

**Democratic Services Section
Legal and Civic Services Department
Belfast City Council
City Hall
Belfast
BT1 5GS**



**Belfast
City Council**

19th January, 2021

MEETING OF LICENSING COMMITTEE

Dear Alderman/Councillor,

The above-named Committee will meet via Microsoft Teams on Wednesday, 20th January, 2021 at 5.00 pm, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

1. **Routine Matters**

- (a) Apologies
- (b) Minutes
- (c) Declarations of Interest

2. **Presentations**

- (a) Mr. D. Boyle
- (b) Mr. S. Magill
- (c) Mr. M. McMahon

3. **Delegated Matters**

- (a) Houses in Multiple Occupation (HMO) Licenses Issued Under Delegated Authority (Pages 1 - 4)

- (b) Application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens (Pages 5 - 30)
- (c) Applications for a New Licence to operate a House of Multiple Occupation for 11 Penrose Street (Pages 31 - 54)

4. **Non-Delegated Matters**

- (a) Proposed process for dealing with new licence applications for premises which previously operated as a HMO (Pages 55 - 76)



Subject:	Houses in Multiple Occupation (HMO) Licences Issued Under Delegated Authority
Date:	20 January 2021
Reporting Officer:	Kevin Bloomfield, NIHMO Manager, 07584 270820
Contact Officer:	Valerie Brown, City Services Manager, Tel. 9027 0668 Kevin Bloomfield, NIHMO Manager, 07584 270820

Restricted Reports	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

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

1.0	Purpose of Report or Summary of main Issues
1.1	Under the Scheme of Delegation, the Director of City & Neighbourhood Services Department is responsible for exercising all powers in relation to the issue and variation, but not refusal, of HMO Licences, excluding provisions relating to the issue of HMO Licences where adverse representations have been made. Those applications which were dealt with under the Scheme are listed below.
2.0	Recommendations
2.1	The Committee is requested to note the applications that have been issued under the Scheme of Delegation.

3.0Main report

3.1

Key Issues

Under the terms of the Houses in Multiple Occupation Act (Northern Ireland) 2016 the following HMO Licences were issued during December 2020.

ID	Licensee	HMO Address
7638	Mr Eoin Cleland	23 St Albans Gardens
7631	Mrs Christine Hunter	53 Tate Avenue
7529	Mr Kevin Campbell	85 Carmel Street
7426	SOBE Developments Limited	Apartment 7, 58 - 60 Cromwell Road
7425	SOBE Developments Limited	Apartment 6, 58 - 60 Cromwell Road
7271	Mr Frederick Rooney	42 Dunluce Avenue
7841	Ms Karen O'Hare	43 Claremont Street
7776	Mrs Linda Thompson	23 Malone Place
7758	Ms Christina Cunningham	80 Agincourt Avenue
7567	Mr Seamus O'Kane	41 Claremont Street
7521	Ms Margaret O'Gara	56 Tate Avenue
7445	Mr Paul McKeown	Flat 3, 36 Lawrence Street
7444	Mr Paul McKeown	Flat 2, 36 Lawrence Street
7443	Mr Paul McKeown	Flat 1, 36 Lawrence Street
7279	Mr. Brian Paul Austin	46 St Albans Gardens
7067	Mr Michael McAllister	Flat 2, 30 Fitzroy avenue
7897	Mr Stephen Crooke	129 Ulsterville Avenue
7863	Ashley Morhej	32 Hatton Drive
7788	Mr Adrian McAlinden	7 Agincourt Avenue
7554	Mrs Anne Tennyson	69 Sandhurst Drive
7478	Mr Neil Rafferty	12 Sandhurst Gardens
7307	Mr Stephen McNulty	Flat 2, 97 Wellesley Avenue
7762	Mr James Harkness	Flat 1, 49 Malone Avenue
7698	Mr Basil Irwin	152 Dunluce Avenue
7641	Ms Barbara Little	20 Stranmillis Gardens
7106	Mr Michael Blaney	117 University Avenue
7064	Ms Mary Fegan	2 Ulsterville Gardens
7800	Mr Neil Fraser Cree	193 Duncairn Gardens
7696	Mrs Aisling McCann	69 Sandhurst Gardens
7684	Mr Bernard Fitzpatrick	Apartment 2, 25 Stranmillis Gardens
7658	J. & A. Murphy Limited	57 Wellesley Avenue
7649	J. & A. Murphy Limited	3 Melrose Street
7643	Mr Tom McAleer	61 Agincourt Avenue
7435	Mr John Kerlin	30 University Avenue
7263	Kendale Limited	17 Wolseley Street
7185	Ms Anna Marie Mallett	50 St Albans Gardens
7042	Kendale Limited	Flat 2 ,37-39 Cromwell Road

7910	Mr	Alan	Wilson	3 Sandhurst Drive
7854	Mrs	Grainne	McKay	3 Meadowbank Street
7840	Ms	SIOBHAN	MAVITTY	47 Palestine Street
7713	Mr	Jason	McAnulla	28 Agincourt Avenue
7683	Mr	Charles	Corcoran	29 Agincourt Avenue
7673	Mr	Joseph	Gibson	13 Rugby Avenue
7669	SOBE Developments Limited			4 Penrose Street
7344	Mr	Peter	O\Hare	25 Stranmillis Park
7339	Mrs	Anne	Foreman	5 Elaine Street
7227	Mr	Neil	Rafferty	30 Stranmillis Gardens
7954	Ms	Marion	Kerr	17 Elaine Street
7868	Mr	John	McGovern	134 Agincourt Avenue
7814	Mr	Ignatius	Trainor	25 Fitzroy Avenue
7801	Mrs	Patricia	Byrne	5 Sandhurst Drive
7740	Mr	John	Boardman	205 Dunluce Avenue
7634	Mr	Kieran	Gribben	67 Farnham Street
7553	Mr	John	Lambon	94 Agincourt Avenue
7430	SOBE Developments Limited			Apartment 3, 58 - 60 Cromwell Road
7223	Mr	Neil	Rafferty	27 Stranmillis Gardens
7926	Mr	Christoph er	McCann	Apartment A, 68 Fitzroy Avenue
7790	Mr	Michael	Grant	46 Sandhurst Gardens
7614	Mr	David	Hutchinson	290 Donegall Road
7540	Mr	Desmond	McAuley	Flat 2, 28 Canterbury Street
7515	Mr	Malcolm	Buck	99 Rugby Avenue
7504	Mr	Brian	Hughes	29 Chlorine Gardens
7220	J J Hennebry & Son Ltd			38 Sandymount Street
7942	Ms	Monica	Boyle	53 Raby Street
7906	Ms	Siobhan	McCreesh	Flat 6, 90 University Street
7650	J. & A. Murphy Limited			63 Melrose Street
7534	Mr	Terry	McManus	61 Sandhurst Gardens
7481	Mr	Binne	Vries	22 Eblana Street
7460	Mr	Neil	Conlon	14 St Ives Gardens
7454	Mr	Lisle	Halkett	18 Wellington Park Avenue
7131	Mr	John	Tease	71 Bates Avenue
6603	Mr	Barry	O\Donnell	6 Whitehall Gardens
7738	Mr	Aidan	McAllister	77 Agincourt Avenue
7632	Mr	Andrew	Hogg	12 Cadogan Street
7239	Mrs	Claire	Little	Flat 2, 96 Malone Avenue
7958	Mr	Martin	King	Flat 1, 27 India Street
7820	Mr	John	McGovern	144 Agincourt Avenue
7767	Ms	Denise	Magill	64 Agincourt Avenue
7766	Mr	James	Harkness	Flat 3, 49 Malone Avenue
7765	Mr	James	Harkness	Flat 2, 49 malone Avenue
7648	McGivern Properties Ltd			84 Agincourt Avenue

	7594	Mr	David	Moore	7 Sandymount Street
	7584	Mr	Patrick	McPeake	32 Canterbury Street
	7059	Mr	Mark	Kilgore	2 St Albans Gardens
	7956	Mr	Raymond	King	Flat 2, 111 Fitzroy Avenue
	7955	Mr	Raymond	King	Flat 1, 111 Fitzroy Avenue
	7852	Mr	Dairmid	Laird	Flat 4, 110 Fitzroy Avenue Belfast Antrim BT7 1HX
	7847	Mr	John	Lynch	Flat 1, 10 Lawrence Street
	7689	Mr	Mark	McKelvey	48 Sandhurst Gardens
	7611	Mr	Peter	Collins	70 Malone Avenue
	7113	Mr	Fergus	Fitzsimons	91 University Avenue
	7032	Natalie Clarke Residential			53 Damascus Street
	7933	Mr	Patrick	McGovern	Flat 2, 139 University Avenue
	7899	Mr	Bernard	Fitzpatrick	Flat 2, 15 Landseer Street
	7851	Mr	Dairmid	Laird	Flat 3, 110 Fitzroy Avenue Belfast Antrim BT7 1HX
	7850	Mr	Dairmid	Laird	Flat 2, 110 Fitzroy Avenue
	7839	Dr	John	Corrigan	57 Agincourt Avenue
	7793	Mr	Neil	O'Hare	54 Pretoria Street
	7733	Mr	Michael	Smyth	Flat 1, 120 Malone Avenue
	7939	Mr	Paul	Conlon	84 University Avenue
	7907	Mr	Andrew	Peoples	59 Lomond Avenue
	7578	Enagh Investments Ltd			Flat 3, 22 Wolseley Street
	7962	M&M King Partnership			Flat 2, 17 Cromwell Road Belfast Antrim BT7 1JW
	7934	NIPATO Limited			82 Carmel Street
	7789	Mr	Nial	Jordan	27 Sandhurst Drive
	7785	Mrs	Caryl	Mac Randal	9 Ashley Avenue
	7675	Mr	Stephen	Andrews	314 Donegall Road
	6951	Mr	Stephen	Campbell	35 Jerusalem Street
	8028	Mr	Brian	Flanagan	6 Ardenlee Way
	7359	Mr	Stephen	Calvert	5 Agincourt Avenue
<u>Financial & Resource Implications</u>					
3.2	None				
<u>Equality or Good Relations Implications/Rural Needs Assessment</u>					
3.3	There are no issues associated with this report.				



Subject:	Addendum report in respect of an application for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens, Belfast. BT9 5AS
Date:	20 January 2021
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
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 type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	The Committee, at its December 2020 meeting, was asked to consider whether it would grant or refuse the application for a new HMO licence at 32 Stranmillis Gardens, Belfast. BT9 5AS. However based on advice from legal services the report was deferred to allow member to further consider at the January meeting the paper presented on "Proposed process for dealing with new licence applications for premises which previously operated as a HMO" which would have a direct impact on this case.
1.2	At the October 2020 meeting following a presentation and a written submission on behalf of the owner of the accommodation, members deferred the application until the committee meeting on 18 November 2020 for officers to provide additional clarification to the points raised. A copy of the written correspondence provided by the applicant, setting out further representations is included at Appendix One to this report. For the purposes of this report the issues are abbreviated and the officer response is detailed below.
1.3	This report should be read in conjunction with the report presented to Committee at its October meeting which is at Appendix Two.
1.4	That the HMO Subject Plan does not present a true socioeconomic picture of the area and should not be used to assess over provision
1.5	Pursuant to section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ("the 2016 Act") the Council can refuse an application where it is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation.

1.6	In order to ensure consistency as both a planning and licensing authority, the same area was used to determine the locality. This is HMO Policy Area "HMO 2/19 Stranmillis" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 (the "2015 Plan").
1.7	<p>In assessing whether the grant of a new licence in this locality would result in overprovision officers had regard to –</p> <p>(a) the number and capacity of <u>licensed</u> HMOs in the locality; and</p> <p>(b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.</p>
1.8	On the date of assessment, 29 September 2020 there were a total of 366 licensed HMOs out of 761 dwelling units in HMO policy area "HMO 2/19 Stranmillis" which equates to 48% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 366 licensed HMOs have a capacity of 1548 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
1.9	The Council must also consider the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.
1.10	In September 2017 The Housing Executive published the document "Housing Market Analysis Update – Belfast City Council Area" which states "HMOs form an important element of the PRS, particularly for younger people on low incomes and for single people, under the age of 35, affected by the limitation of housing benefit to the shared room rate. Anecdotal evidence also indicates that this has been a popular sector with migrant workers."
1.11	At the time of writing this report there were 10 HMO properties advertised for let as student houses on the website Property News in BT9 with a capacity of 40 bed spaces. It would therefore appear that there is sufficient supply of HMO accommodation in the area.
1.12	Consequently, officers were of the view that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality.
1.13	Legal Services has advised that there is a clear requirement in Section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision.
1.14	The fact the use of the property as a HMO is permitted for planning purposes is a relevant consideration in determining whether the grant of this licence will result in overprovision. There is an argument that it may not do so as the premises are already being used as a HMO.
1.15	However it should be borne in mind that planning permission was granted on the basis that the use had been established for 5 or more years and was therefore immune to enforcement. No assessment of overprovision was made at that time. Given the level of licensed HMO properties in this locality as set out above it would be highly unlikely that a planning application for a new HMO in the area would be successful as the thresholds in the 2015 Plan have been significantly exceeded.
1.16	Reminder letter about renewal only sent one week before the licence was due to expire
1.17	Prior to the date of transfer the NIHE took the decision based on legal advice that it could not issue reminder letters relating to a regulatory process it would not be responsible for administering. The NIHE did however in November 2018 write to all HMO owners on behalf

1.18	of the Department of Communities (DfC) informing them of the upcoming changes to the legislation.
1.19	<p>In this case a reminder letter was issued by both post and email 7 days prior to the expiry of the existing licence. An application was not received until 13th February 2020.</p> <p>It is a matter of good practice that reminder letters should be sent and in this case one was sent. However, there is no legislative requirement for the council to do so and it is ultimately the responsibility of the owner of the HMO to bring forward the application for renewal. Whilst a reminder was not sent in the same manner that NIHE would have done, one was sent a week before the application was due to expire. Members will be aware that an application can be made online.</p>
1.20	The applicant acknowledges in his written response that he let the licence lapse but cites a number of factors for the lapse which included some health concerns and he was in the process of changing the managing agent for the property due to misconduct and bad management by the previous agent. he was in the process
1.21	That he was required to have planning permission before submitting his application
1.22	Up to September 2019, applicants for renewal were advised that a failure to have planning permission for use of the property as an HMO would be considered when assessing whether the applicant is a fit and proper person. Applicants were furthered instructed that while it did not mean that an application would automatically be refused, they should ensure that they had the necessary permission or certificate of lawful use in place before applying for renewal of their licence.
1.23	Furthermore, at that time the advice given verbally by staff to applicants was that the application could be submitted without all the documentation being completed prior to the licence expiring. Whilst applicants were advised to ensure that they had the necessary planning permission or certificate of lawful use in place prior to making the required renewal application, you will note that applicants were also advised that not having said permission "...does not mean that an application will automatically be refused...". Furthermore, at that time the advice given verbally by staff to applicants was that the application could be submitted without all the documentation being completed prior to the licence expiring.
1.24	Officers have no record of the applicant seeking advice regarding the application process, prior to the expiry of his existing licence. Had he done so officers would have advised him to submit his application.
1.25	Not provided with details of the objection.
1.26	Details of the objection were included in the notice of proposed decision issue to Mr Rafferty on 30 September 2020.
1.27	The agenda seems to be in issuing the fixed penalty notice
1.28	The Fixed Penalty Notice issued on the 14 October 2019 offered Mr Rafferty the opportunity to discharge any liability to conviction by the payment of the FPN. The serving of the FPN followed an inspection of the property on the 2 October 2019 at which time it was identified that the property was occupied as an HMO by 5 unrelated individuals. Mr Rafferty took independent legal advice regarding the FPN at the time and subsequently chose to pay the FPN on the 28 October 2020.
1.29	The level of fixed penalty is within the range permitted in the Houses of Multiple Occupation Act (NI) 2016.

1.30	Why could we not of been advised of the temporary exemption notice before being issued us with the £5000 fine?
1.31	On the 2 October 2019 an authorised officer from the HMO Unit inspected the property and established that the property was occupied as an HMO by 5 individuals from more than 2 households which was an offence pursuant to section 30(1) of the 2016 Act. Prior to the 2 October 2019 the HMO Unit was not aware that the property was continuing to be used as an HMO and as such was not in a position to provide advice regarding Temporary Exemption Notices.
1.32	A temporary exemption notice applies where the owner of an unlicensed HMO makes an application to the council explaining the steps to be taken to stop the premises from being an HMO (such as ensuring that the number of occupants reduces below 3, or that sufficient basic amenities for exclusive use are installed so that occupants do not have to share them), and the council must be satisfied that these steps will be successful.
1.33	Threat of another £5000 fine
1.34	The advice provided to Mr Rafferty on the 21 October 2019 was that if he intended to take steps to remove the property from HMO usage he could apply for a temporary exemption notice. We further advised that if the property remained an unlicensed HMO and no such temporary exemption notice was in place the Council would have to consider taking further action pursuant to section 30 “Unlicensed HMO” of the Houses in Multiple Occupation Act (Northern Ireland) 2016.
1.35	Mr Rafferty in his application for a temporary exemption notice dated the 24 October 2019 give an undertaking that he would remove the accommodation from HMO usage by “Eviction of three or all five of tenants”.
1.36	Subject Access Request (SAR)
1.37	Mr Rafferty submitted a SAR in relation to this licence application on the 4 October 2020, the council responded with the requested information on the 5 November 2020.
2.0	Recommendations
2.1	Taking into account the information presented Committee is asked to hear from the applicant and make a decision to either: <ul style="list-style-type: none"> (i) Grant the application, with or without any special conditions; or (ii) Refuse the application.
2.2	If the application is refused, the applicant has a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision. The licence will remain in place pending the appeal.
	Appendices – Documents Attached
	<ul style="list-style-type: none"> • Appendix 1 – Applicant’s correspondence in response to notice of proposed decision • Appendix 2 – Original Committee Report • Appendix 3 – Minutes of the Licensing Committee meeting on 14 October 2020 • Appendix 4 – Applicants correspondence of the 3 November 2020 • Appendix 5 – Officers response to the correspondence of 3 November 2020

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Subject:	Applications for a New Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens, Belfast. BT9 5AS
Date:	14 October 2020
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
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 type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues			
1.1	To consider an application for a Licence permitting the use of premises as a House in Multiple Occupation (HMO).			
	Premises	Application No.	Applicant(s)	Managing Agents
	32 Stranmillis Gdns Belfast BT9 5AA	7222	Mr Neil Rafferty	Key Lets NI
1.2	Members will be aware that responsibility for HMO's was transferred to local district councils in April 2019 with the introduction of a new licensing regime. Any existing registrations under the old NIHE Registration Scheme operated were deemed to be licences at the point of transfer. Members are reminded that licences are issued for a 5 year period with standard conditions. Where it is considered necessary to do so, the Committee can also impose special conditions.			
1.3	Following the publication of this application, an objection was received in relation to the application. This objection raises general concerns about the overprovision of HMOs in the Stranmillis HMO Policy Area			
1.4	As a valid objection has been received, the application must be considered by Committee which must, after hearing from the objector and the applicant, decide whether to grant the licence application.			

1.5	<p>Background</p> <p>The property was previously licensed as an HMO up and until the 20 August 2019, at which time the licence expired. Prior to the expiry of the licence the NIHMO Unit wrote to the owner on the 13 August 2019 reminding him that the licence on the property was about to expire.</p>
1.6	<p>On the 02 October 2019 an authorised officer from the HMO Unit inspected the property and established that the property was occupied as an HMO by 5 individuals from more than 2 households.</p>
1.6	<p>Officers wrote to Mr. Rafferty on the 2 October 2019 asking him if he had a reasonable excuse for operating the accommodation without it being licensed. As no such reasonable excuse was forthcoming the council issued a Fixed Penalty Notice (“FPN”) on the 14 October 2019 for the sum of £5000.00, offering Mr. Rafferty the opportunity of discharging any liability to conviction for the alleged offence, by paying the fixed penalty. Mr. Rafferty accepted the opportunity and paid the FPN on the 28 October 2019. Correspondence exchanged between the applicant, the applicant’s solicitor and the NIHMO Unit, in this regard, are appended to this report.</p>
1.7	<p>On the 28 November 2019 pursuant to Section 15 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 a Temporary Exemption Notice (TEN) was granted until 28 February 2020 after the owner specified the steps he would be taking with a view to securing the accommodation ceases to be an HMO. The TEN was subsequently extended until 28 May 2020. On the 17 July 2020 officers confirmed the property was no longer in HMO usage.</p>
1.8	<p>On the 13 February 2020 an application for a new HMO licence was submitted to the NIHMO Unit.</p>
2.0	Recommendations
2.1	<p>Taking into account the information presented Committee is asked to hear from the objectors and applicant and make a decision to either:</p> <ul style="list-style-type: none"> (i) Grant the application, with or without any special conditions; or (ii) Refuse the application.
2.2	<p>If the application is refused, the applicant has a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision. The licence will remain in place pending the appeal.</p>
2.3	<p>Objectors have no right of appeal but may be able to judicially review the Council’s decision</p>
3.0	Main report
	<u>Key Issues</u>
3.1	<p>Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that:</p> <ul style="list-style-type: none"> a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control; b) the owner, and any managing agent of it, are fit and proper persons; c) the proposed management arrangements are satisfactory); d) the granting of the licence will not result in overprovision of HMOs in the locality;

	<p>e) the living accommodation is fit for human habitation and—</p> <p>(i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or</p> <p>(ii) can be made so suitable by including conditions in the licence.</p>
3.2	<p>As this is a new application the HMO Unit consulted with the Council's Planning Service who confirmed that on 17 January 2020 a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/2946/Idc</p>
3.3	<p>For the purpose of determining whether or not the granting of a licence would result in an overprovision of HMOs in the locality of the accommodation, the locality was defined as being HMO Policy Area "HMO 2/19 Stranmillis" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.</p>
3.4	<p>When considering the fitness of an applicant the Council must have regard to any offences concerning fraud/ dishonesty, violence, drugs, human trafficking, firearms, sexual offences, unlawful discrimination in, or in connection with, the carrying on of any business; or any provision of the law relating to housing or of landlord and tenant law. It also permits the Council to take into account any other matter which the council considers to be relevant.</p>
	<p><u>Objections</u></p>
3.5	<p>Following publication of notice of the application, an objection was received in relation to the licence application. A copy of that objection is appended to this report. As appears from the objection, the issues raised are as follows:</p> <p>a) Over provision of HMOs in the Stranmillis HMO Policy Area.</p>
3.6	<p>The NIHMO Unit has consulted with following units within the Council's City and Neighbourhood Services Department -</p> <p>(a) Environmental Protection Unit ("EPU") - who have confirmed that in relation to night-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years,</p> <p>(b) Environmental Protection Unit ("EPU") - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years,</p> <p>(c) Public Health and Housing Unit ("PHHU") - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years,</p> <p>(d) Cleansing Enforcement ("CE") - who have confirmed that in relation to litter and waste , there has been no relevant enforcement action required in respect of the HMO in the last 5 years,</p>
	<p><u>Fitness</u></p>
3.7	<p>The applicants and managing agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.4 of this report.</p>

3.8	The applicant or managing agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and CE, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the applicant, managing agent or occupants. Due to data protection issues which have recently arisen, PSNI have not been accepting or responding to notification of these applications. Officers are continuing to engage with PSNI to find a resolution to this issue.
3.9	As set out at paragraph 1.6 of this report, the NIHMO Unit issued a FPN on the applicant, for operating the accommodation as an HMO without a licence.
3.10	Officers are not aware of any other issue relevant to the Applicant's fitness.
	<u>Attendance</u>
3.11	The applicant and/or their representatives will be available to discuss any matters relating to the renewal of the licence should they arise during your meeting.
	<u>Suitability of the premises</u>
3.12	An inspection of the premises was carried out by Officers from the Service on 17 July 2020 at which time it was established that the property meet the physical standards for an HMO.
	<u>Notice of proposed decision</u>
3.13	On the 30 September 2020, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, Officers issued a notice of proposed decision to the applicant setting out the terms of the proposed licence.
	The notice of proposed decision stated that the council proposed to refuse the licence.
	A statement of reasons for the proposal was included in the notice of proposed decision.
	<u>Statement of reasons for the proposed decision</u>
3.14	<p><u>The statement of reasons outlined the following as the Council's basis for refusal:-</u></p> <p>"Pursuant to section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 "2016 Act" the Council is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.</p> <p>For the purpose of section 12(2) of the Act the Council has determined the locality as being HMO Policy Area "HMO 2/19 Stranmillis" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 (the "2015 Plan")</p> <p>In making this decision the Council has had regard to –</p> <ul style="list-style-type: none"> (a) the number and capacity of <u>licensed</u> HMOs in the locality (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need <p>To inform the Council in its consideration of the above provisions, the Council has taken account of the 2015 Plan and in particular, Policy HMO 1 and Policy HMO 2.</p>

3.15	<p>On the date of assessment, 29 September 2020 there were a total of 366 licensed HMOs out of 761 dwelling units in HMO policy area “HMO 2/19 Stranmillis” which equates to 48% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 366 licensed HMOs have a capacity of 1548 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey’s Pointer database.</p> <p>Consequently, the council is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.”</p> <p><u>Financial and Resource Implications</u></p> <p>None. The cost of assessing the application and officer inspections are provided for within existing budgets.</p> <p><u>Equality and Good Relations Implications</u></p> <p>There are no equality or good relations issues associated with this report.</p>
4.0	Appendices – Documents Attached
	<ul style="list-style-type: none"> • Appendix 1 – Location Map • Appendix 2 – Objection • Appendix 3 – Notice of proposed decision • Appendix 4 – Correspondence with applicant regarding the FPN • Appendix 5 – Correspondence with applicant’s solicitor regarding the FPN • Appendix 6 – Map of HMO Policy Area “HMO 2/19 Stranmillis”

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Applications for the renewal of a Licence to operate a House of Multiple Occupation for 32 Stranmillis Gardens

- [Meeting of Remote Meeting, Licensing Committee, Wednesday, 14th October, 2020 5.00 pm \(Item 13.\)](#)

Minutes:

The HMO Unit Manager provided an overview of the application and explained that as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

He pointed out that the property was previously licensed as an HMO up and until 20th August 2019, at which time the licence had expired. Prior to the expiry of the licence, the NIHMO Unit had written to the owner on 13th August 2019 reminding him that the licence on the property was about to expire. On 2nd October 2019, an authorised officer from the HMO Unit had inspected the property and established that the property was occupied as an HMO by 5 individuals from more than 2 households.

He further advised that officers had written to Mr. Rafferty on 2nd October 2019 asking him if he had a reasonable excuse for operating the accommodation without it being licensed. As no such reasonable excuse was forthcoming, a Fixed Penalty Notice ("FPN") was issued on 14th October 2019 for the sum of £5000.00, offering Mr. Rafferty the opportunity of discharging any liability to conviction for the alleged offence, by paying the fixed penalty. Mr. Rafferty accepted the opportunity and paid the FPN on the 28th October 2019.

On 28th November 2019, pursuant to Section 15 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, a Temporary Exemption Notice (TEN) was granted until 28th February 2020 after the owner specified the steps he would be taking, with a view to securing the accommodation ceases to be an HMO. The TEN was subsequently extended until 28th May 2020. On 17th July 2020 officers had confirmed that the property was no longer in HMO usage. On 13th February 2020 an application for a new HMO licence was submitted to the NIHMO Unit.

Following the publication of the application, an objection was received in relation to the application. The objection raised general concerns about the overprovision of HMOs in the Stranmillis HMO Policy Area.

The HMO Unit Manager informed the Committee that as it was a new application, the HMO Unit had consulted with the Council's Planning Service which confirmed that on 17th January 2020, a Certificate of Lawful Use or Development was granted with the planning reference **LA04/2019/2946/Idc**.

For the purpose of determining whether or not the granting of a licence would result in an overprovision of HMOs in the locality of the accommodation, the locality was defined as being HMO Policy Area “HMO 2/19 Stranmillis” as defined in the document “Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.

The Committee agreed that Mr. Steven Rafferty, speaking on behalf of the applicant, Mr. Niall Rafferty, could address the Committee regarding the application for a new HMO for 32 Stranmillis Park.

Mr. Rafferty explained that because of miscommunications and inaccuracies provided by the HMO Office, the application process had been conducted extremely poorly and that it was the applicant’s view that the application should have been considered by the HMO Office as a renewal and not a new application.

Mr. Rafferty advised that the applicant acknowledged that he had allowed the licence to lapse, however, there were several contributing factors, which included some health concerns and changes in the administration process undertaken by Belfast City Council after the Northern Ireland Housing Executive (NIHE) transferred its Statutory Registration Scheme. He added that at the time of the renewal, he was in the process of changing the managing agent for the property due to misconduct and bad management by the previous agent, however, this had not been accepted as a reasonable excuse for failing to renew the licence within the specified timeframe.

He further advised that the applicant had held a HMO licence for the property for the previous ten years without issue and that, previously, the NIHE would have provided many months’ notice for renewal and that an NIHE officer would have made contact by telephone when a licence was due for renewal, a process not undertaken by Belfast City Council, which provided one week’s notice before the licence was due to expire.

Mr. Rafferty further informed Members that the applicant opposed the assumption of overprovision in the Stranmillis area and that the HMO Policy Area “HMO 2/19 Stranmillis” did not represent a true socioeconomic picture of the area in 2020. He asked the Committee to take his submission into consideration and grant the HMO licence.

The Chairperson thanked Mr. Rafferty for his submission to the Committee and following discussion, the Committee agreed to defer the application for the Grant of a Licence to Operate a House of Multiple Occupation for 32 Stranmillis Gardens to its next meeting on 18th November, 2020.

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Subject:	Applications for a New Licence to operate a House of Multiple Occupation for 11 Penrose Street, Belfast. BT7 1QX
Date:	20 January 2021
Reporting Officer:	Kevin Bloomfield, HMO Unit Manager, Ext. 5910
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 type="checkbox"/>	No <input checked="" type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues			
1.1	The Committee, at its December 2020 meeting, was asked to consider whether it would grant or refuse the application for a new HMO licence at 11 Penrose Street, Belfast, BT7 1QX. However based on advice from legal services the report was deferred to allow member to further consider at the January meeting the paper presented on “Proposed process for dealing with new licence applications for premises which previously operated as a HMO” which would have a direct impact on this case.			
1.2	Application details			
	Premises	Application No.	Applicant(s)	Managing Agents
	11 Penrose Street Belfast BT7 1QX	7621	Mr Michael McQuillan & Ms Nicola McQuillan	M & M Property Services
1.3	Members will be aware that responsibility for HMO’s was transferred to local district councils in April 2019 with the introduction of a new licensing regime. Any existing registrations under the old NIHE Registration Scheme operated were deemed to be licences at the point of transfer. Members are reminded that licences are issued for a 5 year period with standard conditions. Where it is considered necessary to do so, the Committee can also impose special conditions.			
1.4	Background The property was previously licensed as an HMO up and until the 01 August 2019, at which time the licence expired. Prior to the expiry of the licence the NIHMO Unit wrote to the owner on the 11 April 2019 reminding her that the licence on the property was about to expire.			

1.5	On the 04 October 2019 a HMO licence application was received from the owners of the accommodation. As this was a new application the HMO Unit consulted with the Council's Planning Service who on the 7 October 2019 confirmed "that Planning Service has no record of permission for an HMO at this address"
1.6	The council subsequently rejected the application on the 22 October 2019 pursuant to section 8.(2)(a) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 as the occupation of the living accommodation as an HMO would constitute a breach of planning control.
1.7	On the 30 June 2020 a further HMO licence application was received. As this is a new application the HMO Unit consulted with the Council's Planning Service who on the 6 July 2020 confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/2931/LDE
2.0	Recommendations
2.1	Taking into account the information presented Committee is asked to hear from the applicant and make a decision to either: <ul style="list-style-type: none"> (i) Grant the application, with or without any special conditions; or (ii) Refuse the application.
2.2	If the application is refused, the applicant has a right of appeal to the County Court. Such an appeal must be lodged within 28 days of formal notification of the decision. The licence will remain in place pending the appeal.
3.0	Main report
	<u>Key Issues</u>
3.1	Pursuant to the 2016 Act, the Council may only grant a licence if it is satisfied that: <ul style="list-style-type: none"> a) the occupation of the living accommodation as an HMO would not constitute a breach of planning control; b) the owner, and any managing agent of it, are fit and proper persons; c) the proposed management arrangements are satisfactory); d) the granting of the licence will not result in overprovision of HMOs in the locality; e) the living accommodation is fit for human habitation and— <ul style="list-style-type: none"> (i) is suitable for occupation as an HMO by the number of persons to be specified in the licence, or (ii) can be made so suitable by including conditions in the licence.
3.2	As this is a new application the HMO Unit consulted with the Council's Planning Service who on the 6 July 2020 confirmed that a Certificate of Lawful Use or Development was granted with the planning reference LA04/2019/2931/LDE
3.3	For the purpose of determining whether or not the granting of a licence would result in an overprovision of HMOs in the locality of the accommodation, and in order to ensure consistency as both a planning and licensing authority the locality was defined as being HMO Policy Area "HMO 2/22 Botanic, Holylands and Rugby" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015.
3.4	Legal Services has advised that there is a clear requirement in Section 8 of the 2016 Act upon the Council to be satisfied that the granting of a licence will not result in overprovision.

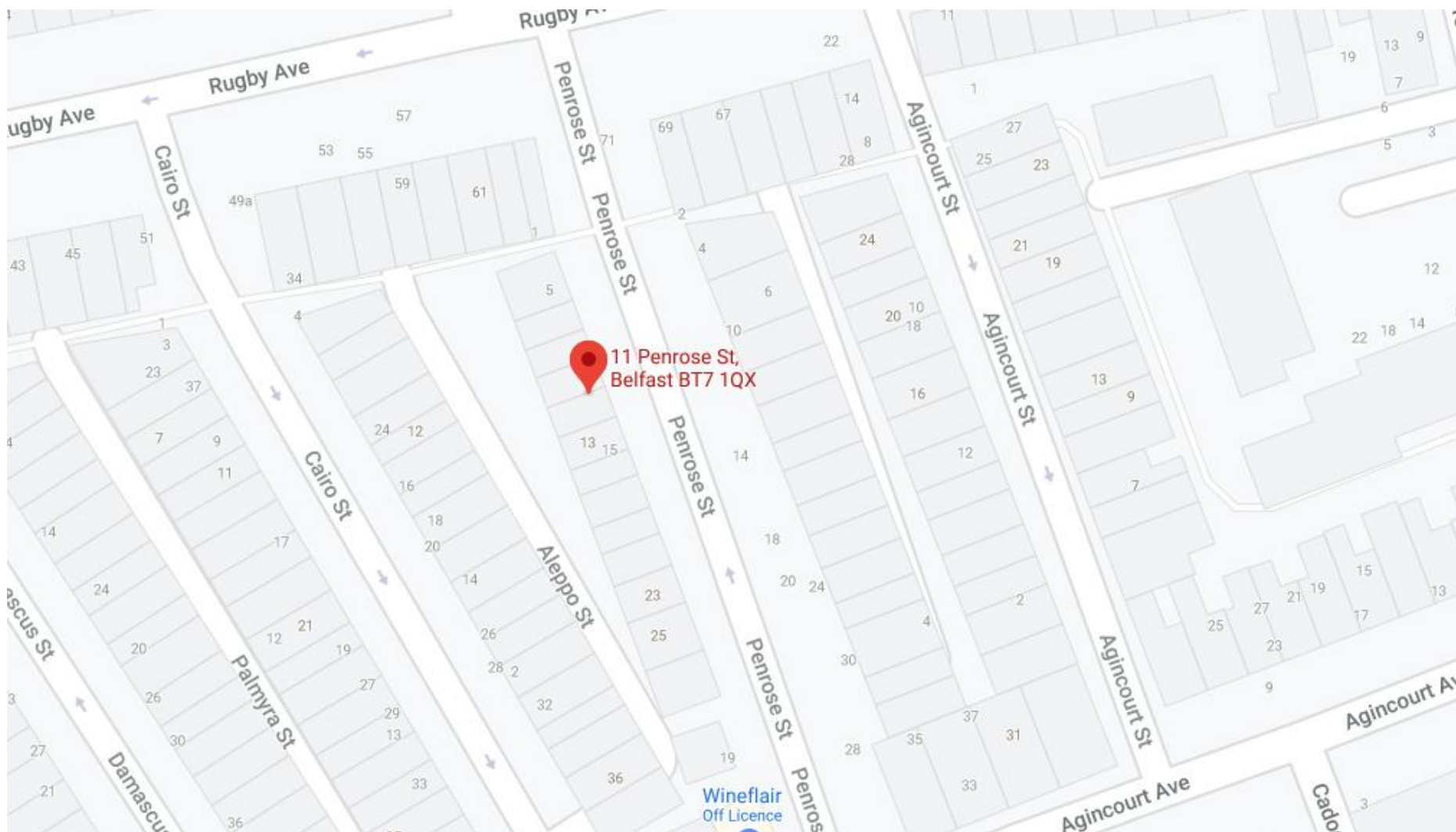
3.5	On the date of assessment, 9 October 2020 there were a total of 1250 licensed HMOs out of 2595 dwelling units in HMO policy area "HMO 2/22 Botanic, Holylands and Rugby" which equates to 52% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1250 licensed HMOs have a capacity of 6024 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey's Pointer database.
3.6	The Council must also consider the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need.
3.7	In September 2017 The Housing Executive published the document "Housing Market Analysis Update – Belfast City Council Area" which states "HMOs form an important element of the PRS, particularly for younger people on low incomes and for single people, under the age of 35, affected by the limitation of housing benefit to the shared room rate. Anecdotal evidence also indicates that this has been a popular sector with migrant workers."
3.8	At the time of writing this report there were 62 properties advertised for let as student houses on the website Property News in BT7 with a capacity of 253 bed spaces. It would therefore appear that there is sufficient supply of HMO accommodation in the area.
3.9	The fact the use of the property as a HMO is permitted for planning purposes is a relevant consideration in determining whether the grant of this licence will result in overprovision. There is an argument that it may not do so as the premises are already being used as a HMO.
3.10	However it should be borne in mind that planning permission was granted on the basis that the use had been established for 5 or more years and was therefore immune to enforcement. No assessment of overprovision was made at that time. Given the level of licensed HMO properties in this locality as set out above it would be highly unlikely that a planning application for a new HMO in the area would be successful as the thresholds in the 2015 Plan have been significantly exceeded.
3.11	When considering the fitness of an applicant the Council must have regard to any offences concerning fraud/ dishonesty, violence, drugs, human trafficking, firearms, sexual offences, unlawful discrimination in, or in connection with, the carrying on of any business; or any provision of the law relating to housing or of landlord and tenant law. It also permits the Council to take into account any other matter which the council considers to be relevant.
3.12	<p>The NIHMO Unit has consulted with the following units within the Council's City and Neighbourhood Services Department -</p> <ul style="list-style-type: none"> (a) Environmental Protection Unit ("EPU") - who have confirmed that in relation to night-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years, (b) Environmental Protection Unit ("EPU") - who have confirmed that in relation to day-time noise there has been no relevant enforcement action required in respect of the HMO in the last 5 years, (c) Public Health and Housing Unit ("PHHU") - who have confirmed that in relation to rubbish accumulation/filthy premises, there has been no relevant enforcement action required in respect of the HMO in the last 5 years, (d) Cleansing Enforcement ("CE") - who have confirmed that in relation to litter and waste , there has been no relevant enforcement action required in respect of the HMO in the last 5 years,

	<p><u>Fitness</u></p> <p>3.13 The applicants and managing agent have confirmed that they have not been convicted of any relevant offences as set out at paragraph 3.4 of this report.</p> <p>3.14 The applicant or managing agent have not been convicted of any HMO related offences by the Council. The EPU, PHHU and CE, solely in respect of their statutory functions, have confirmed that there are no relevant, previous convictions in respect of the applicant, managing agent or occupants. Due to data protection issues which have recently arisen, PSNI have not been accepting or responding to notification of these applications. Officers are continuing to engage with PSNI to find a resolution to this issue.</p> <p>3.15 Officers are not aware of any other issue relevant to the Applicant's fitness.</p> <p><u>Attendance</u></p> <p>3.16 The applicant and/or their representatives will be available to discuss any matters relating to the licence application should they arise during your meeting.</p> <p><u>Suitability of the premises</u></p> <p>3.17 An inspection of the premises was carried out by Officers from the Service on 17 July 2020 at which time it was established that the property meet the physical standards for an HMO.</p> <p><u>Notice of proposed decision</u></p> <p>3.18 On the 13 October 2020, pursuant to Paragraph 9 of Schedule 2 of the Houses in Multiple Occupation Act (Northern Ireland) 2016, Officers issued a notice of proposed decision to the applicant setting out the terms of the proposed licence.</p> <p>The notice of proposed decision stated that the council proposed to refuse the licence.</p> <p>3.19 A statement of reasons for the proposal was included in the notice of proposed decision.</p> <p><u>Statement of reasons for the proposed decision</u></p> <p><u>The statement of reasons outlined the following as the Council's basis for refusal:-</u></p> <p>Pursuant to section 12 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 "2016 Act" the Council is satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.</p> <p>For the purpose of section 12(2) of the Act the Council has determined the locality as being HMO Policy Area "HMO 2/22 Botanic, Holylands and Rugby" as defined in the document "Houses in Multiple Occupation (HMOs) Subject Plan for Belfast City Council Area 2015 (the "2015 Plan")</p> <p>In making this decision the Council has had regard to –</p> <ul style="list-style-type: none"> (a) the number and capacity of licensed HMOs in the locality (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need
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	<p>To inform the Council in its consideration of the above provisions, the Council has taken account of the 2015 Plan and in particular, Policy HMO 1 and Policy HMO 2.</p> <p>On the date of assessment, 9 October 2020 there were a total of 1250 licensed HMOs out of 2595 dwelling units in HMO policy area “HMO 2/22 Botanic, Holylands and Rugby” which equates to 52% of the total dwelling units, which in turn exceeds the 30% development limit as set out at Policy HMO 1. The 1250 licensed HMOs have a capacity of 6024 persons. The total number of dwelling units in a Policy Area is measured by Ordnance Survey’s Pointer database.</p>
3.20	<p>Consequently, Officers are satisfied that the granting of the HMO licence will result in overprovision of HMO accommodation in the locality of the accommodation for the purpose of section 8(2)(d) of the 2016 Act.</p> <p><u>Financial and Resource Implications</u></p>
3.21	<p>None. The cost of assessing the application and officer inspections are provided for within existing budgets.</p> <p><u>Equality and Good Relations Implications</u></p>
3.22	<p>There are no equality or good relations issues associated with this report.</p>
	<p>Appendices – Documents Attached</p>
	<ul style="list-style-type: none"> • Appendix 1 – Location Map • Appendix 2 – Map of HMO Policy Area “HMO 2/22 Botanic, Holylands and Rugby” • Appendix 3 – Notice of proposed decision • Appendix 4 – Applicants response to the notice of proposed decision.

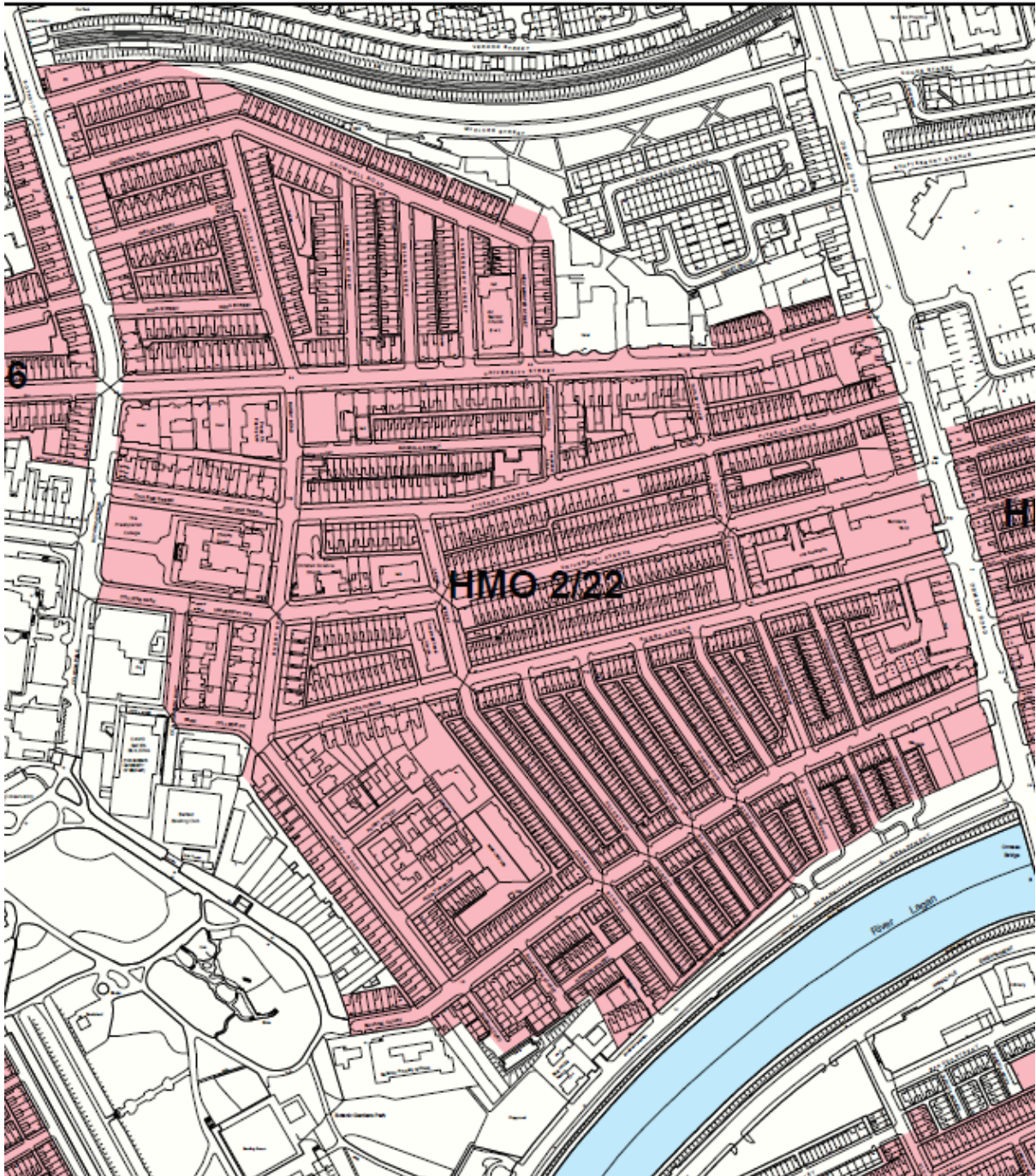
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Appendix 1 – Location Map – 11 Penrose Street, Belfast, BT7 1QX



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Appendix 2 - HMO 2/22 Botanic, Holylands and Rugby



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Subject:	Addendum Report - Proposed process for dealing with new licence applications for premises which previously operated as a HMO
Date:	20 th January 2021
Reporting Officer:	Nora Largey, Divisional Solicitor, Ext. 6049
Contact Officer:	Vivienne Donnelly, City Protection Manager, Ext. 5325 Kevin Bloomfield, HMO Unit Manager, Ext. 5910

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	The purpose of this report is to update members in respect of representations received subsequent to Committee's last meeting on 16 th December 2020.
2.2	Committee is asked to note the contents of this report and determine whether to agree the recommendation in the substantive report from December; namely:
2.3	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.
2.4	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
	<u>Key Issues</u>
3.1	A copy of the minutes in relation to December Licensing Committee in at Appendix One.
	Correspondence from Belfast Holyland Regeneration Association
3.2	Since Committee's last meeting correspondence has been received from Tony McGuinness on behalf of Belfast Holyland Regeneration Association. A copy of that email is appended to this report at Appendix 2.
3.3	Officers have carefully considered the representations which have been received and believe the recommendation to Committee is legally robust.
3.4	The correspondence asks why the Council does not propose to revoke those licences which were granted prior to counsel's advice being sought.
3.5	There is no proposal to revoke licences in respect of which over provision was not taken into account as a separate and distinct issue to planning permission. Legal Services have advised that any such revocation is likely to be subject to the same concerns about fairness and the ability to successfully defend any appeal. This is based upon a number of considerations, including the 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.
3.6	It was alleged that the paper's advice that there are no equality or good relations issues which arise from the proposal 'insults residents of affected areas' due to the overprovision of HMOs. Officers acknowledge that overprovision of HMO's in certain areas of the city is controversial. However it is not considered that this limited proposal would give rise to an equality or good relations issue which would require the Council to screen the decision.
3.7	Having considered representations from those landlords who would be affected, officers would propose that all new applications received up to and including 1 st 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 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. 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.
3.8	In relation to the number of unlicensed HMOs, this query is specifically raised in relation to the application for Penrose Street, Belfast which is also before Committee this evening. There are no live enforcement investigations by either Planning Service or NIHMO Unit in relation to alleged HMOs in that street. Council continues to take enforcement action in respect of any unlicensed HMO properties which come to its attention or those without planning permission.

	Correspondence from McCann & McCann Solicitors
3.9	Correspondence has also been received from McCann & McCann solicitors asking that we extend the proposed transitional period from 1st March 2021 for a further 3 months until 30 th June 2021. This is due to the deferral of the report from December and also due to the current Covid pandemic and the current restrictions. A copy of that correspondence is attached at Appendix 3.
3.10	Officers have advised the solicitors that this request would be placed before Committee for consideration. They were however advised that it is the responsibility of landlords to apply to renew their licences before their current licence has expired.
3.11	Furthermore, officers advised that its standard HMO renewal, reminder letter has been amended, to remind licence holders that should they fail to renew their licence on time, the Council will take into account planning permission and overprovision as two distinct issues. Officers have also issued further reminder letters to those approaching the date for the renewal of their licence, and whom had already been issued with reminder letters, previously.
	Other issues
3.12	Officers believe it may be helpful to provide some further clarity for members following on from the discussion which took place at Committee in December.
	Reference to 'new applications' in December Committee report
3.13	It is important to clarify that the reference to 'new' applications should be considered in the context of this report, which is those applications which are essentially an out of time renewal application rather than a new licence. It is also limited to those properties where it is alleged that the failure to renew on time was due to the misconception that planning was required. All of these premises have planning permission/CLEUD and have previously been registered as a HMO under the old NIHE scheme.
3.14	The report is not intended to deal with all new applications and the transitional period will not apply to any licences which are due to expire after 1 st March 2021.
3.15	By way of example, in paragraphs 2.1, 3.6 and 3.14 of the report, there is reference to 'new' applications but this is only a reference to the limited number of applications which this proposal directly relates to, which is considered to be approximately 30-35 properties throughout the city.
	Transfer of ownership
3.16	Overprovision will not lead to a refusal where there is a transfer of ownership. However this is only where there is a live HMO licence held by the vendor. This remains valid until the property is transferred. Therefore the number of licences in the area remain the same.
	<u>Financial and Resource Implications</u>
3.17	None.
	<u>Equality and Good Relations Implications</u>
3.18	There are no equality or good relations issues associated with this report.
4.0	Appendices:
	Appendix One – Minutes of December Licensing Committee meeting

	Appendix Two - Email from Tony McGuinness – 11 th January 2021
	Appendix Three – Letter from McCann & McCann solicitors – 8 th January 2021
	Appendix Four – Original report to December 2020 meeting of Licensing Committee

Licensing Committee

Wednesday, 16th December, 2020

MEETING OF LICENSING COMMITTEE HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Donnelly (Chairperson);
Alderman Sandford; and
Councillors Bradley, Bunting, Howard, Hussey,
Hutchinson, M. Kelly, T. Kelly, Magee, Magennis,
McAteer, McCabe, McCullough, McKeown,
Nicholl and Smyth.

In attendance: Mr. J. Walsh, City Solicitor;
Mr. A. Thatcher, Director of Planning
and Building Control;
Mr. S. Hewitt, Building Control Manager;
Ms. N. Largey, Divisional Solicitor;
Mr. K. Bloomfield, HMO Unit Manager;
Mr. J. Cunningham, Regulatory Services Manager;
Mr. V. Donnelly, City Protection Manager;
Mr. H. Downey, Democratic Services Officer; and
Ms. C. Donnelly, Democratic Services Officer.

Apologies

An apology for inability to attend was received from Alderman Copeland.

Minutes

The minutes of the meeting of 18th November 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 December, 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 recorded.

Presentations

Mr. D. Boyle

The Chairperson welcomed Mr. Boyle, a private landlord, to the meeting.

Mr Boyle informed the Committee that he was requesting that the report to be considered by the Members regarding proposed process for dealing with new licence applications for premises which previously operated as a HMO, be deferred until January's meeting of the Licensing Committee to allow for consideration of the issues contained in the report.

He further informed the Committee that HMOs were critical in the provision of housing in Belfast, that they provided affordable housing to a cross section of society including:

- Homeless;
- Single people on low income;
- Victims of domestic abuse;
- People suffering with addiction;
- Refugees;
- Tourists; and
- Students

He highlighted that there was various industries attached to the provision of HMOs, providing employment, including carpet fitters, painters, plasterers and furniture outlets. He added that it was local people, gaining employment by providing safe accommodation.

Mr. Boyle reported that he contested valid objections being made against HMO applications, and the application process, whereby landlords were being held responsible for noise complaints from tenants who no longer lived in their properties, and had not for many years or before the landlord had purchased the property.

Mr. Boyle summed up by adding that he felt the administration of HMO applications and renewals needed to be reviewed.

A Member asked Mr. Boyle to clarify his position with regard to the status of valid complaints. Mr. Boyle replied by stating that he felt that it was unfair that anyone could make an objection to a HMO application, whether they were directly affected by the application or not, and that those objections where an individual made an objection whereby they are not directly affected, should not be considered as a valid objection by the Council.

He added that an application on a property that had previously operated as a HMO, where the licence had expired, should not be treated as a new application, even though the application may have been out of time.

In response to a further question from a Member regarding the responsibility of making renewal applications lying with the applicants, Mr. Boyle stated that the Housing Executive had previously taken the decision to cease sending renewal reminders to licence holders but had failed to inform those licence holders that the reminder letters would no longer be issued.

The Chairperson thanked Mr. Boyle for his presentation to the Committee.

Mr. M. McMahon

The Chairperson welcomed Mr. McMahon, a Property Agent, to the meeting.

Mr. McMahon informed the Members that he was involved with the registration and licensing of a large number of HMO properties which were predominantly situated in the University Area of south Belfast. He added that the area accommodated students, refugees, young professionals, migrant workers and asylum seekers.

He advised the Committee that the Northern Ireland Housing Executive, together with landlords in the Holylands area, had invested millions of pounds in upgrading substandard dwellings to meet the demand for shared accommodation. He added that, as a result, the population of the area had changed and was mostly a transient population and not an area predominantly occupied by families.

He stated that the HMO accommodation market was very fluid and highlighted that, although student numbers and shared accommodation had declined over the previous months as a result of the pandemic and the provision of online learning by the universities, there had been a growth in other sectors such as migrant workers, young professionals and asylum seekers.

He added that students did, however, make up the majority of occupants in the area and that there had been a number of enquiries from students who resided in the new purpose built student accommodation in the city, who were uncomfortable living in a building with hundreds of other students as a result of the pandemic, and wished to leave in a smaller household.

He summed up by stating that HMO accommodation was much more affordable for students than the purpose built accommodation, and it was important that students had a choice on where to reside while at university in order to minimise costs.

In response to a question from a Member requesting how Mr. McMahon thought the future of the Holylands area would look in five to ten years' time, he stated that the area was not desirable to families and that, although the Holylands was mostly occupied by students, it remained a diverse area.

The Chairperson thanked Mr. McMahon for his presentation to the Committee.

Mr. S. Magill – LANI

The Chairperson welcomed Mr. Magill from the Landlords Association of Northern Ireland (LANI) to the meeting.

Mr. Magill explained that he was a landlord, an agent and had, in the past, been a private rental tenant, received housing benefit and resided in the Holylands area. He added that the 2016 HMO Act and the transfer of its powers to the Council had not concerned landlords and assumed that, following discussions with the Minister, MLAs, the Department for Communities and HMO staff, the transfer to the Council would be seamless. However, he reported that the application process had become extensive,

that planning permission was required, and that landlords had to undertake a fit and proper person test, requirements that were not previously sought by the Housing Executive and were not referred to in the 2016 HMO Act.

He referred to occasions when HMO officers had contacted landlords to inform them that as they had not renewed their licence, they had been operating illegal HMOs and therefore liable to large fines.

He explained that the recent proposed changes to the administration procedure, including the requirement of an out of hours contact numbers and stated that the consideration of noise complaints up to five previous years was an unfair requirement, as many landlords were not aware of the complaints, or did not own the property at the time.

The Chairperson thanked Mr. Magill for his presentation to the Committee.

Delegated Matters

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

Licenses Issued Under Delegated Authority

The Committee noted the applications that had been issued under the Scheme of Delegation.

Designation of Street Trading Sites

The Building Control Manager reminded the Committee that, at its meeting in November, it had agreed that the statutory consultation process in relation to the consideration of the designation of a number of proposed new street trading sites should commence, and that Members had asked for further details to be provided on the proposed sites.

He provided Members with a detailed overview of the following proposed sites:

- Lockview Road;
- Upper Newtownards Road;
- Comber Greenway;
- Dublin Road;
- King Street;
- North Road; and
- Castle Junction.

He informed the Committee that the statutory notice had been published and that any representations received, relating to the proposed designation, would be brought before the Committee for consideration.

He further informed the Members that consultation with the PSNI, the Department for Infrastructure and others had also been initiated and that the responses would form the basis of the future report that would be presented for consideration and

that Members would also be able to determine any restrictions on the commodities to be sold and make any recommendations regarding the hours of trading.

The Committee was advised that written notification had been received from the applicant withdrawing the application to designate the site at 123 Miltown Road in the car park of Shaw's Bridge Sports Association and that the application no longer formed part of the consultation process.

The Committee noted the content of the report.

Houses in Multiple Occupation (HMO) Licences
Issued Under Delegated Authority

The Committee noted the applications that had been issued under the Scheme of Delegation.

Applications for the renewal of a Licence to operate
a House of Multiple Occupation for 2 St Albans Gardens

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 2 St Albans Gardens.

Applications for the renewal of a Licence to operate
a House of Multiple Occupation for 7 Sandymount Street

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that a warning notice regarding nighttime noise had been issued on 7th September, 2016, in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 7 Sandymount Street.

**Applications for the renewal of a Licence to operate
a House of Multiple Occupation for 61 Sandhurst Gardens**

The HMO Unit Manager provided an overview of the application and explained that, as a valid objection had been received, the application must be considered by the Committee, pursuant to the 2016 Act and legal advice.

He advised that no noise complaints had been received in relation to the property.

The Committee approved the application for the Grant of the renewal of a Licence to Operate a House of Multiple Occupation for 61 Sandhurst Gardens.

**Applications for a New Licence to operate a House
of Multiple Occupation for 11 Penrose Street**

The Committee deferred consideration of the application to its meeting scheduled to take place on 20th January, 2021.

**Addendum report in respect of an application for a
New Licence to operate a House of Multiple Occupation
for 32 Stranmillis Gardens**

The Committee deferred consideration of the application to its meeting scheduled to take place on 20th January, 2021.

Non-Delegated Matters

Licence Fees for Sex Establishments

The Building Control Manager advised Members that, under Article 4 and Schedule 2 of The Local Government (Miscellaneous Provisions) (NI) Order 1985 (the Order), the Council had powers relating to the Licensing of Sex Establishments, and that paragraph 19, Schedule 2 provided that an applicant for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the council.

He reminded the Committee that the current Sex Establishment Licence fees were set at its meeting in June 2016 and the Committee had agreed that a review of the fees be conducted each year.

He reported that a review of the time allocated to each task in the licensing process had been undertaken and costing estimates reviewed and that the analysis had demonstrated that the current fees, as agreed by the Licensing Committee in September 2019, were still proportionate to the cost of the processes associated with administering a Sex Establishment Licence.

The Committee agreed that the fees, which had been reviewed in September 2019, remained unchanged.

Pavement Café Licence Hours of Operation

The Building Control Manager reminded the Committee that, at its meeting in December 2016, it had determined a number of matters in relation to the administration of the Licensing of Pavement Cafés Act (NI) 2014, including setting Pavement Café Licence fees, agreeing the Standard Conditions to be attached to licences and amendments to the Scheme of Delegation to outline those matters that would be brought before the Licensing Committee for consideration.

He informed Members that, in June, a temporary process for considering pavement café applications had been introduced to assist the hospitality sector during the pandemic. The process included drafting temporary guidance for applicants, based on the Department for Communities guidelines, and supplementary guidance from the Licensing Forum Northern Ireland which had been produced when the Act came into force.

He advised the Committee that Councils may set the hours and days of use for the pavement café area having regard to the location, likely disturbance to local residents or other businesses and representations from interested parties.

He further advised that the supplementary guidance offered general advice around the hours of operation of pavement cafés to maintain consistency across Northern Ireland. It advised that pavement cafés should be licensed between 8.00 am and 11.00 pm and be reflective of the normal operating hours of the business. There had also been advice that, if the premises were licensed under the Licensing Order, a licence would not be issued beyond 11.30 pm, regardless of the additional operating hours that may apply to the premises.

He reported that the Council has now received a number of applications from premises with a Liquor Licence, where the hours applied for were not representative of the Council's guidance document or the current requirements of the N.I. Executive. Some applicants had requested a later finishing time up to 1.00 am, although those applications had generally been submitted before the N.I. Executive requirement that licensed premises were to be closed by 11.00 pm.

The Building Control Manager informed the Members that under the current liquor licensing law, normal trading hours for licensed premises had been 11.30 am to 11.00 pm on weekdays, 12.30 pm to 10.00 pm on Sunday or Christmas Day.

He reminded the Committee that any application for an Outdoor Entertainments Licence would be issued under delegated authority with a latest finishing time of 11.00 pm and for any licensee that wished to provide outdoor entertainment later than 11.00 pm, such applications would be brought before the Licensing Committee for consideration.

Following discussion, Members agreed that the standard hours for which a Pavement Café licence may be permitted to operate would be set as 7.00 am to 11.00 pm, and to delegate authority to the Director of Planning and Building Control to grant any application for a pavement café licence to trade earlier or later than the standard times of 7.00 am to 11.00 pm.

The Committee further agreed that officers would provide a fortnightly report to Members with details of applications received for pavement café licenses.

**Amendment of Standard Terms and Conditions to
include an Emergency Out of Hours Contact Number**

The Divisional Solicitor presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 To consider amendment of the Standard Terms and Conditions attached to licences for the use of premises as a House in Multiple Occupation (HMO) to include a requirement to provide an emergency out of hours contact number.**

2.0 Recommendations

- 2.1 Taking into account the information presented Committee is asked to amend the Standard Terms and Conditions attached to a HMO licence to allow the landlord or managing agent to be contacted in circumstances where there is anti-social behaviour occurring at the HMO property and the co-operation of the tenants cannot be secured.**
- 2.2 If Committee does agree to amend the standard conditions, delegated authority is sought to grant any outstanding applications in respect of which a special condition was proposed without such condition.**

3.0 Main report

Key Issues

- 3.1 Section 10(6) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 ('the 2016 Act') 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 granting a licence.**
- 3.2 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.**

- 3.3 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.
- 3.4 Section 14 (1)(a) of the 2016 Act provides that the Council may include such conditions as the Council considers appropriate for regulating the management, use and occupation of the HMO. Such conditions may include the requirement to take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO.
- 3.5 At its meeting on 20th February 2019 the Committee approved standard licence conditions. These conditions 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. The Council may include further special conditions as it considers necessary.
- 3.6 At its meeting on 20th February, 2019 the Committee also approved a guidance document entitled ‘Tackling Anti-Social Behaviour in HMO Properties, A Guide for Owners and Managing Agents’ provides guidance to landlords on the remedies and preventative measures that can 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.
- 3.7 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.
- 3.8 Historically Council had considered that sharing information about alleged anti-social behaviour or any enforcement action against occupants was unlawful. However with the introduction of the new licensing scheme officers reviewed this position and determined that certain information could be provided in light of the new statutory scheme. This move was broadly welcomed by landlords.
- 3.9 In the course of that review it became apparent that it is very difficult for Environmental Health to effectively deal with noise and other anti-social behaviour immediately given

legislative restraints and the transient nature of the occupancy of most of these properties. There will also be incidences of anti-social behaviour which are not enforceable under noise legislation but are nonetheless causing a significant disturbance.

- 3.10 Upon some reports being presented to Committee where there had been issues relating to noise Committee requested that a special condition be included to provide an out of hours contact number to deal with noise issues at a property. Given this indication from Committee officers have considered the imposition of such a condition for those applications where there has been a noise issue reported at the property over the lifetime of the licence.
- 3.11 Whilst most landlords have been content to agree to the special condition, there have been objections from some and LANI have also raised concerns.
- 3.12 Amongst the other concerns raised some landlords have alleged that the imposition of such a condition is a breach of a landlord's rights under Article 1 Protocol 1 of the European Convention on Human Rights (the Convention'). This relates to the right to peaceful enjoyment of a person's own property. Officers have also been asked whether the Council carried out 'a human rights impact assessment' in respect of the proposed inclusion of such a condition.
- 3.13 Article 6 of the Human Rights Act 1998 states that "It is unlawful for a public body to act in a way which is incompatible with a Convention right." However Article 1 Protocol 1 of the Convention is not an absolute right. This means that it can be interfered with to the extent that it is considered necessary or proportionate to do so in order to achieve a legitimate aim. In this particular context the Council must also have regard to the competing rights of those affected by noise. Similarly their rights are engaged under Article 1 Protocol 1 and also under Article 8 of the Convention which relates to the right to respect for private and family life, home and correspondence. Therefore in determining whether to impose special licence conditions, the Council must strike an appropriate balance between the human rights of those who own HMOs and those who live beside them.
- 3.14 Officers have carefully considered the issues which have been raised and what was sought to be achieved in requiring an out of hours number. There is a clear statutory obligation upon HMO landlords to be responsible for managing anti-

social behaviour at their properties. They are also likely to have the most up to date contact details for their tenants and/or their guarantors if needed and it is considered that tenants may be more likely to comply with council officer requests if they are aware their landlord could be contacted with the potential ramifications that may have on their tenancy etc.

- 3.15 Officers have come to the conclusion that it would be more appropriate to include a standard condition requiring all landlords to provide an emergency out of hours contact number rather than applying a special condition on an ad hoc and reactive basis upon the renewal of each individual licence.
- 3.16 It is envisaged that this number will only be used where the anti-social behaviour is causing an unacceptable disturbance to neighbours or in the area generally and that there has been a failure to comply with a reasonable request from an officer of the council or PSNI by the occupants. The landlord or managing agent will generally not be expected to attend the property, nor will they be expected to manage anti-social behaviour which is not directly occurring on, or connected to, their premises. In this regard it is also considered that the proposal is proportionate to the aim which is sought to be achieved.
- 3.17 If Committee agree to the inclusion of such a Standard Condition the Council will amend the Standard Conditions and notify all registered landlords of the change. It will also provide some general guidance as set out above to reassure landlords that this will only be used in very limited circumstances.
- 3.18 Furthermore, delegated authority is sought to grant any outstanding applications in respect of which it was proposed to include a special condition without same given the standard licence conditions are to be amended.

Financial and Resource Implications

- 3.19 None.

Equality and Good Relations Implications

- 3.20 There are no equality or good relations issues associated with this report."

The Committee agreed to amend the Standard Terms and Conditions attached to a HMO licence to allow the landlord or managing agent to be contacted in circumstances where there is anti-social behaviour occurring at the HMO property and the co-operation of the tenants cannot be secured.

The Committee further agreed to delegate authority to the Director of City and Neighbourhood Services to grant any outstanding applications in respect of which a special condition was proposed without such condition.

Amendment of the Scheme of Delegation to Delegate Authority to determine Some Renewal Applications with Objections

The Divisional Solicitor presented the Committee with an update in respect of the following report:

“1.0 Purpose of Report or Summary of main Issues

- 1.1 To consider amendment of the Scheme of Delegation in respect of applications for renewal of a licence for the use of premises as a House in Multiple Occupation (HMO).**

2.0 Recommendations

- 2.1 Taking into account the information presented Committee is asked to consider whether it wishes to amend the Scheme of Delegation to allow officers to grant a renewal application for a HMO licence where a valid objection has been received but where the objection relates to overprovision, either directly or indirectly.**
- 2.2 Amendment of the Scheme of Delegation does not fall within the scope of the delegated authority for Committee and must therefore be ratified by Council.**

3.0 Main report

Key Issues

- 3.1 Members will recall that a report was brought to Committee at its last meeting seeking authority to amend the Scheme of Delegation to allow officers to grant renewal applications where a valid objection has been received but the objection relates to over provision.**
- 3.2 Members are reminded that Section 20 of the Houses in Multiple Occupation Act (NI) 2016 states that councils cannot refuse a renewal application on the grounds of overprovision or breach of planning control.**

- 3.3 Authority was also sought to delegate authority to officers to grant renewal applications where the objections which were raised were general in nature and not specific to the property in question.
- 3.4 Members expressed some concerns about the proposed amendments to the Scheme of Delegation and it was agreed to defer making a decision until Committee's next meeting.
- 3.5 Paragraph 3.6.27 of the Scheme of Delegation permits officers to exercising all powers in relation to the grant (but not refusal) of HMO licences, except in certain circumstances. One of those exceptions is where material objections are received. This means that where a material objection has been received the application must be referred to Committee.
- 3.6 Council continues to receive objections in relation to renewal applications which raise general issues about overprovision or raise concerns about other issues in the general area which are not specific to either the property, owner or managing agent of the property. In accordance with the 2016 Act these objections are valid and whilst not dismissing the alleged issues, legal advice has consistently been that refusal of an application on the basis of such an objection would not be sustainable.
- 3.7 It is considered that this process is unfair to the applicants and indeed to objectors. It also brings applications to Committee unnecessarily which increases work load for both Committee and officers. However in light of concerns raised at the last meeting officers are only seeking delegated authority to determine renewal applications where there is an objection on the grounds of overprovision.
- 3.8 At the last Committee meeting a member suggested that officers should consider whether delegated authority should be granted in respect of all renewal applications where an objection has been received if Legal Services advise that refusal would not be sustainable.
- 3.9 This has been considered by officers and there is no legal impediment to such an approach. However officers recognise that the issues associated with HMO are controversial and as the licensing scheme remains relatively new it may be more appropriate for Committee to retain a higher level of decision making at this stage. There are also potentially reputational issues for the Committee in delegated such powers to the Council's Legal Services without Committee having heard the objectors.

Financial and Resource Implications

3.10 None.

Equality and Good Relations Implications

3.11 There are no equality or good relations issues associated with this report."

The Committee agreed to amend the Scheme of Delegation to delegate authority to the Director of City and Neighbourhood Services to grant a renewal application for a HMO licence where a valid objection had been received, but where the objection related to overprovision, either directly or indirectly.

Proposed process for dealing with new licence applications for premises which previously operated as a HMO

The Committee deferred consideration of the report to its meeting scheduled to take place on 20th January, 2021.

Chairperson

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DATE:

PLEASE QUOTE OUR REF:

YOUR REF:

8th January 2021

PMACD/LMcC/MISC

F.A.O. Mr Kevin Bloomfield

NI Houses in Multiple Occupation Unit
Belfast City Council
The Cecil Ward Building,
4-10 Linenhall Street,
Belfast
BT2 8BP

Dear Sir,

We write in relation to the upcoming meeting of the Belfast City Council Licensing Committee which we understand is to be convened on 16th January 2021.

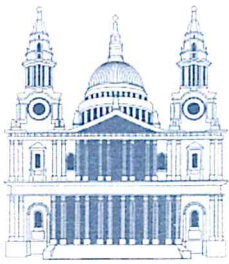
We understand that at that meeting the "*Proposed process for dealing with new licence applications for premises which previously operated as an HMO*" will be discussed and two recommendations moved for agreement by the Committee.

Following our consideration of the Licensing Committee Report dated 16th December 2020, we would request confirmation as to the circumstances in which an application would be considered a "new application for a HMO licence" by the Council, and distinctly, the circumstances an application would be considered a "renewal application for a HMO licence" by the Council.

The Licensing Committee Report includes several references to premises "previously operated as an HMO": see the 'Subject' heading of the report, and paras 2.1 and 3.9. We would be grateful if further definition could be given to this phrase. When it will be concluded that premises have previously operated as a HMO?

We would further submit that the proposed deadline by which applications must be lodged, where the premises have previously operated as an HMO, should be extended by 3 months until 30th June 2021. The deferral of consideration of the Licensing Committee Report from December 2020 means that one month of the proposed period of benefit to landlords has already been lost. The extension we propose would also be an appropriate recognition that the circumstances in which the proposed process is intended to operate will require to accommodate the unprecedented, and as yet unknown consequences of the present phase of the COVID-19 crisis, and in particular the recent restrictions imposed by the Northern Ireland Executive.





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DATE:

PLEASE QUOTE OUR REF:

YOUR REF:

We would be grateful for a response as soon as possible, and in any event in advance of the next meeting of the Licensing Committee on 16th January 2021.

Yours faithfully,
McCann & McCann

Per. 





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="260 226 416 255"><u>Key Issues</u></p> <p data-bbox="165 293 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="165 459 1474 857">3.2 Section 12 goes on to specifically deal with overprovision. It reads:</p> <p data-bbox="260 528 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="316 629 1474 763" style="list-style-type: none"> (a) the number and capacity of licensed HMOs in the locality, (b) the need for housing accommodation in the locality and the extent to which HMO accommodation is required to meet that need, and (c) such other matters as the Department may by regulations specify. <p data-bbox="260 797 1474 857">(2) It is for the council to determine the localities within its district for the purposes of this section.</p> <p data-bbox="165 896 1474 1023">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 1061 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 1265 1474 1431">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 1771 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 1906 1474 1966">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	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.
3.9	Having considered representations from those landlords who would be affected, officers would propose that all new applications received up to and including 1 st 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 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. 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.
3.10	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.
3.11	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.
3.12	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.
3.13	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.
3.14	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.
3.15	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><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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