

Licensing Committee

Wednesday, 18th February, 2015

MEETING OF LICENSING COMMITTEE

- Members present: Alderman Ekin (Chairman);
Alderman Rodgers;
Councillors M. E. Campbell,
Clarke, Hussey, Hutchinson,
Groves, Magee, McCarthy,
Mullan, Ó Donnghaile and Spence.
- Also attended: Councillor Graham (Shadow Council).
- In attendance: Mrs. S. Toland, Lead Operations Officer/Head of
Environmental Health;
Mr. T. Martin, Head of Building Control;
Ms. N. Largey, Council Solicitor;
Mr. B. Flynn, Democratic Services Officer; and
Miss. L. Francey, Democratic Services Officer.

Apologies

Apologies were reported on behalf of Aldermen McCoubrey, R. Patterson and Webb and Councillors Attwood and Cunningham.

Minutes

The minutes of the meeting of 21st 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 2nd 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.

Non-Delegated Matters

Review of Entertainments Licensing Legislation – Update

The Head of Building Control reminded the Committee that the Environment Minister, Mr. Mark. H. Durkan, had announced in July 2014 that changes to the current Entertainments Licensing Legislation were required and that he had approached the Council, amongst others, to carry out a review. He pointed out that the current legislation had been introduced almost thirty years ago and that the Council had vast experience of administering the legislation. He added that it was deemed appropriate to update both the legislation and the Model Terms and Conditions in order to remove

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any provisions which were no longer relevant and to introduce updated provisions as necessary.

The Head of Building Control presented an overview of the proposed changes to the legislation. The proposals included, amongst others, the removal of the requirement to advertise in newspapers, Fixed Penalty Notices to augment existing enforcement powers, the introduction of Five Year Licences, the introduction of Emergency/Temporary Licences, provision for the immediate call-in of licences and combining licences for venues with both outdoor and indoor space.

The Committee noted the information which had been provided.

Presentation on the Scottish Licensing Model

The Committee was reminded that, at its meeting on 11th December, it had agreed to invite Mr. Stephen McGowan, a legal expert in Licensing matters, to present an overview of the Scottish licensing system.

Mr McGowan highlighted a number of key differences between Scottish licensing laws and the current law in Northern Ireland. He reported that in Scotland temporary or emergency licences could be granted, as well as personal licences, which were granted to an applicant rather than specific premises. He indicated that, since 2009, applicants in Scotland no longer had to advertise in a newspaper and instead placed a notice on the front of the relevant premises for which the licence had been applied. In addition, all licence applications were listed on the appropriate Council's website. He pointed out that, in his view, the revised procedures had resulted in a more efficient process and that the number of objections to licences had remained stable. Mr McGowan also apprised Members of the benefits of the Primary Authority initiative in England and Wales, currently under consideration by the Scottish Parliament, which allowed a business to form a partnership with one local authority in order to receive tailored support in relation to a range of regulation. He then answered a number of questions from members in relation to the Scottish model.

The Chairman thanked Mr. McGowan for his valuable contribution and invited him to observe the remaining part of the meeting.

Review of Advertising Requirements for Entertainments Licensing

The Head of Building Control informed the Committee that, under the terms of the Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order), an applicant for the grant, renewal, variation or transfer of an Entertainments Licence must provide public notice of an application by publishing an advertisement in newspapers circulated in the Council district. The number and type of papers in which advertisements might be placed was entirely at the discretion of the Council. He explained that the policy (existing from 1985 with modifications) within Belfast had required that notices be advertised in two newspapers, with at least one being advertised in the Belfast Telegraph, Newsletter (Ulster Edition), Daily Mirror (Northern Ireland Edition) or the Irish News. The second notice might be placed in one of the local newspapers distributed or sold in the area in which the premises were located.

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However, if the premises were located within the city centre, the notice must be placed in two of the main newspapers, as outlined.

He reminded Members that, given Local Government Reform, a number of premises would transfer to within the new Belfast boundary and that different policy positions had been applied by both Castlereagh Borough Council and Lisburn City Council in this regard. He explained that, in Lisburn, licensees were required to advertise in two newspapers, however, the cost of advertising was substantially less than that of Belfast. He added that Castlereagh Borough Council, as was the case in many other Councils, required applicants to place advertisements in only one newspaper. He further reminded the Committee that a Working Group had been set up by the Environment Minister, Mark. H. Durkan, to review the Entertainment Licensing Legislation and that its recommendation on this matter included removing any requirement for applicants to advertise in newspapers. However, it might be necessary to display a notice on or near to the premises for 21 days and, in addition, councils would be required to publish all applications on their website.

The Head of Building Control indicated that the Committee might also consider the move to a shortened Advertising Notice which would reduce costs to the applicants whilst still complying with statutory requirements.

After discussion, the Committee agreed to recommend to the new Licensing Committee the following change to its policy in respect of advertising requirements:

- 1) that the new Council would no longer require licensees to advertise in two newspapers for Entertainments Licences and that it would only be necessary to advertise in one newspaper;
- 2) that an applicant may advertise in a local newspaper (titles to be agreed by the Council) distributed or sold in the area where the premises were located, unless the premises were located within the city centre, in which case the applicant would be required to advertise in either the Belfast Telegraph, News Letter (Ulster Edition), Daily Mirror (Northern Ireland Edition) or Irish News; and
- 3) to agree to the Advertising Notice wording as set out in the revised template included as Appendix 2 to the report.

Review of Street Trading and Pedlary Laws - Update

The Head of Building Control reminded the Committee that, at its meeting on 17th December, it had considered a report regarding the proposed changes to the Pedlars Acts 1871 and the Street Trading Act (N.I.) 2001. He reported that a letter had been sent to the Minister on behalf of the Committee to express its concerns regarding the negative impacts which any changes to the laws would create for the City. The Minister had now responded and he considered that it would be beneficial, in the first instance, if a meeting was convened initially between officials to discuss the Committee's concerns.

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The Committee agreed that officers would attend the meeting with officials from the Department for Social Development and noted that a further report would be submitted to its meeting in March on the outcome of that meeting.

**Refusal of an Application for the Renewal of a Stationary Street Trading Licence
in Berry Street - Appeal of Decision**

The Head of Building Control reminded the Committee that, at its meeting on 11th December, it had agreed to affirm its previous decision to refuse the application as submitted by Mr. M. Gulusen for the renewal of his Stationary Street Trading Licence. He informed the Committee that the applicant had since lodged a Notice of Appeal with the Belfast Magistrates Court and that an appeal hearing would take place on 24th February, 2015.

Noted.

**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 Council's Scheme of Delegation.

**Application for the Renewal of a Seven-day Annual
Entertainments Licence – El Divino**

The Head of Building Control reminded the Committee that, at its meeting on 17th December 2014, it had been advised that two objections had been received in relation to an application for the renewal of a Seven-day Annual Entertainments Licence for El Divino nightclub. The Committee was informed that the complaints related to the following:

- disturbance and antisocial behaviour caused by patrons arriving and leaving the premises;
- lewd behaviour in the car park of El Divino;
- traffic congestion and rubbish on the Laganbank Road;
- disturbance having a detrimental effect on the objector's health and wellbeing; and
- it was unreasonable to have a nightclub on a road where two residential apartment blocks were located.

The Committee was reminded that, at its meeting on 17th December, it had agreed to implement a revised protocol which would permit both the applicant and the objectors to be present within the room whilst an application was under discussion. However, whilst the two complainants had been invited to the meeting, they were unable to attend but had not requested that consideration of the application be deferred.

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Accordingly, the Director of El Divino, Mr. P. Langsford, together with Mr. P. Kelly, senior manager, were admitted to the meeting and welcomed by the Chairman.

Mr. Langsford referred to the objections which had been submitted by the complainants and outlined the steps which had been taken to address those matters. Mr. Langsford and Mr. Kelly indicated that they had taken a number of measures to address the concerns of residents in the Laganbank Road area, which had included closing the Club on Monday nights and at 2.00am on other nights, increasing the number of security personnel, reducing the size of the outdoor smoking area and closing certain areas of the club at 12 midnight in order to reduce noise in the area. Mr. Langsford explained that the nightclub was considering setting up a phone line for residents of the Laganbank Road area which would allow them to speak directly to a manager should they have a complaint. The deputation then answered a number of questions and retired from the meeting.

The Committee agreed, in its capacity as Licensing Authority, to grant a renewal of a Seven-day Annual Entertainments Licence in respect of El Divino, Mays Meadow, Laganbank Road.

**Application for the Transfer, Renewal and Variation of a Seven-day Annual
Entertainments Licence – White’s Tavern**

The Head of Building Control informed the Committee that applications had been received from Mr. James Crawford, BCD Events Limited, for the transfer, renewal and variation of a Seven-Day Annual Entertainments Licence for White’s Tavern. He pointed out that the normal process for dealing with Entertainments Licence applications which were not the subject of objections was that the Director of Health and Environmental Services, or his/her nominee, would grant the licence in accordance with the Council’s Scheme of Delegation. However, given that the applicant had applied also for a variation to extend the hours of entertainment past 1.00am the applications were being presented for the Committee’s consideration.

He explained that the areas currently licensed to provide entertainment were the ground floor lounge bar with a maximum capacity of 100 persons, and the first floor lounge with a maximum capacity of 100 persons. The days and hours during which the premises are currently licensed to provide entertainment were as follows:

Monday to Saturday: 11.30 am to 1.00 am the following morning, and
Sunday: 12.30 pm to midnight

He explained that entertainment was currently provided in the form of a disc jockey and live band performances and that the nature of the variation was to extend the hours during which entertainment might be provided from 1.00 am to 2.00 am on Monday to Saturday and from midnight to 1.00am on Sunday.

The Committee agreed, in its capacity as Licensing Authority, to grant the transfer, renewal and variation of a Seven-Day Annual Entertainments Licence in respect of White’s Tavern, 2-4 Winecellar Entry, and to extend the hours during which

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entertainment might be provided on Monday to Saturday to 2.00 am the following morning and from midnight to 1.00 am on Sunday.

Application for the Renewal of a Stationary Street Trading Licence – Cornmarket

The Committee considered the undernoted report:

“1 Relevant Background Information

- 1.1 Mr. V. Wilkinson has applied to renew his Stationary Street Trading Licence for the designated site in Cornmarket, outside BHS.**
- 1.2 Mr Wilkinson wishes to sell shirts, scarves, badges, hats, flags, pictures and mugs all of a soccer and George Best theme. He also wishes to sell batteries, lighters, wrapping paper, greeting cards, umbrellas, toys, tour tickets, boxer shorts, socks, gift bags, St Patrick’s Day and Pride Day hats, flags, whistles and necklaces.**
- 1.3 Mr Wilkinson proposes to use his current trailer measuring 3m x 1.5m.**
- 1.4 His proposed hours of operation are as follows:**
 - Monday to Saturday 11.00 a m to 5.00 p m**
- 1.5 Mr Wilkinson has held the licence at this site since 3rd January 2014 and traded for many years as an employee of the previous licensee, Mr John Tyrrell.**
- 1.6 However, since the licence was granted to Mr Wilkinson he has, on a significant number of occasions, breached his Licence conditions which have resulted in formal action. Some examples of these are detailed below.**
- 1.7 During routine licence inspections on 12th March 2014, 19th June 2014 and 24th August 2014, it was observed by council officers that Mr Wilkinson’s trailer had been left on site after the permitted hours of trading. The Terms and Conditions of a Street Trading Licence state that units must be removed from the area after trading has finished.**
- 1.8 On each of those occasions, Mr Wilkinson was spoken to about the offences and a warning letter was sent to him informing him that, if he continued to leave the trailer on the site in breach of his licence, the Council would have no other option but to remove and store the trailer at a suitable location and that he would incur the cost of this enforcement action.**

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- 1.9 At a subsequent inspection, on 7th September 2014, Mr Wilkinson's trailer was again observed to be on site after the hours of trading at approximately 10.00 p m. His trailer was, therefore, removed from the area, as permitted under Section 23 of the Act. As a result, he had to pay the £200 costs incurred by the Council to have a recovery company remove and store the trailer. The trailer was returned to Mr Wilkinson after payment was made.**
- 1.10 On 14th November 2014 and 16th November 2014, it was again observed by Council Officers that Mr Wilkinson's trailer had been left on site after the hours of trading. Mr Wilkinson was spoken to about the offences and a further warning letter was sent to him advising that if he continued to leave the trailer on site that it would be removed as before.**
- 1.11 On 19th December 2014 Mr Wilkinson's trailer was again observed by Council Officers to be on site at approximately 10.30pm, some 5 hours after the permitted hours of trading. The trailer was removed from the area and Mr Wilkinson had to again pay the £200 costs incurred by the Council to have a recovery company remove and store the trailer. The trailer was duly returned to him after payment was made and he was given a final warning that any future breaches of his licence conditions may result in legal proceedings against him and the revocation of his Street Trading Licence.**
- 1.12 Given these continued licence infringements, it is deemed appropriate for Committee to consider Mr Wilkinson licence renewal application.**

2 Key Issues

- 2.1 The Street Trading Act (Northern Ireland) 2001 places a statutory obligation on the Council to grant an application for a Street Trading Licence unless there are sufficient grounds to refuse it.**
- 2.2 Section 9 of the Act sets out discretionary grounds under which the Council may refuse to grant an application.**
- 2.3 Section 9 (1)(c) states that a Council may refuse a licence if it is satisfied that the applicant is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a Street Trading Licence.**
- 2.4 Should Committee be of a mind to use its discretionary power to refuse Mr Wilkinson's Street Trading Licence, Section 12 of**

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the Act requires advance notice be given to Mr Wilkinson and that he be invited to make representations.

3 Resource Implications

3.1 Financial

If the Committee grants a licence, the Street Trading Licence fee is as follows:

- **Application Fee of £100, and**
- **A Licence fee, for Monday to Saturday, of £800 per annum.**

3.2 Human Resources

None.

3.3 Asset and Other Implications

None.

4 Equality Implications

4.1 There are no equality or good relations issues.

5 Recommendations

5.1 The Committee is requested to decide whether:-

- 1. it is minded to refuse Mr Wilkinson's Licence as he is, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a Street Trading Licence and, if so,**
- 2. to agree to consider the refusal of the Licence at a future meeting at which Mr Wilkinson would be invited to make representation regarding his misconduct."**

Accordingly, the Committee agreed, in its capacity as Licensing Authority, that it was minded to refuse the application submitted by Mr. Wilkinson for the renewal of a Stationary Street Trading Licence for Cornmarket, on the discretionary grounds as set out in Section 9 (1) (c) of the Street Trading Act (Northern Ireland) 2001, in that he was, on account of misconduct or some other reason relating to trading activities, unsuitable to hold a Street Trading Licence; and as such Mr Wilkinson would be invited to a future meeting at which he could make representations in relation to the proposed refusal of his renewal application.

Chairman