

Licensing Committee

Wednesday, 20th February, 2019

MEETING OF LICENSING COMMITTEE

Members present: Councillor O'Hara (Chairperson);
Aldermen Copeland and L. Patterson, and
Councillors Clarke, Dudgeon, Garrett, Hussey, Hutchinson,
Magennis, and Nic Biorna.

In attendance: Mr. A. Thatcher, Director of Planning and Building Control;
Mrs. N. Largey, Divisional Solicitor;
Mr. S. Leonard, Neighbourhood Services Manager;
Mr. J. Cunningham, Regulatory Services Manager; and
Miss C. Donnelly, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported on behalf of Alderman Spence and Councillors Collins, Craig, Groves and McReynolds.

Minutes

The minutes of the meeting of 16th January were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 4th February, 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 reported.

Delegated Matters

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

Applications Approved under Delegated Authority

The Committee noted a list of licences and permits which had been issued under the Council's Scheme of Delegation.

Application for the Renewal of Entertainments Licences with Previous Convictions – AM;PM

The Committee was reminded that, under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, it had a duty, when considering any application for the grant, renewal or transfer of an Entertainments Licence, to take into account any convictions of the applicant relating to an offence under the Order which had occurred within a five-year period immediately preceding the date on which the application had been made.

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The Regulatory Services Manager informed the Committee that an application had been received for the renewal of a Seven-Day Annual Indoor Entertainments Licence where the applicant had been convicted of an offence under the Local Government (Miscellaneous Provisions) (NI) Order 1985 within the previous five years, in respect of AM:PM, 38-44 Upper Arthur Street.

He reported that it was a requirement of the legislation that, after an individual had been convicted of an offence under the Local Government (Miscellaneous Provisions) (NI) Order, any application for renewal of an Entertainments Licence must be brought before the Committee for a period of five years.

He reported that the licensee of AM:PM had, on 6th January, 2017, been fined £2750 and instructed to pay costs of £66, following an inspection by Council officers, which had found that entertainment was being provided on the second floor without an Entertainments Licence, that the rear escape stairs and door were obstructed, that the rear escape corridor on the ground floor was obstructed, that the fire door was held open on the ground floor escape route, that all escape routes were not maintained with non-slippery and even surfaces and that the Entertainments Licence was not being displayed.

He pointed out that the Committee had, in subsequent years, agreed to renew the Entertainments Licences and that, on the two occasions over the past year on which the premises had been inspected, officers had found that all management procedures were being implemented effectively.

He confirmed that no written representations had been received in relation to the application and that neither the Northern Ireland Fire and Rescue Service or the Police Service of Northern Ireland had offered any objections.

The Committee agreed, in its capacity as Licensing Authority, to renew the Annual Indoor Entertainments Licences in respect of AM:PM, 38-44 Upper Arthur Street.

**Application for the Grant of a 14-Day Occasional
Outdoor Entertainments Licence for Dunmurry Park,
Kingsway**

The Regulatory Services Manager informed the Members that an application had been received for the grant of a 14-Day Occasional Outdoor Entertainments Licence in respect of Dunmurry Park, Kingsway. He informed the Committee that the Park was owned and maintained by Belfast City Council which intended to offer the use of the space for small community type events.

He pointed out that a public notice of the application had been placed and that no written representation had been lodged as a result of the advertisement. He also confirmed that the Police Service of Northern Ireland had offered no objections.

He further informed the Members that officers from the Building Control Service had engaged with representatives from Parks Services regarding the general long-term use of the space. He advised the Members that Mr. L. McKinley, City Parks Manager, was present should the Committee be minded to discuss the application with him.

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After discussion, the Committee agreed that it would be beneficial to hear from Mr. L. McKinley, City Parks Manager, and he was welcomed to the meeting.

A Member asked Mr. McKinley what type and size of events were envisaged for the Park as it was located in an interface area and had a history of antisocial behaviour associated with it. He added that engaging with the local community with regard to any planned events would be necessary. Mr. McKinley informed the Members that the majority of events held within Dunmurry Park would be small to medium sized, cross community events and that all local residents would be consulted in advance of any event taking place.

The Chairperson thanked Mr McKinley for his attendance and he retired from the table.

The Committee agreed to the grant of the 14-Day Occasional Outdoor Entertainments Licence from Monday to Sunday, 11:30am to 11:00pm, with the following special conditions:

- Maximum numbers will be agreed at the discretion of the Building Control Service and will vary depending upon individual concert set up proposals.
- Prior to any event taking place the promoters are required to demonstrate evidence of early consultation and have in place a robust system of dealing with any complaints, which has been agreed in advance with the Council.
- Any requests to provide entertainment later than 11.00 pm must be considered by the Licensing Committee and therefore must be made at least 3 months in advance of the proposed event.

The Committee further agreed that should an application to provide entertainment beyond 11.00 pm be granted and the Council subsequently were to receive a significant number of complaints regarding noise or if the complaint is of such significant impact, that authority be granted to the Director of Planning and Building Control, in consultation with the City Solicitor, to reduce the finishing time for any subsequent nights of the event, in which case, the promoter would be required to make contingency arrangements

**Temporary Street Trading Licence –
Donegall Place**

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 Committee is reminded that at your meeting of 16 January 2019, you approved the application for a Temporary Street Trading Licence to Mr Gavin Gregg of City Picnic to trade Tuesday to Thursday from 8am to 5pm and Friday and Saturday 8am to 2am the following morning selling hot and**

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cold food and non-alcoholic beverages from a catering trailer on Donegall Place.

- 1.2 Four inspections have been carried out including at night and there were no issues found.
- 1.3 It was agreed that authority is delegated to the Director of Planning and Building Control to renew the licence upon application on not more than four further occasions, and that the Licensee must undertake to maintain the area adjacent to the premises with regard to litter.
- 1.4 It was further agreed that the City Solicitor would provide a legal opinion for consideration at the February meeting regarding protocol for future applications for Temporary Street Trading Licences in Donegall Place. A copy of the Minute is attached as Appendix 1.
- 1.5 The Licence expires on 19th February 2019.
- 1.6 Mr Arthur McAnerney of City Picnic has now applied to trade the same days and hours selling the same products from the same trailer in Donegall Place.

2.0 Recommendations

- 2.1 Based on the information presented and considering any representations received, the Committee is requested to consider the application and decide whether it is minded:
 - 1. To grant and approve the Licence, or;
 - 2. To grant and approve the Licence with additional conditions, or
 - 3. To refuse the Licence application.
- 2.2 Members may attach any reasonable Conditions when granting a Street Trading Licence.
- 2.3 If Members are minded to grant the Temporary Licence, you are then requested to delegate to the Director of Planning and Building Control authority to grant any further Temporary Licences that may be required.
- 2.4 If the licence is refused, the applicant may appeal the Council's decision within 21 days of notification of that decision to the Magistrates' Court.

3.0 Main report

Key Issues

Legislative background for Temporary Street Trading

- 3.1** The Street Trading Act (NI) 2001 Section 14 permits the Council to issue a Temporary Street Trading Licence where a full-term Licence may not be appropriate, for example, for special events such as festivals, fairs, etc. The Act permits temporary trading to take place in an undesignated street or in goods or services which are normally prohibited in that street.
- 3.2** The legislation permits the Council to grant a temporary licence to an applicant for up to 7 days. No more than 5 Temporary Licences may be issued to any one applicant in a year.
- 3.3** Members may be aware that the Council, through the Health and Environmental Services Committee, had previously agreed a Policy in 2001 with respect to the granting of Temporary Licences.
- 3.4** Applications to permit Temporary Street Trading are normally only permitted at special events such as Christmas Lights Switch-on, New Year's Eve, Halloween Events, Festival & Civic Events, Community Organised Events and Cultural Parades/Events.
- 3.5** The Committee is however entitled to depart from its usual policy where there are exceptional circumstances, which would warrant it to do so.
- 3.6** It is also important that the holder of a Temporary Licence should not have an unfair advantage over the holder of a full-term licence who may only trade in designated streets.

Extenuating Circumstances

- 3.7** In considering this application, Members may wish to have regard to the exceptional circumstances relating to the Primark fire that have led to extreme financial and emotional hardship for the owners of City Picnic (and others) who were unable to operate at all for a number of weeks and had to lay off staff as a result.
- 3.8** It is also the case that as soon as the remedial works to Bank Buildings are complete City Picnic intend to return to their existing premises and resume trading. The latest indications from Primark are that Castle Street should be accessible to the

public by Easter and we would expect City Picnic to be open and trading again by the end of April at the latest.

Consultation on the Application

- 3.9 Dfl Roads, PSNI and Belfast City Centre Management have been asked for their views on the proposal. None has any objection. (Attached as Appendix 1)**

Legal Opinion

- 3.10 Members will recall that at their last meeting, the Director of Economic Development advised that the proposed grant of temporary licences was intended to provide assistance to a business which had been displaced because of the cordon that surrounded Bank Buildings. Efforts to find a unit for the business to occupy on a temporary basis had been fruitless, as landlords and letting agents were unwilling to provide short-term leases to food and beverage businesses. He added that the site on Donegall Place appeared to be the only option available to the applicants to continue trading until they were able to return to their premises on Castle Street.**
- 3.11 Abuse of process is a two-fold test. It must involve the improper use of procedure and it must be for an unintended, malicious, or perverse purpose.**
- 3.12 The restriction within the legislation relates to the number of licences which can be granted to a particular applicant, it does not restrict the number of temporary licences which can be granted for any particular location. Therefore in principle there is nothing to prohibit the Council from granting more than 5 Temporary Licences for a particular location.**
- 3.13 On a strict interpretation of the legislation it could be argued that the grant of additional licences for the benefit of the same business is using proper procedure for an unintended purpose. However, in exercising its powers the Council has an obligation to do so fairly and in a manner which is consistent with the purpose of the legislation.**
- 3.14 Upon consideration of the legislation as a whole it is clear that the intention was to allow some flexibility whilst at the same time ensuring that an applicant could not circumvent either the requirement to apply for a permanent licence or the fact that a site was not designated.**
- 3.15 It is clear that the business is not intending to do either of these things. In the context of the exceptional circumstances in which the business finds itself, it is considered that the further grant of 5 licences is unlikely to be an abuse of process.**

Fee

- 3.16 The Council's Economic Development Division of the Place and Economy Department have agreed that they will pay the Licence fees required for the duration of the applicant's stay at this location given the exceptional circumstances the applicant finds himself in. Depending on the success of the continued trading and the ongoing works at the Primark Building, the applicant may require up to 5 Temporary Street Trading Licences at a cost of £2,500. Members are asked to consider once more waiving the fee on this occasion, as the payment is an internal Council transaction.

Delegated Authority

- 3.17 Members are reminded that the normal process for dealing with a Temporary Street Trading Licence application, which is not the subject of objections is that the Director of Planning and Building Control will grant the Licence as provided for in the Council's Scheme of delegation. This application is before Committee as it is contrary to the Committee's current policy position in that it would permit trading in areas where street trading is not usually permitted and also involves the sale of hot food in the city centre.
- 3.18 If Committee agree to grant the Licence for 7 days, it is requested that delegated authority be granted to the Director of Planning and Building Control to impose Conditions and grant any subsequent applications made by the applicant.

Financial and Resource Implications

- 3.19 If the Committee is of the mind to grant the applicant a Street Trading Licence, the fee is as follows:
- Application Fee of £180, and
 - A Licence fee, for Monday to Sunday £320.

The fees will be met from the existing budget of the Council's Economic Development Division.

**Equality or Good Relations Implications/
Rural Needs Assessment**

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

The Committee was reminded that, at its meeting on 16th January, the grant of a Temporary Street Trading Licence for Donegall Place was approved to enable the owners of City Picnic, who remained displaced from their premises as a result of the fire in Bank

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Buildings in August, 2018, to continue lawful trading on the site until they were able to return to their premises.

The Regulatory Services Manger informed the Members that the Temporary Street Trading Licence had expired and a further application from Mr. A. McAnerney, one of two owners of City Picnic, had been received to allow trading to continue.

He advised the Committee that the Police Service of Northern Ireland, the Department for Infrastructure and Belfast City Centre Management had been consulted with and had no objections to the application.

The Divisional Solicitor informed the Committee that the legislation permitted the consideration of Temporary Street Trading Licences to provide flexibility, and to allow cities to deal with special events. She further informed the Members that, in the particular circumstances, the applicant was not attempting to circumvent the legislation and that Legal Services was content for the Committee to consider the application from City Picnic.

The Committee agreed to approve the application for a Temporary Street Trading Licence for Donegall Place to Mr. A. McAnerney to trade Tuesday to Thursday from 8am to 5pm and Friday and Saturday, from 8am to 2am the following morning, and that the Licensee must undertake to maintain the area adjacent to the premises with regard to litter.

It was also agreed that that authority be delegated to the Director of Planning and Building Control to renew the licence upon application on not more than four further occasions.

The Committee further agreed to the waiving of the applicable fee, as the Council's Economic Development Division of the Place and Economy Department had agreed that it would pay the licence fee and any subsequent renewal fees.

Non-Delegated Matters

Update on Transfer of Houses in Multiple Occupation – Fees and Fixed Penalty Notices

(Mr. S. Leonard, Neighbourhood Services Manager, attended in connection with this item.)

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12th May 2016 and is due to be commenced on 1st April 2019. The Department of Communities (DfC) will also be laying some subordinate Regulations at the same time, one of which is the Houses of Multiple Occupation (Fees) Regulations (NI) 2019. This sets the maximum level of fee for an application for a HMO licence at £45 per person per annum.**

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- 1.2 DfC has carried out a stakeholder engagement in relation to the subordinate legislation and the feedback from stakeholders had been fully reviewed. No concerns were raised in that engagement in relation to the maximum fee which is being proposed in the Regulations.
- 1.3 Whilst the Regulations set a maximum fee level of £45 it is proposed to set the fee at £37 per person per annum which, it is estimated, will allow the service to be provided on a cost neutral basis. The fee will be subject to review after two years by both council officers and DfC.
- 1.4 This report also provides the Committee with detail regarding the powers available to the Council under the 2016 Act in relation to the enforcement of the HMO licensing regime via the imposition Fixed Penalty Notices.

2.0 Recommendations

2.1 The Committee is asked to:

- note the update information regarding the fees for the Houses of Multiple Occupation licensing function;
- agree to set a fee of £37 per person per annum in respect of an application for a HMO licence;
- agree additional fees for an application to vary a licence, and those for supplying a certified copies from, or of, the register;
- note the information regarding the use of Fixed Penalty Notices as enforcement functions that are available to the Council under the Houses in Multiple Occupation (HMO) Act NI 2016;
- agree the value of any fixed penalty notices that may be issued.

3.0 Main Report

Key Issues

Fees

- 3.1 Members are reminded that The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12th May 2016 and is due to be commenced on 1st April 2019. This will transfer responsibility for regulating HMOs from the Northern Ireland Housing Executive (NIHE) to local district councils. The new scheme will be a licensing scheme which assesses

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whether the applicant is a fit and proper person to hold a licence. This paper relates to the proposed fees which are to be introduced as part of that new scheme.

- 3.2** Following the preparation of a draft budget, and a subsequent detailed review by external consultants, officers of both DfC and Councils consider that a fee of £37 per person per annum would provide for full cost recovery for the service.
- 3.3** The budget reflects the need to provide for full cost recovery for the service.
- 3.4** In preparing the draft budget, the estimated expenditure includes full staff costs, non-staff costs and overhead costs. Overhead costs include the costs of a solicitor who will be recruited to provide the additional legal support that will be needed to support the new licensing regime.
- 3.5** The estimated income includes deferred income from the old Registration Scheme which will be received from the Northern Ireland Housing Executive (NIHE) and income from new applications. The budget does not include transition costs already provided by DfC to Council to support the implementation of the new licencing scheme, for example training costs and the new ICT system.
- 3.6** Members will note that while the costs of the new scheme are anticipated to remain relatively constant, apart from planned inflationary increases, estimated annual income is not evenly spread across each financial year. The total budget for the new HMO service has thus been established to include income and expenditure over five years, ie the life span of a licence. Years with higher income due to higher numbers of renewals (ie 2019 and 2020) generate an annual surplus, which are off set over the five year budget period against those years where smaller numbers of properties are due to renew and which will thus generate less income (ie 2021, 2022 and 2023).
- 3.7** A new Licencing fee of £37 per person per annum will be required to ensure that the new scheme does not run at a deficit. This represents a 47% increase on the existing registration scheme's fees (i.e. £25/person/annum). However, it should be noted that this this represents an increase of just 98p per person per month, and that there have been no fee increases since the current fee rates were established in 2008.
- 3.8** Tables 1 and 2 (below) demonstrate that from the analysis carried out, over the 5 years 2019 – 2023, and 2024 -2028, the scheme should be cost neutral to councils and should not require any subsidy.

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**Table 1: Estimated budget for the HMO licencing scheme
2019 - 2023**

Projected surplus/deficit for HMO service 2019 – 2023						
	2019	2020	2021	2022	2023	Total
Total income	£1,300,984	£1,431,844	£942,774	£926,273	£493,083	£5,094,958
Total expenditure	£979,039	£998,620	£1,018,592	£1,038,964	£1,059,743	£5,094,958
Net deficit/surplus	£321,945	£433,224	(£75,818)	(£112,691)	(£566,660)	£0

**Table 2: Estimated budget for the HMO licencing scheme
2024 - 2028**

Projected surplus/deficit for HMO service 2024 – 2028						
	2024	2025	2026	2027	2028	Total
Total income	£777,947	£1,257,966	£1,548,970	£1,001,229	£1,039,133	£5,625,245
Total expenditure	£1,080,938	£1,102,557	£1,124,608	£1,147,100	£1,170,042	£5,625,245
Net deficit/surplus	(£302,991)	£155,409	£424,362	(£145,871)	(£130,909)	£0

DfC engagement

- 3.9** On 14th November 2018, the DfC launched a stakeholder engagement, which included the issuing of 2607 letters to landlords and agents registered under the current scheme, and the publication of the new scheme’s details on the DfC website. The communication also outlined the new registration fees for the scheme. The engagement closed on 30th November 2018.
- 3.10** No significant concerns were raised to the DfC by stakeholders in response to the proposed new licensing fee arrangements.
- 3.11** The level of fee payable per occupant will be £37 per person per year with the full fee payable on renewal. Setting a maximum amount at £45 in the regulations will give councils the scope to increase the fee if required to compensate for any future deficit in income without amendment to subordinate regulation.
- 3.12** The ongoing financial impacts of the new service will be monitored by, and reported to, the DfC, via a MoU. Further, DfC intend to undertake a review of the service during year 2 of the new regime, which will include a review of financial performance.

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Variations to a licence

- 3.13 As well as the licence fees outlined above, Council is required to establish and agree the cost of variations to a licence. Officers propose the following, based on the cost of a licence (ie £37 per person per year for 5 years = £185) :**

Table 3: proposed licence variation fees

Licence variations	
Item	Cost
Addition of a new owner or managing agent	£185
Addition of a new occupant	£185 for each new occupant + £75 inspection fee (per visit)

Maximum fee for copy of the HMO Register

- 3.14 The council is also required to set the maximum fee to provide a certified copy of an entry relating to an HMO to any person who falls with section 62(9) of the Act, and a certified copy of its register, or of an extract from it, to any statutory authority, for the subordinate Regulations.**

- 3.15 Officers have considered the cost for similar copies across the council, and propose the following:**

Table 4: proposed maximum fees for copy of the HMO Register

Maximum fee for copy of HMO register	
Item	Maximum cost
A certified copy of an entry relating to an HMO to any person who falls within section 62(9) of the Act	£15
A certified copy of its register, or of an extract from it, to any statutory authority	£15

Fixed Penalty Notices

- 3.16 The Houses in Multiple Occupation (HMO) Act NI 2016 provides a wide variety of enforcement options to be available to the Council, including the ability to serve Fixed Penalty Notices (FPN).**
- 3.17 A fixed penalty notice (“FPN”) is a notice giving the recipient the opportunity of discharging any liability to conviction for an offence, by paying a fixed sum of money within a particular period.**

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- 3.18 Section 64-66 of the 2016 Act gives councils the power to issue fixed penalty notices which tend to be conferred in respect of lower level offending.**
- 3.19 Members should note the issuing of a notice is an alternative to prosecuting the offender, in instances where an authorised officer, following an investigation, has reason to believe that a person has committed an offence under any of the relevant provisions, and there are grounds for instituting proceedings for an offence.**
- 3.20 Section 64 of the 2016 Act lists the offences and maximum amount of the FPN's. These are included Appendix 1. The 2016 Act states that the amount for each fixed penalty notice 'is to be determined by the council'.**
- 3.21 In March 2014, following a report on the Landlord Registration Scheme, Council agreed that FPN in the scheme should be set at the maximum levels specified in the legislation, see table 4:**

Table 5:

Offence	Criminal penalty	FPN
Failure of a landlord to register	£2,500	£500
Landlord found guilty of providing false information	£2,500	£500
Landlord fails to provide evidence of registration	£500	£100

- 3.22 On this basis, officers are recommending that the fixed penalty levels for the offences under the new HMO (NI) Act 2016 are set on the same basis. These are detailed in Appendix 1.**

Financial and Resource Implications

- 3.23 Regarding the fees, it is anticipated that the new HMO licencing scheme transferring from NIHE will remain cost neutral to councils given the increase in fees outlined above. As noted, the number of HMO applications to the new scheme will not be even, year by year. This therefore gives peaks and troughs in income. However, over a five year period the income offsets the expenditure meaning that this service will be cost neutral to the council.**
- 3.24 Regarding the Fixed Penalty Notices, given the inherent difficulties in projecting the variation in the income that may be derived from this source, it has not been possible to accurately determine how much income might be received from these enforcement actions, and any attempts to quantify such income is deemed speculative and variable. Given this, fixed penalty income has not been included in the revenue estimates for the first five years of the scheme. It is currently**

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envisaged that income from enforcement action will be re-invested back into the scheme, for example, on education related activities.

**Equality or Good Relations Implications/
Rural Needs Assessment**

3.25 There are no equality, good relations or rural needs implications associated with this report.

4.0 Appendices

The Houses in Multiple Occupation (HMO) Act NI 2016, Fixed Penalty Notices and Criminal Penalties Table.

Appendix 1

**The Houses in Multiple Occupation (HMO) Act NI 2016
Proposed Fixed Penalty Notice Fines**

No.	Offence	Relevant Section	Maximum FPN	Maximum Penalty
1	Unlicensed HMO: Agent	30(1)	£5,000	£20,000
2	Unlicensed HMO: Owner	30(2)	£5,000	£20,000
3	Unlicensed HMO: Owner instructs agent to let as HMO	30(3)	£2,500	£10,000
4	Breach of occupancy condition	31(1)	£5,000	£20,000
5	Breach of licence conditions: owner/agent	31 (2)	£2,500	£10,000
6	Breach of licence conditions: person not named on licence	31(3)	£2,500	£10,000
7	Person represents HMO as licensed when it is not	32	£2,500	£10,000
8	Agent operating but not named on licence - other	33(1)	£2,500	£10,000
9	Agent operating but not named on licence - owner	33(2)	£2,500	£10,000
10	Failure to comply with rectification notice	37(1)	£2,500	£10,000
11	Failure to comply with information notice	49	£200	£500
12	Contravention of overcrowding notice	60(1)	£5,000	£20,000
13	Contravention of occupancy requirement of suitability notice	60(2)	£5,000	£20,000
14	Uses or permits use of HMO subject to a hazard notice	60(4)	£5,000	£20,000
15	Refusal to provide information under 68 & 70	75	£200	£500
16	Owner fails to complete works specified in hazard notice	60(6)	£500	£1,000
17	Obstruction whilst seeking entry (without or with a warrant)	80(5)	£500	£1,000
18	Obstruction of person complying with a rectification notice	82 (4)	£500	£1,000
19	Obstruction of works needed under with Part 4 notices, TENS & rectification notices	81(4)	£500	£1,000
20	Providing false or misleading information	Para 14, Schedule 2	£200	£500
21	Unlawful occupation	Para 8, Schedule 3	£500	£1,000

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Proposal

Prior to discussion of the matter, it was

Moved by Councillor Hussey,
Seconded by Alderman L. Patterson,

That consideration of the Fees and Fixed Penalty Notices for Houses of Multiple Occupation be deferred, pending engagement with the Landlords Association of Northern Ireland (LANI).

On a vote by show of hands, three Members voted for the proposal and nine against and it was declared lost.

After discussion, the Committee agreed:

- To note the update information regarding the fees for the Houses of Multiple Occupation licensing function;
- to set a fee of £37 per person per annum in respect of an application for a HMO licence;
- to note the information regarding the use of Fixed Penalty Notices as enforcement functions that are available to the Council under the Houses in Multiple Occupation (HMO) Act NI 2016;
- to set the additional fees, as recommended in the report, for an application to vary a licence;
- to set the additional fees, as recommended in the report, for supplying certified copies from, or of, the register; and
- to set the fees, as recommended in the report, for fixed penalty notices that may be issued.

It was further agreed that officers would seek to engage with LANI and that any concerns raised, be brought back to a future meeting of the Licensing Committee.

**Update on Transfer of Houses in Multiple
Occupation – Antisocial Behaviour and Standard Conditions**

(Mr. S. Leonard, Neighbourhood Services Manager, attended in connection with this item.)

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12th May 2016 and is due to be commenced**

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on 1st April 2019. The Department of Communities (DfC) will also be laying some subordinate Regulations at the same time.

1.2 This paper provides Members with information regarding the Standard Conditions and the approach to managing Anti-Social Behaviour.

2.0 Recommendations

2.1 The Committee is asked to endorse:

- the proposed Standard Conditions;
- the proposed approach to tackling Anti-Social Behaviour.

3.0 Main report

Key Issues

3.1 Members are reminded that The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12th May 2016 and is due to be commenced on 1st April 2019. This will transfer responsibility for regulating HMOs from the Northern Ireland Housing Executive (NIHE) to local district councils.

Standard conditions

3.2 The proposed standard conditions are attached in Appendix 1. The conditions imposed within this document will 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.

3.3 The Council may include further conditions in the licence in addition to the conditions contained in this document. Such conditions, if imposed, shall be appended to the licence certificate.

3.4 It is noted that if effectively implemented and sufficiently resourced, a new HMO regulatory framework for HMOs in Northern Ireland has the potential to have a positive impact on the lives of those living in HMOs, the owners of HMOs, and the residents of the communities in which HMOs are located. It is acknowledged that responsible HMO landlords want to be good neighbours, take the behaviour of their tenants seriously and already endeavour to resolve any alleged anti-social behaviour linked to their properties. Councils will continue to support landlords in doing so.

Tackling Anti-social Behaviour

- 3.5 The proposed 'Tackling Anti-Social Behaviour in HMO Properties, A Guide for Owners and Managing Agents' is attached in Appendix 2. This will apply to all houses in multiple occupation (HMOs) in Northern Ireland, and will be attached to all licences as they are issued.
- 3.6 Section 10(6) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 sets out the matters which are relevant for deciding whether an owner or managing agent is a fit and proper person for the purposes of the act.
- 3.7 It is acknowledged that legal action, and in particular issuing court proceedings, is a remedy of last resort in most cases and should only be considered where informal action has failed and the problem persists or where the problems are considered sufficiently serious so as to warrant legal action.
- 3.8 In instances where breach of conditions problems persist, the use of Fixed Penalty Notices and consequently prosecution are available to councils. Ultimately, councils have an ability to revoke a licence, where a successful prosecution undermines the ability of an owner or managing agent to fulfil the requirements of being a fit and proper person.
- 3.9 The Licensing Committee has assumed responsibility for determining a fit and proper person check, and in the revocation of licences, except where in the public interest the Director, in consultation with the City Solicitor, considers that there are particular circumstances which make it necessary to suspend a licence immediately.
- 3.10 Amongst other considerations, the council must have regard to any anti-social behaviour engaged in by the owner or manager, and the owner or manager's conduct as regards any anti-social behaviour engaged in by the occupants of any relevant living accommodation whilst in the accommodation, or adversely affecting the occupants of any such accommodation.
- 3.11 For the purpose of Section 10(6) "anti-social behaviour" means acting or threatening to act in a manner causing or likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaging in a lawful activity in residential premises or in the locality of such premises, or using or threatening to use residential premises for illegal purposes.
- 3.12 The guide has been prepared to assist landlords to comply with this new statutory obligation. It provides guidance to landlords on the remedies and preventative measures that can

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be taken to manage anti-social behaviour, how to best demonstrate compliance via record keeping and intervention, and the development of an anti-social behaviour plan.

Financial and Resource Implications

- 3.13 The cost of administering the new licensing regime has been included in the draft estimates for 2019/20.**

**Equality or Good Relations Implications/
Rural Needs Assessment**

- 3.14 There are no equality, good relations or rural needs implications associated with this report.”**

The Committee agreed to endorse the proposed Standard Conditions and the proposed approach to tackling Anti-Social Behaviour.

Assessment of Bus Tour Ticket Selling

The Committee was reminded that, at its meeting on 19th September, it had agreed to vary the Designating Resolution for stationary street trading sites in Castle Junction and Castle Place to allow for the sale of bus tour tickets and that any resulting applications to sell tickets would be considered by the Committee and, if approved, be granted on a one-year trial basis. The Committee also agreed that officers would, in consultation with Visit Belfast and other relevant agencies, develop potential criteria to assess the success of a trial period.

The Regulatory Services Manager informed the Members that officers had been working in collaboration with Visit Belfast, the Department for Infrastructure's Public Transport Division, Belfast City Centre Management, Police Service of Northern Ireland and Tourism NI to gauge the visitor experience of the tours in Belfast.

He advised the Committee that an application had been received from Mr. J. Rea to vary his Street Trading Licence to allow him to sell bus tour tickets at castle Place and that officers felt it was necessary to have the aforementioned criteria in place before Mr. Rea's application was considered.

He informed Members that in the development of the proposed criteria, the following concerns were considered:

- What “good experience” and “quality” would look like from a visitor point of view in buying the bus tour tickets from the stalls?;
- How could previous problems in terms of approaching visitors and relations between the companies be avoided?;
- What can the Council reasonably request the Licensed Street Trader to do given they are not the owner of the bus tour companies?

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The Regulatory Services Manager added that a customer service focussed training programme could be endorsed and encouraged, however, it was noted that any training could not be made mandatory or specified as a condition of the Licence unless it was a grant or a renewal of a licence.

He advised the Members that, at the end of the one year period, officers would review feedback from key agencies and review any complaints received. He added that Visit Belfast would continue with its role of monitoring activity and behaviour and that officers would carry out increased inspections of the stalls, particularly during the summer months.

Following discussion, the Committee agreed so set the following criteria for evaluating the trial period for the sale of bus tour tickets:

- the uptake of training offered to the Street Trader;
- the number of reports of alleged abusive or intimidating behaviour by Licenced Street Traders or bus company representatives;
- the number of reports of alleged harassment involving Licenced Street Traders and different bus companies; and
- the number of complaints to PSNI, Visit Belfast, BCC, BCCM or other statutory agencies.

It was further agreed that the Divisional Solicitor would seek options as to how Street Traders could be encouraged to facilitate more open competition amongst Bus Tour Operators.

**Consideration of Entertainments Licences
where the Applicant has been convicted of an Offence**

The Committee considered the following report:

“1.0 Purpose of Report or Summary of main Issues

1.1 Members will recall that, at your meeting of the 16th January 2019, the Committee agreed that a report be submitted to a future meeting outlining the options available to the Committee regarding authority to grant future applications where the applicant has been previously convicted of an offence under the Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order).

2.0 Recommendations

2.1 Taking into account the information presented, the Committee is requested to consider the proposals set out at 3.7 and agree how future applications should be presented to the Committee

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where the applicant has been previously convicted of an offence under the Order.

2.2 As all matters pertaining to policy and legislation in relation to licensing matters are not delegated any decision will be subject to ratification by Council.

3.0 Main report

Key Issues

3.1 Committee is reminded that, at your meeting on 18th January 2017, you agreed that you would consider the revocation of an Entertainments Licence immediately after a licence holder is convicted of an offence.

3.2 This means that as soon as an applicant is convicted of an offence, rather than when their licence falls due for renewal, the Licensee is invited to appear before Committee and convince Members as to why their Licence should not be revoked.

3.3 This has the benefit that, regardless of any Court penalty, Members have the opportunity to impress upon the Licensee the severity of their offence and seek assurances in relation to future management of the premises. Whilst it is not possible to attach Conditions to an extant Licence an undertaking can be sought from a Licensee in terms of additional controls to be put in place at the premises. Compliance with such an undertaking is relevant to their fitness in any future renewal application.

3.4 In addition to the above, the Order requires the Council to consider any application for the grant, renewal or transfer of an Entertainments Licence where the applicant or their company has been found guilty of committing an offence within five years of the application for a licence being submitted to the Council.

3.5 Members are advised that since 2011, the Committee has considered 125 Committee reports for 50 premises as a consequence of legal action and previous convictions of applicants. Many of the applicant's offences have been considered on more than one occasion due to the '5 year rule'. After the initial consideration of the conviction, none has been refused a grant of Licence.

3.6 On the majority of occasions, as there have been no further infringements, Committee have agreed to grant these applications without hearing from the applicants even though the applicants are required to attend the Committee meeting.

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3.7 After discussion with Legal Services the following proposals have been drawn up which it is believed will streamline the Committee process for both Members and applicants:

- 1. As agreed at your meeting of 18 January 2017 you will continue to consider the revocation of an Entertainments Licence immediately after a licence holder is convicted of an offence. At that meeting the Licensee will still be required to appear before Committee and convince Members as to why their Licence should not be revoked.**
- 2. Thereafter, assuming the Committee does not revoke the Licence at the post-conviction Committee meeting, authority is delegated to the Director of Planning and Building Control to approve any subsequent applications where the applicant has been found guilty of committing an offence within five years of the application for a Licence being submitted to the Council.**
- 3. Such delegated authority will only be exercised on the basis that:**
 - a. All safety, technical and managerial matters have been maintained in accordance with the terms, conditions and restrictions of the Entertainments Licence,**
 - b. There has been no recurrence of the breach for which the applicant was convicted, or any other offences have been committed,**
 - c. There are no representations in respect of the application.**
- 4. All subsequent applications will be included in the 'Licences Issued Under Delegated Authority' Committee Report.**
- 5. Additionally, the Director of Planning and Building Control in consultation with the City Solicitor will still bring any application where the applicant has been found guilty of committing an offence within five years of the application for a licence being submitted to the attention of the Licensing Committee for consideration should the circumstances of that application dictate.**

Financial and Resource Implications

3.8 Officers carry out during performance inspections on premises providing entertainment which is catered for within existing budgets.

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**Equality or Good Relations Implications/
Rural Needs Assessment**

3.9 There are no issues associated with this report.

The Committee agreed that, when an application is received for the renewal of an Entertainments Licence where the applicant had been convicted of an offence under the Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order) within the previous five years, that the following measures are adopted in the application of the Order:

- To consider the revocation of an Entertainments Licence immediately after a licence holder is convicted of an offence. The Licensee will be required to appear before Committee and convince Members as to why their Licence should not be revoked; and
- thereafter, assuming the Committee does not revoke the Licence at the post-conviction Committee meeting, that authority be delegated to the Director of Planning and Building Control to approve any subsequent applications where the applicant has been found guilty of committing an offence within five years of the application for a Licence being submitted to the Council.

The Committee further agreed that such delegated authority will only be exercised on the basis that:

- All safety, technical and managerial matters have been maintained in accordance with the terms, conditions and restrictions of the Entertainments Licence;
- There has been no recurrence of the breach for which the applicant was convicted, or any other offences have been committed;
- There are no representations in respect of the application;
- That all subsequent applications be included in the 'Licences Issued Under Delegated Authority' Committee Report; and
- That the Director of Planning and Building Control, in consultation with the City Solicitor, will bring any application where the applicant has been found guilty of committing an offence within five years of the application for a licence being submitted, to the attention of the Licensing Committee for consideration.

Chairperson