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| Subject: | Application for a New Licence to operate a House of Multiple Occupation for Flat 2, 3 Ireton Street, Belfast, BT7 1LH |
| Date: | 15 June 2022 |
| Reporting Officer: | Kevin Bloomfield, HMO Unit Manager, Ext. 5910 |
| Contact Officer: | Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, Divisional Solicitor, Ext. 6049 |

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| 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 | To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO). <table border="1"><thead><tr><th>Premises</th><th>Application No.</th><th>Applicant(s)</th><th>Managing Agents</th></tr></thead><tbody><tr><td>Flat 2, 3 Ireton Street, Belfast, BT7 1LH</td><td>9108</td><td>Mr Michael Clarke</td><td>Anthony Jamieson Estate Agents</td></tr></tbody></table> | Premises | Application No. | Applicant(s) | Managing Agents | Flat 2, 3 Ireton Street, Belfast, BT7 1LH | 9108 | Mr Michael Clarke | Anthony Jamieson Estate Agents |
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| Flat 2, 3 Ireton Street, Belfast, BT7 1LH | 9108 | Mr Michael Clarke | Anthony Jamieson Estate Agents | | | | | | |
| 1.2 | Members are reminded that licences are issued for a 5-year period with standard conditions. Where it is considered necessary to do so, the Committee can also impose special conditions. <u>Background</u> | | | | | | | | |
| 1.3 | The property had the benefit of an HMO licence granted by the Northern Ireland Housing Executive (“NIHE”) which expired on the 28 February 2021. | | | | | | | | |
| 1.4 | Mr. Clarke applied to renew his licence on the 23 February 2021, however on the 26 March 2021 he emailed the NIHMO Unit withdrawing the application “due to a recent outcome with a separate HMO application”. (Appendix 2) | | | | | | | | |
| 1.5 | The outcome of the application referenced in Mr. Clarke’s email of the 26 March 2021 is summarised in Appendix 3 . | | | | | | | | |
| 1.6 | On the 21 February 2022 Mr. Clarke submitted an application for a new HMO licence for the accommodation. | | | | | | | | |

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| 2.0 | Recommendations |
| 2.1 | <p>Taking into account the information presented Committee is asked to hear from the Applicant and make a decision to either:</p> <ul style="list-style-type: none"> (i) Grant the application, with or without any special conditions; or (ii) Refuse the application. |
| 2.2 | <p>If the application is refused, the Applicants have a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision.</p> |
| 3.0 | Main report |
| 3.1 | <p><u>Key Issues</u></p> <p>Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:</p> <ul style="list-style-type: none"> a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control; b) the owner, and any managing agent of it, are fit and proper persons; c) the proposed management arrangements are satisfactory); d) the granting of the licence will not result in overprovision of HMOs in the locality; e) the living accommodation is fit for human habitation and— <ul style="list-style-type: none"> (i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or (ii) can be made so suitable by including conditions in the licence. <p><u>Planning</u></p> <p>3.2 As this is a new application the Council’s Planning Service was consulted. It confirmed that a Certificate of Lawful Existing Use or Development (“CLEUD”) was granted with the planning reference LA04/2021/1955/LDE.</p> <p><u>Fitness</u></p> <p>3.3 When considering the fitness of an applicant the Council must have regard to any offences concerning fraud/ dishonesty, violence, drugs, human trafficking, firearms, sexual offences, unlawful discrimination in, or in connection with, the carrying on of any business; or any provision of the law relating to housing or of landlord and tenant law. It also permits the Council to take into account any other matter which the council considers to be relevant.</p> <p>3.4 The NIHMO Unit has consulted with the following units within the Council’s City and Neighbourhood Services Department –</p> <ul style="list-style-type: none"> (a) Environmental Protection Unit (“EPU”) - who have confirmed that in relation to night-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years, (b) Environmental Protection Unit (“EPU”) - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years, |

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| | <p>(c) Public Health and Housing Unit (“PHHU”) - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years,</p> <p>(d) Enforcement Unit (“EU”) - who have confirmed that in relation to litter and waste, there has been no relevant enforcement action required in respect of the HMO in the last 5 years,</p> |
| 3.5 | The Applicants and Managing Agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.3 of this report. |
| 3.6 | The Applicant or Managing Agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and EU, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the Applicant, Managing Agent or occupants. Due to data protection issues which have recently arisen, PSNI have not been accepting or responding to notification of these applications. Officers are continuing to engage with PSNI to find a resolution to this issue. |
| | <u>Overprovision</u> |
| 3.7 | 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, and in order to ensure consistency as both a planning and licensing authority the locality was defined as being HMO Policy Area “HMO 2/22 Botanic, Holylands, Rugby” as defined in the document “Houses in Multiple Occupation (HMO’s) Subject Plan for Belfast City Council Area 2015”. |
| 3.8 | Legal Services has advised that there is a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision. |
| 3.9 | On the date of assessment, 12 May 2022 there were a total of 1107 licensed HMOs in HMO policy area “HMO 2/22 Botanic, Holylands, Rugby” which equates to approximately 46% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1107 licensed HMOs have a capacity of 5026 persons. |
| 3.10 | The total number of dwelling units in a Policy Area is measured by Ordnance Survey’s Pointer database. |
| 3.11 | The Council must also consider the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need. |
| 3.12 | The Council recognises that there is a need for intensive forms of housing and to meet this need, HMOs are an important component of this housing provision. HMOs, alongside other accommodation options within the private rented sector, play an important role in meeting the housing needs of people who are single, who have temporary employment, students, low-income households and, more recently, migrant workers. |
| 3.13 | In September 2017, The Housing Executive published the document “Housing Market Analysis Update – Belfast City Council Area” which states “HMOs form an important element of the PRS, particularly for younger people on low incomes and for single people, under the age of 35, affected by the limitation of housing benefit to the shared room rate. Anecdotal evidence also indicates that this has been a popular sector with migrant workers.” |
| 3.14 | On the 04 May 2022 there were 25 licensed HMOs advertised for let on the website Property News in HMO policy area “HMO 2/22 Botanic, Holylands, Rugby”, <i>from the information provided on the website this represented 95 bed spaces</i> . The advertisements indicated that |

availability of the accommodation varied from 2 HMOs for immediate occupancy, representing 6 bed spaces, with the rest available for occupancy at various times until the 29 September 2022.

3.15 Anecdotal evidence from conversations with HMO managing agents suggest that there is currently a lack of HMO accommodation available in the locality.

3.16 The fact the use of the property as an HMO is permitted for planning purposes is a relevant consideration in determining whether the grant of this licence will result in overprovision. There is an argument that it may not do so as the premises are already being used as an HMO.

3.17 However, it should be borne in mind that planning permission was granted on the basis that the use had been established for 5 or more years and was therefore immune to enforcement. No assessment of overprovision was made at that time. Given the level of licensed HMO properties in this locality as set out above it would be highly unlikely that a planning application for a new HMO in the area would be successful as the thresholds in the 2015 Plan have been significantly exceeded.

3.18 Officers are therefore of the opinion that it is too early to tell whether there is a temporary lack of HMO accommodation in the locality or evidence of an emerging long-term supply issue.

Objections

3.19 No objections have been received in relation to this application.

Attendance

3.20 The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting.

Suitability of the premises

3.21 The accommodation was certified as complying with the physical standards for an HMO by a technical officer from the NIHMO service on the 16 April 2022

Notice of proposed decision

3.22 On the 17 May 2022, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, Officers issued a Notice of Proposed Decision to the Applicant setting out the terms of the proposed licence. **Appendix 4**

3.23 The Notice of Proposed Decision stated that the council proposed to refuse the licence on the grounds of overprovision. A statement of reasons for the proposal was included in the Notice of Proposed Decision.

Applicant's response to the notice of proposed decision

3.24 On the 1 June 2022 Logan & Corry Solicitors on behalf of the applicant submitted a written response to the notice of proposed decision (**Appendix 5**).

3.25 Reference is made to the perceived lack of accommodation in the locality and to protests by students at Stormont in September 2021. They also suggest that PBMSA according to the NUS-USI is not the answer to the perceived supply issue due to cost considerations.

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| 3.26 | Logan & Corry submits that the Council's approach to the proposed decision is misguided and amounts to an error of law. The question is not whether this is a temporary problem or a long-term problem. The only question is whether there is a problem (i.e. a lack of HMO accommodation) at the time that the Applicant's application is determined. |
| 3.27 | They further suggest that the Council rationale for refusing the application on the grounds of overprovision appears to be based wholly on the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015, stating the document does not take into account the need for HMO accommodation in the area at this time. They state that the inference from the notice of proposed decision is that the Council has treated itself as bound by the Plan, or at the very least afforded the Plan irrational weight. |
| <u>Officers' comments further to the applicant's response</u> | |
| 3.28 | As the current application was received after the expiry of the previous licence this application is a new licence application and, in accordance with Section 8(2)(d) of the 2016 Act, the Council may grant the licence only if it is satisfied that the granting of the licence will not result in over provision of HMOs in the locality in which the living accommodation is situated. |
| 3.29 | When considering over provision the council must have regard to: (a) the number and capacity of licensed HMOs in the locality; (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need; and, (c) such other matters as the Department may by regulations specify. |
| 3.30 | Officers recognise that there is a high demand for HMO type accommodation in HMO policy area "HMO 2/22 Botanic, Holylands, Rugby" at this time. However, in Officers view the evidence available does not demonstrate a clear need for HMO accommodation at this time. The Committee is entitled to adopt a precautionary approach as this is the only occasion in respect of which overprovision can be taken into account in an area where the level of HMO accommodation already exceeds the limit set out in the HMO Subject Plan by over 50%. |
| 3.31 | In relation to the criticism regarding reliance upon the HMO Subject Plan, it appears that the applicant's solicitor has misunderstood the nature of this document. It is not an internal Council Policy. It is a publicly available planning policy document which is used to assess planning applications for HMOs in Belfast. The overall aim of the Subject Plan is to provide a planning framework for HMO development in facilitating sustainable growth and encouraging balanced communities by promoting a mix of housing tenures and types and the creation of quality-built environments which contribute to the achievement of safe, complete and balanced communities for people to live in. |
| 3.32 | Officers are of the view that it is entirely reasonable and rationale to use this Plan as a basis for assessing overprovision. This allows for some level of certainty for property owners, prospective purchasers and the general public in relation to the acceptable level of HMO properties in a particular area. Regardless of the fact that the Council did not draft this document, it is a material consideration and one which the Council is entitled to have regard to. The weight to be attached to the HMO Subject Plan is a matter for the Committee having regard to all other material considerations. |
| Financial and Resource Implications | |
| 3.33 | None. The cost of assessing the application and officer inspections are provided for within existing budgets. |

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| 3.34 | <p>Equality and Good Relations Implications</p> <p>There are no equality or good relations issues associated with this report.</p> |
| 4.0 | Appendices – Documents Attached |
| | <ul style="list-style-type: none"> • Appendix 1 – Location Map • Appendix 2 – Email received on 26 March 2021 • Appendix 3 – Outcome of the application referenced in Mr. Clarke’s email of the 26 March 2021 • Appendix 4 – Notice of Proposed Decision dated 17 May 2022 • Appendix 5 – Applicant’s response to proposed decision |