

# Licensing Committee

Wednesday, 21st February, 2024

## MEETING OF THE LICENSING COMMITTEE

HELD IN THE LAVERY ROOM AND  
REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor McKeown (Chairperson);  
Aldermen McCoubrey, McCullough and Rodgers;  
Councillors Anglin, Bradley, P. Donnelly, Doran,  
D. Douglas, Lyons, Murray,  
F. McAteer, McCabe, McCann,  
McMullan, Ó Néill and Smyth.

In attendance: Ms. K. Bentley, Director of Planning and Building Control;  
Ms. N. Largey, City Solicitor/Director of Legal and  
Civic Services;  
Mr. S. Hewitt, Building Control Manager;  
Mr. K. Bloomfield, HMO Manager;  
Mr. C. McLaughlin, Solicitor (Regulatory and Planning); and  
Mrs. L. McLornan, Democratic Services Officer.

### **Apologies**

An apology for inability to attend was reported from Councillor Gormley.

### **Minutes**

The minutes of the meeting of 17th January, 2023 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 February, 2024, 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 a list of applications for licences which had, since its last meeting, been approved under the Council's Scheme of Delegation.

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

The Committee noted a list of applications which had been approved under the Council's Scheme of Delegation during January 2024.

**Application for a New Licence to operate a House  
of Multiple Occupation for 22 Penrose Street**

The Houses in Multiple Occupation (HMO) Manager presented the details of the application to the Committee. He highlighted to the Members that the application was not subject to call-in, as the call-in period would exceed the time limit for determining the application pursuant to Schedule 2, Paragraph 2, of the 2016 Act and, therefore would be in breach of a statutory duty

He explained that the property had had the benefit of an HMO licence issued by the Housing Executive in the name of the applicant which expired on 19th August, 2023. Due to an administrative oversight, a reminder letter was not sent to the applicant, informing him that the licence was about to expire. On 24th September, 2023, an HMO licence application was received from the owner of the accommodation.

The HMO Manager outlined that, pursuant to the 2016 Act, the Council could only grant a licence if it was satisfied that:

- 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, were fit and proper persons;
- c) the proposed management arrangements were satisfactory;
- d) the granting of the licence would not result in overprovision of HMOs in the locality;
- e) the living accommodation was fit for human habitation and—
  - i. was suitable for occupation as an HMO by the number of persons to be specified in the licence, or
  - ii. could be made so suitable by including conditions in the licence.

The Committee was advised that, as it was a new application, the Council's Planning Service was consulted. It had confirmed that full planning permission for use as an HMO was granted on 25th February, 2008.

It was reported that the NIHMO Unit had consulted with the Environmental Protection Unit in relation to daytime noise; the Public Health and Housing Unit in relation to rubbish accumulation/filthy premises; and the Enforcement Unit in relation to litter and waste and all had confirmed that there had been no relevant enforcement action required in respect of any of the issues in the HMO in the last 5 years. The Environmental Protection Unit confirmed that three noise warning notices had been issued in relation to nighttime noise, dated 30th August 2020, 16th August 2021 and 19th May 2022. The

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applicant had confirmed that they had not been convicted of any relevant offences under the 2016 Act.

For the purpose of Section 12(2) of the 2016 Act, the Council had determined the locality of the accommodation as being Housing Management Area (HMA) "2/22 Botanic, Holylands, Rugby" as defined in the document Council's Local Development Plan Strategy, which was formally adopted on 2nd May, 2023. It was reported that Legal Services had advised that there was a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence would not result in overprovision.

The officers had had regard to:

- a) the number and capacity of licensed HMOs in the locality; and
- b) the need for housing accommodation in the locality and the extent to which HMO accommodation was required to meet that need.

To inform the Council in its consideration of the above provisions, the Council had taken account of the 2023 Strategy given that "Nurturing sustainable and balanced communities was a fundamental aim of the LDP's housing policies." In particular, the Council had considered Policy HOU10, which stated:

"Within designated HMAs, planning permission will only be granted for Houses in Multiple Occupation (HMOs) and/or flats/apartments where the total number of HMOs and flats/apartments combined would not as a result exceed 20% of all dwelling units within an HMA."

The Committee was advised that, on the date of assessment, 17th January, 2024, 90% of all dwelling units in policy area HMA 2/22 were made up of HMOs and flats/apartments, which in turn exceeded the 20% development limit as set out in Policy HOU10. There were 1095 (45%) licensed HMOs with a capacity of 4808 persons in that HMA.

It was outlined that there were a total of 2409 dwelling units in HMA 2/22. The Committee was advised that the fact that the use of the property as an HMO was permitted for planning purposes was a relevant consideration in determining whether the granting of the licence would result in overprovision.

The Houses in Multiple Occupation Manager reminded the Committee that there was a need for intensive forms of housing and, to meet that demand, HMOs were an important component of the housing provision. HMOs, alongside other accommodation options within the private rented sector, played an important role in meeting the housing needs of people who were single, who had temporary employment, students, low income households and, more recently, migrant workers and asylum seekers.

The Committee was advised that, on 17th January, 2024, out of 38 premises available for rent within the BT7 area on PropertyNews.com there were 11 licensed HMOs which, from the information presented on the website, represented 43 bed spaces. The HMO Manager advised the Committee that anecdotal evidence from previous

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conversations with HMO managing agents suggested that that there was currently a lack of HMO accommodation available in that locality.

On 7th December, 2022, the Ulster University Director of Campus Life advised the Council's City Growth and Regeneration Committee that there was an "increase in competition for HMOs particularly from NIHE, Immigration Services and statutory agencies and there were increasing accommodation issues across the housing sector which required a holistic view and should include the consideration of international students, families and graduates looking for professional accommodation."

However, the QUB Director of Student Plus had confirmed that the current trend indicated a significant move of students to purpose-built student accommodation blocks. She had advised the Members that there were 7,000 purpose built managed student accommodation (PBMSA) rooms in the city, the majority having been built since 2018, and approximately 5,000 in the city centre.

It was reported that November 2023 monitoring information produced by the Council's Planning Service for PBMSA indicated that 2055 bedspaces were currently under construction with an operational date of 2024.

Therefore, with the continued expansion of the PBMSA sector and students transitioning from private rentals to PBMSAs, it was too early to tell whether the increased competition from non-students for HMOs was a temporary problem which could be managed by the contraction in students residing in existing HMO accommodation within the locality, or evidence of an emerging long-term supply issue.

The Houses in Multiple Occupation Manager explained that, in assessing the number and capacity of licensed HMOs, as well as the need for HMO accommodation in the locality, officers could not be satisfied that the granting of the HMO licence would not result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

The Committee was advised that no objections had been received in relation to the application. It was also reported that the accommodation had been certified as complying with the physical standards for an HMO for three persons by a technical officer from the NIHMO service, on 23rd November, 2023.

On 17th January, 2024, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, officers had issued a Notice of Proposed Decision to the Applicant advising that it was proposing to refuse the licence on the grounds of overprovision. The Members were advised that a response had not been received from the applicant.

Moved by Councillor Murray  
Seconded by Councillor McCann and

Resolved – that the Committee agrees to refuse the application as, in accordance with Section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, it was satisfied that the granting of the HMO

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licence would result in overprovision of HMO accommodation in the locality of the accommodation, as determined under section 8(2)(d) of the Act; and

while recognising that there was no legal duty upon the Council to remind HMO owners when their licence was due to expire, officers should, out of courtesy, make a concerted effort to issue letters to that effect.

**Application for a New Licence to operate a House of Multiple Occupation for 71 Eglantine Avenue**

The Houses in Multiple Occupation (HMO) Manager outlined the details of the application to the Committee.

He explained that the property had had the benefit of an HMO licence issued by the Housing Executive in the name of the previous owner, who was a Director of S&B Properties N.I. Ltd., which had expired on 10th June, 2023. On 2nd October, 2023, the applicant had purchased the property and, in accordance with Section 28 (2) of the Houses in Multiple Occupation Act (NI) 2016, the existing licence ceased to have effect on the date ownership transferred.

On 24th April, 2023, an application for a new HMO licence was received from S&B Properties N.I. Ltd., which was subsequently rejected on 5th May, 2023, as the Council could not be satisfied that the occupation of the living accommodation as an HMO would not constitute a breach of planning control. An application for a temporary exemption notice was issued on 30th August, 2023, and subsequently extended to 1st March, 2024.

The Members were advised that on 14th November, 2023, an HMO licence application was received from the owner of the accommodation. If the new owner had applied for a licence before the change of ownership had taken place, the licence which was already in effect in respect of the HMO would have been treated as being held by the new owner until such times as the application had been determined.

The HMO Manager outlined that, pursuant to the 2016 Act, the Council could only grant a licence if it was satisfied that:

- f) the occupation of the living accommodation as an HMO would not constitute a breach of planning control;
- g) the owner, and any managing agent of it, were fit and proper persons;
- h) the proposed management arrangements were satisfactory;
- i) the granting of the licence would not result in overprovision of HMOs in the locality;
- j) the living accommodation was fit for human habitation and—
  - iii. was suitable for occupation as an HMO by the number of persons to be specified in the licence, or
  - iv. could be made so suitable by including conditions in the licence.

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The Committee was advised that, as it was a new application, the Council's Planning Service was consulted. It had confirmed that a Certificate of Lawful Existing Use or Development ("CLEUD") was granted on 10th November, 2023.

It was reported that the NIHMO Unit had consulted with the Environmental Protection Unit in relation to nighttime and daytime noise; the Public Health and Housing Unit in relation to rubbish accumulation/filthy premises; and the Enforcement Unit in relation to litter and waste and all had confirmed that there had been no relevant enforcement action required in respect of any of the issues in the HMO in the last 5 years. The owners of S& B Properties N.I. Ltd. had confirmed that they had not been convicted of any relevant offences pursuant to the 2016 Act.

For the purpose of Section 12(2) of the 2016 Act, the Council had determined the locality of the accommodation as being Housing Management Area (HMA) "2/09 Eglantine" as defined in the document Council's Local Development Plan Strategy, which was formally adopted on 2nd May, 2023. It was reported that Legal Services had advised that there was a clear requirement in section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence would not result in overprovision.

The officers had had regard to:

- a) the number and capacity of licensed HMOs in the locality; and
- b) the need for housing accommodation in the locality and the extent to which HMO accommodation was required to meet that need.

To inform the Council in its consideration of the above provisions, the Council had taken account of the 2023 Strategy given that "Nurturing sustainable and balanced communities was a fundamental aim of the LDP's housing policies." In particular, the Council had considered Policy HOU10, which stated:

"Within designated HMAs, planning permission will only be granted for Houses in Multiple Occupation (HMOs) and/or flats/apartments where the total number of HMOs and flats/apartments combined would not as a result exceed 20% of all dwelling units within an HMA."

The Committee was advised that, on the date of assessment, 1st February, 2024, 95% of all dwelling units in policy area "HMA 2/09 Eglantine" were made up of HMOs and flats/apartments, which in turn exceeded the 20% development limit as set out in Policy HOU10. There were 259 (22%) licensed HMOs with a capacity of 1297 persons in that HMA.

It was outlined that there were a total of 1175 dwelling units in HMA 2/09. The Committee was advised that the fact that the use of the property as an HMO was permitted for planning purposes was a relevant consideration in determining whether the granting of the licence would result in overprovision.

The Houses in Multiple Occupation Manager reminded the Committee that there was a need for intensive forms of housing and, to meet that demand, HMOs were an important component of the housing provision. HMOs, alongside other accommodation

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options within the private rented sector, played an important role in meeting the housing needs of people who were single, who had temporary employment, students, low income households and, more recently, migrant workers and asylum seekers.

The Committee was advised that, on 1st February, 2024, out of 69 premises available for rent within the BT9 area on PropertyNews.com there were 9 licensed HMOs which, from the information presented on the website, represented 40 bed spaces. The HMO Manager advised the Committee that anecdotal evidence from previous conversations with HMO managing agents suggested that there was currently a lack of HMO accommodation available in that locality.

He reiterated that the Ulster University Director of Campus Life, in December 2022, had advised the Council's City Growth and Regeneration Committee that there was an "increase in competition for HMOs particularly from NIHE, Immigration Services and statutory agencies and there were increasing accommodation issues across the housing sector which required a holistic view and should include the consideration of international students, families and graduates looking for professional accommodation."

However, the QUB Director of Student Plus had confirmed that the current trend indicated a significant move of students to purpose-built student accommodation blocks. She had advised the Members that there were 7,000 purpose built managed student accommodation (PBMSA) rooms in the city, the majority having been built since 2018, and approximately 5,000 in the city centre.

The Committee was reminded that recent monitoring information produced by the Council's Planning Service for PBMSA indicated that 2055 bedspaces were currently under construction with an operational date of 2024.

Therefore, with the continued expansion of the PBMSA sector and students transitioning from private rentals to PBMSAs, it was too early to tell whether the increased competition from non-students for HMOs was a temporary problem which could be managed by the contraction in students residing in existing HMO accommodation within the locality, or evidence of an emerging long-term supply issue.

The Houses in Multiple Occupation Manager explained that, in assessing the number and capacity of licensed HMOs, as well as the need for HMO accommodation in the locality, officers could not be satisfied that the granting of the HMO licence would not result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.

The Committee was advised that no objections had been received in relation to the application.

It was reported that the accommodation had been certified as broadly compliant with the physical standards for an HMO by a technical officer from the NIHMO service, on 24th November, 2023, with some minor works to be completed.

On 1st February, 2024, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, officers had issued a Notice of Proposed

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Decision to the Applicant advising that it was proposing to refuse the licence on the grounds of overprovision. The Members' attention was drawn to the applicant's response.

The Chairperson then welcomed Mr. E. McCarthy, Barrister, representing the applicants, to the meeting. He advised the Committee that:

- in 2021, having acted upon legal advice, the owners transferred the property and 2 others, into a limited company, of which they were directors;
- the applicants ran a day nursery on the ground floor of the site of nos. 67, 69 and 71 Eglantine Avenue, and the upper floors provided accommodation for some of the daycare staff;
- the accommodation was much more generous in size than the minimum standards requirements for an HMO;
- the applicants understood that a licence application should have been made before the transfer of ownership had been completed and had apologised for that oversight;
- the reason for refusal given by officers was "overprovision", yet it was a case of replacing one HMO with another in exactly the same location; and
- had the applicants not transferred the property to a company, and had simply renewed the application, "overprovision" would not have applied.

The Chairperson thanked Mr. McCarthy for his attendance.

In response to a Member's query, the Solicitor confirmed that the Committee was bound to take overprovision into consideration as it was a new application.

In response to a further Member's question regarding setting a precedent, the Solicitor confirmed that the Committee had taken a consistent approach towards previous applications, each with varying personal circumstances, and that the Committee had not deviated from applying the policy to date.

Moved by Councillor O'Neill,  
Seconded by Councillor McCann,

Resolved – that the Committee agrees to refuse the application as, in accordance with Section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, it was satisfied that the granting of the HMO licence would result in overprovision of HMO accommodation in the locality of the accommodation, as determined under section 8(2)(d) of the Act.



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**Non-Delegated Matters**

**Pavement Cafe Licensing – Dfl in attendance**

The Chairperson welcomed Mr. D. Healy, Divisional Manager at Dfl Roads Western Division, to the meeting.

He advised the Committee that, since the original pavement café legislation had been proposed, the Department for Infrastructure (Dfi) had been compiling a document to assist its staff in ensuring consistency across Northern Ireland.

He outlined that initial work on the guidance, up to 2020, had only reached draft stage as there had been a number of issues around consistency as well as getting agreement with Councils and disability groups.

The Committee was advised that the unpublished draft guidance had been used by Dfi staff in assessing Pavement Cafes to date. However, having been prompted by Belfast City Council's adoption of its permanent Pavement Café Licensing scheme, he had since been tasked, as Chair of the Network Planning Committee, to bring the draft guidance forward.

Mr. Healy explained that a number of amendments had been made in terms of suitable footway widths. He outlined that Dfi relied upon a number of different guides in terms of what were deemed acceptable footway widths. He stated that the minimum standard was 2metres but within each guidance document there were instances where that distance could be reduced. He pointed out that, in the Chartered Institution for Highways and Transportation "Planning for Walking" document, it suggested an absolute minimum of 1.8metres clearance, whereas the Inclusive Mobility document specifically relating to pavement cafes suggested that 1.5metre clear space should be regarded as a minimum acceptable distance.

He explained that the new guidance document from Dfi would draw upon the guidance from the various complementary documents and would consider in what circumstances a pavement café could operate with less than 2metres clearance. He outlined that Dfi would seek to produce guidance which was acceptable to Councils and to disability groups. He explained that the new document would look to assess applications for a pavement café where it had less than 2metres clearance of footway width.

The Members were advised that the updated draft guidance had been issued to Councils and disability groups in early January 2024. A meeting had subsequently been held with those groups on 18th January, 2024, with a number of amendments having been made as a result of the consultation. A further version of the guidance had been issued to stakeholders on 19th February, 2024 and Dfi was currently awaiting feedback.

The Committee was advised that, once the guidance was completed, it would go through the Department's Equality Screening assessment in advance of its publication.

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Mr. Healy confirmed to the Committee that the guidance would be a “live” document and would continue to evolve over time but would hopefully help to ensure consistency across all Council areas.

In response to a Member’s question regarding the most recent version of the guidance, the Building Control Manager advised the Committee that, while officers had only had sight of it two days previously, they had been working closely with the Department in respect of the guidance and that the guidance produced by the Council and the DfI seemed to be well aligned.

The Chairperson emphasised that it was important that the guidance was not set in stone so as to adopt best practice, learn from lived experience, and that it was ultimately people-centred and not policy-centred.

In response to a Member’s query, Mr Healy confirmed that only in certain circumstances should applicants be permitted to have less than 2metres footway clearance, such as in areas of very low pedestrian footfall.

A further Member queried how individual applications would be adjudicated, including who would decide if it was acceptable for a pavement café to operate if there was less than 2metres clearance available, and if there would be an appeal mechanism. In response, Mr. Healy explained that there was a section in the guidance outlining scenarios where less than 2metres clearance could be acceptable, where it would be up to the applicant to demonstrate that the pedestrian flow adjacent to the property was sufficiently low to lessen the risk of anyone on the footpath being impeded, or in areas of not more than 2metres long, known as pinch points. The Committee was advised that the information would also be verified by DfI staff on the ground.

A further Member queried how the appeals process would operate. The Building Control Manager outlined that the only right of appeal would be from applicants, if their application for a pavement café was refused. He explained that the Committee would be asked to consider any applications which had been refused by officers and were being appealed by applicants, but he clarified that users who felt disadvantaged by a pavement café would not have a right of appeal.

After discussion, a number of Members stated that it was important that the parameters were clear for officers and applicants, in order to provide reassurance to everyone.

The Chairperson thanked Mr. Healy for his attendance and the update which he had provided.

Chairperson