

**Licensing Committee**

**20th April, 2016**

**Extract of Minutes**

**Application for the Provisional Grant of an Amusement Permit –  
Roll the Dice, 181 Ormeau Road**

The Committee considered the following report:

**“1.0 Purpose of Report/Summary of Main Issues**

<b>Premises and Location</b>	<b>Ref. No.</b>	<b>Applicant</b>
Roll the Dice 181 Ormeau Road Belfast BT7 1SQ	WK/2015/01745	Mr James Neeson 141-143 Donegall Pass Belfast BT7 1DS

**1.1 To consider an application from Mr James Neeson, for the provisional grant of an Amusement Permit under the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.**

**1.2 A copy of the application form and location map has been forwarded to the Committee.**

**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 £25.00, 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 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 Main report**

**Key Issues**

**3.1 Members are reminded that the Licensing Committee is responsible and has full delegated authority for determining all**

applications relating to the grant and provisional grant of Amusement Permits.

#### **Applicant**

- 3.2** The applicant has requested to operate the premises under the hours of 10.00am to 11.00 pm Monday to Sunday. However, the planning permission hours of operation are from 10.00 am to 10.00 pm, in the interests of public amenity. However, the applicant has advised that they overlooked this at the time of making their provisional amusement permit application to us and is prepared to comply with the hours approved under the planning permission.
- 3.3** The permit is for a total of 40 gaming machines, all of which are to pay out a maximum all cash prize of £25.00. In the case of premises which have machines with a maximum cash prize of £25.00, admission is restricted to persons aged 18 or over.
- 3.4** Mr Neeson and/or his representatives will be available to discuss any matters relating to the grant of the permit at your meeting.

#### **Previous use as an Amusement Arcade**

- 3.5** Members are advised that this site was formerly a snooker hall (Mission snooker hall) and the front part of it operated as an amusement arcade between 1990 and 1999.

#### **Planning Matters**

- 3.6** A planning application was made to the Planning Service on 2nd February, 2012 for a change of use from a Retail Unit to an Amusement Arcade and this was granted on 17th December, 2012.
- 3.7** Prior to the premises being approved as a retail unit it was formerly approved for a change of use from a snooker hall to a ground floor retail unit. Before that it was approved for a part change of use of an existing snooker hall to an Amusement Centre.
- 3.8** A copy of the planning permission granted on the 17th December 2012 has been forwarded to Members.
- 3.9** 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.
- 3.10** 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**

- 3.11 Members will be aware that the Council's Amusement Permit Policy was ratified at Council on 1st 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.**
- 3.12 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; and**
  - 5. respect the need to prevent gambling from being a source of crime and disorder.**
- 3.13 The Policy consists of two components which are considered below:**
- 1. Legal Requirements under the 1985 Order**
- 3.14 Members must have regard to the legal requirements under the 1985 Order relating to:**
- (a) The character, reputation and financial standing of the applicant:**
- 3.15 References and additional supporting information for those associated with the application have been circulated to the Committee.**
- (b) The nature of the premises and activity proposed:**
- 3.16 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:**
- 3.17 The PSNI has been consulted in relation to the application and has not offered any objection to it. It is also worth noting that, when an amusement arcade previously operated at this address**

from 1990 until 1999, the Council received no objections from the Police Service.

(d) Submissions from the general public:

- 3.18 No objections have been received as a result of the public notices placed in the three local newspapers.

## 2. Assessment criteria for Suitability of a Location

- 3.19 There are five criteria set out in the Policy which 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.

(a) Retail vibrancy and viability of Belfast:

- 3.20 The application premises are a former retail unit that sold electronic cigarettes. Prior to its redevelopment for retail use over a decade ago the planning history of the site indicates that it operated as a snooker club. In 1990 the front part of this snooker hall was granted a change of use planning permission (Z/1990/0719/F) to operate as an amusement centre. An Amusement Permit was subsequently issued and this remained in force for nearly a decade under a number of different permit holders.
- 3.21 While this vacant shop is located within a shopping and commercial area on the Ormeau Road arterial route, as designated in the Belfast Metropolitan Area Plan (BMAP) 2015, the unit in question is specifically left unzoned as white land. This is most likely due to the fact that it was not trading as a shop at the time of the land use survey for BMAP.
- 3.22 The unit is bordered on one side by a Turkish barbers, and on the other side, by a bicycle shop, with a shared service access (circa 1.5 metres wide) located between the bicycle shop and application premises. Having regard to the definition of a shop in Appendix D of the Amusement Permit Policy, which is reproduced from the Planning Use Classes Order (NI), the application premises are technically bordered on each side by a retail unit.
- 3.23 Viewed in this light, it can be concluded that the application would break up a continuous shopping frontage.
- 3.24 Accordingly, bearing in mind the objective of the Amusement Permit Policy to promote the retail vibrancy of Belfast, together with the limited appeal of amusement centres in generating pedestrian flows, the application runs counter to the Permit Policy. Having stated this, it is worth noting that the planning decision was silent on its impact on the continuous shopping frontage. This is in spite of the fact that this guidance is contained in the Planning Service's own Development Control

Advice Note 1 (DCAN 1), which the Amusement Permit Policy sought to be consistent with. Instead, the planning decision chose to attach overriding weight to its location in this mixed use area.

*Application does not comply with this criterion.*

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

- 3.25 There are no other amusement arcades on the commercial frontage to which the application relates and therefore it would not contribute to a cumulative build-up of amusement centres at this location.

*Application complies with this criterion.*

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

- 3.26 The application premises are not located next to a tourism asset and are not located at a Gateway location into Belfast City Centre.

*Application complies with this criterion.*

(d) Proximity to residential use:

(i) - predominantly residential in character

- 3.27 The application premises are located at ground floor level along the shopping/commercial frontage of Ormeau Road where there is a mix of shopping/commercial units. There are residential units at first floor level immediately above this block of ground floor businesses. These residential units are accessed via Fitzwilliam Square, which is situated to the rear of the premises, off Rugby Avenue. Further residential units are located along the streets leading off the Ormeau Road.

- 3.28 Mindful of the above, the application premises are located along an arterial route into the city centre as defined under BMAP 2015 and the location can therefore be viewed as a 'mixed use' area and not one that is predominantly residential in character.

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

- 3.29 There is an adjacent apartment situated above the premises, which forms part of the Fitzwilliam Square development that is accessed from the rear via Rugby Avenue. The Amusement Permit Policy states that permits will not be granted in cases where the proposed premises are immediately adjacent to residential use. However, it is important to note from the planning approval that the Council's Environmental Health Service adjudged the proposed use acceptable from a noise impact perspective and that the planning decision notice restricts opening hours between 10.00 am and 10.00 pm.

- 3.30 On balance, therefore, the location of the unit in a mixed used area, together with the restricted opening hours attached to the planning permission (10.00am-10.00pm) would tend to outweigh the presumption against not granting a permit on the basis of impact concerns for the existing apartment above.

*Application complies with this criterion.*

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

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

*Application complies with this criterion.*

- 3.32 A copy of the Council's Amusement Permit Policy has been made available to Members.

### Conclusion

- 3.33 The application premises do not comply with 1 of the 5 assessment criteria for the suitability of the location for an amusement centre as laid down in the Council's Amusement Permit Policy. This relates to its break up of a continuous shopping frontage, which the permit policy aspires to retain in the interest of promoting shopping in the City.

- 3.34 This notwithstanding, it is important to note that this amusement centre was granted planning permission before the introduction of the Permit Policy and, therefore, there are exceptional circumstances pertaining to this permit application. In this regard, DOE Planning at the time was not aware of the detail of the Council's final Permit Policy and the weight it attached to the maintenance of a continuous shopping frontage. Instead, DOE Planning at the time attached overriding weight to its mixed use location on an arterial route, which is also acknowledged as a very important consideration.

- 3.35 The circumstances of this application lead to a finely balanced determination. However, given that case law has resolved that the determination of a permit application should be slow to differ from that of a planning application and that an amusement permit was in force on the front part of this site for nearly a decade (between 1990 and 1999) it may be reasonable to conclude that there are exceptional grounds for the Council to depart from its assessment under the Permit Policy and to grant a permit accordingly.

### Financial and Resource Implications

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

### **Equality or Good Relations Implications**

#### **3.37 There are no equality or good relations issues associated with this report.”**

The Building Control Manager provided an overview of the application in the context of planning matters and the Council’s Amusement Permit Policy. He pointed out that the applicant had indicated that he wished to operate the arcade from Monday till Sunday between the hours of 10.00 a.m. and 11.00 p.m. However, having been advised that the planning permission for the premises had been granted on the basis that it would operate between 10.00 a.m. and 10.00 p.m., the applicant had, accordingly, agreed to amend the hours of operation.

During discussion, a Member referred to the key policy objectives of the Amusement Permit Policy, as set out within 3.12 of the report, and pointed out that, in her view, the Council, in assessing the application, had failed to take into account the residential nature of the area and the need to protect vulnerable persons from being harmed or exploited by gambling and highlighted the difficulties which had arisen in the nearby Holylands area, where young people had, in the past, been easily influenced in terms of their behaviour. She highlighted the fact that the Court of Appeal had, in June 1999, confirmed that the Council, in determining applications for Amusement Permits, could take into account matters such as location, structure, character and impact upon neighbours and the surrounding area.

The Committee was informed that Dr. T. Quinn, Braniff Associates, who had assisted the Council in the formulation of its Amusement Permit Policy, was in attendance in order to clarify any issues around the Policy and its application and he was welcomed by the Chairperson.

Dr. T. Quinn reminded the Committee that the Amusement Permit Policy, which had been implemented in May 2013, identified areas where there was a presumption against the location of amusement arcades, namely, in the retail core of the City and in residential areas. However, there were parts within the city centre outside the retail core, in non-residential business areas, and, in terms of this application, on designated shopping and commercial areas on arterial routes, which could be open to consideration in terms of where an Amusement Permit could be granted.

He reported that, when assessing the current application, it was evident that it failed to comply with the Amusement Permit Policy, in that it broke up a continuous shopping frontage. However, there were a number of exceptional circumstances to be considered, as alluded to within the Policy, namely, that it had obtained planning permission in 2012 and, importantly, that that had occurred prior to the implementation of the Policy. He added that it was only when the Policy had been ratified by the Council that engagement had taken place with senior officers within the Planning Service with a view to ensuring consistency in the decision-making process between that Service and the Council. He highlighted also the fact that no objections had been received in relation to the application, which had not been the case for other applications for the grant of Amusement Permits which had been refused previously by the Committee.

In response to a question, Dr. Quinn indicated that the proposed use at this location appeared to breach the applicable Planning Policy DCAN1.

The Chairperson thanked Dr. Quinn and invited Mr. J. Neeson, the applicant, to provide the Committee with details of his application and address the issues which had been raised.



Mr. Neeson informed the Members that he had, approximately twenty years ago, developed the property at 181 Ormeau Road. He reported that the ground floor of the property was comprised of several retail units, some of which had taken a considerable length of time to lease. He highlighted the fact that this particular unit had been occupied for a total of only five years since being developed and confirmed that it was the only one which was vacant currently. That had led him to apply for planning permission for an amusement arcade which it was his intention to operate. He made the point that, since that permission had been obtained prior to the implementation of the Council's Amusement Permit Policy, the Policy should not apply in this case.

Mr. Neeson was thanked by the Chairperson.

After discussion, it was

Moved by Councillor Attwood,  
Seconded by Councillor Campbell and

Resolved - That the Committee, in its capacity as Licensing Authority, agrees that it is minded to refuse an application for the provisional grant of an Amusement Permit in respect of Roll the Dice, 181 Ormeau Road, on the grounds that it fails to comply with the Council's Amusement Permit Policy.

The Committee noted that, in accordance with the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, the applicant would be afforded the opportunity to make representation to the Committee regarding its decision at a future meeting.