast City Council after the Northern Ireland Housing Executive (NIHE) transferred its Statutory Registration Scheme. He added that at the time of the renewal, he was in the process of changing the managing agent for the property due to misconduct and bad management by the previous agent, however, this had not been accepted as a reasonable excuse for failing to renew the licence within the specified timeframe.

He further advised that the applicant had held a HMO licence for the property for the previous ten years without issue and that, previously, the NIHE would have provided many months' notice for renewal and that an NIHE officer would have made contact by telephone when a licence was due for renewal, a process not undertaken by Belfast City Council, which provided one week's notice before the licence was due to expire.

Mr. Rafferty further informed Members that the applicant opposed the assumption of overprovision in the Stranmillis area and that the HMO Policy Area “HMO 2/19 Stranmillis” did not represent a true socioeconomic picture of the area in 2020. He asked the Committee to take his submission into consideration and grant the HMO licence.

The Chairperson thanked Mr. Rafferty for his submission to the Committee and following discussion, the Committee agreed to defer the application for the Grant of a Licence to Operate a House of Multiple Occupation for 32 Stranmillis Gardens to its next meeting on 18th November, 2020.

Non-Delegated Matters

Houses in Multiple Occupation (HMO) Update

The HMO Unit Manager presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report or Summary of main Issues

1.1 Members will be aware that responsibility for HMO’s was transferred to local district councils in April 2019 with the enactment of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ‘2016 Act’.

1.2 Members expressed concern at the September’s licensing committee meeting about the ongoing issues in the Holylands and other areas associated with HMOs, particularly around ASB. It was agreed that officers would bring back a report to this meeting outlining what potential action could be taken under HMO legislation to address that and other more medium term priorities, for example amendments to the HMO legislation.

1.3 This paper provides Members with information regarding the action being taken by the NIHMO Unit to address ASB in HMO accommodation and details of the proposed review of the Houses in Multiple Occupation (HMO) Licensing Scheme.

2.0 Recommendations

2.1 The Committee is asked to note the additional measures which have been put in place to allow the NIHMO Unit to address ASB issues and the proposed review of the HMO Licensing Scheme.

3.0 Main report

Key Issues

Background

3.1 On the 20 February 2019 this committee approved the Standard Licensing Conditions for Houses in Multiple

Occupation (HMOs) in Northern Ireland. The conditions imposed within that document apply to all houses in multiple occupation (HMOs) in Northern Ireland, and will be attached to all licences as they are issued. They are imposed for the purpose of regulating both the management, use and occupation of the HMO, and its condition and contents.

- 3.2 Section 9 of the Standard Licensing Conditions require the licensee to have in place a policy / plan (approved in writing by the council) to deal with any anti-social behaviour linked to licensed premises, either directly or indirectly which is caused by or effects their tenants.
- 3.3 To assist owners and managing agents in the preparing of their anti-social behaviour plans, Members on the 20 February 2019 approved the guidance document 'Tackling Anti-Social Behaviour in HMO Properties, A Guide for Owners and Managing Agents'.
- 3.4 Only those properties licensed since the 1 April 2019 have the Standard Licensing Conditions and the requirement to have an ASB plan applied to them, this equates to 22% of licensed HMOs in Belfast. The remaining 78% of licensed HMOs retain the condition in place when they transferred from Statutory Registrations (granted by the NIHE) and became Licences pursuant to the provisions of The Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (Northern Ireland) 2019.
- 3.5 Section 10(6) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 sets out certain matters which the Council must have regard to in deciding whether an owner or managing agent is a fit and proper person. It also allows councils to take into account any other matter which it considers to be relevant. This cannot however include over provision or breach of planning control where the application is for renewal.
- 3.6 Amongst those mandatory considerations, the council must have regard to any anti-social behaviour engaged in by the owner/ manager the occupants and any anti-social behaviour which may affect their tenants. Officers are of the opinion that the Standard Licensing Conditions including the requirement for an anti-social behaviour ('ASB') Plan allows much more decisive action on the part of the Council and landlords alike when coupled with the progress that has been made on a number of issues recently which are discussed below.

Information Sharing Protocol

- 3.7 For a number of months Officers have been working on putting processes in place to ensure the proactive and managed sharing of internal data so as to effectively deal with complaints regarding HMO properties in the Belfast area. These arrangements were just recently formalised through an Information Sharing Protocol between the NIHMO Unit, Environmental Protection Unit (EPU), Public Health and Housing Unit (PHHU) and Cleansing Enforcement (CE).

Sharing Information with HMO Owners

- 3.8 The Information Sharing Protocol also regulates the arrangements for the sharing of data with HMO owners in circumstances where matters potentially affect their licence to operate the premises. This is an important development and a departure from our previous position which was based on GDPR concerns. The NIHMO unit will now share with HMO owners, where appropriate, the following information –

1. details of Warning Notices, Fixed Penalty Notices and Abatement Notices served in respect of HMO property concerning night time domestic/neighbourhood noise;
2. details of Warning Letters or Abatement Notices served in respect of HMO property concerning day time domestic/neighbourhood noise;
3. details of Abatement Notices served in respect of HMO property where a statutory nuisance has been established as a result of the accumulation of rubbish which may/has attract vermin;
4. details of Litter Clearing Notices and Fixed Penalty Notices served in respect of HMO property concerning litter and waste; and
5. details of Covid-2 Prohibition Notices which Council have been advised of by the PSNI in relation to your HMO property

- 3.9 On receipt of the aforementioned information, or on receipt of a complaint from any other source, the HMO owner must maintain a register of such complaints and advise the Council as to how the owner and/or the managing agent dealt with the problem. If a landlord fails to effectively deal with any reported ASB councils can consider varying or revoking the licence. All HMO landlords in Belfast have been advised of this development and that failure to deal with ASB may

affect their licence regardless of whether there is a condition requiring an ASB Plan to be in place.

- 3.10 A temporary resource (subject to further review) has been added to support the NIHMO unit to manage ASB complaints and communication with Landlords.

Varying HMO Licences

- 3.11 Pursuant to Section 22 of the 2016 Act the council can during the terms of an HMO licence vary the licence to remove, add or vary any conditions included in the licence.

- 3.12 Officers are considering how best to commence the process of varying the licences of those properties which are still under the old registration scheme conditions. This process can only be done on an individual case by case basis. The statutory process for varying a licence is cumbersome and any variation is subject to appeal in the Magistrates Court. Whilst courts have started sitting again, contested hearings for non-urgent cases are not proceeding so it is likely to be some time until any contested appeals would be concluded. It is not therefore considered that this is an immediately effective tool to deal with ASB presently occurring in some areas.

- 3.13 Officers are continuing to explore with the DfC the possibility of amending The Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (Northern Ireland) 2019 to apply the standard conditions around ASB to all deemed licences.

Review of the Houses in Multiple Occupation (HMO) Licensing Scheme.

- 3.14 Officers have been liaising with officials from the Department for Communities (DfC) to finalise the terms of reference for the review of the HMO Licensing Scheme and the legislative framework underpinning the Scheme.

- 3.15 The review will relate to the operation of the licensing of houses in multiple occupation in accordance with the Houses in Multiple Occupation Act (Northern Ireland) 2016 and the Houses in Multiple Occupation (Northern Ireland) Regulations 2019 which dictate how the licensing scheme should operate.

- 3.16 Officers have put forward suggestions that the review should include a detailed assessment of the resources necessary to meet the demands and expectations of the Departments and

relevant stakeholders. Officers have also suggested that the review should assess if there are any operational / legislative omissions, difficulties or teething issues experienced implementing HMO licensing which may require further development to enhance and improve the workings of the scheme.

- 3.17 The Department has proposed a collaborate approach to the review with councils, tenants and LANI and any other stakeholders identified.
- 3.18 The vast majority of public representations received in respect of licence applications relate to general concerns about ASB, over provision and breach of planning control rather than specific properties. Officers recognise that these have also been a cause of concern for Members, as was particularly highlighted at the September meeting. ASB has been addressed above and Members will be aware the legislation specifically precludes councils from having regard to these issues in respect of renewal applications. Representations have also been received in relation to the ability to apply for Certificates of Lawful Use and how that circumvents the limits placed on the number of HMO's in certain areas.
- 3.19 Officers would welcome the views of Committee as to issues it would like to see addressed in this Review and would ask that Committee agrees to hold a workshop to explore those issues.

Financial & Resource Implications

- 3.20 None

Equality or Good Relations Implications/Rural Needs Assessment

- 3.21 There are no issues associated with this report."

The Committee noted the additional measures which have been put in place to allow the NIHMO Unit to address ASB issues and during consideration of the proposed review of the HMO Licensing Scheme, it was

Moved by Councillor Smyth,
Seconded by Councillor McKeown,

That the Committee agrees that officers, when liaising with officials from the Department for Communities (DfC) to finalise the terms of reference for the review of

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the HMO Licensing Scheme and the legislative framework, recommend that local residents associations are included as stakeholders.

The Committee agreed to the proposal.

Chairperson