

Public Document Pack

**Democratic Services Section
Legal and Civic Services Department
Belfast City Council
City Hall
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**Belfast
City Council**

15th December, 2020

MEETING OF LICENSING COMMITTEE

Dear Alderman/Councillor,

The above-named Committee will meet in the Lavery Room - City Hall on Wednesday, 16th December, 2020 at 5.00 pm, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

- (e) Proposed process for dealing with new licence applications for premises which previously operated as a HMO (Pages 1 - 6)

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Subject:	Proposed process for dealing with new licence applications for premises which previously operated as a HMO
Date:	16 th December 2020
Reporting Officer:	Vivienne Donnelly, City Protection Manager, Ext. 5325
Contact Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910 Nora Largey, Divisional Solicitor, Ext. 6049

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	To consider how to address the issue of overprovision in respect of certain new applications for a licence to operate a House of Multiple Occupation ('HMO') given the requirements of the Houses of Multiple Occupation Act (NI) 2016.
2.0	Recommendations
2.1	Taking into account the information presented Committee is asked to agree the following: That all new applications received up to and including 1 st March 2021 where the premises have previously operated as a HMO and have the benefit of planning permission and/or a CLUD will not be considered to result in overprovision given there appears to have been a generally held misconception that planning permission must be obtained before an application for renewal of a licence was submitted.
2.2	That officers write to all HMO licence holders whose licence is due to expire before 1 st March 2021 and explicitly advise that if they fail to apply to renew the application before that date the Council will, in accordance with the requirements of the 2016 Act, assess whether the grant of a licence would result in a breach of planning control or result in overprovision of HMO accommodation in the locality.

3.0	Main report
	<p data-bbox="258 228 416 259"><u>Key Issues</u></p> <p data-bbox="165 291 1474 421">3.1 Sections 8 of the 2016 Act states that a council may grant a HMO licence only if it is satisfied of certain criteria. These include that the occupation of the living accommodation as an HMO would not constitute a breach of planning control and that the grant of the licence will not result in overprovision of HMOs in the locality in which the living accommodation is situated.</p> <p data-bbox="165 461 1474 860">3.2 Section 12 goes on to specifically deal with overprovision. It reads:</p> <p data-bbox="258 528 1474 591">(1) In considering whether the granting of a licence will result in overprovision in a locality for the purposes of section 8(2)(d), the council must have regard to—</p> <ul data-bbox="316 631 1417 761" style="list-style-type: none"> <li data-bbox="316 631 1114 663">(a) the number and capacity of licensed HMOs in the locality, <li data-bbox="316 663 1417 725">(b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need, and <li data-bbox="316 725 1219 761">(c) such other matters as the Department may by regulations specify. <p data-bbox="258 797 1474 860">(2) It is for the council to determine the localities within its district for the purposes of this section.</p> <p data-bbox="165 900 1474 1025">3.3 It is clear from the wording of the 2016 Act that the Council is under a mandatory obligation to have regard to the issue of overprovision when assessing new applications. Moreover it must be satisfied that the grant of the licence will not result in overprovision of HMO accommodation in the locality.</p> <p data-bbox="165 1066 1474 1227">3.4 Up until relatively recently officers had not taken overprovision into account in respect of any new application for a HMO licence which had planning permission or a Certificate of Existing Lawful Use ('CLEUD') in place. A CLEUD is a certificate which is issued in respect of premises which have established immunity from enforcement action where it can be demonstrated that the premises has been used as a HMO for over 5 years.</p> <p data-bbox="165 1267 1474 1429">3.5 Upon review of the position it was considered that this approach was not in accordance with the 2016 Act which requires the Council to have regard to planning permission AND overprovision as two separate and distinct issues. Assessment of overprovision is based on the number of licensed HMOs, not on the number of HMOs which have planning permission or the benefit of a CLEUD.</p> <p data-bbox="165 1469 1474 1733">3.6 It was therefore recommended that overprovision should be taken into account in respect of new licences. In assessing overprovision it was considered appropriate to use the policy tests as set out in the "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015" for consistency purposes. This is a planning policy document against which planning applications for HMOs are assessed. The HMO Subject Plan Strategy "aims to adopt a balanced approach to HMO development, by seeking to positively influence and shape the market for HMOs, while controlling and curtailing further development in areas where such accommodation is currently concentrated."</p> <p data-bbox="165 1774 1474 1868">3.7 The Plan identifies certain areas of the city in which a higher density of HMO properties is considered acceptable. In these development nodes the threshold is set at 30% subject to some limited exceptions. In all other areas the threshold is 10%.</p> <p data-bbox="165 1908 1474 1971">3.8 In determining whether these thresholds are reached officers had regard to the number of current licensed HMOs in the area as per the 2016 Act.</p>

3.8	<p>It appears however that the position has been complicated by a common misconception that the Council would automatically refuse a renewal application where the owner did not have the benefit of planning permission or a CLEUD. This resulted in a number of HMO owners not applying to renew their licence on time. Members will recall the discussion of one such premises in Stranmillis Gardens at its September meeting where the premises had been operating as a HMO for a substantial period of time but the owner had not applied to renew his licence. A new application was lodged some 7 months after the licence had expired.</p>
3.9	<p>Having considered representations from those landlords who would be affected, officers would propose that all new applications received up to and including 1st March 2021 where the premises previously operated as a HMO and have the benefit of planning permission and/or a CLUD will not be considered to result in overprovision. Officers will also write to all HMO licence holders whose licence is due to expire before 1st March 2021 and explicitly advise that if they fail to apply to renew the application before that date the Council will, in accordance with the requirements of the 2016 Act, assess whether the grant of a licence would result in a breach of planning control or result in overprovision of HMO accommodation in the locality. They will be further advised that this may result in the refusal of the application even if the premises has planning permission or previously operated as a HMO.</p>
3.10	<p>It is considered that this proposed approach will resolve any concerns members, and indeed HMO owners, may have regarding fairness given the misconception as in relation to planning permission as discussed at paragraph 3.8.</p>
3.11	<p>LANI have raised concerns about what they allege is a policy change on the part of the Council. Officers asked that they put their concerns in writing so that officers could consider same and provide their response in this report so as to better inform members. The response from LANI is attached at Appendix One. You will note that no commentary was provided in respect of this issue although it may be linked to issues they wish to raise regarding change of ownership. As members will note LANI have asked to address the Committee at its December meeting, together with two landlords/managing agents.</p>
3.12	<p>With regard to the change of ownership issue it is believed that LANI's concerns relate to the Council taking into account overprovision when assessing such applications. This is not a policy change but rather the Council correctly apply the 2016 Act.</p>
3.13	<p>Counsel's advice was previously sought on this and has been subsequently clarified. He has confirmed that the 2016 Act requires the Council to treat such an application as a new application rather than a renewal.</p>
3.14	<p>However there will be no material change to the Council's position in respect of overprovision. In circumstances where an application has been received from the prospective owner before the expiry of the existing licence such licence remains in place until the prospective owner's application has been determined. In such cases this is effectively a transfer of an existing licence to another person and would not result in overprovision.</p>
3.15	<p>The wording of this particular provision is likely to be reviewed as part of the review being undertaken by DfC and it is acknowledged that this would provide greater clarity for those seeking to purchase HMO properties.</p>
<p><u>Financial and Resource Implications</u></p>	
<p>None.</p>	
<p><u>Equality and Good Relations Implications</u></p>	

	There are no equality or good relations issues associated with this report.
4.0	Appendices: Appendix One – Submission of LANI dated 1 st December 2020

The introduction of an out of hours contact number for all HMO licence renewals.

- Lack of consultation and or advice
- Council's refuse to advise landlords of any incidents, now fortunately changed.

Recent policy change with regard to change of ownership.

- Has there been one?
- Lack of consultation and or advice to landlords, estate agents, solicitors, surveyor etc.
- legislation was not intended to have an enormous impact on the existing HMO properties, other than in connection with the anti-social behaviour regulations

Training

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