



Subject:	Public and Private Land
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

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	The Committee will recall, at your September Committee meeting, considering an application from Mr Brian McGeown of Aether & Echo for a Street Trading Licence to enable Mr McGeown to apply to the Petty Sessions Court for an Occasional Liquor Licence. The licence facilitated the operation of a bar facility outside their premises for an outdoor musical event, on land owned by the Department of Regional Development ('DRD') and thus regarded as public land.
1.2	DRD had given its consent for the use of the land by Aether and Echo, under Article 72 of the Roads (Northern Ireland) Order 1993. This consent was given to accommodate the erection of scaffolding, hoardings, etc on a road which allowed the applicant possession of a portion of that road for a short period of time which enabled Mr McGeown to provide an outdoor musical event.
1.3	At your September meeting, you also requested that a report was submitted to a future meeting outlining the criteria for determining if an Entertainments Licence was required for an event taking place on public land.
2.0	Recommendations
2.1	The Committee is requested to consider the report, information and recommendations and agree: <ul style="list-style-type: none">That, from 1st January 2016, where an outdoor musical event is proposed on land in respect of which the DRD have issued a Consent pursuant to Article 72, the organiser must apply for an Entertainments Licence.

3.0	Main report
	<p data-bbox="261 228 416 255"><u>Key Issues</u></p> <p data-bbox="150 259 1444 322">3.1 Consent to erect scaffolding, hoardings etc on a road is granted by virtue of Article 72 of The Roads (Northern Ireland) Order 1993..</p> <p data-bbox="150 362 1444 425">3.2 When making application for consent the applicant is required to provide the following information to undertake the above operations on a public road:</p> <ul data-bbox="274 461 1286 622" style="list-style-type: none"> • A description of the works • The location of the works • The name and permanent address of the applicant • A drawing showing the nature of the work (where appropriate), and • Details of the appropriate planning approval including drawings if relevant. <p data-bbox="150 663 962 694">3.3 The applicant shall also undertake to do the following:</p> <ul data-bbox="274 730 1369 1904" style="list-style-type: none"> • Indemnify the Department against any claims in respect of injury, loss or damage arising from the works. • The applicant is required to make such monetary deposit as the Department shall assess against the proper undertaking and satisfactory completion of the works. An estimate of the deposit likely to be required can be obtained by applying the rates contained on the attached leaflet. • A Consent and a receipt for the deposit will be issued by the Section Office together with a Permanent Restoration Notice. Where necessary a specification showing the standard for the work will be included. • The deposit is returned to the applicant when the Restoration Notice has been received by the Department and no damage has been done to the road or if this damage is covered under an Article 78 consent. <ul data-bbox="322 1267 1369 1469" style="list-style-type: none"> – If the road has been damaged the deposit will be withheld until the damage has been repaired to the satisfaction of the Department. – If a reinstatement has been made the deposit will not be returned until six months has elapsed from receipt of the Restoration Notice and the work is completed to the satisfaction of the Department and in accordance with the current specification for reinstatement. • The applicant shall be responsible for traffic safety and control in accordance with Chapter 8 of the Traffic Signs Manual during the execution of the works. • Any person aggrieved by the refusal of the Department to give its consent under Article 72 (2) of the Roads (NI) Order 1993 or any condition subject to which any such consent is given, may, within 21 days of receiving notice thereof, appeal to the Planning Appeals Commission by notice in writing under Article 84 of the Roads (NI) Order 1993. • In the instant case, the applicant must ensure that the public have access to walk through Lower Garfield Street and that there is a 2 metre pedestrian access provided. <p data-bbox="150 1944 1444 2002">3.4 Licensing of Places of Entertainment is governed by Schedule 1, Article 3 of the Local Government (Miscellaneous Provisions) (NI) Order 1985.</p>

3.5	<p>Paragraph 2 of Schedule 1, Article 3 states:</p> <p>‘Licensing of outdoor musical entertainments’</p> <p>(1) An entertainment to which this paragraph applies shall not be provided at any place except under and in accordance with the terms of a licence granted under paragraph 3, by the council for the district in which the place is situated.</p> <p>(2) This paragraph applies to any public musical entertainment which is held-</p> <p>(a) wholly or mainly in the open air; and</p> <p>(b) at a place on private land.</p> <p>(3) For the purposes of this paragraph-</p> <p>(a) an entertainment is musical if music or singing is a substantial ingredient; and</p> <p>(b) land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee.</p> <p>(4) This paragraph does not apply-</p> <p>(a) to a garden fete, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two or more days; or</p> <p>(b) to a religious meeting or service, merely because music or singing is incidental to it.”</p>
3.6	<p>The 1985 Order does not define ‘private land’ over and above the definition provided at paragraph 3(b).</p>
	<p><u>Legal Opinion</u></p>
3.7	<p>Paragraph 2(3)(b) of Schedule 1, Article 3 of the Local Government (Miscellaneous Provisions) (NI) Order 1985 provides that "land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee."</p>
3.8	<p>It could be construed that if a business owns land, or has obtained permission from the owner, (in this case the Transport NI who owns the land) to effectively occupy the land, then it may fall under the definition of ‘private land.’</p>
3.9	<p>Conversely, if the land is considered public land, and the applicant did not obtain the consent from the owner of the land (in this case the Transport NI) , it would be considered public land in respect of which the Council would have no control under the 1985 Order.</p>
3.10	<p>Roads are maintained by Transport NI by virtue of The Roads (Northern Ireland) Order 1993. Under Article 2 of said Order, the reference to ‘a road’ means a public road, which is maintainable by the Department and includes–</p> <ul style="list-style-type: none"> • a road which the public have a right of way on foot only, not being a footway; • any part of a road; and • any bridge or tunnel over or through which a road passes.
3.11	<p>Article 71 of the Order prohibits the erection of any building, wall or fence on a road otherwise than in the exercise of a statutory power; in pursuance of a consent given by the</p>

	Department under the 1993 Order; or in pursuance of a Street Trading Licence.
3.12	We have also examined the circumstances in which the Department could issue a Consent under the 1993 Order. These appear to be primarily in relation to carrying out works on or under the road such as excavation, works to drains or the erection of shelters by a district council by way of a request under Article 72 of the said Order.
3.13	Whilst it is clear that the provision of entertainment at such a location is not pursuant to a statutory power, the Department has consented to such requests by the applicant, to use the land, by virtue of the grant of an Article 72 Consent. The Department is thereby giving its permission to the applicant to occupy the land for a specified period of time subject to certain conditions. In addition to this, the applicant erected barriers around that land, thereby controlling the entry of patrons onto it. The land, for that period of time, therefore falls under the definition of "private land" for the purposes of Paragraph 2 (3)(b) of Schedule 1, Article 3 of the 1985 Order .
3.14	As set out above, granting a Consent does not transfer ownership. It is permission to occupy land for a specified period of time. The Department would have to pass legislation in order to change the classification of a road from public to private. Therefore the grant of a Consent does not make the land private for the purposes of all legislation, nor does it make it private land on a permanent basis.
3.15	Furthermore, a Temporary Street Trading Licence does not appear to be the long term solution as the legislation only permits a maximum of five Temporary Licences per year.
3.16	In respect of Aether and Echo, the Department has confirmed that the public must have access across the land at Lower Garfield Street and stipulate that a 2 metre pedestrian access is provided in this area. Further, the Department advised that this permission is given to Aether and Echo as Lower Garfield Street is considered a dead end street and advised that an Article 72 consent would not be granted for a street which is considered to be a 'live' street. It was also noted that no other publicans have lodged an Article 72 application to the Department.
3.17	We consider that, after discussing the matter further with Transport NI, that the matter is better addressed under Article 2, Schedule 1 of the Local Government (Miscellaneous Provisions) (NI) Order 1985 and the definition provided at paragraph 3(b), regarding the land becoming private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee.
3.18	An Entertainments licence can therefore be issued by the Council as the land falls within the definition of 'outdoor musical events.'
	<u>Consulting agencies</u>
	Transport NI
3.19	The Department have stated that they have no objection or concerns with an Entertainments Licence being granted to permit events to be held on public land. However, they have requested to be involved in the development of the administrative process and procedure, if Members are of the mind to grant approval for the Service to pursue and administer Entertainments Licences for such events being held on public land.
	PSNI
3.20	The PSNI has been consulted and has confirmed that they have no issues with an Entertainments Licence being granted for events on public land and would welcome such a decision as it would ensure consistency of approach regarding public safety, etc in the

	<p>same way as the Council do for other events, such as Belsonic and Tennents Vital.</p> <p>NIFRS</p> <p>3.21 As a statutory consultee for all Entertainment Licence applications, the NIFRS have also been consulted and they too have no concerns with an Entertainments Licence being granted for such occasions</p> <p><u>Financial & Resource Implications</u></p> <p>3.22 The requirement to apply for an Entertainments Licence on public land is likely to increase revenue for the Council.</p> <p>3.23 However, we consider that there is also added value in that these events will be administered, managed, coordinated and regulated with all parties in the same vain as the regular events which currently take place under the auspice of an Entertainments Licence; thereby creating consistency of approach and ensuring public safety.</p> <p>3.24 Officers carry out during performance inspections on premises providing entertainment but this is catered for within existing budgets.</p> <p><u>Equality or Good Relations Implications</u></p> <p>3.25 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 – Relevant extracts of The Roads (Northern Ireland) Order 1993 • Appendix 2 – Application for Consent to erect scaffolding, hoardings, etc on a road