

Licensing Committee

Wednesday, 16th October, 2013

MEETING OF LICENSING COMMITTEE

Members present: Alderman Ekin (Chairman);
The Deputy Lord Mayor (Alderman Stalford);
Alderman Rodgers; and
Councillors M. E. Campbell, Clarke, Hussey,
Jones, Keenan, Magee, Mallon, Ó Donnghaile,
Reynolds and Spence.

In attendance: Mrs. S. Wylie, Director of Health and
Environmental Services;
Mr. T. Martin, Head of Building Control;
Ms. N. Largey, Solicitor; and
Mr. H. Downey, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported from Aldermen McCoubrey and Smyth and Councillors Attwood, Cunningham and Groves.

Minutes

The minutes of the meeting of 18th September 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 October, 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.

New Members

The Chairman welcomed to their first meeting Councillors Clarke and Magee who had replaced the former Councillors Lavery and O'Neill on the Committee.

Non-Delegated Matters

Update on 2013 Summer Entertainment Events

The Committee noted the contents of a report providing information on entertainment events which had been held across the City over the course of the summer. The report had provided details on the location of the venues, the numbers of patrons who had attended, complaints which had arisen, together with any resulting actions, and the extent of the Council's work with promoters and the various statutory agencies.

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Invitation from the Police Service of Northern Ireland

The Committee was reminded that, at its meeting on 15th August, 2012, it had received from a representative of the Police Service of Northern Ireland a presentation on a 'traffic light' categorisation system which it had developed to record information on violent crimes emanating from licensed premises. The representative had suggested that the deployment by pubs and nightclubs of an identification scanning device could have the potential to reduce levels of underage drinking, violence and anti-social behaviour and had invited the Council to participate in a joint initiative to promote their use. However, the Committee had agreed that it would require further evidence on the effectiveness of the device before deciding if the Council should sign up to the initiative.

The Head of Building Control reported that the Police Service had advised that two premises had, since June, 2013, been using the scanning device. A third establishment had, subsequently, deployed the device at the request of the Police Service, following an unacceptable rise in incidences of violent crime. He explained that the Police Service had invited the Licensing Committee to undertake a visit to those establishments in order to view the scanning device in operation and to obtain the views of the relevant licensees. Invitations had been extended also to the Policing and Community Safety Partnerships and to participants in the Safer Cities Programme.

The Committee agreed to visit the premises.

**Authorisation of Officers under the Fire and
Rescue Services (Northern Ireland) Order 2006**

The Committee was reminded that, at its meeting on 20th June, 2012, it had recommended that the Council sign a Memorandum of Understanding with the Board of the Northern Ireland Fire and Rescue Service. The Head of Building Control reported that the purpose of the document, which would be reviewed annually by both parties, was to clarify and co-ordinate the roles and responsibilities of that Service and council licensing officers on matters relating to fire safety in those premises which councils were responsible for licensing. The Memorandum would ensure also that no unnecessary burden was placed on businesses or organisations seeking to comply with both the Fire and Rescue Services (Northern Ireland) Order 2006 and the Council's licensing conditions. The Council would not, however, be assuming any additional responsibilities, since it would be enforcing only that legislation which was covered currently by district councils.

He explained that, in entering into the Memorandum of Understanding, the Board of the Northern Ireland Fire and Rescue Service had agreed, as provided under Article 13 (1) of the aforementioned Order, to devolve to the Council its function conferred on it by virtue of Article 33(1) of the Order. Such a move would permit officers to undertake fire safety duties in premises or parts thereof which required a licence under the legislation listed within the Memorandum. It was, therefore, a requirement that all officers undertaking enforcement work under the Order were authorised to do so and that they were suitably qualified and competent. He reminded the Members that the Council had, for a number of years, delegated to the Director of Health and Environmental Services the power to authorise officers to undertake certain functions in the course of their work. Accordingly, he recommended that the Committee delegate to

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the Director authority to authorise officers to carry out those fire safety duties which had been conferred on the Council under the Fire and Rescue Services (Northern Ireland) Order 2006.

The Committee adopted the recommendation.

**THE COMMITTEE DEALT WITH THE FOLLOWING ITEMS IN PURSUANCE OF
THE POWERS DELEGATED TO IT BY THE COUNCIL AT ITS MEETING ON
1st MAY, 2007 IN ACCORDANCE WITH STANDING ORDER 46**

Licences Issued under Delegated Authority

The Committee noted a list of licensing applications which had been granted under the delegated authority of the Director of Health and Environmental Services.

**Applications for the Grant of Outdoor Entertainments
Licences for Council-Owned Properties**

The Committee was advised that applications had been received from the Council's Parks and Leisure Department for the grant of Seven-day Annual Outdoor Entertainments Licences for the Cathedral Gardens and the Woodvale Park and of a Fourteen-day Occasional Outdoor Entertainments Licence for the Belmont Park. The Head of Building Control reported that, whilst these were the first such applications for the Cathedral Gardens and the Belmont Park, the Woodvale Park had held a Licence since 2008. However, that had not been renewed for 2012/2013 due to works being undertaken to upgrade the Park, which had since been completed.

The Head of Building Control reminded the Members that Outdoor Entertainments Licences for which no objections had been lodged had, in the past, been issued under the Council's Scheme of Delegation. However, the Committee, at its meeting on 21st November, 2012, had agreed, amongst other things, that in future all new applications for the grant of Outdoor Entertainments Licences be placed before it for consideration.

He reported that no written representation had been received in relation to the grant of the Licences and that the Police Service of Northern Ireland and the Northern Ireland Fire and Rescue Service had offered no objections. The Council's Environmental Protection Unit had been advised of the applications and had confirmed that it would comment on events on an individual basis, once all of the relevant documentation had been received. He confirmed that, should the Committee grant the Licences, the Building Control Service would, in advance of events taking place, consult with the organisers, the Parks and Leisure Department, the Environmental Protection Unit and relevant agencies, including the Northern Ireland Fire and Rescue Service and the Police Service of Northern Ireland, to ensure that all documentation was completed and that all safety and technical requirements were met.

Cathedral Gardens

The Committee agreed, in its capacity as Licensing Authority, to grant a Seven-day Annual Outdoor Entertainments Licence in respect of the Cathedral Gardens.

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Woodvale Park

The Committee agreed, in its capacity as Licensing Authority, to grant a Seven-day Annual Outdoor Entertainments Licence in respect of the Woodvale Park.

Belmont Park

The Committee agreed, in its capacity as Licensing Authority, to grant a Fourteen-day Occasional Outdoor Entertainments Licence in respect of the Belmont Park.

**Competing Applications for a Stationary Street
Trading Licence – Site 2, Berry Street**

The Committee was advised that competing applications had been received from two persons wishing to trade from a vacant designated site in Berry Street, 46 feet from its junction with Royal Avenue. The Head of Building Control reviewed the applications, one of which had been submitted by Ms. Monika Szczesna, who had applied to sell, from a traditional market stall measuring 3 metres by 1.5 metres, hand crafts, e-cigarettes, e-cigarette accessories and refills, seasonal accessories, leather goods and jewellery from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 1.00 p.m. till 6.00 p.m. He explained that the applicant had, in September, 2013, been granted a Street Trading Licence to trade from a designated site in Lower Garfield Street. However, she had advised Council officers that her preferred site was that in Berry Street and that, should her application be successful, she would vacate her current site.

He reported that the second applicant, namely, Mr. Peter Robinson, was seeking to sell, from a traditional market stall measuring 3 metres by 1.5 metres, hand crafts, football souvenirs, vintage and collectable clothing, bags and fashionable accessories and seasonal flowers from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 12.00 noon till 6.00 p.m. The applicant had held a Licence in 2003 for a site in Fountain Lane, which he had operated in accordance with the Street Trading legislation.

The Head of Building Control informed the Members that written objections to both applications had been received from Mr. M. Gulusen, who had, in September 2011, been granted by the Committee a Street Trading Licence to sell a range of commodities from a designated site in Berry Street, 32 feet from its junction with Royal Avenue. The Committee had agreed that leather goods should comprise 50% of those commodities, in view of the fact that they were handmade and unique and would add value to tourism. Mr. Gulusen's objections had been based primarily on the fact that he provided currently many of the goods which the applicants were proposing to sell and that his trade could be affected, should the Committee approve either of the applications.

He confirmed that all three parties had been invited to attend the meeting and that it was normal practice for the objector to address the Committee in advance of the applicants. However, having been advised that Mr. Gulusen had not yet arrived, the Committee agreed to receive the applicants and Mr. P. Robinson was welcomed to the meeting.

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Mr. Robinson outlined the extent of his trading experience to date and confirmed that he was proposing to sell, from an attractive stall, well-presented original high quality goods of local significance which would add interest and vibrancy to the area. Those goods, which would include distinct handmade pendants and necklaces, would differ from those sold by Mr. Gulusen and would, therefore, be unlikely to impact upon his trade.

Mr. Robinson thanked the Committee for receiving him and he retired from the meeting.

Ms. M. Szczesna, together with Mr. B. Brzezinski, her advisor, were then admitted to the meeting.

Ms. Szczesna circulated for the Members' information photographs of the type of stall from which she wished to trade. She outlined the range of commodities which she was proposing to sell, which would include unique hand-crafted items made of ceramic, glass, metal or wood, and pointed out that they would add to the attractiveness of her stall and to the general area. In terms of Mr. Gulusen's objection, she pointed out that, since he was not selling items such as e-cigarettes or their accessories, which she would be offering, his business would not be affected.

In response to a question from a Member, Ms. Szczesna confirmed that she had applied to trade from the site in Lower Garfield Street until such times as her application for the one in Berry Street had been processed. She pointed out that, whilst she had held the Licence for Lower Garfield Street for a few weeks, she had yet to trade from there and that she was willing to vacate that site should the Committee grant her current application, as Berry Street was her preferred location.

The Chairman thanked Ms. Szczesna and Mr. Brzezinski for being in attendance and they left the meeting.

It was reported that Mr. M. Gulusen was now available to address the Committee and he was admitted to the meeting.

Mr. Gulusen informed the Members that he had built up his street trading business over a number of years. He explained that he was not objecting to the presence of another street trading stall in Berry Street but on the basis that he was providing already many of the commodities which the applicants were proposing to sell, which would have a detrimental effect upon his business. He added that e-cigarettes and their accessories were not in keeping with the type of commodities which the Committee had licensed him to sell and that the Council should not be seen to be promoting such products.

Mr. Gulusen was thanked by the Chairman and he left the meeting.

The Council's Solicitor informed the Committee that, under the provisions of the European Union legislation and the European Union Services Directive in particular, the Committee could not refuse an application solely on economic grounds. It could, however, as had been the case with previous applications, refuse an application on the grounds, as set out within Section 9(iv) of the Street Trading Act (Northern Ireland)

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2001, that there were sufficient traders trading in the street in the commodities in which the applicant wished to trade.

After a lengthy discussion, it was

Moved by Councillor Hussey,
Seconded by The Deputy Lord Mayor Alderman Stalford,

That the Committee, in its capacity as Licensing Authority, agrees, in view of the unique nature of the commodities which he is offering for sale, that it is minded to grant to Mr. P. Robinson a Stationary Street Trading Licence to sell hand crafts, football souvenirs, vintage and collectable clothing, bags and fashionable accessories and seasonal flowers from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 12.00 noon till 6.00 p.m. in Berry Street, 46 feet from its junction with Royal Avenue, at a site which has been designated previously for the sale of those commodities, subject to:

- (i) the applicant providing all necessary documentation; and
- (ii) the receipt of the appropriate licensing fees.

Amendment

Moved by Councillor Keenan,
Seconded by Councillor Mallon,

That the Committee, in its capacity as Licensing Authority, agrees, in view of the fact that her application was the first to be submitted, that it is minded to grant to Ms. M. Szczesna a Stationary Street Trading Licence to sell hand crafts, e-cigarettes, e-cigarette accessories and refills, seasonal accessories, leather goods and jewellery from Monday to Saturday between the hours of 9.00 a.m. and 7.00 p.m. and on a Sunday from 1.00 p.m. and 6.00 p.m. in Berry Street, 46 feet from its junction with Royal Avenue, at a site which has been designated previously for the sale of those commodities, subject to:

- (i) the applicant providing all necessary documentation; and
- (ii) the receipt of the appropriate licensing fees.

On a vote by show of hands eight Members voted for the amendment and five against and it was accordingly declared carried.

The amendment was thereupon put to the meeting as the substantive motion when eight Members voted for and seven against and it was accordingly declared carried.

As a consequence of the decision to grant the Licence to Ms. Szczesna and the fact that there was only one designated site available, the Committee agreed that it was minded to refuse the application which had been submitted by Mr. P. Robinson, on the

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grounds set out in Sections 9(i) and 9(iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which he wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which he wished to trade.

The Head of Building Control informed the Members that the unsuccessful applicant would be advised that, in accordance with Section 12 (2)(b) of the Street Trading Act (Northern Ireland) 2001, he would be permitted to make written representation to the Council within twenty-one days from the date of notice.

**Competing Applications for a Stationary Street
Trading Licence - Shaw's Bridge Car Park**

The Head of Building Control informed the Committee that competing applications had been received from three persons wishing to trade from a designated site at the above-mentioned location. He provided an overview of the applications, the first of which had been submitted by Mr Kenneth Chivers, the current licensee of the site, who had, since July 2012, been selling ice cream, non-alcoholic beverages and confectionery from Monday to Sunday between the hours of 11.00 a.m. and 8.00 p.m. The second applicant, Mr. Paul Chivers, who was an uncle of Mr. Kenneth Chivers, had applied to sell ice cream, non-alcoholic beverages and confectionery from Monday to Sunday between the hours of 10.00 a.m. and 8.00 p.m. Mr. P. Chivers held a Mobile Street Trading Licence for the Finaghy, Ladybrook, Suffolk and Taughmonagh areas and had operated in accordance with the Street Trading Act (Northern Ireland) 2001. The final applicant, namely, Mr. Robert Adair, was seeking to sell ice cream, candy floss, non-alcoholic beverages and confectionery from Monday to Sunday between 12.00 noon and 8.00 p.m. Mr. Adair had, from 2008 till 2011, held a Street Trading Licence to sell ice cream from a site in Berry Street. However, he had traded there for only one month before vacating the site, once it had been established that his stall was substantially larger than that permitted.

He reported that Mr. K. Chivers, Mr. P. Chivers and Mr. W. Adair, the brother of Mr. R. Adair, were in attendance in order to brief the Committee on the applications and Mr. K. Chivers was admitted to the meeting.

Mr. Chivers reported that he had, since 2012, held a Stationary Street Trading Licence permitting him to sell ice cream, confectionery and non-alcoholic drinks from the car park at Shaw's Bridge. For four years prior to that, he had been employed there by his father, who had been the licensee at that time. He explained that he strove to provide a high quality service and he circulated for the Members' attention a list of customers, all of whom had affirmed that assertion. He pointed out that his business had attained consistently a 5-star rating from the Council in terms of its food hygiene and that his van had been specially adapted to reduce fuel emissions and was maintained regularly. In addition, he provided, during peak times, additional receptacles for waste and ensured that all litter generated by the operation of his business was removed from the site when he ceased trading.

Mr. Chivers thanked the Committee for receiving him and he left the meeting.

Mr. P. Chivers, together with Mr. O. Friel, his legal representative and Mr. B. Topping, his employee, were welcomed to the meeting.

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Mr. Friel informed the Committee that Mr. P. Chivers had, for the past two years, been licensed as a mobile street trader to sell ice cream and other products in Finaghy, Taughmonagh and the surrounding areas. In July of this year, he had secured a contract to trade within the Sir Thomas and Lady Dixon Park, which had necessitated the purchase of a second van. He made the point that his client provided his customers with a high standard of service, which had been reinforced within a letter of support from a local community development association, and that his business had been awarded a 5-star rating by the Council in recognition of the strict hygiene standards which he maintained. He explained that his client was seeking to expand his business to sell ice cream, confectionery and hot beverages within the car park at Shaw's Bridge, which would require the acquisition of a third van and the recruitment of another employee. The fact that he retained an interest in the site, despite being unsuccessful with a previous application, demonstrated his continued desire to provide a service to customers at that location.

The Chairman thanked the delegation for being in attendance and they retired from the meeting.

Mr. W. Adair was then admitted to the meeting and welcomed by the Chairman.

Mr. Adair reported that his brother, who had been unable to attend the meeting, had approximately thirty years' experience of trading and that he had operated previously for twelve years in the Botanic Gardens. In addition, he held mobile Street Trading Licences in two other council areas and had achieved accreditation in recognition of his high hygiene standards. He explained that the applicant was proposing to sell locally produced ice cream and other commodities such as fruit, juices, milk shakes and hot drinks and that no illegal products would be stocked. In addition, the site would be kept clean and any rubbish would be removed at the end of each day.

Mr. Adair was thanked for his contribution and he left the meeting.

After discussion, the Committee, agreed, in its capacity as Licensing Authority, that it was minded, in view of the fact that he was the current licensee and that he had operated the site in accordance with the Street Trading legislation, to grant to Mr. Kenneth Chivers a Stationary Street Trading Licence to sell, from a van measuring 4 metres by 2 metres, ice cream, non-alcoholic beverages and confectionery from Monday to Sunday between the hours of 11.00 a.m. and 8.00 p.m. in the car park at Shaw's Bridge, at a pitch which had been designated previously for the sale of those commodities, subject to:

- (iii) the applicant providing all necessary documentation; and
- (iv) the receipt of the appropriate licensing fees.

As a consequence of the decision to grant the Licence to Mr. Kenneth Chivers and the fact that there was only one designated site available, the Committee agreed that it was minded to refuse the applications which had been submitted by Mr. P. Chivers and Mr. R. Adair, on the grounds set out in Sections 9(i) and 9(iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which they wished to

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trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which they wished to trade.

The Head of Building Control informed the Members that the unsuccessful applicants would be advised that, as required under Section 12 (2)(b) of the Street Trading Act (Northern Ireland) 2001, they would be permitted to make written representation to the Council within twenty-one days from the date of notice.

**Competing Applications for a Stationary Street
Trading Licence – Apollo Road**

The Committee was reminded that, at its meeting on 21st August, it had considered separate applications from Mr. I. Emodi and Mr. R. Anderson for the grant of a Stationary Street Trading Licence to sell hot food and non-alcoholic beverages from a vacant designated site in Apollo Road.

The Head of Building Control reported that, whilst both applicants had been invited to brief the Committee at that meeting on their proposals, neither had been present. He explained that Mr. Emodi had been unable to attend due to ill health, however, his wife had been present in order to address the Members on his behalf, if required. Mr. Anderson, on the other hand, had not indicated that he would be unable to attend and had failed to respond to several telephone calls from officers advising him of the meeting. On that basis, the Committee had agreed that it was minded to grant a Stationary Street Trading Licence to Mr. Emodi to sell hot food and non-alcoholic beverages from Monday till Friday between the hours of 6.00 a.m. and 5.00 p.m. in Apollo Road, at a pitch designated previously by the Council for the sale of those commodities, subject to:

- (v) the applicant providing all necessary documentation; and
- (vi) the receipt of the appropriate licensing fees.

As a consequence of that decision, the Committee had agreed also that it was minded to refuse the application which had been submitted by Mr. R. Anderson, on the grounds that, despite being aware that his application would be considered by the Committee on 21st August, he had failed to attend that meeting or to provide an explanation for his non-attendance and that Mr. Emodi had, in arranging for a representative to be in attendance, demonstrated more interest in acquiring the site.

The Head of Building Control reported further that Mr. Anderson had been advised that, as required under Section 12 (2)(b) of the Street Trading Act (Northern Ireland) 2001, he would be permitted to make written representation to the Council within twenty-one days of receiving notification of the Committee's decision. However, no written or verbal representation had been forthcoming during that time.

Accordingly, the Committee agreed, in its capacity as Licensing Authority, to affirm its decision of 21st August to grant to Mr. I. Emodi a Stationary Street Trading Licence for a designated site on Apollo Road. The Committee agreed also to refuse the application which had been submitted by Mr. R. Anderson on the basis of the aforementioned facts.

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As a consequence of the decision to grant the Licence to Mr. I. Emodi and the fact that there was only one designated site available, the Committee agreed to refuse the application which had been submitted by Mr. K. Anderson, on the grounds set out in Sections 9(i) and 9(iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which he wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which he wished to trade.

Chairman